



# CATHOLIC BISHOPS OF NORTHERN IRELAND

Response to the Department of Justice (NI)  
Consultation on the Criminal Law on Abortion

## Abstract

“The lives of both a mother and her unborn child are sacred by virtue of their common humanity and therefore require equal protection under the law”.

15th January 2015  
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**A Response from the  
CATHOLIC BISHOPS OF NORTHERN IRELAND**

**To**

**The Department of Justice (NI)**

**Consultation Paper :**

*The Criminal Law on Abortion-  
Lethal Foetal Abnormality and Sexual Crime.*

**15<sup>th</sup> January 2015**

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## Introduction

In response to the consultation paper issued by the Department of Justice – ‘The Criminal Law on Abortion – Lethal Foetal Abnormality and Sexual Crime’, we, the Catholic Bishops of Northern Ireland, take this opportunity to emphasise that it has always been the teaching of the Catholic Church that the **lives of both a mother and her unborn child are sacred by virtue of their common humanity and therefore require equal protection under the law.** The direct and intentional termination of an unborn child denies the humanity and inherent dignity of that child in the womb and violates the most basic human right of all, the right to life. **This is true regardless of whether a) The child has a life limiting condition or b) The child has been conceived as a result of a sexual crime under the law.**

The existence of an objective moral law is the essential reference point for civil law in a democratic society that embodies and promotes fundamental ethical values. In the context of this Consultation Paper, the relevant values and rights that flow from the moral law are the dignity of the human person and the right to life of every person, including the unborn child. Since the role of civil law in a true democracy is to protect these values and rights, it cannot be used to decriminalise an offence such as abortion which disregards the fundamental right to life of an innocent human being. To do so, as proposed in this Paper, would run the risk of reducing civil law to a mechanism for regulating different and opposing interests. Furthermore, the change to the criminal law proposed in this Paper, which disregards the fundamental right to life of the unborn child, a right belonging to all, denies the equality of everyone before the law. For this reason, a law that authorises the direct and intentional killing of an unborn child, regardless of his or her medical condition or the circumstances of his or her conception, is completely lacking in any authentic juridical validity and therefore possesses no morally binding force. Consequently, there is no obligation in conscience to obey such a law; indeed there is a clear obligation to oppose this law by conscientious objection.

## **The Framing of the Consultation: fundamental challenges.**

In the Introduction to the Consultation Paper, the Department claims that there is a 'pressing need' for reform of the criminal law with regard to abortion. Given the serious nature of what is proposed in this Paper, we are surprised that no published research evidence is presented in support of this claim.

The Department states that the Paper does not present a debate on the wider issues of abortion law; issues often labelled as 'pro-choice' and 'pro-life'. Nevertheless, the Department has chosen to adopt what is commonly understood to be a 'pro-choice' stance throughout this Paper, i.e. the 'right' of a woman, in certain circumstances, to choose to terminate the life of her unborn child. In adopting this position, the Department fails to give any consideration in this Paper to the right to life of the unborn child.

The Department also states in its Introduction - 'no response to this document which addresses these wider issues will be considered relevant to any proposed reform of the criminal law on abortion'. While the Department does not make clear which issues it is referring to, it cannot be denied that the proposed reform of the criminal law on abortion in Northern Ireland immediately involves the fundamental question of the right to life of the unborn and will have potentially far reaching consequences with regard to a wide range of issues relating to abortion, not least the campaign to extend the Abortion Act (1967) to Northern Ireland. It is our view that the reform of the criminal law cannot be considered in isolation from such wider issues, and in particular the right to life of the unborn child. Therefore, we strongly object to the Department's decision to exclude submissions which address the impact any reform of the criminal law might have on the right to life of the unborn child as well as wider issues relating to abortion.

*In relation to the specific questions raised in the consultation paper, in the response that follows we respond to a select number of the most critical questions listed in annex A. References to the Consultation Paper will be indicated by the paragraph number in the text.*

## Part I – Questions on ‘Lethal Foetal Abnormality’

### Q2. Should the law allow for abortion in cases of lethal abnormality?

First of all we wish to state clearly that we have the deepest sympathy and concern for any mother who receives the distressing news that her baby has a life-limiting condition. On receiving such a diagnosis both the mother and child should receive all appropriate treatment and support throughout the pregnancy and after the child has been delivered.

