

# *Evaluating the Need To Reform Northern Ireland's Abortion Law From a Human Rights Perspective*

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## INTRODUCTION

Northern Ireland has one of the most restrictive abortion regimes in Europe and is the only part of the United Kingdom where access to abortion is almost entirely illegal. On the 25<sup>th</sup> of May 2018, Ireland voted overwhelmingly in favour of repealing the Eighth Amendment in a referendum, and the House of Keys recently passed the Abortion Reform Bill which decriminalises abortion on the Isle of Man, leaving Northern Ireland the only part of Britain and Ireland where women<sup>1</sup> have virtually no access to abortion.

This article argues that Northern Ireland's restrictive abortion law violates the UK's human rights obligations, and it is therefore necessary to provide for abortion on the grounds of rape and fatal foetal abnormality (FFA) and to fully decriminalise abortion. Section I highlights the comparative restrictiveness of Northern Ireland's abortion law, and how the failure to liberalise the law is the result of the dominant morally conservative, anti-abortion attitudes of political and religious figures. This public discourse, coupled with the draconian criminal offence, creates an environment where women cannot access abortions even on lawful grounds, and this forces abortion-seeking women to travel abroad or illegally terminate their own pregnancies.

Section II considers the human rights arguments for reforming Northern Ireland's abortion law, focusing chiefly on the right to freedom from inhuman and degrading treatment under Article 3 of the European Convention on Human

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<sup>1</sup> Where the term 'woman' is used, it is acknowledged that trans\* men and non-binary people also require access to abortion services.

Rights (ECHR) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR). The right to privacy under Article 8 ECHR is also considered insofar as States have a positive obligation to ensure that lawful abortions are accessible in practice. It is argued that Northern Ireland's prohibition on abortion on the grounds of rape and FFA is a violation of Article 3 and, extending this argument, that the criminalisation of abortion also amounts to inhuman and degrading treatment. Section 3 examines how Northern Ireland's abortion law should be reformed to guarantee access to abortion in cases of rape and FFA, arguing that the Abortion Act 1967 should be extended or abortion on request be provided for, and it is concluded that decriminalisation is also required alongside non-legal measures to ensure that abortion services are accessible in practice.

## I. THE RESTRICTIVENESS OF NORTHERN IRELAND'S ABORTION LAW

Abortion is legal in almost every European state; Andorra and Malta are the only European countries with abortion laws more restrictive than Northern Ireland. Unsafe, illegal abortions have been increasingly recognised as a consequence of restrictive abortion laws, and it is estimated that 30 women die for every 100,000 unsafe abortions in developed countries.<sup>2</sup> The Abortion Act 1967 was passed in England, Wales, and Scotland following the acknowledgment of backstreet abortions as a social problem which resulted in a significant maternal morbidity rate of around 50 women per year.<sup>3</sup> Since the 1967 Act was passed, there have been no recorded maternal deaths in England, Wales, and Scotland due to illegal abortions.<sup>4</sup> Yet, the Abortion Act has never been extended to Northern Ireland. This section will outline the restrictiveness of the Northern Irish position in comparison to other jurisdictions, and how reluctance to change the law and the stigmatisation of abortion is exacerbated by the dominant morally conservative public discourse and prejudicial attitudes which fail to reflect the views of the majority of Northern Ireland's population. This restrictive legal position has substantial negative impact, creating a chilling effect on medical practitioners and

<sup>2</sup> World Health Organisation (WHO), 'Preventing unsafe abortion' (*World Health Organisation*) <[www.who.int/mediacentre/factsheets/fs388/en/](http://www.who.int/mediacentre/factsheets/fs388/en/)> accessed 17 February 2018.

<sup>3</sup> Wendy Savage, 'Fifty years on, the Abortion Act should be celebrated – and updated' *The Guardian* (London, 27 October 2017) <[www.theguardian.com/commentisfree/2017/oct/27/50-years-abortion-act-law-women](http://www.theguardian.com/commentisfree/2017/oct/27/50-years-abortion-act-law-women)> accessed 17 February 2018.

<sup>4</sup> Katherine Side, 'Contract, Charity, and Honourable Entitlement: Social Citizenship and the 1967 Abortion Act in Northern Ireland after the Good Friday Agreement' (2006) 13(1) *Social Politics* 89, 98.

forcing women to travel abroad for abortions or to terminate their pregnancies illegally, risking prosecution and their own health.

#### A. THE COMPARATIVE RESTRICTIVENESS OF NORTHERN IRELAND'S ABORTION LAW

Northern Ireland's abortion law is guided primarily by the Offences Against the Person Act 1861, which provides for the offence of unlawfully administering or procuring drugs or using instruments to cause a miscarriage with a maximum penalty of a life sentence.<sup>5</sup> Section 25 of the Criminal Justice Act (NI) 1945, which mirrors the Infant Life (Preservation) Act 1929, created the offence of child destruction, again with the penalty of a maximum life sentence, but also introduced a good faith exception for the purpose of preserving the life of the woman. The application of the Infant Life (Preservation) Act exception was clarified in *Bourne*, a case involving a doctor who performed an abortion for a 14-year-old girl after she became pregnant from rape.<sup>6</sup> Macnaghten J found that the word "unlawfully" in section 58 of the 1861 Act could be read as importing the good faith exception found in the Infant Life (Preservation) Act.<sup>7</sup> Thus, *Bourne* created an exception to the OAPA allowing abortion for the purpose of preserving the life of the woman, which covered circumstances where the woman would become "a physical or mental wreck".<sup>8</sup> This test was found to be satisfied by the risk of suicide in two Northern Irish cases, where the court ordered in each case, both concerning minors, that abortions could be lawfully obtained.<sup>9</sup> The Northern Irish courts have, however, subsequently limited the scope of the *Bourne* exception. In *NHSSB v A*, MacDermott J emphasised that any adverse effect on the pregnant woman's physical or mental health must be "real and serious" and that it is a question of fact and degree as to whether the effect is "sufficiently grave to warrant terminating the unborn child".<sup>10</sup> The meaning of "real and serious adverse effect" was further restricted to one which is "permanent or long-term", rather than short-term, by Pringle J in *WHSSB v CMB*.<sup>11</sup> Therefore, the only grounds for a lawful abortion in

<sup>5</sup> Offences Against the Person Act 1861, ss 58 and 59.

<sup>6</sup> *R v Bourne* [1939] 1 KB 687 (Court of Criminal Appeal).

<sup>7</sup> *ibid* 691.

