

UPR Submission on access to safe and legal abortion in Northern Ireland (part of the UK)

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Joint Submission by:

Family Planning Association (FPA)

www.fpa.org.uk

&

The Sexual Rights Initiative (SRI)



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Introduction

1. This report is submitted by the Family Planning Association (FPA)¹ and the Sexual Rights Initiative (SRI)². It contends that the UK Government has legislation in place that is incompatible with international human rights obligations because women living in Northern Ireland are denied access to safe and legal abortions. This is a violation of their rights to health, non-discrimination, privacy, life, liberty and security of the person and to be free from inhuman and degrading treatment. The consequence is that women are still at risk of unsafe abortion practices and are unable to access abortions safely and legally if they have been raped, are a victim of incest or have a diagnosis of fetal abnormality.

Background and context

2. Northern Ireland, although part of the UK, operates under a different legal framework in relation to abortion than England, Scotland and Wales. Abortion is only legal in extremely restrictive circumstances with a very small number of abortions carried out each year, with only 75 legal abortions in the year 2010 -2011³. Fetal abnormality, fetal viability, rape and/or incest are not grounds for an abortion.

3. Women not entitled to an abortion in Northern Ireland are forced to travel to England or another European country. Despite being UK citizens, they are not entitled to a National Health Service (NHS) abortion (unlike women from the rest of the UK), and depending on the gestation of the pregnancy have to raise up to £2,000 (€2283). Abortion therefore becomes a class issue, only available to those who can afford it. According to recorded statistics, since 1970, over 56,930⁴ women living in Northern Ireland have paid for a private abortion in England. This statistic is based on addresses provided by women but many, for fear of detection, give false addresses; therefore it is generally accepted that this is an underestimation. Those women who cannot afford to access abortion services in England are either forced into motherhood or unsafe abortion practices.

¹ FPA is the UK's leading sexual health charity; which has worked to promote and protect human rights in relation to sexual and reproductive health. FPA provides the only non-directive, non-judgmental unplanned pregnancy counselling, information and support service in Northern Ireland and has over twenty years experience of working with women with unplanned and crisis pregnancies.

² A coalition including: Action Canada for Population and Development (ACPD); Creating Resources for Empowerment and Action (India), AKAHATA (Latin America), Federation for Women and Family Planning (Poland), and others.

³ Source: Hospital Inpatient System

⁴ 1970 - 1973 - Office of Population Censuses and Surveys Registrar General's Review of England and Wales Supplement; 1974 – 2001 - Office for National Statistics Abortion Statistics Series AB; 2002 - 2010 - Department of Health Abortion Statistics Statistical Bulletin.

Legislative framework

4. Abortion legislation which permits abortions to be carried out for a wider range of circumstances (including for grounds of rape, incest and fetal abnormality) introduced to England, Scotland and Wales in 1967, has never been extended to Northern Ireland. Abortion in England, Scotland and Wales is state-funded and provided by the National Health Service, at no financial cost to women.

5. In Northern Ireland abortion remains under the provision of the 1861 Offences Against the Person Act, which states that procuring or assisting in an abortion is a criminal offence punishable by up to life imprisonment. Thus, abortion is criminalised in all circumstances except where the woman's life is at immediate risk or where there is a "real and serious" and "permanent or long term" adverse effect on her mental or physical health.

Political context

6. In 1967, there was a devolved parliament in Northern Ireland and the decision to enact the same permissive abortion legislation introduced in the rest of the UK was left to the Northern Ireland parliament. They opposed inclusion in the Act. With the onset of the 'troubles', the Northern Ireland parliament was dissolved and constitutional power returned to Westminster, with permissive abortion legislation never being extended to Northern Ireland.

7. The Northern Ireland Assembly was established under the Good Friday Agreement of 1998 and is now the devolved legislature of Northern Ireland. It has responsibility for significant areas of policy, apart from those specifically under the legislative jurisdiction of the Parliament of the UK. At this point in time, responsibility for abortion legislation remained with the UK Government.