It is a cause of deep concern that the ‘key objective’ of the consultation process is to, ‘enable women who wish to terminate a pregnancy on the grounds of lethal foetal abnormality to make that choice’ (1.1). We understand this proposed outcome to be a deliberate attempt to remove from unborn children with a life-limiting condition the protection that they currently possess under the law. Therefore, we need at the outset to state unequivocally that it is wholly unacceptable to attempt to decriminalise a direct and intentional act aimed at terminating the life of an unborn child on the grounds that the child’s lifespan is limited by a serious medical condition such that the child will not, if born, survive, (4.12). Such a life-limiting condition does not in any way detract from the humanity of the child or the inherent dignity of that child. For this reason, the deliberate termination of this child’s life is always unethical and should remain a criminal act under the law. Indeed any consideration of options upon which to base a legal definition of ‘lethal foetal abnormality’, (as presented in chapter 4), which has the purpose of facilitating as lawful the direct and intentional taking of the life of unborn children with life limiting conditions, is also unethical and cannot be justified.

The failure of this consultation paper to acknowledge that there are two lives to be considered during pregnancy, i.e the mother and her unborn child, is deeply disturbing and is in stark contrast to the Department of Health’s draft guidance document, ‘The Limited Circumstances for a Lawful Termination of Pregnancy in Northern Ireland’ (April 2013), which clearly states in paragraph 1.1:

*‘The aim of the Health and Social Care System must be the protection of both the life of the mother and her unborn child. The objective of interventions administered to a pregnant woman must be to save the mother’s life or*

*protect against real and serious long term or permanent injury to her health. Intervention cannot have as its direct purpose the ending of the life of an unborn child'*

According to this Department of Health document, decisions about medical interventions are to be based solely on **clinical necessity** while there must be an intention to seek to protect and care for both the health of the mother and her unborn child. It is alarming to note that this acknowledgement of the need to protect both lives is totally absent from this Consultation Paper issued by the Department of Justice. It would appear that the Department attaches no medical or ethical significance to the fact that unborn children with a life-limiting condition can survive for a period of time after diagnosis.

Furthermore the Department of Justice makes clear that there should be no intervention after birth in the case of a child whose life limiting condition is clinically judged to be 'incompatible with life', (4.10). It is our understanding that in Northern Ireland, the current medical practice is in fact to intervene after birth in response to the child's most basic care needs. Is the Department proposing that medical staff will no longer be required to intervene with such basic care should option 4 (4.10), be adopted as the basis on which to legislate to allow for lawful termination of pregnancy? It is our view that the Department's proposal of a 'non-intervention' policy under option 4 is inhumane, unethical and shows total disregard for the dignity of the child and the mental health of the mother and is therefore totally unacceptable. At the same time we accept that, while it is never morally acceptable to intervene directly and intentionally to end the life of any innocent person, and while there is always an obligation to provide ordinary levels of life-supporting intervention and care, there is no absolute obligation to use extraordinary medical intervention to prolong the life of any person when it becomes clear that such an intervention is proving futile.

We also wish to note that while unborn children are not recognised as legal persons under the current law, they are legally protected from destruction except in very specific circumstances. Given that this protection derives in part from a State interest in the protection of all unborn children, regardless of their medical condition, all citizens must be mindful of the fact that the issue of abortion is not a purely private matter between a doctor and patient. The decision to deliberately terminate the life of the unborn child can never simply be taken on the grounds of a mother's personal choice or the predicted life expectancy of the unborn child. **Therefore, we recommend that unborn children with life**

**limiting conditions continue to enjoy the protection of the law throughout the pregnancy.**

**Q4. How would you define 'lethal'?**

**Q5. Do you agree that the best way is to allow clinical judgment to decide when a foetus is not compatible with life?**

The possibility of life after birth, albeit with significant challenges due to serious physical disabilities, is not conveyed in the words 'lethal abnormality' or 'incompatible with life'. Such terms imply that a judgment is being made about the present and future quality of life of the living but as yet unborn child. For this reason, we understand that these terms are never used by medical staff or counsellors when explaining the diagnosis to parents, as research evidence indicates that the use of the word 'lethal' obscures rather than aids communication when counselling women about the management of a pregnancy complicated by foetal abnormality. It should also be noted that such terms as 'lethal' and 'incompatible' frighten parents and the decisions they make re abortion can be influenced by the fear of abandonment of themselves and their unborn child. Research evidence again indicates that a significant number of women who are informed there will be no intervention after birth, also fear that they and their child will be abandoned. The prospect of such a scenario leaves these women feeling under increasing pressure to terminate the pregnancy. (See - 'Fatally Flawed? – A Review and Ethical Analysis of 'Lethal' Congenital Malformations, D.J.C. Wilkinson et al, BJOG, vol 119, Issue 11, 25 July 2012).

