facing up to ►REALITY

an Irish Family Planning Association submission to the

INTERDEPARTMENTAL WORKING GROUP ON ABORTION

March, 1998

ifpa

ifpa

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Foreword

This document contains the full text of the Irish Family Planning Association (IFPA) submission to the government's Inter-Departmental Working Group on Abortion. It is published as a contribution to open debate of the issues surrounding this important women's health issue.

We believe that the establishment of the working group, together with the recent publication of the *Women and Crisis Pregnancy* Report, presents this country with a much needed opportunity to face up to and deal with the reality of Irish abortion. This is an opportunity to rise above the rhetoric of past debates, to look beyond the blinding light of 'hard cases' and the crisis mentality that they evoke and to focus on the everyday realities of Irish abortion and the health needs of the women concerned. According to British statistics an average of 18 Irish women will terminate a pregnancy in England every working day. This is the reality we must now address.

During the months ahead, whatever our individual viewpoint, we all have a duty to contribute to the achievement of a meaningful way forward. We all have a duty to conduct the debate with respect for the dignity and well-being of all women, especially those who have experienced crisis pregnancy or who are experiencing it currently.

The IFPA makes this submission in the hope that it will help us all to move forward. We welcome the active support of all those who share our perspective (a membership application form is printed inside the back cover), and we offer constructive dialogue to all those who remain to be convinced.

This is an opportunity for progress.

Catherine Forde

Catherine Forde
National Chairperson

Tony O'Brien

Tony O'Brien
Chief Executive

ifpa *promoting sexual health and reproductive choice*

This page does not form part of the Submission.

Invitation of Submissions to the Interdepartmental Working Group on Abortion

The Government has established an Interdepartmental Working Group to prepare a Green Paper with the following Terms of Reference:

"Having regard to:

Section 58 of the Offences against the Person Act, 1861;

Section 59 of the Offences against the Person Act, 1861;

Article 40.3.3 of Bunreacht na hEireann;

The decision of the Supreme Court on 5 March 1992 in the *Attorney General v X and Others* [1992] 1 I.R.1;

Protocol No. 17 to the Maastricht Treaty on European Union signed in February 1992 and the Solemn Declaration of 1 May 1992 on that Protocol;

The decision of the people in the Referendum of 25 November 1992 to reject the proposed Twelfth Amendment of the Constitution;

The decision of the High Court on 28 November 1997 in *A & B v Eastern Health Board, Judge Mary Fahy, C and the Attorney General (Notice Party);*

and having considered the constitutional, legal, medical, moral, social and ethical issues which arise regarding abortion and having invited views from interested parties on these issues, to prepare a Green Paper on the options available in the matter".

The Green Paper will be a discussion document which will set out the options in relation to possible approaches to resolving the situation regarding abortion. It is the Government's intention to refer the Green Paper, when completed, to the All-Party Committee on the Constitution for its consideration.

The Working Group would welcome contributions in relation to the matters at issue, as part of the process of preparation of the Green Paper. Interested members of the public, professional or voluntary organisations and any other parties who wish to do so are invited to make written submissions to the Group at the following address:

The Secretary
Working Group on Green Paper on Abortion
Department of Health and Children
Hawkins House
Hawkins Street
Dublin 2

DEPARTMENT OF HEALTH AND CHILDREN
AN ROINN SLÁINTE AGUS LEANAÍ

Submissions must be received not later than 31 March 1998.

This page does not form part of the Submission.

facing up to
► **REALITY**

Contents

SECTION 1

Introduction

1.1 **This Submission.**

1.1.1 The IFPA welcomes the establishment of a government working group on abortion and is taking this opportunity to make a submission. We hope that early government action to address Irish abortion will now follow.

1.1.2 In making this submission the IFPA is strongly committed to the view that women's health, the well-being of Irish Society and respect for the political process necessitate a resolution of the long-running abortion debate. For almost twenty years this issue has been a constant theme in Irish political life. During those twenty years at least 100,000 Irish abortions have taken place[1].

1.1.3 This endless debate has been conducted in increasingly extreme terms, which tend to have little or no regard for the emotional well-being of those who have had abortions or who are concurrently living with crisis pregnancy. In more recent times there have also been attempts to intimidate Irish politicians, by targeting their private dwellings and their families.

1.1.4 The IFPA is, therefore, firmly of the view that there is an overwhelming case that the public interest can only be served by addressing abortion as a practical health issue.

1.1.5 Our aim in making this submission is to achieve a society in which:

- abortion is treated as a health issue, since it requires a medical intervention;
- the criminal law and the constitution are not used as part of an effort to limit the extent of women's control over their own bodies;
- the decisions which women make about pregnancy are treated with respect at all times and, especially, whenever the issue of abortion is debated;
- women with crisis pregnancies have their right to privacy and confidentiality respected, including those women whose situation may be the subject of public controversy;
- efforts are made to limit the extent of unplanned pregnancy through education, information and service provision;
- there is easy and free access to non-directive counselling and support for women with crisis pregnancy or who have had an abortion;
- women do not need to leave Ireland to terminate their crisis pregnancies;
- the greatest possible number of women who do terminate their pregnancies do so within the first 12 weeks.

1.2 **IFPA Credentials**

1.2.1 The Irish Family Planning Association (the IFPA) is a national voluntary organisation and registered charity which was founded in 1969. The Association's founders desired to change the appalling health and social circumstances in which many families in Ireland lived and, in particular, the health consequences for mothers and their children of repeated pregnancies.

1.2.2 The primary aim of the IFPA's founder members was to alter the social and legal environment in Ireland so that information and services, regarding all methods of family planning, were accessible to everyone. Over the past 29 years the aims and objectives of the Association have broadened and developed. The IFPA remains fundamentally committed to ensuring that all persons have access to the method of contraception which is most suitable to their individual and particular needs. However, this commitment is now part of a broader policy to promote and protect the individual basic human rights of all persons within the context of their reproductive and sexual health, their relationships and their sexuality. In 1969 the IFPA opened its first clinic. Now it has three large medical centres and

1. *Estimate of minimum number of abortions in the period based on British statistics and estimate of non-reported Irish abortions. See also paragraph 3.2 and Appendix A.*

six additional counselling centres. Initially, the IFPA provided contraceptive services and now it provides a comprehensive range of sexual and reproductive health services, including pregnancy counselling. Through the provision and development of its services and through its political activity, the Association has been and continues to be acutely aware of the myriad difficulties which can affect any person in their reproductive health and, in particular, women faced with crisis pregnancy.

1.2.3 The IFPA, therefore, makes this submission against a background of more than 29 years of first hand experience in the field of reproductive health and crisis pregnancy.

SECTION 2

Terms of Reference of the Interdepartmental Working Group on Abortion

2.1 The Terms of Reference of the Interdepartmental Working Group on Abortion refer to the constitutional, legal, medical, moral, social and ethical issues which arise regarding abortion. The Working Group has invited contributions as part of the process of preparing a Green Paper which will set out the options in relation to possible approaches to resolving the situation regarding abortion. The Terms of Reference have regard to Sections 58 and 59 of the Offences Against the Person Act, 1861, Article 40.3.3 of the Constitution of Ireland, the "X" and "C" cases, Protocol No. 17 to the Maastricht Treaty and the proposed 12th Amendment to the Constitution of Ireland.

2.2 The word abortion does not appear in either sections 58 or 59 of the Offences Against the Person Act, 1861, Article 40.3.3, Protocol No. 17 or the proposed 12th Amendment to the Constitution of Ireland. The 1861 Act refers to the procuration of a miscarriage. Article 40.3.3 and the proposed 12th Amendment refer either to the constitutional rights of the "unborn" and/or the termination of the life of the "unborn" and Protocol No. 17 refers to the application of EU Treaties on the application in Ireland of Article 40.3.3 of the Constitution of Ireland. Both the "X" and the "C" cases refer to abortion though in neither of these cases is a definition of the term "unborn" given.

2.3 It should, therefore, be noted that when the word 'abortion' is used within the Terms of Reference of the Interdepartmental Working Group on Abortion it is used in the absence of a definition of its legal meaning.

2.4 The terms of reference and this submission pay due regard to the circumstances of the 'X' and 'C' cases, and it is certainly important to ensure that the issues directly arising from these two extreme cases are resolved. However, the IFPA does not seek to argue, in this submission or elsewhere, that the issue of abortion should be debated or addressed on the basis of hard cases alone. To do so would run the significant risk of missing the real point. The reality of Irish abortion is reflected in the daily and private journeys of thousands of Irish women to Britain. Thousands of women whose situation is not comparable to the circumstances which befell Miss 'X' or Miss 'C'. It is possible to envisage measures which respond to the detail of these two cases but which fail completely to address the everyday reality of Irish abortion.

2.5 The Terms of Reference do not refer to the 'Regulation of Information (Termination of Pregnancies Outside the State)' Act, 1995. However, the Minister for Health and Children has indicated that his department will withhold publication of the recommendations of the *Women and Crisis Pregnancy*[2] Report, pending their consideration by the working group. Since much of the Report relates to the operation of the information legislation it is reasonable to assume that these recommendations will include matters which arise from the operation of the Act and the organisation and funding of counselling services.