<sup>8</sup> *ibid* 694.

<sup>9</sup> *Northern Health and Social Services Board v F and G* [1993] NI 268 (NIFam); *Re CH (a minor)* (NI High Ct, 1995).

<sup>10</sup> *Northern Health and Social Services Board v A and others* [1994] NIJB 1, 5.

<sup>11</sup> *Western Health and Social Services Board v CMB and the Official Solicitor* (NI High Ct, 1995).

Northern Ireland are when the woman's life is at risk, including a risk of suicide, or there is a serious risk to her long-term health.

The restrictiveness of this position is demonstrable by comparison to the Abortion Act, which sets out a range of broader exceptions to the OAPA. Under the 1967 Act, a person shall not be guilty of an offence if a pregnancy is terminated by a medical practitioner, provided that two medical practitioners are satisfied that the abortion would fall under one of four grounds: where continuing the pregnancy poses a greater risk to the physical or mental health of the woman than an abortion, provided that the pregnancy has not exceeded 24-weeks; to prevent grave permanent injury to the physical or mental health of the woman; if there is a risk to the life of the woman; or if the foetus would be born with a serious disability.<sup>12</sup> The first exception, the social ground, effectively allows any woman to have an abortion, given that continuing a pregnancy poses greater risks to her physical and mental wellbeing than an abortion.<sup>13</sup> The position in many jurisdictions around Europe goes further, allowing abortion on request (requiring no specific circumstance) up to the end of the twelfth week of pregnancy.<sup>14</sup> Even in countries with highly restrictive abortion laws, such as Poland, provision is made for abortions on the grounds of rape and FFA, as these are generally regarded as exceptional circumstances alongside risk to the life of the pregnant woman. Northern Ireland is therefore an outlier from the general European consensus on access to abortion, even by restrictive standards.

Furthermore, Malta and Andorra are the only two European states with more restrictive abortion laws than Northern Ireland, and yet they all have lower maximum sentences for the criminal offence of abortion, highlighting the draconian nature of the outdated 1861 Act. Andorra also only permits abortion to save the pregnant woman's life, with a penalty of two-and-a-half-years for a woman who terminates her own pregnancy,<sup>15</sup> while Malta, which prohibits abortion in all circumstances, imposes a lower sentence on of a maximum of three years for the abortion-seeking woman.<sup>16</sup> Before the Eighth Amendment was repealed, Ireland only allowed abortion where there was a "real and substantial risk of loss of the woman's life", including the risk of suicide,<sup>17</sup> but excluding any

<sup>12</sup> Abortion Act 1967, section 1.

<sup>13</sup> British Medical Association, 'Decriminalisation of abortion: a discussion paper from the BMA' (British Medical Association 2017), 27–28.

<sup>14</sup> For example, Austria, Denmark, and Switzerland. See The Law Library of Congress, *Abortion Legislation in Europe* (The Law Library of Congress 2015).

<sup>15</sup> UN Department of Economic and Social Affairs (Population Division), 'Abortion Policies: A Global Review' (2002).

<sup>16</sup> Criminal Code of Malta, section 241.

<sup>17</sup> Protection of Life During Pregnancy Act 2013, sections 7 and 9.

risk to the woman's health. The Protection of Life During Pregnancy Act 2013 repealed the relevant provisions of the OAPA and replaced them with the offence of intentionally destroying unborn life, which carried a maximum penalty of 14 years.<sup>18</sup> While Catherine O'Rourke suggested that abortion law in Northern Ireland was "marginally more liberal" than Ireland, the existence of a maximum life sentence made the Northern Irish position arguably harsher.<sup>19</sup> Thus, not only does Northern Ireland have one of the most restrictive abortion regimes in Europe, but it also imposes one of the most severe criminal sanctions.

## B. REJECTING THE CLAIM OF UNIVERSAL MORAL VALUES IN ABORTION CONTEXT

The Northern Irish position has been borne out of the prominent moral conservatism of politicians and the central role of religious institutions in the abortion debate. This has been identified as a key barrier to abortion law reform, with the alignment of politics and religion evident in the lobbying of MPs by Northern Irish churches to prevent the extension of the Abortion Act and express condemnation for the opening of the Marie Stopes clinic in Belfast in 2012.<sup>20</sup> Fegan and Rebouché have criticised anti-abortion figures for their tendency to unquestioningly believe in the universality of their opinion.<sup>21</sup> This claim of near-unanimous public opinion has also been used as a continuous justification for the lack of action by Westminster, as abortion is treated as an issue of devolution which allows Parliament to abscond judgement on a controversial topic.<sup>22</sup> Recent polls refute this claim, showing that the majority of Northern Ireland does, in fact, support greater access to abortion: Amnesty International found that 58% of people thought that abortion should be decriminalised;<sup>23</sup> a poll conducted by Ulster University found that only 43% of people thought that it should be illegal for a

<sup>18</sup> *ibid* section 22.

<sup>19</sup> Catherine O'Rourke, 'Advocating Abortion Rights in Northern Ireland: Local and Global Tensions' (2016) 25(6) *Social and Legal Studies* 716-740, 719.

<sup>20</sup> Fiona Bloomer and Kellie O'Dowd, 'Restricted access to abortion in the Republic of Ireland and Northern Ireland: exploring abortion tourism and barriers to legal reform' (2014) 16:4 *Culture, Health & Sexuality* 366, 367-368.

<sup>21</sup> Eileen Fegan and Rachel Rebouché, 'Northern Ireland's Abortion Law: The Morality of Silence and the Censure of Agency' (2003) 11 *Feminist Legal Studies* 221, 232.

<sup>22</sup> Jennifer Thomson, 'Explaining gender equality difference in a devolved system: The case of abortion law in Northern Ireland' (2016) 11 *British Politics* 371, 372.