This is particularly true at the 20-week scan when parents are naturally anxious even before they receive any information about the health of their child. Further, there is concern that pressure, perhaps subtle, would be brought to bear on Catholic women or others for whom the ethics of the proposed practice would be incompatible with their beliefs. **We recommend that this concern should be reviewed in an equality impact assessment.**

It should also be noted that a review of the scientific literature concludes that there is no agreement on the 'probability of death' that would justify describing a condition as 'lethal'. There is also no agreement in the field of medicine regarding how much physiological or brain function would justify the use of the term 'lethal'.



**For these reasons the use of the term 'lethal' or 'incompatible' should never be used.** (See – 'Fatally Flawed?', D.J.C. Wilkinson et al).

#### **Option 4 – Clinical Judgment of incompatibility with life.**

It is not clear from the Consultation Paper how medical practitioners will be expected to make the clinical judgment of so-called 'incompatibility with life'. Given that the Department does not approve of 'using a specified measure of sustainable life as the deciding factor for a termination' (4.6), which criteria are to be used in assessing a foetal condition? We note that the Consultation Paper is totally silent on this matter. Whatever criteria are adopted, it appears that under option 4 doctors will carry the full legal and professional responsibility for making a clinical judgment re survival at /after birth upon which a woman will make her decision re termination of the pregnancy. We note that the Department does not provide any criteria upon which to base the application of the law.

It is a cause of deep concern that the Consultation Paper does not acknowledge the medical fact that the unborn child has been a living human being from the moment of conception and is therefore alive at the time when a life-limiting condition is diagnosed. The unborn child in these circumstances has the same right to life as any other unborn child. The value of his or her life cannot be measured in terms of its duration even when that might only be a matter of minutes or hours. Therefore his or her life-limiting condition needs to be managed as long as the unborn child is alive, as is the case with every terminally ill patient. The parents and siblings of this unborn child have the right to be supported and treated in the same way as any family with a terminally ill member. Therefore a perinatal palliative care programme that includes appropriate counselling and chaplaincy services should be established to respond to the emotional and spiritual needs of the whole family. This should include a post-natal plan in the event of a live birth. (www.perinatalhospice.org\_Amy Kuebelbeck , '*A Gift of Time: Continuing Your Pregnancy when Your Baby's Life is Expected to be Brief*', John Hopkins University Press, 2011).

**We recommend that this option of palliative care including counselling services be offered to all parents while they consider the implications of continuing their pregnancy after a diagnosis of a life-limiting condition.**

## **Part II: Response to Questions on ‘Sexual Crime’.**

In the context of the Department’s ‘key objective’ i.e. ‘to enable women who wish to terminate a pregnancy on the grounds of lethal foetal abnormality to make that choice’, (Part I, 4.1), concern is expressed by the Department that if the definition of ‘lethal foetal abnormality’ is too broad, ‘the outcome will potentially be that abortion is legalised in cases over and above those envisaged in that objective’. This apparent concern to protect the lives of unborn children with less severe foetal abnormalities is contradicted in Part II, ‘Sexual Crime’, where the consultation process is widened to include discussion of a change to the law that would permit the abortion of healthy unborn children conceived as a result of criminal sexual behaviour. Within that range of cases, Part II contemplates a complete surrender of ethical principles in favour of the mother’s freedom to choose a termination of her pregnancy. The Catholic Church utterly opposes such a proposal, and reiterates the principle of the dignity of the unborn child and his/her mother

### **Questions from Annex A**

#### **Q 6 &7 Should the law provide for abortion to be a choice in the case of rape? For victims of other sexual crime?**

As stated in the introduction to our response to this consultation paper, the direct and intentional termination of an unborn child denies the humanity and inherent dignity of that child in the womb and violates the most fundamental right of all; the right to life. This remains true regardless of the circumstances in which the child was conceived. While we acknowledge the unimaginable trauma and distress that is caused to a woman who is the victim of a sexual crime such as rape, it is never morally justifiable to directly and intentionally abort the unborn child.

Nor should it be assumed that the mother of a child conceived as a result of rape could not, under any circumstances, accept and raise this child. Society must hear the voices of women who have brought their children to term after rape and in many

cases have gone on to raise the child, who they rightly regard as their own baby, though some will choose to give the child up for adoption, (see *Victims and Victors; Speaking out About Their Pregnancies, Abortions, and Children resulting from Sexual Assault*, eds. David C. Reardon et al (Springfield, IL: Acorn books, 2000), Shauna R Prewitt, "Giving Birth to a "Rapist's Child" *Georgetown Law Journal* 98 (2010): 827-62.

