**SUBMISSION OF THE PRO LIFE CAMPAIGN TO GENERAL DISCUSSION ON ARTICLE 6 (RIGHT TO LIFE) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**Introduction**

The PLC is a non-denominational human rights organization, drawing its support from a cross-section of Irish society. The Campaign promotes pro-life education and defends human life at all stages, from conception to natural death. It also campaigns for resources to support and assist pregnant women and those in need of healing after abortion. The organization has been to the forefront of contributing to the ongoing debate on the right to life of all members of Irish society for over 30 years.

The PLC makes these comments as part of its contribution to the ongoing discussion on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights (hereafter “ICCPR”), and in particular in answer to the draft General Comment as prepared by the Rapporteur.

**Initial comments regarding Article 6**

All modern human rights treaties originate in the 1948 Universal Declaration on Human Rights according to which “everyone has the right to life, liberty and the security of person”. Nothing was specified as to the beginning or end of life.

The ICCPR was intended to implement the Universal Declaration aspirations, and as such Article 6 encompasses the aim of protecting human life.

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

Statements included in the draft General Comment which uphold and re-iterate the inherent dignity of every human being are to be welcomed as a timely addition to authentic human rights protection and it is noted that the very basic nature of this right is set out in Paragraph 2, namely:

*“Article 6 recognizes and protects the right to life of all human beings. It is the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies. The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed and infused by other human rights.”*

Such comments are to be warmly welcomed. However, the PLC must express serious concern at some of the remaining contents of the revised draft and the way in which it would, if implemented, impact negatively on the rights of unborn babies.

**Protecting the right to life in national law**

The PLC makes its comments as the group largely responsible for promoting the insertion into the Irish Constitution of Article 40.3.3. This provision, also known as the 8th Amendment, was inserted by a majority of the Sovereign People of Ireland, and reads as follows:

***“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.”***

The 8th Amendment is Ireland’s pre-eminent right to life provision and has had an enormously positive effect in protecting the right to life of babies in the womb. There are few laws it can be said with certainty save lives but the 8th Amendment is one such law. A recent independently produced actuarial report[[1]](#footnote-1) compared the number of Irish women who travel abroad to avail of abortion, to abortion rates in other EU countries. It concluded that at least 100,000 lives have been saved from abortion by the 8th Amendment in the last two decades. This is a staggering figure at a time when life in the womb is under attack in many countries internationally.

The PLC notes with concern that some aspects of the revised draft would impact negatively on the protections offered by the 8th Amendment and in this regard, attention is particularly drawn to paragraph 9. Any requirement that State parties must provide access to abortion would contravene the provisions of the 8th Amendment.

It is worth noting the context of Ireland’s right to life provision which does not in any way contradict the worth aim of protecting the right to life and health of women as well as the unborn child.

Ireland’s model of protecting both mother and child as expressed in the 8th Amendment, is a reflection of the two patient model which has served the country well. This model has grown from the sincerely held conviction of a majority of the Irish public that the law should protect both mother and child and that while women should receive whatever medical treatment they need while pregnant, the life of their unborn baby should also be protected insofar as this is possible.

It is important that ethical distinctions are made at all stages when discussing abortion and its impact on society, particularly where there is mention of “termination of pregnancy” or the need for abortion “where there is a real and substantial risk to the life of the mother.”

Regarding the phrase “termination of pregnancy”, it is important to remember that all pregnancies are terminated. Most of them terminate with the birth of a normal healthy baby. Some unborn babies die as an unavoidable and unintended result of some life-saving treatment of the mother.

Furthermore, some babies die, in spite of the very best efforts of all involved, as a result of being born too early: such births may occur spontaneously or may be induced in cases where it represents the only, albeit very low, chance of survival for the baby.

Clearly then, there is a huge ethical distinction between necessary medical interventions in pregnancy where the baby may be exposed to some risks, and induced abortion where the life of the baby is directly and intentionally targeted.

It is always the case that when this distinction is included in opinion polls on the right to life issue in Ireland, the Irish public consistently responds overwhelmingly in favour of retaining constitutional protection for the unborn while at the same time ensuring that women receive whatever medical treatment they need during pregnancy.