<sup>23</sup> Amnesty International UK, 'Northern Ireland: Nearly 3/4 of public support abortion law change - new poll' (*Amnesty International UK*, 18 October 2016) <[www.amnesty.org.uk/press-releases/northern-ireland-nearly-34-public-support-abortion-law-change-new-poll-0](http://www.amnesty.org.uk/press-releases/northern-ireland-nearly-34-public-support-abortion-law-change-new-poll-0)> accessed 17 February 2018.

woman to have an abortion because she does not want children;<sup>24</sup> and the Economic and Social Research Council found that just 29.1% of people opposed changing Northern Ireland's abortion law.<sup>25</sup> The figures in support of decriminalisation are much higher for cases of rape (72%) and fatal foetal abnormality (67%).<sup>26</sup>

However, the domination by anti-abortion views of the mainstream discourse in Northern Ireland has resulted in prejudicial attitudes that focus on foetal life to the exclusion of the rights of pregnant women and heavy stigmatisation of abortion. This was highlighted in one Northern Ireland Assembly debate on preventing the extension of the Abortion Act, in which Britain's abortion rate was compared to the Holocaust.<sup>27</sup> Anti-abortion views are openly expressed by public figures; Jim Wells, just before becoming the NI Health Minister, said during a radio interview that abortion should not be available in cases of rape, arguing that the unborn child is the "ultimate victim".<sup>28</sup> The dominant anti-choice rhetoric expressed by religious and political figures has produced a stagnant area of law that has failed to evolve in line with the modern views of the population. Northern Ireland's restrictive regime is anomalous by European standards and ignores the consensus in Northern Ireland in support of liberalised access to abortion. There is no justification for preserving this outdated position.

### C. THE CHILLING EFFECT OF THE CRIMINAL LAW

The restrictiveness of Northern Ireland's abortion law and the dominance of conservative values is a significant problem, as it creates a chilling effect on doctors who may be reluctant to perform even lawful abortions out of fear of prosecution. This chilling effect is exacerbated by the uncertainty of the law, which is based on a Victorian statute and only a few cases. In 2003, the Family Planning Association of Northern Ireland (FPANI) challenged the Department of Health, Social Services, and Public Safety for its failure to issue clear guidance as to the availability of abortion in Northern Ireland.<sup>29</sup> The Court of Appeal held that the Department had acted unlawfully in failing to provide advice to pregnant women

<sup>24</sup> Ulster University, 'Ulster University research reveals attitudes to abortion in Northern Ireland' (*Ulster University*, June 2017) <[www.ulster.ac.uk/news/2017/june/ulster-university-research-reveals-attitudes-to-abortion-in-northern-ireland](http://www.ulster.ac.uk/news/2017/june/ulster-university-research-reveals-attitudes-to-abortion-in-northern-ireland)> accessed 17 February 2018.

<sup>25</sup> Jonathan Tonge, *Northern Ireland General Election Survey 2017* (UK Data Service, 2017) accessed 22 Mar 2019

<sup>26</sup> Amnesty International UK (n 23).

<sup>27</sup> NI Assembly Deb 20 June 2000.

<sup>28</sup> Adrian Rutherford, 'DUP's Jim Wells: Abortion should be ruled out for rape victims' *Belfast Telegraph* (Belfast, 25 August 2012) <[www.belfasttelegraph.co.uk/news/northern-ireland/dups-jim-wells-abortion-should-be-ruled-out-for-rape-victims-28785234.html](http://www.belfasttelegraph.co.uk/news/northern-ireland/dups-jim-wells-abortion-should-be-ruled-out-for-rape-victims-28785234.html)> accessed 07 January 2018.

<sup>29</sup> *Family Planning Association of Northern Ireland v Minister for Health, Social Services, and Public Safety* [2004] NICA 37–39, [2005] NI 188.

and medical professionals. Nicholson LJ found that medical practitioners were not adequately aware of the law relating to abortion, and the Department should have recognised this following the refusal of clinicians to carry out a court-ordered termination due to the existence of the criminal offence.<sup>30</sup> He further held that the Department had a duty to ensure that accurate guidance is given, pointing out that it was not good enough for the principles governing the law to be found only in case law, of which two of the four key cases are unreported.<sup>31</sup>

Guidance was not issued until five years after this case, and was clearly not intended to remedy the concerns raised in *FPANI* decision given that it perpetuates the chilling effect of the law by reinforcing the illegality of abortion in Northern Ireland and restricts the law further by recommending the certification of two medical practitioners as good practice,<sup>32</sup> which has no basis in Northern Irish law. Despite this conservative position, it was still immediately challenged by the Society for the Protection of Unborn Children on the grounds that it failed to acknowledge the presumptive illegality of abortion in Northern Ireland and the rights of the unborn.<sup>33</sup> Girvan J gave a misdirection as to the law in his judgment, asking: “Could the giving of such advice constitute an offence of counselling or procuring an abortion unlawful in Northern Ireland?”<sup>34</sup> Not only was the answer to be found in the negative, as non-directive counselling was already permitted in Northern Ireland and provided by FPANI,<sup>35</sup> but the judgment sustained the fear of medical practitioners that giving *any* advice to patients regarding abortion could put them at risk of prosecution. The most recent guidance does provide for counselling services<sup>36</sup> and it was also recently clarified that staff in Northern Ireland would not be at threat of prosecution for referring women to abortion clinics in England and Wales.<sup>37</sup>

However, this guidance remains cautionary, clearly emphasising that abortion is a criminal offence, and the chilling effect therefore remains. This effect

<sup>30</sup> *ibid* [93].

<sup>31</sup> *ibid* [115].

<sup>32</sup> Department of Health, Social Services, and Public Safety (DHSSPS), *Guidance on the Termination of Pregnancy: The Law and Clinical Practice in Northern Ireland* (2009) [1.8]

<sup>33</sup> *Society for the Protection of Unborn Children, Re Judicial Review* [2009] NIQB 92.

<sup>34</sup> *ibid* [37].

<sup>35</sup> Family Planning Association (FPA), ‘Pregnancy choices counselling service, Northern Ireland’ (*Family Planning Association*) <[www.fpa.org.uk/unplanned-pregnancy-and-abortion/unplanned-pregnancy-post-abortion-counselling-northern-ireland](http://www.fpa.org.uk/unplanned-pregnancy-and-abortion/unplanned-pregnancy-post-abortion-counselling-northern-ireland)> accessed 19 March 2018.

<sup>36</sup> DHSSPS, *Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland* (2016) pt 5.