2. *Women and Crisis Pregnancy A Report Presented to the Department of Health and Children by Evelyn Mahon, Catherine Conlon and Lucy Dillon, The Stationery Office, Dublin. ISBN 0-7076-5005-4.*

3. *The Right to Choose: Reproductive Rights and Reproductive Health UNFPA (United Nations Population Fund), New York, January 1998. ISBN 0-89714-451-1 (See Appendix F).*

4. *See Table at Appendix A.*

SECTION 3

Abortion in Context

3.1 Abortion has been practised since the earliest of times. No criminal sanction or constitutional provision has ever or will ever stop women seeking abortions. In many countries criminal sanctions result in unsafe abortions which cause the deaths of about 70,000[3] women every year world wide, and a much larger number suffer from infections, injury and trauma. Victims of unsafe illegal abortions fill hospital wards in such countries. In other countries criminal sanctions result in women going abroad, as in Ireland, or "State-hopping" as happens in the United States of America. Increasing criminal sanctions or further amendments to the Irish Constitution, which are intended to totally prohibit abortion within the State, will not reduce the Irish abortion rate. In fact, it may increase it or introduce unsafe abortion into Ireland. Where there is no possibility of recourse to safe abortion women have sought to perform the procedure for themselves, often with catastrophic consequences.

3.2 Statistics produced by the Office for National Statistics in Britain demonstrate quite clearly that neither the Eighth Amendment or the restrictions on information which flowed from it, lessened the number of women travelling from Ireland for abortions in Britain. During this period the statistics indicate that the number grew steadily.[4]

3.3 If the law in Britain were to be changed, so as to limit Irish women's access to legal abortion there, it is likely that Ireland would face backstreet abortion and self-induced abortion with serious health consequences for Irish women.

3.4 The IFPA views abortion as a health issue which should be regulated by health guidelines and not by way of criminal statutes or constitutional provisions.

3.5 For medical reasons, abortion is not an appropriate method of family planning. It should be viewed, therefore, as a solution to a "crisis" (an unwanted or problematic pregnancy) rather than as a means of regulating one's fertility. It is a necessary elective treatment for many women faced with a crisis pregnancy. This crisis may exist for medical/health, social or economic reasons, for example:

- it could be the mother of six children who can neither mentally nor physically cope with any more children;
- it may be the mother of a disabled child who decides that it is not fair to that child, or to her other children, to have yet another child with or without a similar disability;
- it may be the woman who does not wish to carry her pregnancy to full term as she knows that her child will not be capable of surviving separation from the uterus; or
- it may be the minor who cannot cope with a pregnancy caused by rape.

The situations which result in some pregnancies being crisis pregnancies are varied and frequently tragic. A listing of the different circumstances may give rise to a greater degree of sympathy, by the public, for certain women more than for others. We certainly know that, in general, the Irish public has been anxious that minors who are suicidal, as a result of an unwanted pregnancy, should have access to abortion[5 6]. However, for every woman who has an unwanted or problematic pregnancy that pregnancy causes a crisis for her which can have long term effects on her welfare and the welfare of other members of her family.

3.6 Gynaecologists advise that abortion in the first trimester is significantly preferable to a later abortion, from the point of view of the woman's health. One consequence of the abortion trail to Britain, and the ongoing difficulties with access to counselling and information, is that 27% of Irish Abortions in 1996 were performed after the 12th week of pregnancy[7], as compared with 19% of abortions where the woman was a resident of England and Wales.

3.7 It is the view of the IFPA that women, faced with unwanted or problematic pregnancies, should be assisted, in whatever way is necessary, to deal with their dilemma by way of non-directive pregnancy counselling and the provision of whatever service or treatment, **within the State**, as that particular woman requires.

3.8 Abortion is legal under some circumstances in nearly all countries of the world:[8]

- 98 per cent of countries, with 96 per cent of the world's population, recognise a threat to the mother's life as a legal basis for stopping a pregnancy;
- 62% of countries with 75 per cent of the world's population make some provision for preservation of the physical health of the woman as a basis for legal abortion;
- protection of women's health is a legal ground for abortion in 89 per cent of industrialised countries.

5. *The Irish Times (11/12/1997) Front Page. Irish Times/MRBI Poll."77% say limited abortion right should be provided." Quotes from Text: The poll shows only 18 per cent of voters believe abortion should not be permitted in any circumstances." "A substantial majority of 55 per cent...believe the medical profession in Ireland should provide abortion facilities."*

6. *Sunday Independent (30/11/1997), Front Page "Public Support Court Decision". Sunday Independent/IMS.*

7. *See Appendix B. Written answer from Office for National Statistics to Harry Barnes, MP in response to his parliamentary question. 2nd March 1998.*

8. *State of the World's Population, 1997, UNFPA New York, p22. ISBN 0-89714-409-0.*

SECTION 4

Abortion and Irish Law

4.1 This submission shall not set out the present state of the law regarding the termination of pregnancy within the State as same is dealt with extensively in the recent publication *Abortion and the Law* by Kingston and Whelan with Bacik [Roundhall, Sweet & Maxwell, 1997].

4.2 Having regard to the list of documents set out in the Terms of Reference, the one which has caused most of the constitutional, legal, medical, moral, social and ethical problems regarding abortion, whether within or outside the State, is Article 40.3.3 of the Constitution.

4.3 So far as sections 58 and 59 of the Offences Against the Person Act, 1861 are concerned, the abortion problem in Ireland could be resolved by deleting those sections and/or amending them to provide for legal abortion and/or by providing a definition of the word "unlawfully" so that doctors, in particular, can be certain as to when they can lawfully terminate a pregnancy. The procedure for doing this is quite simple and straightforward and if the subsequent legislation is found to be unworkable, unsatisfactory or unjust it can be further amended.

4.4 The 1861 Act produces legal difficulties as the word "unlawfully" is not defined within the Act and, hence, it is unclear what acts are unlawful and which are lawful. There is no Irish case interpreting that word though there have been a number of cases before the Northern Irish courts and the courts there have preferred to apply sections 58 and 59 on a case by case basis rather than to apply a definitive definition. This is also unsatisfactory as it has led to a lack of clarity in the law. However, the simple procedure of statutory amendment is not available where abortion is regulated or affected by a constitutional provision.

4.5 Article 40.3.3 introduced a totally new dimension into the relationship between a mother and her "unborn". That article conferred constitutional protection on the "unborn" and, as has happened in both the "X" and the "C" cases, the mother and her "unborn" found themselves on opposing sides of a legal battle. This possibility of a legal conflict between a mother and her "unborn" has serious consequences for the dignity and status of women. It is extremely important that, in any approach which is taken to resolve the situation regarding abortion in the State, due respect is paid to mothers and women and that they are not reduced to mere vessels or containers which carry an "unborn". In both the "X" and the "C" cases, the court gave consideration to the fact that the mother was a "life in being" and, hence, she could have a termination of pregnancy where there was a "real and substantial risk" to her life. However, it should be remembered that in both of those cases there was a conflict, a legal dispute, between the **life** of a young girl and a 10 to 13 week old foetus. This type of dispute pays little respect to the dignity and/or to the security of the person of women. If a "woman's capacity to reproduce is not to be subject to her own control .... she is truly being treated as a means to an end which she does not desire but over which she has no control. She is the passive recipient of a decision made by others as to whether her body is to be used to nurture a new life. Can there be anything that comports less with human dignity and self-respect?". [Wilson J. of the Canadian Supreme Court in his judgment in the case of *Morgentaler Smoling and Scott v. The Queen* (1988) 44 D.L.R.].

4.6 The earlier in its development that the "unborn" acquires the protection of Article 40.3.3 the earlier a potential conflict between the mother and the "unborn" is likely to arise. At present this conflict can arise in a large variety of situations, such as in the "X" and "C" cases and in the many varied circumstances which cause so many women to seek abortions outside the State. However, little attention or discussion has taken place on the conflicts which may arise as a result of the developments in foetal technology or in the conflicts which may arise between "unborn" and "unborn", for example, where selective foetal reduction may be advised in order to save the life of one or more "unborn" .

4.7 In 1982 it was suggested that, as a result of the proposed 8th Amendment to the Constitution, Irish women could be injuncted from going outside the State to get an abortion. The response to this suggestion was that this was 'scaremongering'. However, it did happen. The developments in medicine and, in particular, in the areas of infertility treatment and in foetal technology will give rise to as yet unthought of complexities depending on the stage of development at which an embryo or a foetus is conferred with constitutional protection.

4.8 Prior to the "X" case, the Supreme Court made reference to the right to life of the "unborn", however, those references were obiter statements which could have been modified or overturned. Hence, the real source of the difficulties which surround the issue of abortion in Ireland is Article 40.3.3 and the various possible interpretations of the word "unborn". In addition and in order to ensure clarity in the interpretation of the Constitution, the Constitution could be amended to provide that any declared and/or enumerated right to life only applies to persons who are born.

SECTION 5

The Definition of "Unborn" and its Implications

5.1 Absence of Definition

5.1.1 As stated by the Constitutional Review Group there may be difficulties with the legislature defining a word which is already in the Constitution and that such a definition could be open to a constitutional challenge[9]. However, Article 40.3.3 provides that the State, shall "as far as practicable, by its laws" defend and vindicate the right to life of the "unborn". Hence, as McCarthy J. stated in the "X" case, it is "reasonable... to hold that the People when enacting the Amendment were entitled to believe that legislation would be introduced so as to regulate the manner in which the right to life of the unborn and the right to life of the mother could be reconciled". It would also appear to be reasonable for the legislature to know what rights they are reconciling, given the nature of the conflicts which can arise between the mother and the "unborn" and between the "unborn" and the "unborn".

5.1.2 As stated elsewhere, the time at which an "unborn" comes into existence is of extreme importance given that the "unborn" will have the benefits of legal protection which may conflict with the wishes of the mother and with her physical and mental well-being as well as with the right to life of other "unborn".

5.1.3 The word "unborn" is an adjective and, as stated by the Constitutional Review Group, "one would expect 'unborn human' or 'unborn human being"'. The Review Group suggests that the word "unborn" seems to imply "on the way to being born" or "capable of being born". Neither the "X" case nor the "C" case defined

9. *Report of the Constitution Review Group, Stationery Office, Dublin, May 1996. Chapter 1 Rights to Life ('Unborn' and Mother).*

the word "unborn", hence, both those cases were decided on an apparent assumption that a 10 or 13 week old foetus is an "unborn". Both of those cases were decided within their own facts and without the benefit of any evidence as to when constitutional protection was to be conferred on the "unborn" and without considering the legal and medical complications which will arise once that protection is conferred.