8. Under the devolution of Policing and Justice in 2010, responsibility for abortion was devolved to the Northern Ireland Assembly because Northern Ireland's abortion law is still governed by criminal legislation. It is significant to note that abortion remains under the legislative jurisdiction of the UK Government with regards to Wales and Scotland, who also have devolved parliaments. Thus, Northern Ireland is the only part of the UK where abortion is still criminalised.

9. All three devolved assemblies (Scottish Parliament, Welsh Assembly and Northern Ireland Assembly) can pass primary legislation within the areas that have been devolved to them, but their powers to legislate all stem from the UK Parliament and can be withdrawn unilaterally. For example the Northern Ireland Assembly has been suspended on several occasions due to political deadlocks,

10. The doctrine of parliamentary sovereignty means that the UK Government can legislate on all matters including matters that have been devolved. Therefore, the UK Government has the ultimate responsibility for abortion legislation in Northern Ireland.

Such legislation cannot be challenged in the courts, while legislation passed by the three devolved legislatures can be withdrawn by the UK Government if it is found to overstep their powers⁵.

Failure of the UK Government to meet international human rights obligations

11. The UK Government has overall responsibility for ensuring that all jurisdictions of the UK, including Northern Ireland, meet obligations with regard to international conventions and treaties. However there have been serious lapses in the discharge of this legal responsibility giving rise to persistent inequalities and grave and systematic violations of the human rights of women living in Northern Ireland including breaches of the UK's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the International Covenant on Economic, Social and Cultural Rights (ICESCR;) and the International Covenant on Civil and Political Rights (ICCPR).

12. In 2008, the CEDAW Committee noted with concern that the Convention on the Elimination of All Forms of Discrimination Against Women is unevenly applied across all jurisdictions of the UK. The Committee stressed that the primary responsibility for implementing the Convention in all jurisdictions rests with the UK Government and that a comprehensive and overarching national strategy for the implementation of the Convention should be developed.⁶

13. The Committee specifically expressed concerns over Northern Ireland's incongruous position on abortion and made the following recommendations to the UK Government:

- A process of public consultation on abortion should be initiated.
- Abortion law should be amended so as to remove punitive provisions imposed on women who undergo abortion.
- Health services should be delivered in a gender-sensitive manner to all health concerns of women.⁷

14. These concerns were further validated by the Committee on Economic, Social and Cultural Rights (CESCR), who in their concluding observations made the following recommendation:

The Committee calls upon the State party to amend the abortion law of Northern Ireland to bring it in line with the 1967 Abortion Act with a view to preventing clandestine and unsafe abortions in cases of rape, incest or foetal abnormality.⁸

⁵ Whilst the doctrine of parliamentary sovereignty exists there is a parliamentary convention that the UK Government will not legislate in a devolved area without the consent of the devolved government – nonetheless the doctrine still exists.

⁶ Concluding Observations of CEDAW regarding: The United Kingdom of Great Britain and Northern Ireland, 18 July 2008, C/GBR/CO/6, at para 16.

⁷ Ibid, at paras. 41 and 42.

15. To date the UK Government has ignored the concerns and recommendations of UN bodies and has made no attempt to ensure compliance with its international human rights obligations in Northern Ireland, as detailed below.

The Right to Health

16. The abortion law in Northern Ireland criminalises women restricting their access to abortion, and serves as an impermissible barrier to the realisation of the right to the highest attainable standard of physical and mental health under article 12.1 of the International Covenant on Economic, Social and Cultural Rights. Women living in Northern Ireland are still exposed to the health risks of unsafe abortions and do not have safe and affordable access to high quality abortion services.

17. Women who decide for reasons of fetal abnormality to have an abortion have to travel to England and pay £2000 (€2283) for the abortion procedure. Normal clinical practice is for women to receive a two-step abortion procedure which includes the administration of a potassium chloride injection followed by expulsion of the fetus. However, the Royal College of Midwives has noted with an ever increasing concern that women are only receiving the first stage of the procedure in England and are presenting themselves at maternity units in Northern Ireland expecting delivery.⁹ The College notes that “if the woman is not delivered within a few days of the feticide having been carried out she is at risk of developing the complications associated with carrying a dead fetus for a prolonged period of time.” Women living in the rest of the UK are not subjected to these health risks as they receive both stages of the procedure without the same delay.