The success of this two-patient model means that Ireland ranks in the top league in the world in terms of safety for pregnant women.[[2]](#footnote-2) Since 2009, Ireland has adopted the methodology used by the UK’s triennium report Confidential Enquiry into Maternal Deaths (CEMD) for measuring maternal deaths. Based on the methodology used in Ireland’s Confidential Maternal Death Enquiry, Ireland has a safety record very close to the UK’s, indeed the 2015 Maternal Mortality Estimates by the World Health Organisation, UNICEF, UNFPA and World Bank Group, put Ireland ahead of the UK, with 8 maternal deaths per 100,000 live births, compared with 9 maternal deaths per 100,000 live births, in the single year.

It is clear then, that Ireland has proved that it is possible to care for women safely during pregnancy without introducing abortion. Indeed, abortion itself is not always a safe procedure for a woman, as evidenced by instances like the woman who travelled to the UK for an abortion in 2013 and following the abortion, bled to death in the back of a London taxi.[[3]](#footnote-3) Abortion is of course never safe for the unborn baby.

The suggested references to a woman’s mental health as set out in paragraph 9 are of concern. No account is taken of the very real suffering experienced by women and their partners in the aftermath of abortion, as expressed by groups such as WomenHurt.[[4]](#footnote-4) No reference is made to the substantial pain and suffering that abortion itself causes and the PLC suggests that the final draft of Article 6 must acknowledge and take account of this much-overlooked and underestimated phenomenon. Consideration must be given to the significant evidence worldwide to support the assertion that abortion is of no benefit to a woman suffering from suicidal ideation during pregnancy and may in fact exacerbate the illness.

The PLC refers to the Fergusson Study (2008)[[5]](#footnote-5) which states as follows:

***“In general, there is no evidence in the literature on abortion and mental health that suggests that abortion reduces the mental health risks of unwanted or mistimed pregnancy. Although some studies have concluded that abortion has neutral effects on mental health, no study has reported that exposure to abortion reduces mental health risks.”***

**Abortion and the question of “torture”**

It is worrying that an amendment would be made to Article 6 requiring State parties to provide access to abortion on the grounds of preventing “torture”. Such a requirement would contravene the expressed wishes of the Irish public, who have consistently said that they require protection to remain for the unborn baby in domestic law, and would also counter the factual evidence of what is happening in the world today.

In this regard, the PLC refers to the ***Confidential Enquiry into Maternal and Child Health, 2007***,[[6]](#footnote-6) commissioned by the UK Government, where it was discovered that 66 infants survived National Health Service termination attempts in hospitals in England and Wales during 2005. Instead of dying during the abortion procedure as intended, they survived and were able to breathe unaided but received no medical attention or care and were left to die. Official records show that one of these babies survived for 10 hours.

Similarly, official Canadian figures show that over a ten year period starting in 2000, 491 babies who survived botched abortions were abandoned by medical staff and left to die alone in the corners of hospitals.[[7]](#footnote-7)

The desire to protect unborn babies from having their lives ended in such a cruel manner is reflected in the 8th Amendment of the Irish Constitution and any suggestion that this amounts to “torture” is obscene and a subversion of the correct desire of the Irish public to ensure that such violations do not happen in their country.

It is submitted that any baby allowed to die in these circumstances could certainly be said to have been “subjected to torture or to cruel, inhuman or degrading treatment” as outlined by Article 7 of the ICCPR. It is submitted that any amendment to Article 6 which would require Ireland to legalise abortion would open it up to allowing similar human rights abuses and contraventions of Article 7.

**Babies conceived in rape or incest and babies suffering from life-limiting conditions**

It is noted that paragraph 9 proposes amending Article 6 with a view to requiring State parties to provide access to abortion in these cases. Any such move would be in direct contravention to the stated aim of Article 6, as expressed in the Travaux Preparatoires, and the general agreement regarding the importance of *“safeguarding the right of everyone to life through the covenant.”*

Abortion is not healthcare. Abortion is life-ending, not life-saving and as such its introduction for babies in these circumstances would run in direct opposition to the aims of Article 6.