5.1.4 The IFPA submits that the word "unborn", if it is to be used at all, should only refer to a foetus when it becomes capable of independent life outside the uterus, some time after the 22nd week of gestation. ***This is submitted for a number of reasons.***

5.1.5 *In SPUC (Ireland) Ltd. v Open Door Counselling Ltd. and the Dublin Well Woman Centre Ltd.* (No.1) [1988] IR 593, Hamilton J., referred to life commencing at conception, however, there was no evidence before the court as to when a pregnancy and/or life commenced and, hence, there was no evidence before the court on which it could make a determination of fact or law as to when life commenced.

5.1.6 It is difficult to imagine how the legislature could "by its laws" vindicate the "right to life" of fertilised eggs particularly given that so many of them are naturally discarded.

5.1.7 The medical implications of conferring constitutional protection before the successful implantation in the uterus of a fertilised egg would result in the use of emergency post-coital contraception (the so called "morning after" pill and the post coital IUCD) becoming an interference with the "right to life of the unborn" and, hence, unlawful. No doubt, this would lead to a huge increase in the number of unwanted pregnancies and to an increase in the Irish abortion rate.

5.2 Conflicting Rights

5.2.1 The medical implications for conferring constitutional protection prior to a foetus achieving capacity for independent life will result in conflicts between the mother and the "unborn" and between the "unborn" and other "unborn". It is somewhat difficult to separate the medical and legal complications which arise in such situations. Hence, they will be dealt with together.

5.2.2. It is between successful implantation and the 22nd week that most conflicts between the mother and the "unborn" will arise. These conflicts may exist for a variety of reasons some of which have been outlined above, e.g. the raped minor, the mother of the disabled child, the mother who cannot cope with any more children, the woman with an ectopic pregnancy, the woman with high blood pressure, the woman with a heart condition, the woman pregnant with an anencephalic foetus: in fact, any woman with a crisis, unwanted or problematic pregnancy.

5.2.3 As no legislation has as yet been introduced to reconcile the rights of the pregnant woman and the rights of the "unborn" to life, the only situation in which one can say with confidence that any of the women, referred to above, could legally obtain an abortion in Ireland is where there is a real and substantial risk to her life. It is highly unlikely that the Irish electorate expected that:

- the woman who is pregnant from a vicious rape is to be required to carry her pregnancy to full term if to do so will cause her such severe emotional trauma that she will suffer psychological damage for the remainder of her life;
- the woman who is pregnant with an anencephalic foetus[10] must carry that foetus for nine months only to watch that child die shortly after birth;

10. *Myles Textbook for Midwives, Churchill Livingstone. Edited by V. Ruth Bennett and Linda K. Brown. Chapter 38 "Anencephaly: A major malformation of the skull and brain which is incompatible with life."*

- the woman with a heart condition, or high blood pressure, must wait until there is a real and substantial risk to her life before she can get an abortion.
- a pregnant woman's life is of such little value that she must be facing death before she is granted any dignity within this State.

It is submitted that this is not the type of Ireland that the electorate wants or intended to create.

5.2.4 This analysis may be thought somewhat emotive. However, it is not unusual for a woman who seeks an abortion to be in an emotionally distressed state.

Is this State saying to this woman:

"No matter what the mental, physical or social consequences this pregnancy may have on your life you must carry this pregnancy to full term because the ten-week old foetus has the same right to life as you and it does not matter that your health, mental or physical, may be affected for the rest of your life"?

It is no answer to this woman that she can go to England to get an abortion. All of these women should be able to obtain the treatment which they require to deal with their crisis or problematic pregnancy **within** this State. They should have access to abortion in Ireland. Expert medical care, counselling, emotional or financial support may not suffice to enable these women to recover, either mentally or physically, from their pregnancies.

5.3 The Question of Equality and Women's Rights

5.3.1 It appears that once a woman becomes pregnant she is no longer like other citizens of this State, who are all equal to each other under the Constitution [Article 40.1 - *"All citizens shall, as human persons, be held equal before the law..."*]. Once a woman becomes pregnant she is not like other citizens who are equal, before the law, with other human beings, but rather, her life has now become equal to an "unborn" – an "unborn" whose existence is dependent on her yet whose rights may be superior to hers. Will she be able to refuse medical interventions which may be necessary to save the life of the "unborn" but which she does not wish to undergo?

5.3.2 It is now possible for doctors to carry out surgery on a foetus whilst still within the womb. Who is the person who can consent to such surgery on the foetus? One would assume that it is the woman who would consent, as such medical intervention has implications for (i) her health and (ii) her bodily integrity and the security of her person. However, if a doctor decides that it is necessary to carry out surgery on the foetus, in order to save the life of the foetus, then can the mother's consent be overridden? Can she be required to undergo a medical procedure which interferes with the security of her person against her wishes?

5.3.3 In the case of Re.A.C. [533 A.2d 611 (D.C. 1987)], a woman was diagnosed with a lung tumour in the 25th week of her pregnancy. It was decided between the woman, her husband and her family that she would not have a caesarian section as this might hasten her own death and also because the foetus would probably not survive, as it had already been deprived of oxygen due to the mother's failing condition. The hospital administrators brought an application to a judge and separate legal counsel was appointed for the foetus, for the mother and her family and for the hospital. The mother's doctors gave evidence that they opposed the surgery. Evidence was given by a neo-natalist that the foetus had a 60% chance of survival. The court made an order that a Caesarian section was to be carried out. The mother and her family appealed that

decision but lost their appeal. The Caesarian section was carried out. The foetus died within two hours of delivery and the mother two days later. Subsequent to the woman's death, the District of Columbia Court of Appeals issued an opinion saying that they were aware they might have shortened the mother's life span. However, the value of her remaining life was outweighed by the "slim" chance that the foetus might survive. The deceased woman's family sued the hospital for violation of her civil rights and, in particular, her right to bodily integrity. The U.S. Court of Appeals held in favour of the family.

5.3.4 In the above example the foetus did not have a constitutional right to life, hence, if such a case were to occur in Ireland the foetus could have, perhaps, even a greater degree of protection than the mother. It would not be a case, such as in "X" or "C" where the conflict was between the life of the mother and the life of the foetus but rather between the life of the foetus as against the duration of the mother's life. Will the mother's right to bodily integrity, together with her right to life, be sufficient to enable her to refuse medical intervention which is carried out for the purpose of saving the foetus? These are the types of rights which the legislature must reconcile and these are the types of issue which will arise depending on what stage of development an "unborn" is conferred with legal and constitutional protection.

5.3.5 As stated above, both the "X" and the "C" cases dealt with the conflict between the life of the mother and the life of the "unborn". In the "X" case Finlay J. concluded that "the proper test to be applied is that if it is established as a matter of probability that there is a real and substantial risk to the life, as distinct from the health, of the mother" a termination of pregnancy is permissible. In the above mentioned case, the mother was going to die, it was only a matter of when. The termination was ordered as there was a "slim" chance that the foetus might survive. As has been stated by the courts on numerous occasions, the Constitution is not a static instrument and just because the cases which have come before the courts, to date, have dealt with mothers seeking abortions, this does not mean that Article 40.3.3 is limited to the abortion issue only and will not be applicable to cases where the foetus requires treatment.

5.3.6 It has frequently been argued that "a law forbidding abortion protects the unborn child against intentional attack but does not prevent the mother being fully and properly treated for any condition which may arise while she is pregnant". The IFPA agrees with the Constitutional Review Group that, for as long as the current constitutional provisions remain in place, it would not be safe to rely on such understandings and that "it is essential to have specific legislative protection for appropriate medical intervention ...". The medical circumstances which may give rise to a medical intervention which would require a termination of pregnancy or which may result in such a termination or in the death of the foetus would include such conditions as cancer, severe congenital heart disease and severe atypical hypertensive disease of pregnancy.

5.3.7 Reference has already been made to the conflicts which may arise between the "unborn" and the "unborn". Such a situation arose recently in England where a mother, who was pregnant with sextuplets refused medical advice to reduce the number of foetuses in the hope that at least some of them might survive[11]. It is possible that at some future time a woman in Ireland may have such a pregnancy and may wish to increase the chances of one or more foetuses surviving, by use of foetal reduction or selective abortion. Whilst McCarthy J. made no reference to the legislature introducing

11. *The case of Mandy Allwood.*

legislation to reconcile the rights between the "unborn" this is probably because he did not even consider the possibility of a conflict between them rather than because such a conflict could not exist. If constitutional protection is conferred on a foetus, prior to achievement of capacity for independent life, then the right to life of all foetuses is acknowledged by the State and, hence, the legislation should provide for the reconciliation of the rights of each foetus as against the other or others present in the mother's womb. However, it is doubtful whether this is possible having regard to Article 40.3.3, which presumably confers an equal right to life on each foetus.

5.4 **The "C" Case**

5.4.1 The "C" Case gives rise to particular difficulties for minors, mentally handicapped adult women or women who are wards of court.

5.4.1 It appears that the District Judge, in that case, took the view that the minor "C" could travel to England for an abortion even though she did not fall within the criteria set out in the "X" Case. The High Court, however, took the view that a court "cannot make a direction authorising travel to another jurisdiction for a different kind of abortion", ie. other than an "X" Case "kind of abortion". Hence, a court can only make a direction enabling a child to travel for an abortion outside the State where there is a real and substantial risk to that child's life. A court, therefore, can only grant permission for a child to travel in circumstances where that child could have a lawful termination within the state in which case there is no need for the child to travel at all.