<sup>37</sup> Amelia Gentleman, ‘No prosecution risk for Northern Ireland medical staff over abortion referrals’ *The Guardian* (London, 7 September 2017) <[www.theguardian.com/uk-news/2017/sep/07/no-prosecution-risk-for-northern-ireland-medical-staff-over-abortion-referrals](http://www.theguardian.com/uk-news/2017/sep/07/no-prosecution-risk-for-northern-ireland-medical-staff-over-abortion-referrals)> accessed 18 February 2018.

does not operate only in the context of giving advice; Bloomer and Fegan note that the threat of prosecution, coupled with the minimal training that doctors receive on abortion, means that doctors are unwilling to carry out the procedure even to save a woman's life.<sup>38</sup> The insufficient training on abortion in Northern Ireland is evidenced by students seeking education from external providers, such as Medical Students for Choice,<sup>39</sup> and Irish students travelling to London for abortion training.<sup>40</sup> The assertion that doctors will not perform life-saving abortions can be made based on the extremely low abortion statistics: in 2017/18, just twelve legal abortions were carried out in Northern Ireland.<sup>41</sup> In England and Wales, the majority of abortions are carried out under the social ground, so it is difficult to pinpoint exactly how many life-saving abortions are carried out each year, but it is likely to be significantly higher than twelve based on the figure of 197,533 abortions in total in 2017.<sup>42</sup> Thus, not only is abortion criminalised in almost every situation, but women who fall within the narrow exception and are legally entitled to an abortion may not be able to access one in practice.

#### D. ABORTION TOURISM AND ILLEGAL ABORTIONS: HARMING PREGNANT WOMEN

Women who require an abortion on any ground are therefore forced to either travel abroad to access abortion services or illegally terminate their pregnancies. In 2017, 919 Northern Irish women travelled to England or Wales for terminations.<sup>43</sup> This figure is likely to be an underestimate, as many women will withhold their Northern Irish addresses. Until recently, Northern Irish women were unable to access abortion services on the NHS in England and Wales but had to pay for their terminations at private clinics, despite being UK taxpayers. It was estimated that the cost of an abortion was between £200 and £2000, including travel and accommodation, placing a significant burden on women of low income who would have to borrow money in order to make this journey.<sup>44</sup> In 2017, the Supreme Court found that there was no duty for abortion services to be provided free of charge

<sup>38</sup> Fiona Bloomer and Eileen Fegan, 'Critiquing recent abortion law and policy in Northern Ireland' (2013) 34(1) *Critical Social Policy* 109, 113.

<sup>39</sup> Medical Students for Choice, 'MSFC Ireland' (*Medical Students for Choice*) <[www.msfc.org/about-us/where-we-are/ireland/](http://www.msfc.org/about-us/where-we-are/ireland/)> accessed 18 February 2018.

<sup>40</sup> Catherine Shanahan, 'Medical students go to London for abortion training' *The Irish Examiner* (Cork, 10 June 2015) <[www.irishexaminer.com/ireland/medical-students-go-to-london-for-abortion-training-335569.html](http://www.irishexaminer.com/ireland/medical-students-go-to-london-for-abortion-training-335569.html)> accessed 18 February 2018.

<sup>41</sup> Department of Health NI, *Northern Ireland Termination of Pregnancy Statistics 2017/18* (2019).

<sup>42</sup> Department of Health, *Abortion Statistics, England and Wales: 2017* (2018).

<sup>43</sup> *ibid.*

<sup>44</sup> Bloomer and Fegan (n 38) 111.

for Northern Irish women;<sup>45</sup> however, following this judgment an amendment was tabled by Labour MP Stella Creasy, supported by over 50 MPs, to allow Northern Irish women to access NHS abortions in England, leading the Health Secretary to concede and allow access to free abortion services.<sup>46</sup> The Scottish government later announced that it would do the same.<sup>47</sup> The Minister for Equalities and Women has since provided that Northern Irish women facing hardship will be eligible for grants to cover travel costs, and a central booking service is to be established in order to make accessing abortion services in England simpler.<sup>48</sup>

While this takes away the financial burden for a lot of women travelling to England for abortions, it does not help the most vulnerable women who may still be unable to afford to travel to England. Travelling requires taking time off work, resulting in a loss of pay, women who already have children may have to pay for childcare while they are away, and it remains unclear whether the hardship grants cover accommodation. Northern Ireland has a high poverty rate; in 2016/17, there were 336,000 people (18% of the population) living in relative poverty.<sup>49</sup> Thus, there will likely be a large number of women who cannot afford this option, even with the availability of funding; women with low incomes, homeless women, asylum seekers, young girls who are not financially independent, and those in abusive relationships thus remain unable to access safe, legal abortion services. Those able to travel still face the emotional burden of having to leave their families and support network behind, and the chilling effect on medical professionals means that they may not be able to access counselling or aftercare services upon their return.

Women unable to travel may be forced to have an abortion illegally in Northern Ireland, most often by taking the 'abortion pill' which induces a miscarriage in early pregnancies. The pills can be obtained relatively easily from online websites such as Women on Web and Women Help Women, which also provide help and advice for women seeking to terminate their pregnancies.<sup>50</sup> It has been estimated that there are around 3,000 discreet contacts to these providers each year from the whole of Ireland, with around a third of this number from

<sup>45</sup> *R (on the application of A and B) v Secretary of State for Health* [2017] UKSC 41, [2017] 1 WLR 2492.

<sup>46</sup> BBC News, 'Northern Ireland women to get free abortions in England' *BBC News* (London, 29 June 2017) <[www.bbc.co.uk/news/uk-politics-40438390](http://www.bbc.co.uk/news/uk-politics-40438390)> accessed 06 January 2018.

<sup>47</sup> BBC News, 'Scotland offers free abortions to women from Northern Ireland' *BBC News* (London, 06 November 2017) <[www.bbc.co.uk/news/uk-scotland-41879520](http://www.bbc.co.uk/news/uk-scotland-41879520)> accessed 06 January 2018.

<sup>48</sup> HC Deb 23 October 2017, vol 630, col 192WS.

<sup>49</sup> Department for Communities (NI), *Poverty Bulletin: Northern Ireland 2016–17* (2018).

<sup>50</sup> Women on Web, 'Women on Web' (*Women on Web*) <[www.womenonweb.org/](http://www.womenonweb.org/)> accessed 07 January 2018; Women Help Women, 'Women Help Women' (*Women Help Women*) <<https://wom-enhelp.org/>> accessed 07 January 2018.