18. The extreme restrictive provision of abortion in Northern Ireland has resulted in women who are unable or cannot afford to travel to England or another European country, resorting to accessing abortifacient medicines available online. The FPA’s helpline in Northern Ireland has been increasingly receiving calls from distressed women considering buying such medicine even though upon the interpretation of the law in Northern Ireland, they would be acting illegally. Some women attempting to access abortifacient medicine online access rogue internet sites and are supplied with incomplete prescriptions. They have no way of knowing what they are taking, or if they are taking the correct dosage. Women are not only putting their lives at risk but are also risking prosecution and could be charged with the criminal offence of unlawfully procuring a miscarriage, which carries a sentence of life imprisonment.

19. Due to the criminalisation of abortion in Northern Ireland, there is little or no education and training available for health professionals responsible for delivering post

⁸ Concluding Observations of CESCR regarding: The United Kingdom of Great Britain and Northern Ireland, 22 May 2009, E/C.12/GBR/CO/5, at para 25.

⁹ Letter to Northern Ireland Department of Health, Social Services and Public Safety, dated 2 December 2008.

abortion care with services not meeting clinical practice recommendations set by the Royal College of Obstetricians and Gynaecologists (RCOG).¹⁰ The lack of training available to clinicians can result in invasive procedures which with proper training would have been avoided.

The Right to Non-Discrimination

20. The denial of safe and legal abortion services in Northern Ireland, as a health service required exclusively by women, is discriminatory and consequently in violation of article 2 of the CEDAW Convention which provides for equal entitlement to health care and more broadly for equal protection of the law.

21. It is discriminatory for a State party to refuse to legally provide reproductive health services for women.¹¹ By excluding Northern Ireland from the 1967 Abortion Act, the State party has not only failed to provide equal entitlement to healthcare but has singled out and criminalised healthcare that only women need and exposed them to health risks that are not experienced by men. Men living in Northern Ireland are currently able to access all health services they need without stigma, legal barriers, or the threat of criminal punishment, whereas women cannot.

22. Northern Ireland is the only part of the UK where abortion is still criminalised in the majority of circumstances. As a result, the UK Government has failed to ensure that women living in Northern Ireland have the same legal rights to access free, safe and legal abortions as women in other parts of the UK.

The Right to Privacy

23. Women living in Northern Ireland do not have adequate protection of their right to privacy under article 17 of the International Covenant on Civil and Political Rights (ICCPR). The decision to have an abortion is a private decision and in a free and democratic society the conscience of the individual must be paramount to that of the state. By imposing arbitrary restrictions on access to abortion, women are denied their freedom of conscience, and are deprived of their essential humanity.

The Right to Life

24. The Human Rights Committee General Comment No. 28 on equality of rights between men and women, asks State Parties, when reporting on the right to life protected by Article 6 of the ICCPR, to 'give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not

¹⁰ Evaluation of Post Abortion Care Services in Northern Ireland. November 2008. Dr Kelly Eastwood. Eastern Health and Social Services Board.

¹¹ General Recommendation No.24 (20th session, 1999), Article 12: Women and Health, para. 11.

have to undergo life-threatening clandestine abortions'.¹² FPA knows through its helpline and the other services it provides that many women in Northern Ireland since 1968 have engaged in unsafe abortion practices, and that women regularly put their health and lives at risk. Since the 1967 Abortion Act was introduced in the rest of the UK there have been five known deaths due to illegal, unsafe abortions in Northern Ireland.