5.4.2 His honour Mr Justice Geoghegan made specific reference to the Child Care Act, 1991 and stated that, in his view, a District Court would be prevented from authorising the travel of a child for an abortion which could not be carried out lawfully within the State by virtue of the provisions of Article 40.3.3.

5.4.3 The practical implications of this judgement are to put children, and women suffering from certain incapacities, in a particularly invidious position. It will create four different categories of children:

- those whose parents/guardians agree that the child can travel abroad for a termination no matter the reason,
- those whose parents/guardians disagree as to whether the child can travel for a termination in circumstances outside the criteria set out in the"X" Case,
- those children who are of sufficient age and maturity to make a decision to travel for a termination, outside the "X" Case criteria, but whose parents/guardians do not permit her to travel, and
- those children who are in the care of a health board.

5.4.4 At the moment, if the children's parents/guardians agree that the child can travel outside the State for an abortion, then they can do so and it does not matter what the reason is.

5.4.5 If guardians/parents are in conflict as to what is in the best interests of the welfare of their child, either of them can apply to a court for the court to make direction as to what is in the child's best interests.

5.4.6 It appears, however, that, if the issue of conflict between the parents/guardians is as to whether the child can travel for an abortion, in circumstances where there is not a real and substantial risk to her life, then the court cannot authorise or direct that the child can travel abroad for the purpose of having a termination of her pregnancy. Presumably the parent/guardian who does not wish the child to have an abortion will succeed in an application for an injunction to restrain her travel. Mr Justice Geoghegan took the view that the "freedom to travel" amendment was "intended to prevent injunctions against travel or having an abortion abroad" it does

not confer a right to travel - "I do not think that it was ever intended to give some new substantial right".

5.4.7 Mr Justice Geoghegan's interpretation of the law will create difficulties for the mature 17 year old who wishes to travel abroad for an abortion but whose parents do not permit her to travel.

5.4.8 The child in the care of a health board is in an even more precarious position. When a child in care has a crisis pregnancy then the normal procedure would be for the health board to seek the directions of the District Court under section 47 of the Child Care Act, 1991. Following the judgment in the "C" Case a District Court cannot give permission for a child to travel abroad for an abortion unless that child could have a lawful termination within the State. This is so even if the parents/guardians and the health board all agree that it is in the best interests of the welfare of that child that she should have an abortion.

5.4.9 Under present law, children already suffer from a disability with regard to their access to the courts. However, in the circumstances outlined above, access to the courts will not assist the girl who is under 18 as the court cannot grant her liberty to travel for a termination unless there is a real and substantial risk to her life, in which case she can have a termination in Ireland.

5.4.10 This restriction on courts authorising travel abroad for a termination could also apply to wards of court, to mentally handicapped adults or to any woman who suffers from an incapacity which places her in the care or control of others.

5.4 CONCLUSION

Paragraphs 5.1 to 5.4.10 illustrate just some of the difficulties which may arise as a result of conferring legal protection on an "unborn" prior to capacity for independent life. These situations will give rise to complex medical and legal dilemmas but, more important, they will cause extremely stressful situations for the women involved who will, no doubt, be more concerned about their own lives and their family circumstances than about legal niceties or medical or ethical conundrums. Pregnancy is a health matter which should be dealt with by a woman in consultation with her doctor. It should not be regulated by constitutional provisions or the criminal law, save that the criminal law should deal with criminal sanctions against those who perform abortions contrary to health regulations or statutes which exist to ensure that women have the best quality of care possible.

SECTION 6

Unplanned Pregnancy, Reproductive Health and Abortion

6.1 The IFPA has always stated that one of its primary aims is to enable couples and individuals to exercise their human right to avoid unwanted pregnancies. The Association has dedicated itself to arguing for the social and legal framework necessary to the achievement of this aim, and for the provision of adequately resourced services to make this aim attainable.

6.2 Abortion should not be considered in isolation from other aspects of sexual health and well-being and the IFPA takes this opportunity to endorse the views of the Constitutional Review Group which stated that "there is much private sympathy and concern for the personal, social and moral anxieties of those facing crisis pregnancies, particularly where rape, incest or other grave circumstances are involved. It may be doubted whether enough attention is being given to such basic matters as education on sexuality, human reproduction and relationships as a way of reducing the incidence of abortion, counselling in relation to crisis pregnancies, and the promotion of women's and men's sense of parenthood as a valuable contribution to society."

6.3 The *Women and Crisis Pregnancy* Report has highlighted current difficulties affecting women's access to contraception, confusion about the legality of abortion information and the negative effects caused by the government's current funding policy in respect of non-directive counselling. As the operation of the 1995 information legislation does not fall within the published terms of reference of the working group a separate submission will be made to the Minister for Health and Children concerning funding for non-directive counselling.

6.4 The Government should take into consideration the following linked issues of sexual health as an integral component of its review of abortion:

- 1996 saw an increase from 2,482 to 2,700 teenage births, representing 5.35% of total live births;
- provisional figures for 1996 indicate that there were 5,768 notified cases of sexually transmitted infection (STI's), up from 5,148 in 1995 and 4,446 in 1994;
- up to September 1997, 1,799 people had tested HIV positive, of which 58% are not accounted for by intra-venous drug use - 35% were gay or bisexual men and 12% were heterosexuals;
- the single highest purpose of visit for first time users of family clinics in Dublin is emergency post-coital ("morning-after") contraception;
- that the schools RSE programme has not yet been fully implemented and may not be implemented in some schools, and that teachers' unions have been critical of the resources and training made available for this programme;
- that Ireland is unique in western Europe in not providing resources for a national contraceptive education programme;

6.5 We would also like to remind the legislature of the commitments which this State made at both the Cairo and Beijing Conferences, for example:

- "To reaffirm the right to the enjoyment of the highest attainable standards of physical and mental health for women and men equally, and to review existing legislation and policies to ensure they reflect a commitment to women's health."
(Beijing Article 106b)

- "To take action to ensure that the human rights of women, including their reproductive and sexual rights, are fully respected and promoted."
  (Beijing Article 232f)
- "To include referral services for abortion complications in maternal health services."
  (Cairo Article 6.22)
- "To reduce the recourse to abortion through expanded and improved family planning services."
  (Cairo Article 8.25)
- "To protect and promote the rights of adolescents to reproductive health education, information and care, and greatly reduce the number of adolescent pregnancies."
  (Cairo Article 7.46)

SECTION 7

Executive Summary and Conclusion

7.1.1 The IFPA welcomes the establishment of the government's working group on abortion and hopes that it will provide a means of bringing the long running abortion debate to a satisfactory conclusion. We note that this debate is being conducted in increasingly extreme terms. In all the prevailing circumstances we are firmly of the view that it is in the public interest and in the best interests of politics in Ireland for this matter to be resolved. (Section 1)

7.1.2 Abortion has been practised since the earliest of times and is now legally available to 96 per cent of the world's population and in 98 per cent of countries. Protection of women's health provides legal grounds for abortion in 89 per cent of industrialised countries. In the absence of legalised abortion women have always resorted either to illegal so-called 'back-street' abortions, country or state-hopping, or to self-induced abortion. In countries where criminal sanctions result in unsafe illegal abortions it is estimated that 70,000 women die each year, as a result. (Section 3)

7.1.3 Travel to England and availability of abortion to non-residents has insulated Ireland from the worst consequences of the current abortion regime. However the necessity to travel outside the State does result in a relatively high number of Irish abortions being performed at 12 weeks gestation or later, compared to residents of England and Wales. Gynaecologists advise that abortion in the first trimester is significantly preferable to a later abortion, from the point of view of the woman's health. (Section 3.6)

7.1.4 The legal position of abortion in Ireland is very unsatisfactory. The term "abortion" is not defined by statute and the 1861 Act provides no definition of the word "unlawfully", which is used to refer to the procurement of miscarriage. Doctors, therefore, cannot be certain when they can lawfully terminate a pregnancy. (Sections 4.3, 4.4)

7.1.5 The constitutional position following the 8th Amendment is also unsatisfactory. Article 40.3.3 introduced the concept of the "unborn", but without any definition of its meaning. The possibility of legal conflict between a pregnant woman and her "unborn" has serious consequences for the dignity and status of women. (Sections 4.5-4.8)

7.1.6 The time at which an "unborn" comes into existence is of extreme importance given that the "unborn" will have the benefits of legal protection which may conflict with the wishes of the pregnant woman and with her physical and material well-being as well as with the right to life of other "unborn". The IFPA submits that the word "unborn", if it is to be used at all, should only refer to a foetus when it becomes capable of independent life outside the uterus, some time after the 22nd week of gestation. (Section 5)

7.1.7 Until the position is regularised it appears that once a woman becomes pregnant she is no longer like other citizens of this state, who are all equal to each other under the Constitution. This may lead to women who are pregnant as a result of rape, carrying a foetus incapable of independent life, or whose health will be seriously damaged by pregnancy being required to carry their pregnancies to full term. We submit that this is not the type of Ireland that the electorate wants or intended to create. Such women should be able to obtain the treatment which they require **within** this State. They should have access to abortion in Ireland. (Section 5)

7.1.8 The 'C' Case has demonstrated that minors, mentally handicapped adult women or women who are wards of court have particular difficulties with access to abortion. They have restricted rights as compared with other women and this places them in an invidious position. (Section 5.4)

7.1.9 Pregnancy is a health matter which should be dealt with by a woman in consultation with her doctor. It should not be regulated by constitutional provisions or the criminal law. (Section 5.5)

7.1.10 Consideration of public policy on abortion should not be undertaken in isolation from other indicators of sexual and reproductive health. A strategy to improve sexual health, reduce the incidence of unplanned pregnancy, and promote use of genuinely non-directive pregnancy counselling services is required. (Section 6)

7.2. Conclusion

There is no legislative or constitutional prohibition or sanction which will stop Irish women terminating unwanted pregnancies.