Northern Irish women.<sup>51</sup> The websites supply Misoprostol and Mifepristone, two tablets that are on the World Health Organisation's list of essential medicines<sup>52</sup> and are thus considered to be relatively safe. However, women may seek abortion pills or other means of terminating their pregnancies from unsafe backstreet providers, and there is always the risk that a self-administered abortion could go wrong. Since 1967, there have been five deaths in Northern Ireland associated with complications from illegal abortions,<sup>53</sup> but this figure is likely higher assuming there are cases where it was not identified that a woman had an illegal abortion. Furthermore, where an illegal abortion does go wrong, women may be deterred from seeking medical attention. Sally Sheldon argues that there is "at least a hypothetical risk that heightened stigma regarding illegal abortion and fear of prosecution might lead to a reluctance to seek necessary aftercare", as a woman who confides in her doctor could be reported.<sup>54</sup> There have been a few recent cases where women have been prosecuted for terminating their unwanted pregnancies illegally. A three-month suspended sentence was given to a woman who induced a miscarriage using pills when she was nineteen, after she was reported to the police by her housemates,<sup>55</sup> and a mother faced prosecution for buying abortion pills to help her fifteen-year-old daughter.<sup>56</sup> Treating women as criminals for terminating their pregnancies has obvious repercussions for women's health, and clearly does not prevent abortions from taking place.

## E. CONCLUSION

Section I has outlined the comparative restrictiveness of Northern Ireland's abortion law, manifested in the narrow exceptions for lawful abortions and the severity of the criminal offence. The claims of public figures as to the universal moral views of Northern Ireland create a barrier to reform and stigmatise women who obtain abortions, despite evidence that the majority of the population are in favour of more liberal abortion laws. The OAPA creates a chilling effect on doctors, who may be unwilling to provide advice or even perform live-saving abortions. The

<sup>51</sup> Sally Sheldon, 'How can a state control swallowing? The home use of abortion pills in Ireland' (2016) 24(48) *Reproductive Health Matters* 90, 92.

<sup>52</sup> WHO, 'WHO Model List of Essential Medicines 20<sup>th</sup> List' (2017).

<sup>53</sup> Side (n 4) 98.

<sup>54</sup> Sheldon (n 51) 94.

<sup>55</sup> Henry McDonald, 'Northern Irish woman given suspended sentence over self-induced abortion' *The Guardian* (London, 4 April 2016) < [www.theguardian.com/uk-news/2016/apr/04/northern-irish-woman-suspended-sentence-self-induced-abortion](http://www.theguardian.com/uk-news/2016/apr/04/northern-irish-woman-suspended-sentence-self-induced-abortion) > accessed 15 November 2017.

<sup>56</sup> Amelia Gentleman, 'Woman who bought abortion pills for daughter can challenge prosecution' *The Guardian* (London, 26 January 2017) < [www.theguardian.com/world/2017/jan/26/ulster-woman-who-bought-abortion-pills-for-daughter-can-challenge-prosecution](http://www.theguardian.com/world/2017/jan/26/ulster-woman-who-bought-abortion-pills-for-daughter-can-challenge-prosecution) > accessed 15 November 2017.

only real options available to women seeking abortions are therefore to either travel abroad, imposing a financial and emotional burden, or have an unsafe, illegal termination. The impacts of restrictive abortion laws have become increasingly recognised as human rights violations, which will be addressed in the following Section as part of the argument for reform.

## II. NORTHERN IRELAND'S ABORTION LAW VIOLATES HUMAN RIGHTS

While international human rights bodies are yet to affirm the existence of a right to abortion, it has been increasingly recognised by human rights bodies that restrictive abortion laws and the inaccessibility of safe, legal abortion can amount to human rights violations.<sup>57</sup> The extent to which the right to an abortion has been protected through human rights law is limited to exceptional circumstances, namely where continuing the pregnancy poses a risk to the woman's life or health, where the pregnancy is a result of rape, or in cases of FFA.<sup>58</sup> Thus, while women in Northern Ireland do not have a right to abortion *per se*, the region's restrictive abortion law which forces women to continue pregnancies in circumstances of rape and FFA could be found to violate human rights by constituting "tremendous cruelty".<sup>59</sup> The UK is a member state of the ECHR and signatory to the ICCPR and the Convention on the Elimination of Discrimination Against Women (CEDAW), and is required to comply with human rights standards established under these treaties. The UK is in violation of these standards due to the Northern Ireland's restrictive abortion law, and reform is therefore necessary.

While the ECtHR has been reluctant to find that Article 8 confers a right to abortion, the Court has found that abortion on grounds which are provided for in domestic law must be accessible in practice. The right to freedom from inhuman and degrading treatment under Article 3 of the ECHR and Article 7 of the ICCPR, as an absolute right, provides a stronger argument based on the adverse impacts caused to women by restrictive abortion laws. Both rights are engaged by the impact of prohibiting abortion in cases of rape and FFA, and the ECtHR and the Human Rights Committee (HRC) have been willing to find violations where abortion has been restricted on these grounds. This Section will also argue that the full decriminalisation of abortion is necessary to avoid violating Article 3 ECHR and Article 7 ICCPR. The full decriminalisation of abortion refers to the removal

<sup>57</sup> Johanna Fine, Katherine Mayall, and Lilian Sepulveda, 'The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally' (2017) 19(1) *Health & HRJ* 69, 71.

<sup>58</sup> Christina Zampas and Jaime Gher, 'Abortion as a Human Right – International and Regional Standards' (2008) 8(2) *HRL Rev* 249, 255.

<sup>59</sup> Chiara Cosentino, 'Safe and Legal Abortion: An Emerging Human Right? The Long-lasting Dispute with State Sovereignty in ECHR Jurisprudence' (2015) 15 *HRL Rev* 569, 583.

of the criminal offence of abortion on all grounds, as opposed to the legalisation of abortion in limited circumstances, a position which has been advocated by the CEDAW Committee.

#### A. CHILLING EFFECT OF THE OAPA VIOLATES ARTICLE 8

The ECtHR has recognised that Article 8 is applicable in cases involving abortion, but its willingness to find restrictive abortion legislation to be in violation of Article 8 has been confined to situations where the pregnant woman should have been allowed an abortion in domestic law but was arbitrarily denied one. Thus, while the UK could be found in violation of Article 8 for failing to ensure that Northern Irish women can access abortion services under the existing exceptions, Article 8 cannot be used to argue for more liberal abortion access because of the margin of appreciation. The ECtHR found a breach of Article 8 in *Tysiāc v Poland*, where a visually impaired woman was denied an abortion despite the existence of a health ground for abortion in Poland and confirmation by doctors that continuing her pregnancy could severely impact her vision.<sup>60</sup> In *P and S v Poland*, the ECtHR unanimously found a breach of Article 8 where a teenage girl should have been allowed a lawful abortion on the grounds of rape, stating that Poland had a “positive obligation to create a procedural framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion.”<sup>61</sup> In *R.R. v Poland*, a violation was found where the applicant was denied genetic tests until the time limit for a legal abortion based on foetal abnormality had expired.<sup>62</sup>

*ABC v Ireland* concerned three applicants, all of whom became pregnant unintentionally and travelled to England for abortions.<sup>63</sup> The first applicant felt unable to continue her pregnancy due to her history of depression and alcoholism, and the second applicant had taken the morning-after pill, which failed. The ECtHR cited the “profound moral values of the Irish people”<sup>64</sup> in finding that the restriction on abortion pursued a legitimate aim and afforded a wide margin of appreciation to Ireland in finding that a fair balance was struck between the Article 8 rights of the applicants and the protection of the unborn, so no breach was found.<sup>65</sup> However, the third applicant had previously undergone three years of chemotherapy and her cancer was in remission, but feared that the pregnancy would be life-threatening if her cancer returned, as she would then be unable to

<sup>60</sup> *Tysiāc v Poland* [2007] ECHR 219.