***Part 1 – Babies diagnosed with life-limiting conditions***

The manner in which we address the needs of families of babies diagnosed with life-limiting conditions goes to the heart of the value we place on unborn life and the care we give to pregnant women in deeply distressing situations. It is important that there is a real reflection with understanding and compassion as policy is determined to address these difficult cases and it is submitted that the wording of Article 6 must contribute towards an increased understanding of the value of these babies’ lives, however long they may be.

The word ‘lethal’ is clear in its meaning – that it causes death. Notwithstanding that it is used in clinical practice to convey the poor condition of the unborn child, the concept of lethality has come in for considerable criticism in recent years and it is submitted that its use as a basis for allowing abortion under Article 6 would be a further betrayal of the aims of the Article in question. A review of the international medical literature reported in the British Journal of Obstetrics and Gynaecology in 2012 revealed ‘no agreed definition of a ‘lethal fetal or congenital malformation’’ and no agreed list of conditions that might fit this description.[[8]](#footnote-8) The malformations most commonly cited in lists of lethal abnormalities are not actually lethal in the strict sense, ie they do not invariably cause death in utero or in the newborn period regardless of attempted supportive treatment. Prolonged survival has been reported in all of the conditions usually described as lethal. Regarding the anencephaly examples given by the Department, studies have reported over 70% live births of offspring conceived with anencephaly.[[9]](#footnote-9) Cases have been reported of survival to 10 months and 2.5 years.[[10]](#footnote-10) Cases of prenatal diagnosis of Trisomy 18 and 13 have been cited as examples of lethal abnormalities in debate about the criteria for availability of termination of pregnancy in this jurisdiction. Survival of individuals with these conditions has been reported to 50 and 27 years respectively.[[11]](#footnote-11) Children who survive with these conditions have been reported to show awareness of people around them, to react to sound and to learn and remember.[[12]](#footnote-12)

It is submitted therefore that the use of this terminology may be laden with value judgments of medical practitioners, and mislead couples about the prognosis of an unborn baby with grave abnormality.

In summary, the use of terminology like ‘lethal’ or ‘fatal’ foetal abnormalities ‘is used for a heterogenous group of conditions to imply an ethical conclusion rather than to present a clear prognosis: it obscures rather than aids communication and counselling.’[[13]](#footnote-13) This terminology diminishes, if not removes entirely, the ability of a woman in these circumstances to make informed decisions about the management of her pregnancy and care of her unborn child.

The introduction of abortion where a poor pre-natal diagnosis is made severely limits the ability of unborn human beings to be treated in accordance with accepted norms. The medical literature available demonstrates that life-prolonging treatments might indeed be inappropriate for some of these unborn babies following birth, in cases where the burden of treatment would cause suffering to the offspring which would outweigh any benefit which the treatment might produce. Equally, treatment aimed at prolongation of life including intensive care might be appropriate, depending on the circumstances. These decisions are made on the basis of information which is available following the birth of these unborn babies.

It is sometimes proposed by abortion advocates that the lives of these babies should be ended because they are seriously abnormal. Their lives may well be short. Medical practice on this island has been to care for both patients as far as is practicable, and to strive for natality rather than mortality. Abortion would represent more than non agressive management of these unborn babies, and more than the deliberate hastening of their demise. Further, it would lead to deliberate foeticide on the basis of assertions by ill-informed medical practitioners. This would constitute a radical departure from the doctor’s primary duty to do no harm, and from the duty to practice evidence based medicine insofar as is possible.

It is timely to mention perinatal palliative care at this juncture as something which should be envisaged at all times during the drafting of Article 6. Where it is clear that a baby will have a very short time to live, perinatal palliative care offers a safe and caring environment for the couple and their baby. [[14]](#footnote-14)

A definition of perinatal palliative care can be defined as:

“Perinatal hospice care is an innovative and compassionate model of support offered to parents who find out during pregnancy that their baby might have a life limiting condition. This style of care aims to help parents embrace whatever time they may have with their baby before and after birth. The support begins at the time of diagnosis like a *“hospice in the womb”.* This is not necessarily a place but it is a frame of mind. It can be easily incorporated into standard pregnancy and birth care as a comprehensive team approach.” [[15]](#footnote-15)

Though the lives of children diagnosed with pre-natal conditions may well be short, medical practice in Ireland has been to care for both patients as far as is practicable, and to strive for natality rather than mortality. In this context a developed strategy for perinatal palliative care is key. Where it is clear that a baby will have a very short time to live, perinatal palliative care offers a safe and caring environment for the couple and their baby. This must be agitated for.