The IFPA advocates that abortion should not be regulated by the criminal law or constitutional provisions and should be treated exclusively as a women's health issue. We contend that such an approach, properly supported by education, information, sexual heath (contraceptive) services and free non-directive pregnancy counselling services will lead to a reduction in late abortions, as a proportion of the total, and offers the only prospect of reducing the overall level of Irish abortion.

SECTION 8

Recommendations

Having regard to the matters set out above, the IFPA submits that the following measures should be implemented.

8.1 Preferred Recommendations

8.1.1 Article 40.3.3 of the Irish Constitution should be repealed in its entirety and the Constitution should be amended to provide that any right to life in the constitution refers only to persons who are born.

8.1.2 Articles 58 and 59 of the 1861 Offences Against the Person Act should be repealed.

8.1.3 Legislation should be introduced to permit minors to have access to the courts so as to ensure that they are equal to other women in regard to their ability to avail of medical treatment, including termination of pregnancy.

8.1.4 Increased resources should be made available to health boards, schools and family planning service providers, including the IFPA, to make available increased education, information and contraceptive services to the general population. These measures should include:

- the introduction of a universal free entitlement to sexual and reproductive health care for all;
- enabling access to this new entitlement via any service provider capable of demonstrating possession of a family planning certificate, high quality premises and high quality standards of service;
- the promotion of increased take-up through choice of service by enabling users to choose where to "spend" their free entitlement;
- the introduction and rigorous enforcement of statutory quality standards for condoms (ie EN 600) and outlawing the sale of so-called "novelty condoms" or "fundoms" which have no prophylactic value.
- the provision of funding to enable the IFPA to provide a national contraceptive education and information programme on a planned and well-resourced basis.[12]

8.1.5 Implementation **in full** of the IFPA's *"TEN POINT PLAN To Reduce Unplanned Pregnancy"*, submitted to the Department of Health in 1993. [Appendix (i): *Improving Reproductive Health Care in Ireland*, IFPA 1993] see Appendix D.

8.1.6 That increased resources be made available to health boards and to agencies such as the IFPA to fund the development and operation of specialist free sexual health services for young people, in each urban population centre, along the lines recommended in *A Young Peoples Health Centre for Dublin*, IFPA/EHB, April 1997.

8.1.7 That the relevant government departments should establish a quantified target reduction in the relatively high proportion of Irish abortions carried out later than the twelfth week of gestation, as an immediate practical measure, supported by appropriate programmes and resources.

8.1.8 That the Department for Health and Children should revise its funding policy for non-directive pregnancy counselling so as to remove the existing bias against agencies which will provide abortion information (under the terms of the 1995 Act), thus enabling them to provide a comprehensive, accessible and completely free service, to all who want it; and to address concerns highlighted by the *Women and Crisis Pregnancy* Report. This should be supplemented by a public information programme clarifying the legality of access to abortion information and promoting the use of counselling services.

12. *Improving Reproductive Health Care in Ireland. IFPA 1993. A Submission to the National Health Strategy. Chapter 6 - Promoting Reproductive Health.*

8.2 Secondary Recommendations

Having regard to other proposals which may be made to the Working Group we further submit that:

8.2.1 **The government should not attempt to amend Article 40.3.3 of the Irish Constitution.** The IFPA believes that there is no form of words which can satisfactorily amend this Article and further argues that there is no form of words which could now command the support of a greater number of the electorate.

The IFPA submits that Article 40.3.3 is fundamentally and inherently flawed, not least because history has demonstrated that the issue of abortion is too complex to be adequately dealt with by way of constitutional provisions. Time spent attempting to amend this article would be time wasted.

8.2.2 In the event that the people of Ireland do not agree to delete Article 40.3.3 of the Constitution, the government should address the issue of abortion through legislation. In such circumstances we recommend that:

(a) The legislature defines an "unborn" as a foetus which has reached that stage of pregnancy at which, if born, it would be capable of independent life"

(b) The legislature amends Articles 58 and 59 of the 1861 Offences Against the Person Act so as to provide that it would be unlawful to induce the termination of a pregnancy of more than 22 weeks gestation, other than for the purposes of premature delivery, or where necessitated in order to save the life of the pregnant woman, or where there is a congenital abnormality of the foetus rendering it incompatible with life. It would be necessary, in the interests of women's health, to provide that it would be unlawful for any person other than a person appropriately qualified and trained, and registered under the Medical Practitioners Act 1978 to induce a termination of pregnancy.

8.2.3 Legislation should be introduced to permit minors to have access to the courts so as to ensure that they are equal to other women in regard to their ability to avail of medical treatment, including termination of pregnancy.

SECTION 9

Glossary of Terms

Pregnancy
When a fertilised ovum implants in the womb a pregnancy results.

Foetus
A foetus exists when a fertilised egg has successfully implanted in the uterine wall.

Independent Life
A foetus which, if delivered, could survive independently of its mother.

Unborn
An undefined term which originated in the USA and was inserted in to the Irish Constitution in 1983.

Abortion
The (non-spontaneous) induced termination of a pregnancy, before the foetus achieves capacity for independent life.

Baby
A newly born human being.

IRISH ABORTION: THE FACTS IN FIGURES

Between January 1981 and December 1996, 64,798 Irish women had abortions in Britain.

YEAR	ALL AGES	UNDER 20	20-34	35+	UNSTATED
1981	3,603	556	2,655	375	17
1982	3,650	555	2,694	397	4
1983	3,677	559	2,680	435	3
1984	3,946	556	2,904	484	2
1985	3,888	574	2,827	487	-
1986	3,918	569	2,858	491	-
1987	3,673	512	2,671	490	-
1988	3,839	556	2,768	514	1
1989	3,721	588	2,624	509	-
1990	4,064	667	2,881	516	-
1991	4,152	700	2,876	576	-
1992	4,254	716	2,994	544	-
1993	4,400	659	3,162	579	-
1994	4,590	628	3,388	579	-
1995	4,529	698	3,264	567	-
1996	4,894	766	3,586	541	1

This table was prepared by the IFPA and is based on official British statistics compiled by the UK Office for National Statistics (formerly the Office of Population, Censuses and Surveys) on an annual and quarterly basis.

Irish women who did not give an Irish Address are not included.

OFFICE FOR NATIONAL STATISTICS

Director, Registrar General and
Head of the Government
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Harry Barnes Esq, MP
House of Commons
London
SW1A 0AA

20 March 1998

Dear Mr Barnes

As Director of the Office for National Statistics (ONS), I have been asked to reply to your parliamentary question on abortions in the first nine weeks of pregnancy and the first 12 weeks of pregnancy.

The information requested is shown in the following table.

Proportion of abortions performed in England and Wales by gestation weeks on residents of Northern Ireland, Irish Republic, and England and Wales in 1996.

Country of usual residence	Gestation weeks	
	Under 9 weeks	Under 12 weeks
Northern Ireland	31%	73%
Irish Republic	37%	73%
England and Wales	40%	81%

Yours sincerely

Tim Holt

Appendix C

RECENT IRISH BIRTH STATISTICS (1991-1996)

YEAR	TOTAL	UNDER 20	15 AND UNDER
1991	52,690	2,794	55
1992	51,584	2,721	45
1993	49,461	2,629	57
1994	47,928	2,376	67
1995	48,530	2,482	57
1996	50,390	2,700	46

This table was prepared by the IFPA and is based on Table 2 *Vital Statistics*, Central Statistics Office, Cork, Ireland.

Appendix D

This is Appendix 1 from Improving Reproductive Health Care in Ireland, the IFPA submission to the National Health Strategy, Sept. 1993.

10 POINT PLAN TO REDUCE UNPLANNED PREGNANCY

The IFPA has formulated a 10 point plan of immediate action which would contribute to a reduction in the incidence of unplanned pregnancy. These points are easily implemented and would take a fraction of the legislative time that has been expended on the abortion debate during these last ten wasted years. We call on the Oireachtas to implement this strategy in the next session.

1. The introduction in all schools of age-appropriate relationships and sex education, to include at secondary level, practical and accurate information about the avoidance of pregnancy and STDs, and factual information about anovulant, other medical, barrier or mechanical methods of fertility control, in addition to natural methods.
2. The provision of adequate training and support for teachers and educators to enable them to deliver a national sex education programme.
3. The provision through schools of courses for parents to enable them to develop skills and additional knowledge in delivering sex and relationships education to their own children.
4. The establishment of a genuinely national system of family planning services to which all young people are entitled to have free access for medical consultation, tuition, and free contraception.
5. The creation of a right for all medical card holders to have free access to medical consultation and free contraception at family planning centres, their own GMS doctor, or another GMS doctor.
6. The making available of free condoms (by general distribution) at all national sporting events, music festivals and so on.
7. The use of price controls and state purchasing schemes to reduce the effective price of condoms to the level of around 10p each.
8. Full funding for information services to include the provision of comprehensive factsheets on sex, sexuality and contraception at such places as all Libraries, Health Centres, GP Surgeries, Social Welfare offices and by post.
9. Full funding for confidential telephone counselling services particularly aimed at adolescents, concerned with human sexuality.
10. A pro-active national information campaign promoting the benefits of using contraception when seeking to avoid pregnancy; which stresses the legitimacy of family planning.