The law on abortion has traditionally been based on a medical model that takes account of the well being of the mother. In Part II of the Consultation Paper views are being sought regarding the introduction of a 'freedom of choice' model which regards the needs or perceived needs of the mother of the unborn child as paramount, (5.4) What is being proposed for consideration represents a fundamental change to the way in which law and social policy are formulated. Rather than focus on the medical needs of the mother, Part II of the consultation paper seeks to explore a new model for decision making re abortion that depends solely on the circumstances that give rise to a pregnancy. Such a change also goes beyond the 1967 Act which does not provide for termination of pregnancies in cases of rape or sexual assault. This is acknowledged in the consultation paper itself, (5.5). Those who draft legislation need to give careful consideration to foreseeing possible consequences.

The radical nature of what is under consideration in Part II, namely the freedom to choose the direct and intentional destruction of an unborn child, is underlined by the fact that the current law on abortion acknowledges to some extent the ethical principle of respect for life. The Department has not offered any empirical rationale for the abandonment of this principle in favour of a 'freedom of choice' model.

### **Part III: Conscientious Objection**

#### **Question from Annex A**

**Q17 Should there be a right of conscientious objection for those who participate in treatment for abortion in respect of (1) Lethal foetal abnormality and (2) sexual crime?**

The right to conscientious objection is recognised by the Catholic Church as an essential right that should be acknowledged and protected by civil law. In particular, the right to refuse to take part in the phases of consultation, preparation, and execution of actions designed to terminate human life should be guaranteed to physicians, health care professionals and directors of hospitals. Any action carried out with the direct intention of ending the life of an unborn child is a gravely immoral act. To refuse to cooperate in committing such an injustice is not only a moral duty, it is a basic human right. (See - A Submission of the Catholic Bishops of Northern Ireland Re '*The Limited circumstances for a Lawful Termination of Pregnancy in Northern Ireland*', July 2013.)

**We recommend that the right to conscientious objection should extend not only to individuals but also to institutions whose ethos does not permit a procedure which has as its purpose the death of the unborn child.**

## **General Observations.**

1. It is disturbing and indeed difficult to understand, that in a document from a Government Department which addresses an important ethical issue, there are no ethical principles on which the proposed change to the criminal law is based.
2. The fundamental omission in the consultation paper, is that its focus is entirely and exclusively on the well-being of the woman and it does not consider at any point the possible reasons why abortion should not be allowed in cases where a life limiting condition is diagnosed or a sexual crime has been judged to have taken place. This omission detracts from the balance one would expect in a consultation paper from a Government Department.
3. It is our understanding that the Northern Ireland Human Rights Commission (NIHRC) has no legal authority to require the Department of Justice to 'affirm the intention to amend the law' or to 'progress the matter in a timely manner'.

## **Summary.**

- The direct and intentional termination of an unborn child denies the humanity and inherent dignity of that child in the womb and violates the most basic human right of all, the right to life. This true regardless of whether a) The child has a life limiting condition or b) The child has been conceived as the result of a sexual crime under the law.

- The change to the criminal law proposed in this paper, which disregards the fundamental right to life of the unborn child, a right belonging to every individual, denies the equality of everyone before the law.
- We are deeply concerned that :-
  - a) The Department does not acknowledge the existence of two human lives, i.e. the life of the mother and her unborn child.
  - b) No ethical significance is attached to the fact that the unborn child with a
  - c) life limiting condition is a living human being.
  - d) Option 4 includes a 'non-intervention' policy should a child with a life limiting condition be born alive. This is totally unethical and shows a total disregard for the dignity of the child and the mental health of the mother.
  - e) Pressure, perhaps subtle, would be brought to bear on Catholic women for whom the proposed practice would be incompatible with their beliefs. This concern should be reviewed in an equality impact assessment.
- Part II of the consultation paper contemplates a complete surrender of ethical principles in favour of the woman's freedom to choose to terminate her pregnancy. The Catholic Church totally opposes such a proposal.
- The Department does not offer any empirical rationale for the abandonment of the 'respect for life' principle in favour of the 'freedom to choose' model.
- The right to conscientious objection is recognised by the Catholic Church as an essential right that should be acknowledged and protected by the law. To refuse to cooperate in any action designed to end the life of an unborn child is not only a moral duty but a basic human right.

