



Proposed Amendments to SA's Abortion Law

On Friday, 25th May, the people of Ireland voted in a historic referendum on whether or not to repeal a constitutional clause protecting the rights of the unborn. Voters were asked if they wanted to repeal the 8th Amendment of the Constitution, which recognises the equal right to life of mother and unborn child. The final results showed that 66.4 per cent of voters opted to repeal the amendment, which in effect banned abortion in a vast majority of cases. Those opposing the liberalisation of Ireland's abortion law conceded on Saturday that they had lost Friday's referendum by an overwhelming margin.¹ Legislation to allow abortion on demand up to 12 weeks of age, and thereafter under certain conditions, will follow.

Hitherto, the Republic of Ireland had some of the most restrictive anti-abortion legislation in the world. South Africa, conversely, has one of the most permissive abortion laws. In November 1996, the Choice on Termination of Pregnancy Act, 92 of 1996 (CTOP), was enacted by Parliament. The Act makes termination of pregnancy legal upon a woman's request up to 12 weeks of pregnancy; on physical and mental health grounds, on socio-economic grounds and in cases of rape or incest, up to 20 weeks; and after 20 weeks if the woman's life is endangered, or there is a risk that the foetus is severely malformed. The Act makes it an offence for unqualified practitioners to provide abortions and an offence to obstruct access to an abortion facility.²

The Choice of Termination of Pregnancy Act was amended in 2004 to further expand access to abortions. Specifically, the amendment allowed for registered nurses and midwives to perform abortions during the first 12 weeks of a pregnancy. The amendment also provided that 24-hour maternity centres did not need special approval to perform abortions in the first 12 weeks. While the Constitutional Court ruled the amendment to be invalid in 2006, due to a lack of adequate consultation, Parliament re-enacted the amendment as the Choice on Termination of Pregnancy Amendment Act of 2008, which came into force on February 18, 2008.³

In an effort to bring the CTOP's provisions in line with recent developments in medical science, and to provide women with mandatory counselling which would result in more properly informed consent, the African Christian Democratic Party MP, Cheryllyn Dudley, introduced a Private Member's Bill during 2017.⁴ The proposed Bill sought to make it mandatory for abortion facilities to have ultra-sound equipment which could more accurately determine the period of gestation and provide images of the foetus in the womb. Information regarding alternatives to abortion would also have to be available, as well as access to social services.

The proposed Bill has not met with success, as is evident from the articles and submissions from civil society organizations below. The Portfolio Committee on Health dismissed the Bill as too expensive to implement, and argued that it would make it more difficult to obtain 'safe' abortions.

It should be noted that Ms Dudley previously brought a Private Member's Bill before parliament which introduced the right to paternity leave for the first time in SA, and for mothers of adopted children to have the same rights to maternity leave as biological mothers.⁵ That Bill became the first Private Member's Bill to be adopted by Parliament.

<https://www.businesslive.co.za/bd/national/health/2018-05-09-health-committee-rejects-bill-making-it-harder-to-get-safe-abortions>

<https://www.businesslive.co.za/bd/national/2018-05-03-mps-urged-to-reject-costly-abortion-bill/>

<https://www.businesslive.co.za/bd/national/2018-03-27-emotional-argument-by-anti-abortion-acdp-mp-doesnt-sway-parliament/>

<https://city.press.news24.com/News/bill-to-amend-abortion-act-rejected-20180512>

<https://awethu.amandla.mobi/petitions/stop-the-african-christian-democratic-party-acdp-amending-the-termination-of-pregnancy-ac>

<http://www.spotnews.co.za/index.php/business-2/194-the-interest-of-the-unborn-child>

<https://www.medicalbrief.co.za/archives/bill-tabled-amend-choice-termination-pregnancy-act/>

<https://www.dailymaverick.co.za/article/2017-12-12-op-ed-the-choice-on-the-termination-of-pregnancy-amendment-bill-and-its-moral-shortcomings/#.WwVi5O6FPIU>

<http://section27.org.za/2017/08/joint-section27-and-treatment-action-campaign-submission-on-the-choice-on-termination-of-pregnancy-amendment-bill-a-private-members-bill-proposed-by>

<http://www.joydigitalmag.com/news/christians-support-choice-termination-pregnancy-amendment-bill-proposed-acdp/>

<https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/gender/CALS%20Submissions>

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¹<http://ewn.co.za/2018/05/26/irish-anti-abortion-campaign-concedes-it-has-lost-referendum>

² Choice on Termination of Pregnancy, Act 92 of 1996

³ <https://classroom.synonym.com/choice-termination-pregnancy-act-8431.html>

⁴ Choice on Termination of Pregnancy Amendment Bill [B34-2017] and Notice of Intention to Introduce a Private Member's Bill in accordance with Section 73(2) of the Constitution of the Republic of South Africa, 1996

⁵ <https://www.news24.com/SouthAfrica/News/first-private-members-bill-passed-in-parliament-seeks-paternity-leave-for-fathers-20171128>