IFPA POLICY STATEMENT
Crisis Pregnancy in Ireland

Adopted 28th October 1997

Reiterating that one of the IFPA's primary aims is to enable couples and individuals to exercise their human right to avoid unwanted pregnancies, noting that abortion is not a satisfactory or appropriate means of family planning, and acknowledging that abortion is a serious moral issue for all concerned;

Recognising that, since 1981, at least 65,000[1] Irish women have obtained legal abortions in the United Kingdom, and that it is, therefore, hypocritical to maintain a complete ban on abortion in the Republic of Ireland, and makes no sense to pretend that there is no Irish abortion;

Recognising, further, that for as long as the provision of sex and relationships education, family planning information and access to sexual and reproductive health services remain inadequate in Ireland, unwanted pregnancy will he an inevitable consequence, and that where there is no legal recourse to safe abortion, illegal abortions will result with consequent deaths and damage to women's health;

Recognising, also that no method of contraception can provide 100% protection against unwanted pregnancy, and that women and couples faced with an unwanted pregnancy have three options open to them - parenting, adoption/fostering and abortion;

The Irish Family Planning Association recognises the right of women and couples to choose responsibly between these alternatives;

It recognises the right of health professionals to exercise their individual moral right to refuse conscientiously to participate in abortion procedures;

It recognises the right of women, confronted by a crisis pregnancy, to non-directive counselling to enable them to reach the right decision, for themselves, in every case, and resolves to provide such counselling and whatever other support as each woman may need, in accordance with Irish law;

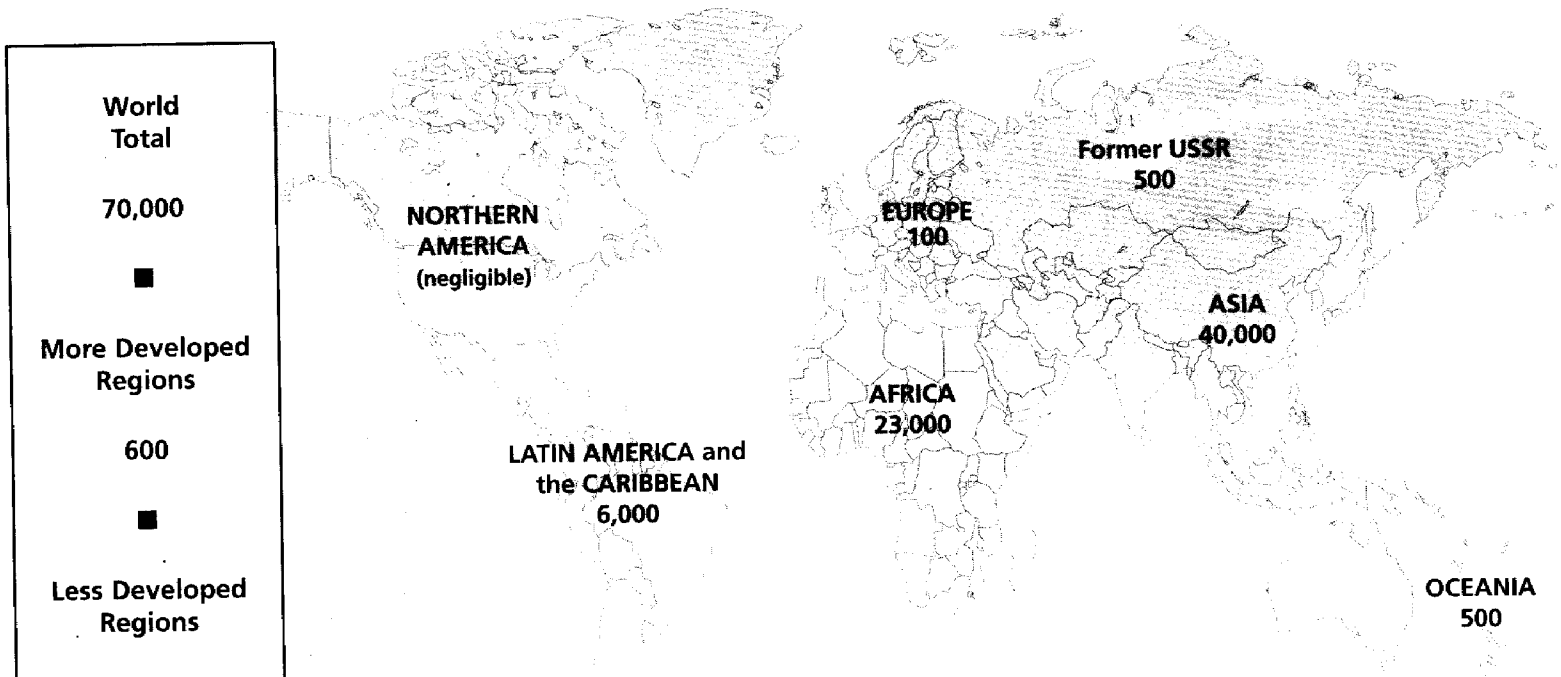
It further resolves to do all in its power to ensure that, following the end of her pregnancy, each woman is provided with a gynaecological examination to minimise the risk of possible after-effects, and will further try to assist each woman to choose and use a suitable method of contraception to minimise the risk of further unwanted pregnancies.

The Association also urges the Irish Government to legislate as soon as possible to make provision for abortion in Ireland in circumstances such as pertained in the 'X' case and believes that, sooner or later, the Government and the legislature will have to address the subject of abortion in a wider legislative context.

1. *Based on figures published by the Office for National Statistics, London. This figure does not include women who did not give an Irish address. The true figure is not known, but is certainly much higher.*

"THE STATE OF WORLD POPULATION 1997"

Estimated Annual Deaths from Unsafe Abortion



Source: World Health Organization, Maternal Health and Safe Motherhood Programme (Geneva), unpublished estimates.

United Nations Population Fund
UNFPA

ABORTION LEGISLATION IN EUROPE

(UPDATED FEBRUARY 1997)

IPPF EUROPEAN NETWORK

REGENT'S COLLEGE, INNER CIRCLE, REGENT'S PARK, LONDON NW1 4NG

ALBANIA

Legislation
- November 1996

Grounds/gestational limits
- On request (up to 12 weeks)
- Social grounds (up to 15 weeks)
- Medical grounds (no limit)

Regulations/conditions
- Medical consultation

Cost:
- 500 Lek

Comments
- This new law overturned the previous law whereby abortion was legally permitted only on narrowly limited grounds.

AUSTRIA

Legislation
- Federation Law 23, January 1974 effective in January 1975

Grounds/gestational limits
- On request at about 15 weeks (12 weeks implantation).
  Second trimester in cases of:
- Risk to life of woman
- Risk to woman's physical health
- Risk to woman's mental health
- Risk to foetal health or of foetal handicap

Regulations/conditions
- Consultation with a doctor
- Minors under 14 years need consent from parents

Cost
- Induced abortion is not paid for by (normal) health insurance.

Comments
- Due to conscientious objection from medical personnel and hospital management, abortion facilities are not readily available all over the country.
- It is not believed that illegal abortions are practised on any scale. Statistics are not available.
- Public information on the availability of abortion services is very scarce.

BELGIUM

Legislation
- Law on Termination of Pregnancy, 3 April 1990
- National Evaluation Committee (Law of 13 August 1990)

Grounds/gestational limits
Abortion remains forbidden (art. 348, 350, 351 & 352 of the Penal Code) but is legal:
- If the pregnancy causes a 'state of distress/emergency' for the woman (up to 12 weeks after conception = 14 weeks pregnancy - the law doesn't define the state of distress/emergency)
- If the pregnancy contains serious risks for the health of the pregnant woman or if the foetus is judged to be suffering from 'an extremely serious and incurable disease' (no limit of time)

Regulations/conditions
- On request of the woman & to be confirmed by a doctor. Compulsory waiting period of 6 days. Parental advice for minors is not mentioned in the law. The woman is to be given all necessary information about alternative solutions (adoption, keeping the baby)
- The advice of a second doctor is only requested if the pregnancy contains serious risks for the health of the pregnant woman or if the foetus is judged to be suffering from an extremely serious and incurable disease. In that case there is no time limit.

Cost
- Abortion is not reimbursed by the social security system

Comments
- The law is quite liberally interpreted. Most abortions are performed in abortion clinics (non-profit organisations).

BULGARIA

Legislation
- February 1990

Grounds/gestational limits
- On request (up to 12 weeks)
- Medical indications (up to 22 weeks)
- Socially deprived groups (up to 16 weeks)

Regulations/conditions
- Doctors obliged to ensure anaesthesia and inform about contraception
- Abortions are permitted only in the state clinics, not in the private clinics
- Minimum required lab tests:
  blood counts, blood groups, urine, Wasserman, AIDS

Cost
- Free of charge for women under 18 and over 35 (medical grounds), others 500 leva.

Comments
- Legislation ensures women's health and privacy and promotes women's reproductive health and welfare.

CYPRUS

Legislation
- Law 59, 1974; Law 186, 1986

Grounds/gestational limits
- Risk to life of woman
- Risk to woman's physical health
- Risk to woman's mental health
- Risk to foetal health or of foetal handicap
- Unwanted pregnancy by rape or other sexual crimes
- Social, socio-medical or socio-economic

Regulations/conditions
- A certificate from the appropriate police authority supported by a medical certificate
- The bona fida opinion of two medical practitioners

Cost
- Free of charge in hospital for patients eligible for free care strictly according to the laws

Comments
- Vast majority of abortions are performed at private sector clinics and cost about $300.

CZECH REPUBLIC

Legislation
- Law 63 and 77. 23 October 1986 effective January 1987. Enactment of the Czech Ministry of Health, No 11, 1993.