<sup>61</sup> *P and S v Poland* [2012] ECHR 1853.

<sup>62</sup> *R.R. v Poland* [2011] ECHR 828.

<sup>63</sup> *A, B, C v Ireland* [2010] ECHR 2032.

<sup>64</sup> *ibid* [230].

<sup>65</sup> *ibid* [235]–[241].

have treatment in Ireland, and she was given insufficient information as to the risks. The Court found a breach of the third applicant's Article 8 rights as Ireland had failed to comply with its positive obligation to implement an accessible and effective procedure to establish whether she qualified for a lawful abortion or not.<sup>66</sup> The Court also acknowledged that the criminal provisions of the OAPA 1861 coupled with the substantial uncertainty of the law constituted a serious chilling effect for women and doctors.<sup>67</sup>

This judgment has been criticised for its "remarkably value-free judgements, avoiding references to female autonomy or dignity, or to discrimination against women"<sup>68</sup> and for placing abortion "firmly within the domestic sphere and [leaving] apparently complete discretion to the State."<sup>69</sup> There is an argument to be made that the ECtHR incorrectly focused on the moral views of Ireland and the lack of a European consensus on the beginning of life, rather than on the existence of a consensus regarding access to abortion, but the application of the margin of appreciation makes it unlikely that the Court will find a violation of Article 8 in circumstances where abortion is not already provided for in domestic law. However, *ABC*, alongside the Polish cases, is significant in confirming that Article 8 confers a positive obligation on States to ensure that legal abortions are accessible. As established above, the chilling effect of the OAPA leaves Northern Irish doctors reluctant to perform abortions on the lawful grounds. Thus, the UK is in breach of its positive obligation to ensure that women can access abortions based on the exceptions already recognised in Northern Ireland's domestic law, and reform, at the very least, is required by Article 8 to remedy this.

## B. ARTICLE 3 AND RAPE

It is necessary for the UK to ensure that Northern Irish women can access abortion on the grounds of rape, as the current prohibition on abortion on this ground may amount to a violation of Article 3. In *P and S*, a breach of Article 3 was found due to the horrific treatment and lack of protection the applicant, a victim of sexual abuse, had received; she was manipulated by doctors when she attempted to access legal abortion services, harassed by anti-abortion activists, and her mother was accused of forcing her to terminate the pregnancy.<sup>70</sup> With the caveat that rape

<sup>66</sup> *ibid* [267].

<sup>67</sup> *ibid* [254].

<sup>68</sup> Daniel Fenwick, 'Abortion Jurisprudence' at Strasbourg: deferential, avoidant, and normatively neutral?' (2014) 34 *Legal Studies* 214, 229.

<sup>69</sup> Fiona De Londras and Kanstantsin Dzehtsiarou, 'Grand Chamber of the European Court of Human Rights, *A, B & C v Ireland*, Decision of 17 December 2010' (2013) 62 *Intl & Comp LQ* 250,, 261.

<sup>70</sup> *P and S* (n 61).

was already a ground for abortion in Poland, this case demonstrates the willingness of the ECtHR to recognise that the distress caused by being unable to obtain an abortion is sufficiently severe that it amounts to an Article 3 violation. Given that Article 3 is an absolute right, the fact that abortion is not already lawful on the ground of rape in Northern Ireland would not prevent a finding of an Article 3 violation. Furthermore, Zampas and Gher argue that, since Member States have a positive obligation to prevent ill-treatment, including rape, and to provide effective remedies, it can be asserted that this includes the right to access abortion in cases where pregnancy is the result of rape.<sup>71</sup>

CEDAW has taken a much clearer stance in finding that States should allow rape victims to access abortions. The landmark case *LC v Peru* concerned a thirteen-year-old girl who became pregnant from rape and attempted suicide by jumping from a building.<sup>72</sup> She was not allowed an abortion and was denied necessary surgery on the basis that it could harm the foetus, leaving her paralysed. CEDAW found that forcing the girl to continue her pregnancy “constituted cruel and inhuman treatment and therefore a violation of her right to physical, psychological and moral integrity”.<sup>73</sup> The Committee recommended that Peru establish a mechanism for therapeutic abortion, and explicitly stated that abortion on the ground of rape should be decriminalised.<sup>74</sup> This judgment is significant in suggesting that prohibitions on abortion in the case of rape will always amount to inhuman and degrading treatment. There is thus significant jurisprudence under the ECHR and CEDAW to support the claim that Northern Ireland’s prohibition on abortion on the ground of rape is a violation of Article 3 ECHR and Article 7 ICCPR.

### C. ARTICLE 3 AND FFA

Northern Ireland’s prohibition on abortion on the ground of FFA also amounts to a violation of Article 3 ECHR and Article 7 ICCPR. There has only been one ECtHR case directly challenging the prohibition of abortion in cases of FFA, *D v Ireland*, but the Court avoided taking a position, finding the case to be inadmissible as the applicant had failed to exhaust domestic remedies.<sup>75</sup> However, in *R.R. v Poland*, the ECtHR found that the distress the applicant suffered as a result of being prevented from accessing information about the foetus’ condition

<sup>71</sup> Zampas and Gher (n 58) 282.

<sup>72</sup> CEDAW, ‘Views Communication No. 22/2009’ (2011) CEDAW/C/50/D/22/2009.

<sup>73</sup> *ibid* [3.4].

<sup>74</sup> *ibid* [9(b)(i)] and [9(b)(iii)].