25. General Comment No. 28 also considers laws or policies where States impose a legal duty upon health professionals to report cases of women who have undergone illegal abortions, a potential violation of the right to life and the right torture or to cruel, inhuman or degrading treatment or punishment (Article 7 of ICCPR). Section 5 of the Criminal Law Act (Northern Ireland) 1967 places a duty and legal obligation on all citizens to report to the police an 'arrestable offence'. This has potential consequences for women who encounter medical complications from self-administered abortions if they seek medical assistance as the health professional would have a legal obligation to report them to the Police Service of Northern Ireland. FPA knows from its counselling service that some women choose not to disclose that they have had an illegal abortion to a health professional for fear of potential prosecution. This can be dangerous, as the healthcare professional involved may not give the proper medical treatment without full knowledge of the woman's medical circumstances.

The Right to Liberty and Security of the Person

26. The right to liberty and security of the person is protected by article 9 of the ICCPR. The right to liberty affords every individual a degree of personal autonomy over important decisions intimately affecting his or her own private life. Forcing a woman, by threat of criminal prosecution, to carry a fetus to full term unless she meets restrictive legal criteria unrelated to her personal circumstances and priorities, is an interference with a woman's body and an infringement of security of the person.

27. Women who do not meet the restrictive legal criteria for an abortion, are told that they cannot submit to a safe medical procedure that might be of clear benefit to them. Not only does the removal of decision-making power threaten women physically; the indecision of not knowing whether an abortion will be granted inflicts great emotional stress for the women involved. This emotional stress is further compounded by the fact that women who decide to have an abortion are forced to travel to England or another European country, often in clandestine circumstances, which can affect their future health and wellbeing. Due to the culture of secrecy that exists in Northern Ireland, the abortion law carries with it the social demand that women should keep the fact that they had an abortion a secret, or at the very least, that they should be extremely cautious about whom they tell.

¹² HRC, General Comment No. 28: Article 3 (Equality of rights between men and women), in Compilation of General Comments supra n. 32 at 179, para. 10.

28. For those women who cannot afford to pay for the abortion procedure in England or another European country and do not access unsafe illegal abortions; they are left with little option but to continue with the pregnancy. These women are forced to continue a pregnancy against their will and face the possibility of developing a pregnancy related illness or condition such as gestational diabetes, hyper-tension or pre-eclampsia. Restricting access to abortion in order to promote the birth of a fetus subordinates the pregnant woman's health and right to security of the person to this objective.

The right to be free from inhuman and degrading treatment

29. The Human Rights Committee has stated that denial of abortions to women with diagnoses of fetal abnormality violates Article 7 of the ICCPR. Being forced to continue a pregnancy against their will where there is fetal abnormality present can cause mental distress that is preventable; thus constituting inhuman and degrading treatment.¹³ The Committee has further addressed abortion in the context of rape, as a violation of the right to be free from inhuman or degrading treatment in General Comment No. 28. States Parties are required to report on whether they provide safe access to abortion for women who become pregnant as a result of rape, to enable the Committee to assess their compliance with Article 7.¹⁴ Rape and fetal abnormality are not grounds for legal abortions in Northern Ireland; therefore the UK Government is in violation of Article 7 of the ICCPR.

Recommendations

30. The UK Government should ensure that women who are legally entitled to an abortion in Northern Ireland are provided with the service.

31. The UK Government should ensure post abortion aftercare services in Northern Ireland meet clinical practice standards by the Royal College of Obstetricians and Gynaecologists (RCOG).

32. The UK Government should remove the financial hardship placed on women living in Northern Ireland by providing free National Health Service (NHS) abortions in all parts of the UK.

33. The UK Government should eliminate the risk of unsafe abortions, by repealing the 1861 Offences Against the Person Act and enact legislation that:

- removes criminal sanctions for women who have illegal abortions;
- is non-discriminatory to women;
- and provides for abortions to be carried out for grounds of rape, incest and fetal abnormality.

¹³ KL v Peru (1153/2003), CCPR/C/85/D/1153/2003 (2005); 13 IHRR 355 (2006), at para 6.3.

¹⁴ HRC General Comment No. 28, supra n.10 at para.11.