Grounds/gestational limits
- On request (up to 12 weeks)
- Medical reasons
- Risk to the woman's life
- Risk to foetal health or of foetal handicap
- Rape or other sexual crimes

Regulations/conditions
- Only for Czech citizens or women with permanent residence
- For non-residents only when risk to life is involved
- Recommendation of physician
- Minors under 16 years need parental consent
- Forced counselling

Cost
- Abortion on medical grounds is free of charge. Cost for other reasons: up to 8 weeks, maximum 2831 kcs (US$100); 9-12 weeks, maximum 3459 kcs (US$120)

Comments
- All abortions must be provided in hospitals, but up to eight weeks out-patient care is most usual

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DENMARK

Legislation
- Act No. 350, 13 June 1973

Grounds/gestational limits
- On request (up to 12 weeks).
  Second trimester in cases of:
- Risk to woman's life and physical health
- Risk to foetal health or of foetal handicap
- Unwanted pregnancy by rape or other sexual crimes
- Social, socio-medical or socio-economic

Regulations/conditions
- Parents consent for minors (under 18 years)
- Possibility of dispensation
- Permission of a committee of four people

Cost
- None, part of the public health system

Comments
- The local hospitals are under an obligation to receive all women wanting abortion up to the first trimester. Abortion on a non-resident is not allowed unless they have some special connection to Denmark.

ESTONIA

Legislation
- Abortion has been legal since the year 1955 (by Soviet Union abortion law);
- New criteria since 1992 and 1993 by decree of Estonian Ministry of Social Affairs and also regulating performing abortions in private health care;
- In June 1993 Estonian Abortion Register was introduced; filling in abortion register forms is obligatory for all the institutions allowed to perform abortions;

Grounds/gestational limits
- Abortion is done on request up to 12 weeks
- Abortion on medical reasons is allowed up to 20 weeks (the list of illnesses and conditions is set by decree of the Estonian Ministry of Social Affairs)

Regulations/conditions
- Consultation with a doctor;
- Those under 16 need consent from parent(s)

Cost
- From February 1994 induced abortion is partially (50% of the estimated price) paid by women having regular health insurance;

Comments

Funds obtained from paid abortion are used to subsidise contraceptives (pills and IUDs) for certain groups:
- Full time pupils and students
- During one year after delivery
- During three months after abortion

Abortions are permitted in both private and state medical institutions by a gynaecologist. It is believed that illegal abortions are not performed in Estonia, statistics are not available about illegal abortions.

FINLAND

Legislation
- Law 239, 1970; Law 564, 1978; Law 572, 1985

Grounds/gestational limits

Up to 12 weeks in cases of:
- Risk to woman's mental health
- Unwanted pregnancy by rape or other sexual crimes
- Social, socio-medical or socio-economic.

Up to 20 weeks in cases of:
- Risk to life of woman
- Risk to woman's physical health
- Risk to foetal health or of foetal handicap

Regulations/conditions
- Recommendation of two physicians and authorisation of the State Medical Board

Cost
- Abortion is free of charge under national health insurance but women must pay hospital fee of FIM 125 per day.

Comments
- Implementation of this law is regarded as highly effective and illegal abortion is rare.
- State hospital provision for abortion is supplemented by a private clinic sector.

FRANCE

Legislation
- Law 75-17, 1975; Law 79-1204, 1979

Grounds/gestational limits
- On request (12 weeks since last menstrual period, 10 weeks of pregnancy).
  Second trimester in case of:
- Risk to life of woman
- Risk to woman's physical health
- Risk to foetal health or of foetal handicap

Regulations/conditions
- A physician must be consulted
- Waiting period of up to one week required
- Minors (under 18 years) need parental consent
- Certificate from two doctors recognised by tribunal for second trimester abortion

Cost
- Women are reimbursed 80% of the cost

Comments
- While the situation varies from one city to another, in general there are not enough hospital beds.
- Conscientious objection provision permits professionals to decline involvement in procedures without penalty or detriment.

GERMANY

Legislation
- Law 27 July 1992. Changed by Law 24 August 1995.
- Order by Federal Constitutional Court 28 May 1993

Grounds/gestational limits
- On request (up to 12 weeks from conception)
- 12 weeks from conception in cases of rape or other sexual crimes
- No limit for medical reasons (broad definition covering mental health risks including foetal damage, and general health risks caused by adverse socio economic conditions)

Regulations/conditions
- Obligatory counselling and three days waiting period after counselling, for abortion on request
- In cases of abortion for medical reasons or pregnancy caused by rape or another sexual crime, permission of doctor other than the one who is to carry out the abortion
- Counselling is not obligatory in medical cases and in cases of rape or other sexual crimes

Cost
- Free in medical cases
- Completely covered by statutory health insurance or civil servant health assistance (over 90 per cent of population) in cases of rape or other sexual crimes
- Cost of abortions on request is covered only partially (eg. for anaesthesia, but not for the abortion itself) by statutory health insurance or civil servant health assistance
- Further cost is met by the state if the woman's personal income is below certain limits (covering around 50 per cent of women in Western Germany and almost all women in the East)

Comments
- The woman herself is not punishable if the abortion is carried out by a physician within 22 weeks from conception or after counselling. This is important for abortions performed abroad.

GREECE

Legislation
- Law 1609, 28 June 1986

Grounds/gestational limits
- On request (up to 12 weeks)
- Medical/psychological (up to 20 weeks)
- Rape or other sexual crimes (up to 20 weeks)
- Eugenic (up to 24 weeks)

Regulations/conditions
- Minors require parental consent

Cost
- Free of charge if performed in public hospital

Comments
- Most abortions are performed privately in outpatient clinics and women pay between 40,000 and 80,000 Drachma.

HUNGARY

Legislation
- New "law on the protection of foetal life" passed December 1992

Grounds/gestational limits
- 12 weeks but in certain circumstances it is possible to have an abortion at later stage
- Grave danger to health of pregnant woman
- Pregnancy result of criminal act
- Grave crisis situation for the pregnant woman
- Minors must have parental consent

Regulations/conditions
- Women must attend counselling service. Women must wait three days after counselling but not longer than eight days before abortion takes place. "Grave crisis situation" is defined by the woman herself and during application is not discussed as this is considered a private matter for the woman.

Comments
- In practice abortion is readily available. Since the law was passed there has been a decrease in the number of abortions.

ICELAND

Legislation
- Effective since 1975

Grounds/gestational limits
- On request up to 12 weeks. The request can be based on social, medical reasons, rape and threat to the life of the expectant mother and due to malformation, genetic faults and trauma to foetus. If the application is rejected it goes through the abortion committee.

Regulations/conditions
- Report needs to be written by two medical doctors or one social worker and a medical doctor before abortion can take place
- Minors under the age of 16 need parental consent
- Abortion should only be performed by medical doctors within a hospital

Cost
- It is free. It is paid by National Health Insurance

Comments
- Before 1975 registration of abortion cases was unclear.

ITALY

Legislation
- Law 194, 22 May 1978

Grounds/gestational limits
- Social, socio-medical or socio-economic (up to 90 days).
  Over 90 days in cases of:
- Medical reasons
- Eugenic reasons
- Rape or other sexual crimes
- The pregnancy threatens the physical or mental health of the woman.

Regulations/conditions
- Women must obtain a doctor's certificate and wait for a minimum of seven days
- Minors (under 18 years) need consent from parents or a judge
- Counselling (not compulsory)

Cost
- Free of charge

Comments
- There is a considerable conscientious objection among health personnel on religious, moral and social grounds. Illegal abortions are still numerous.

LATVIA

Legislation
- In 1991 an abortion law was accepted by the Cabinet of Ministers, providing for the termination of pregnancy for a fee.
- With the help of international consultants a new abortion law has been drafted, and will be discussed in the Cabinet of Ministers of Latvia

Grounds/gestational limits
- Available on demand up to 12 weeks of gestation.

- Up to 22 weeks - in cases of special medical and social situations

Regulations/conditions
- Parental consent is required for women up to 18 years of age
- Abortions should be performed only by government medical centres and private medical centres, that have contracts with the sick fund

Cost
- 15.00 Ls - 65.00 Ls (1 USD = 0.53 Ls)

Comments
- There are very few illegal abortions. The legal abortion rate is still very high - 1208 abortions per 1000 livebirths.

LUXEMBOURG

Legislation
- Law amending Penal Code Act, 353, 15 November 1978.

Grounds/gestational limits
- Social and social-medical (up to 12 weeks). Second trimester in cases of:
- Risk to life of women
- Risk to woman's physical health
- Risk to woman's mental health
- Risk to foetal health or of foetal handicap
- Unwanted pregnancy by rape or other sexual crimes

Regulations/conditions
- Women must obtain a doctor's certificate and wait for a minimum of seven days

Cost
- Women are reimbursed

Comments
- Because most doctors are conscientious objectors to abortion it is still difficult to get an abortion. Many women have abortions in the Netherlands.

MOLDOVA

Legislation
- The Ministry of Health in its activities, adheres to abortion law Number 324, adopted on March 16th, 1982

Grounds/gestational limits
- On request for pregnancies of no greater than 12 weeks gestation
- In the cases of pregnancies of 12 to 25 weeks gestation, a decision regarding pregnancy termination is made by a special legal committee
- Socio-medical or socio-economic grounds up to 28 weeks

Regulations/conditions
- Abortions are only permitted in State clinics (inpatient departments)
- Parental consent is required for young women under the age of 16.

Cost
- Since 1996 abortion is paid for by women

Comments
- The abortion rate is still high in Moldova. The number of abortions per woman of reproductive age is estimated at an average of 2.5 abortions per woman. There is deficiency of vacuum aspirators, the method remains surgical abortions by curretage. That is why the frequency of complications following abortions is high: Incomplete abortions requiring secondary curretage are done.

NETHERLANDS

Legislation
- Law on termination of pregnancy, 1 May 1981, Administrative regulations in 1984

Grounds/gestational limits
- Up to 24 weeks: "Intolerable situation" for the woman to be defined jointly by the woman and her doctor

Regulations/conditions
- Minors (under 18 years) need parents consent
- Compulsory waiting period (5 days)
- A physician is obliged to determine whether the woman took her decision freely

Cost
- Women are reimbursed (except women living abroad)

Comments
- The law is very liberally interpreted. Illegal abortion is almost non-existent. Most abortions are performed in privately organised non-profit making clinics.