Some babies diagnosed prenatally with terminal illness will live only for a few minutes, hours, or days. Families should be informed about perinatal palliative care and be offered contact details of parents who have had similar experiences so that they can lean on and support one another. Given that the intention of Article 6 is to safeguard the right to life of everyone, there is no reason to remove this right on the pretext of ill-health.

***Part 2 – Sexual Crimes***

The PLC does not endorse an abortion as a 'solution' to the tragedy of a sexual assault on a woman, which results in pregnancy. It is submitted that to offer an abortion in such circumstances ignores the fact that it involves the taking of an innocent unborn life and the exposure of the women to emotional hurt and possible psychological harm. The reality is that our willingness to offer social support is the single most important factor influencing a better psychological outcome for women in crisis after a sexual assault.

There are very few peer reviewed studies on pregnancy following sexual assault but a study by Sandra Mahkorn [[16]](#footnote-16) called Pregnancy and Sexual Assault showed that there is a better social and personal outcome for women who chose to continue a pregnancy, despite harrowing initial circumstances. Recent peer reviewed studies from Finland and New Zealand, [[17]](#footnote-17) [[18]](#footnote-18)to name just two, also show a better outcome for women who continue their pregnancy compared to women who opt for abortion.

The landmark Roe v Wade decision, which legalised abortion in the United States, is a very clear example of how abortion advocates uses emotive cases simply to promote abortion. Before her death, Ms Norma Mc Corvey (Jane Roe from Roe v. Wade) admitted she was exploited by pro-abortionists at the time and spent the remainder of her life publicly campaigning against abortion. If we are to be truly concerned about protecting women we would seek stronger sentences for rapists and real justice for those who are victims of rape. Rape is an unimaginable and horrendous crime – however we do not suggest ending the life of an innocent to rectify any other crime.

**Article 6(5) - Death Penalty Issues**

The PLC expresses real concern that the provisions of Article 6(5) would be interfered with in any way so as to allow for the death penalty to be enforced against pregnant women.

It is imperative that the right to life of the second human being should continue to be protected in those countries where the death penalty has continued in force. As a separate person innocent of any crime, the unborn baby must receive the continued protection of Article 6 in this context.

The Travaux Preparatoires to Article 6 are clear in their intention in this regard:

*“It would seem that the intention of paragraph 4, which was inspired by humanitarian considerations and by consideration for the interests of the unborn child, was that the death sentence, if it concerned a pregnant woman, should not be carried out at all.”*

The *“humanitarian considerations and...consideration for the interests of the unborn child”* mentioned therein are no less today than they were in 1955 when this document was drafted. If anything, the humanitarian duty on the international community to take all necessary steps to protect the life of the unborn baby has increased given the advances in science since that time which have revealed so much more about the humanity of the baby.

**Conclusion**

Article 6 has stood as a testament to the aim of protecting the inherent value and dignity of the human person for many years. During that time, the international community has learned more, not less, about the humanity of the unborn child and with greater knowledge comes greater responsibility. Now more than ever, it is incumbent on us to act in such a way so as to ensure that the unborn baby’s rights are safeguarded. In the context of the Irish domestic scene, any amendment to Article 6 requiring the provision of access to abortion would act in complete contradiction to the intentions of a majority of the Sovereign Irish public when they inserted Article 40.3.3 into the Irish Constitution.

The PLC notes that when the right to life of unborn babies was inserted into the Constitution in 1983, this was merely an expression of acknowledgement of that right. The right to life of a human being exists by virtue of his or her humanity. It cannot be given by another and by the same token, it cannot be removed either. It is this principle that should be to the forefront of the final stages of the General Comment on Article 6, which protects the most fundamental right of all.