<sup>75</sup> *D v Ireland* App no 26499/02 (ECtHR, 27 June 2006).

was sufficient to reach the minimum threshold of severity under Article 3.<sup>76</sup> Again, foetal abnormality was already a lawful ground for abortion in Poland, but this case was the first in which the ECtHR considered Article 3 to be relevant in an abortion-related case. This, and the finding in *P and S*, shows a broadening in the approach of the Court and a diminishing reluctance to find restrictive abortion regimes in violation of the Convention. There is, therefore, the potential in a future case for the ECtHR to find that the prohibition on abortions on the ground of FFA violates Article 3.

This is even more likely in light of the recent HRC decisions in *Mellet v Ireland*<sup>77</sup> and *Whelan v Ireland*<sup>78</sup> that Ireland's restrictive abortion law, which forced the two applicants to travel to England for abortions in cases of FFA, violated the applicants' rights to freedom from inhuman and degrading treatment under Article 7 ICCPR. These cases are significant because of the similarities between the abortion regimes of Ireland and Northern Ireland.

Amanda Mellet was in her twenty-first week of pregnancy when she found out that the foetus she was carrying had a chromosomal abnormality that would result in its death *in utero* or shortly after birth. She travelled to Liverpool for an abortion at a high financial cost, did not seek aftercare when she returned to Dublin, was unable to access bereavement counselling services, and unexpectedly received the baby's ashes three weeks later. The Committee found that Mellet had been subjected to conditions of "intense physical and mental suffering" which was exacerbated by various factors including being forced "to choose between continuing her non-viable pregnancy or traveling to another country while carrying a dying foetus, at personal expense and separated from the support of her family, and to return while not fully recovered" and being subjected to "the shame and stigma associated with the criminalization of abortion of a fatally ill foetus".<sup>79</sup>

Rejecting Ireland's claim that there was no arbitrary interference with any right of the applicant, as there was no legal right to an abortion on the ground of FFA in Ireland, the Committee stated that the fact that particular conduct is legal under domestic law does not mean that it cannot infringe Article 7.<sup>80</sup> This right permits no limitations or justifications for its violation; accordingly, the Committee

<sup>76</sup> *R.R.* (n 62).

<sup>77</sup> UN Human Rights Committee, 'Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2324/2013' (17 November 2016) CCPR/C/116/D/2324/2013.

<sup>78</sup> UN Human Rights Committee, 'Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2425/2014' (12 June 2017) CCPR/C/119/D/2425/2014.

<sup>79</sup> *Mellet* (n 77) [7.4].

<sup>80</sup> *ibid.*

found that the facts of the case amounted to cruel, inhuman, or degrading treatment in violation of Article 7.<sup>81</sup> In light of this, a violation of Article 17 ICCPR (which mirrors Article 8 ECHR) was also found, as the State's interference in the applicant's decision as to how best to cope with her non-viable pregnancy was unreasonable and arbitrary.<sup>82</sup> It was therefore recommended that Ireland amend its law in compliance with the ICCPR to ensure effective, timely, and accessible procedures for abortion and, recognising that the existence of punitive provisions effectively amounted to the censorship of medical professionals, take measures to ensure that full information on safe abortion services can be provided without fearing criminal sanctions.<sup>83</sup>

Siobhán Whelan was in her twentieth week of pregnancy when she was informed that her foetus was affected by a rare brain malformation and a chromosomal condition and would die *in utero* or during or soon after birth. She travelled to Liverpool for an abortion at a total cost of €2,900. She was afraid to return to work and face questions, but was not entitled to paid maternity leave or grief counselling. She claimed that she had been subjected to cruel, inhuman, and degrading treatment in being denied the reproductive health care she needed, which forced her to continue to carry a dying foetus, compelled her to terminate her pregnancy abroad, and subjected her to intense stigma.<sup>84</sup> The Committee found that these facts established “a high level of mental anguish that was caused to the author by a combination of acts and omissions attributable to the State party” and violation of Article 7 was found.<sup>85</sup> The Committee again emphasised the absolute nature of Article 7, rejecting the State's explanations of moral and political considerations. A violation of Article 17 was also found along similar reasoning as *Mellet*, and the Committee stated that Ireland must take steps to prevent similar violations in future.

These decisions are of considerable relevance to Northern Ireland. In both cases, the Committee found that the prohibition on abortion in cases of FFA was unjustifiable, as it imposed a level of suffering amounting to inhuman and degrading treatment, exacerbated by forcing women to travel to a foreign country to obtain terminations with inadequate information and limited healthcare upon their return, and compounded by the existence of stigmatising criminal provisions. Northern Ireland similarly forces women to travel abroad to terminate non-viable foetuses and creates barriers to information due to the chilling effect of the criminal law, which imposes a sentence even higher than Ireland. While the

<sup>81</sup> *ibid* [7.6].

<sup>82</sup> *ibid* [7.8].

<sup>83</sup> *ibid* [9].

<sup>84</sup> *Whelan* (n 78) [3.1].

<sup>85</sup> *ibid* [7.7].

UK has signed the ICCPR, it has not signed the first Optional Protocol to allow individual complaints to be brought before the HRC, so it is not possible for a case challenging Northern Ireland's abortion law to be brought under the ICCPR. However, *Mellet* and *Whelan* do still establish a human rights standard that the UK must comply with.

Furthermore, the two decisions could be influential in any future ECtHR case relating to the prohibition of abortion on the ground of FFA. The cases are relevant to the ECHR, as Article 7 ICCPR and Article 3 ECHR are equivalent to one another and Article 3 can be engaged in abortion-related cases, as demonstrated by *R.R.* and *P and S*. Article 3, as with Article 7, is an absolute right which permits no limitations, and therefore the margin of appreciation does not apply to this right. The Committee made clear in *Whelan* that arguments as to moral views (which the ECtHR accepted in *ABC* as engaging the margin of appreciation) could not be invoked as justification for the violation. As the threshold for inhuman and degrading treatment was met in *Mellet* and *Whelan*, it would be unjustifiable for the ECtHR to refrain from reaching the same conclusion in a future case relating to FFA, and it is therefore likely that the Court could find a violation of Article 3. It can thus be concluded that Northern Ireland must reform the law to allow for abortion in cases of FFA, as the UK is currently in breach of established human rights standards and risks being found in violation of Article 3 if such a case were brought before the ECtHR.