NORWAY

Legislation
- Act 50, 13 June 1975. Law 66, Sec 1-4, 16 June 1978

Grounds/gestational limits
- On request (up to 12 weeks). Second in case of:
- Medical reasons
- Eugenic reasons
- Rape and other sexual crimes
- Mentally retarded persons or persons suffering from severe mental illness

Regulations/conditions
- During the second trimester womens application shall be submitted to a Board of two doctors

Cost
- Free of charge

Comments
- There is a conscience clause under which hospital staff can be excused from participating in the actual termination but cannot refuse to help pre- and post-operatively.
- The municipalities organise hospital services so that women in their area may have a pregnancy termination performed at any time.

POLAND

Legislation
- New Anti-Abortion law came into force 16 March 1993 known as the law on Family Planning, Human Embryo Protection and Conditions of Abortion

Grounds/gestational limits
- When woman's health or life is threatened
- When pre-natal examinations prove serious deformity of foetus
- When pregnancy is a result of illegal act

Regulations/conditions
- Doctors who perform abortions outside of stated grounds will be subject to two years imprisonment

Comments
- Final implications of new law remain unclear. The law is more restrictive in practice than on the paper. There is a lot of evidence that many women were denied legal abortions although they were entitled to them particularly when a woman's health is in danger, mainly due to inadequate regulations on the medical grounds for abortion. It depends only on doctors position on abortion and it can be easily abused.
- Abortion is now generally not available from state hospitals however it is believed abortions are still available in private clinics at increased cost.

- Severe shortage and low usage of modern contraception, there already is mounting evidence of women being forced to travel outside Poland at great cost to obtain abortions.
- Although according to the law the Government is obliged to introduce sex education to schools and to promote family planning, these parts of the law have not been implemented.

PORTUGAL

Legislation
- Law 6, Sec. 139-141, 11 May 1984

Grounds/gestational limits

Up to 12 weeks in cases of:
- Risk to life of woman
- Risk to woman's mental health
- Rape or other sexual crimes.

Up to 16 weeks for eugenic reasons.

Regulations/conditions
- Minors need parental authorisation
- Two favourable medical opinions
- Waiting period of up to three days
- The physician who approves the abortion cannot perform the abortion

Cost
- Free of charge

Comments
- The law is not fully implemented in the public hospitals, due to a large number of conscience objectors and lack of further regulations although the number of legal abortions increased in the last years, the majority of them are performed for eugenic reasons. In consequence, the majority of abortions are still performed illegally by doctors, nurses, midwives and in private clinics.

ROMANIA

Legislation
- 26 December 1989, Ministry of Health Order 605/27.12.89

Grounds/gestational limits
- On request (up to 12 weeks).

Second trimester in cases of:
- Risk to the woman's life
- Foetal malformation

Regulations/conditions
- Only performed in Obstetrics and Gynaecology departments and private clinics by OBG-YN

Comments
- The new law replaces Decrees of 1957 and 1985 allowing abortion only on medical or eugenic grounds, or in the case of rape; or up to 12 weeks on social grounds for women aged over 40 and those with five or more children, all under 18. The previous laws were abolished one day after popular uprising.
- Maternal mortality has decreased by 317% since the law was introduced.

RUSSIA

Legislation
- Governmental decision of 23 November 1995

Grounds/gestational limits
- In accordance with Article 36 of the Russian Federation Health Care Law N5487-1 of 22 July 1993 every woman has a right to decide for herself a matter of her motherhood.
- Pregnancy termination is provided on woman's request up to 12 weeks; on social grounds - up to 22 weeks, on medical grounds and by woman's consent - irrespective of pregnancy term.

Regulations/conditions
- Abortion is performed at any time on woman's request irrespective of the time of prior abortion performance. Abortions are performed in establishments having a license for this type of activity.
- In early terms of pregnancy (up to 20 days after a missed period) mini-abortions are performed outpatiently.

Cost
- In accordance with Article 36 of the RF Health Care Law no 5487. 1 of 22 July 1993 abortion on woman's request up to 12 weeks as well as that on medical and social grounds is performed within the compulsory health insurance programme and is free for a woman.

Comments
- There is a tendency towards abortion decrease. According to data of the RF Statistics Committee in 1990 there were 4.1 million abortions or 114.0 abortions per 1000 women of a fertile age and in 1994 - 3.0 million and 81.0 abortions correspondingly. Abortions exceed births twofold.

SLOVAK REPUBLIC

Legislation
- Law 73,23 October 1986 effective January 1987

Grounds/gestational limits
- On request to 12 weeks.

Second trimester in cases of:
- medical reasons
- risk to the woman's life
- risk to foetal health or of foetal handicap
- rape or other sexual crimes.

Space of at least six months between two abortions. Exceptions:
- women with at least two births, aged 35 years or more or in case of rape

Regulations/conditions

Recommendation of Physician in a case of
- minors under 16 years needed parental consent
- minors 16-18 years, after abortion physician must inform parents
- forced counselling

Cost
- Women must pay for abortion according to law maximum - 3,000Sk
- abortion on medical grounds is free of charge

Comments
- All abortions must be provided in hospitals.
- The woman must apply for abortion, she can decide in which district or hospital an abortion will be provided - so called "free choice of physician"

SPAIN

Legislation
- Organic Law 9, 5 July 1985, which decriminalises abortion in three regulations. Under the new legislation, approved on 8 November 1995 in article 145, abortion with the woman's consent, outside the three regulations, is still a criminal offence.

Grounds/gestational limits
- Rape (up to 12 weeks)
- Eugenic reasons (22 weeks)
- No limit in case of risk to women's physical or mental health

Regulations/conditions
- Rape must be reported
- One medical opinion must be provided for cases where there is a risk to a woman's life, physical or mental health

- Two medical opinions must be provided for abortions up to 22 weeks on eugenic grounds
- Minors (under 18 years) need parental consent

Cost

Free in public health system

Comments

- Abortion referrals to other countries have decreased remarkably.
- There is no policy which governs conscientious objection and therefore abortions are carried out in very few public hospitals.
- 97% of abortions are performed privately.

SWEDEN

Legislation

- Abortion Act 595, 14 June 1974 Amended May 1995

Grounds/gestational limits

- On request (up to the end of the 18th week of pregnancy)

Regulations/conditions

- On request (up to the end of the 18th week of pregnancy)

Cost

- Under national health insurance

Comments

- As for all medical treatment certain fees have to be paid by the patient. In the case of surgical abortion the cost for the patient totals SEK 120 and for medical abortion SEK 290.

SWITZERLAND

Legislation

- Penal Code Art. 118-121 January 1942

Grounds/gestational limits

- Risk to woman's life
- Risk to woman's physical health
- Risk to woman's mental health
- No limit to the law (but in most cases until 12-14th week only)

Regulations/conditions

- Consent of a second doctor (who has a special permit) required

Cost

- Health insurance usually covers most of the cost although women must pay something towards it, depending on the type of insurance they have.

Comments

- Most abortions performed on psychiatric grounds. Big regional differences in availability of services.

TURKEY

Legislation

- Population Planning Law, Sec 5-6, 24 May 1983

Grounds/gestational limits

- On request (up to 10 weeks). Over 10 weeks in cases of:
- Risk to woman's life
- Risk to foetal health or of foetal handicap

Regulations/conditions

- Married women need husband's consent
- Parent or guardian's consent or that of a magistrate's court for minors
- Report of two specialists in cases where there is a risk to the woman's life or risk to foetal health

Cost

- Up to 10 weeks: TL 50,000 + TL 25,000 consultation fee in state hospitals. Latter fee waived if certificate of poverty presented.
- Cost of abortions over 10 weeks depends on procedure.

UNITED KINGDOM

(excluding Northern Ireland)

Legislation

- Abortion Act 17 October 1967, Amended 24 April 1990. Human Fertilisation and Embryology Act 1990.

Grounds/gestational limits

- Up to 24 weeks for social, socio-medical or social-economic reasons, except in cases of risk of serious handicap, risk of grave permanent injury to life of woman.

Regulations/conditions

- Consent of two doctors
- Girls under 16 years, usually require the involvement of parents/guardians or social worker if they are in care except in exceptional circumstances when it is left to the doctors clinical judgement.

Cost

- Free of charge (on NHS) in principle, 43% of women pay about £300 for terminations in private or charitable clinics

Comments

- About 57% of abortions are carried out under the NHS.

NORTHERN IRELAND

Legislation

- Offences Against the Person Act, 1861. Amended 1929 Infant Life (Preservation) Act.

Grounds/gestational limits

- Unclear but probably up to 28 weeks. Generally carried out for "therapeutic" reasons only ie: grave risk to the life or health of woman; if the woman has severe learning difficulties or if there is an abnormality of the foetus.

Regulations/conditions

- Consent of two doctors. In practice extremely difficult to obtain this consent.

Cost

- Free of charge on NHS. Private abortions not available. Back street abortions still occur.

Comments

- Abortions are not available on social, socio-medical or socio-economic grounds therefore women have to travel to England. Minimum cost involved £450 rising to £600.

Offences Against the Person Act, 1861

ARTICLE 58

" Every woman being with child, who with intent to procure her own miscarriage shall unlawfully administer to herself any poison or other noxious thing... and whomsoever, with intent to procure the miscarriage of any woman whether she be or be not with child shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing... with the like intent shall be guilty of a felon, and being convicted thereof shall be liable... to be kept in penal servitude for life."

ARTICLE 59

" [W]homsoever shall unlawfully supply or procure any poison or other noxious thing... knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman whether she be or not be with child, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be kept in penal servitude for the term of three years."

Bunreacht na hÉireann

ARTICLE 40.3.3

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

This subsection shall not limit freedom to travel between the State and another state.

This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state."

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Price £4.00

Title: Facing Up To Reality
Organisation: Irish Family Planning Association
Date: 1998