**Pro Life Campaign**

**Republic of Ireland**

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1. www.irishtimes.com/news/social-affairs/eighth-amendment-has-saved-100-000-lives-group-claimes-1.2783045 [↑](#footnote-ref-1)
2. Trends in Maternal Mortality: 1990 to 2015, Estimates by WHO, UNICEF, UNFPA, World Bank Group and the United Nations Population Division [↑](#footnote-ref-2)
3. https://www.irishtimes.com/news/health/minister-shocked-at-death-of-woman-after-uk-abortion-1.1470902 [↑](#footnote-ref-3)
4. www.womenhurt.ie [↑](#footnote-ref-4)
5. David M. Fergusson, L. John Horwood and Joseph M. Boden, “Abortion and mental health disorders: evidence from a 30-year longitudinal study”, British Journal of Psychiatry (2008), 193, pp 444-451 [↑](#footnote-ref-5)
6. Confidential Enquiry in Maternal and Child Health, 2007, 2010 [↑](#footnote-ref-6)
7. Statistics Canada. Table 102-0536-Deaths, by cause, Chapter XVI: Certain conditions originating in the prenatal period, 2012. [↑](#footnote-ref-7)
8. DJC Wilkinson and others, ‘Fatally flawed? A review and ethical analysis of lethal congenital malformations’ (2012) 110(11) British Journal of Obstetrics and Gynaecology 1302-1307. [↑](#footnote-ref-8)
9. Monika Jaquier, Report about the birth and life of babies with anencephaly’ (2006), [www.anencephalie-info.org/e/report.php](http://www.anencephalie-info.org/e/report.php), accessed 17 January 2015; M Jaquier, A Klein, E Bolthauser, ‘Spontaneous pregnancy outcome after prenatal diagnosis of anencephaly’ (2006) 113(8) British Journal of Obstetrics and Gynaecology 951-953. [↑](#footnote-ref-9)
10. G McAbee and others, ‘Prolonged survival of two anencephalic infants’ (1993) 10 American Journal of Perinatology 175-177; TK Koogler, BS Wilfond, LF Ross, ‘Lethal language, lethal decisions (2003) 33 Hastings Centre Report 37-41. [↑](#footnote-ref-10)
11. B Bhanumathi, N Goyel, Z Mishra, ‘Trisomy 18 in a 50-year-old female’ (2006) 12 Indian Journal of Human Genetics 146; Y Yunca, J Kadandale, E Pivnick, ‘Long-term survival in Patau syndrome’ (2001) 10 Clinical Dysmorphology 149. Futher examples, including in cases of other foetal conditions usually described as lethal are described in the Wilkinson paper, n 6 supra. [↑](#footnote-ref-11)
12. M Barr, MM Cohen, ‘Holoprosencephaly survival and performance’ (1999) 89 American Journal of Medical Genetics 116-120; LJ Fenton, ‘Trisomy 13 and 18 and quality of life: treading softly’ (2011) 155A Americal Journal of Medical Genetics 1527-1528; B Yorgason, One Tattered Angel: A Touching True Story of the Power of Love (Shadow Mountain 2003). [↑](#footnote-ref-12)
13. ibid, 1302. [↑](#footnote-ref-13)
14. Drawing on comments made by Caroline Simons: Simons, C. '"Incompatible with Life”: Does Article 40.3.3° Permit Abortion for “ Fatal Foetal Abnormality”?'  (2015) MLJI 1, 11-14. [↑](#footnote-ref-14)
15. www.perinatalhospice.org [↑](#footnote-ref-15)
16. Mahkorn S: Pregnancy and Sexual Assault. In Psychological Aspects of Abortion Mall and Watts (eds) 5: [↑](#footnote-ref-16)
17. Gissler M. et.al., “Injury, Deaths, Suicides and Homicides Associated With Pregnancy, Finland, 1987 - 2000”, European Journal of Public Health; Vol.15 (5):459-463, 2005. [↑](#footnote-ref-17)
18. Fergusson et.al., ‘Abortion in young women and subsequent mental health,’ Journal of Child Psychology and Psychiatry 47:1 pp 16-24, 2006 [↑](#footnote-ref-18)