However, in the recent *NIHRC* case, only the a minority in the Supreme Court found an Article 3 violation.<sup>86</sup> The NIHRC initiated judicial review of Northern Ireland's abortion law in 2015, arguing that the failure to provide exceptions to the offence based on rape, incest, and fatal foetal abnormality violated Articles 3, 8, and 14.<sup>87</sup> The case was dismissed, as the majority took the view that the NIHRC did not have legal standing; had standing not been an issue, the Supreme Court would have found a breach of Article 8 regarding Northern Ireland's prohibition on abortion in cases of rape, incest, and FFA. Despite the *Mellet* and *Whelan* judgments recently preceding this case, only Lord Kerr and Lord Wilson found Northern Ireland's abortion law to violate Article 3. Lady Hale was of the view that Article 3 of the ECHR was more contextual than Article 7 of the ICCPR, and thus legislation could not be axiomatically regarded as a breach.<sup>88</sup>

However, Lord Kerr (with whom Lord Wilson agreed) felt that "a law requiring mothers to carry babies with fatal abnormalities to term or where their

<sup>86</sup> *The Northern Ireland Human Rights Commission's Application, Re Judicial Review* [2018] UKSC 27, [2019] 1 All ER 173.

<sup>87</sup> *The Northern Ireland Human Rights Commission's Application, Re Judicial Review* [2015] NIQB 96, [2015] 11 WLUK 798.

<sup>88</sup> *NIHRC* (n 86) [102]–[103].

pregnancy is the result of rape or incest, carries an inevitable risk that a number of them will have suffered inhuman or degrading treatment”<sup>89</sup> and, while not all women in such a situation would experience this degree of trauma, such a risk sufficiently amounts to an Article 3 violation where “proper safeguards to mitigate the risk of such trauma are not put in place.”<sup>90</sup> Accordingly, Lord Kerr and Lord Wilson would have issued a declaration of incompatibility under section 4 of the Human Rights Act 1998 on this point. While the *Mellet* and *Whelan* cases were admittedly context-specific, the HRC identified a number of factors to support the finding of an Article 7 violation, including the lack of healthcare available in Ireland, forcing pregnant women to travel abroad, and the stigma of the criminal offence amounting to inhuman and degrading treatment. While, as Lord Kerr suggests, not every woman in this situation will experience such a level of trauma, it is evident that a significant number will experience treatment that could be categorised as inhuman and degrading; it is difficult to see how this would not be in contravention of Article 3.

There may be another opportunity, however, for the Supreme Court to issue a declaration of incompatibility on this point. At the end of January 2019, Sarah Ewart, a Northern Irish woman who travelled to England for an abortion in 2013 because the foetus she was carrying had anencephaly, brought a case before the Belfast High Court to challenge Northern Ireland’s abortion law.<sup>91</sup> Since legal standing will not be an issue in this case, it is likely that the court will find Northern Ireland’s abortion law to violate Article 8, and potentially Article 3, based on Ms Ewart’s experience.

#### D. DECRIMINALISATION

While it is important to recognise the need for abortion in cases of rape and FFA in Northern Ireland, only a small number of women require abortions on these grounds. Rachel Rebouché argues that the increasing support for a woman’s right to an abortion, which is typically qualified to exceptional grounds, does not “capture the experiences of the majority of women or the reasons most women elect to end pregnancies.”<sup>92</sup> Accordingly, there is a pressing need to fully decriminalise abortion in Northern Ireland, which can be advocated for based on

<sup>89</sup> *ibid* [223].

<sup>90</sup> *ibid* [235].

<sup>91</sup> BBC News, ‘Abortion law: Sarah Ewart begins NI challenge’ *BBC News* (London, 30 Jan 2019) <[www.bbc.co.uk/news/uk-northern-ireland-47058629](http://www.bbc.co.uk/news/uk-northern-ireland-47058629)> accessed 14 Feb 2019.

<sup>92</sup> Rachel Rebouché, ‘Abortion Rights as Human Rights’ (2016) 25(6) *Social & Legal Studies* 765, 777.

human rights. As discussed above, the wide margin of appreciation afforded under Article 8 limits the scope of this right, so this argument will be based on Article 3.

The arguments for decriminalisation of abortion on the grounds of rape and FFA can be extended to the full decriminalisation of abortion, as the harms identified in the above cases are experienced by Northern Irish women seeking abortions on other grounds, whether they travel abroad or have illegal abortions. Fiona De Londras argues that Amanda Mellet's experience is applicable to women who want abortions for reasons other than FFA, and that the negative implications identified by the Committee "are all common experiences of abortion for women in Ireland" and all result in inhuman and degrading treatment.<sup>93</sup> In *Mellet and Whelan*, the finding of an Article 7 violation was based on the denial of healthcare and bereavement services in Ireland, the stigma caused by the criminal provisions, and the applicants being forced to travel abroad away from their support network at a great financial cost. These facts are relevant to most abortion-seeking women in Northern Ireland, and the harm suffered as a result amounts to inhuman and degrading treatment even where the foetus is viable.

The Committee emphasised that the Irish law forces women to "choose between continuing [their] non-viable pregnancy or traveling to another country",<sup>94</sup> but even where a foetus is viable, women are still compelled to continue an unwanted pregnancy or choose between travelling abroad or having an illegal abortion. The experiences in *Mellet* and *Whelan* are also common to women who do have illegal abortions, as the risk of prosecution acts as a barrier to information and can deter women from seeking aftercare and counselling services. Moreover, some women may not tell anyone in their support network about the abortion due to the stigma around abortion. Furthermore, the Committee found that many of the applicants' negative experiences could have been avoided if they had "not been prohibited from terminating [their] pregnancy in the familiar environment of [their] own country and under the care of the health professionals whom [they] knew and trusted",<sup>95</sup> which is true for all abortion-seeking women in Ireland and Northern Ireland.

The decriminalisation of abortion on the grounds of rape and FFA has been advocated for in several cases where violations of Article 7 were found. In *LC v Peru*, decriminalisation was explicitly recommended, and the HRC in *Mellet* and *Whelan* found that the criminalisation of abortion contributed to the suffering of the applicants by creating a barrier to information, healthcare, and support

<sup>93</sup> Fiona De Londras, 'Fatal Foetal Abnormality, Irish Constitutional Law, and *Mellet v Ireland*' (2016) 24 *Med L Rev* 591, 606.

<sup>94</sup> *Mellet* (n 77) [7.4].

<sup>95</sup> *ibid.*

services. The HRC required that Ireland ensure “health-care providers are in a position to supply full information on safe abortion services without fearing being subjected to criminal sanctions”.<sup>96</sup> It was recognised that the existence of a criminal offence of abortion exacerbated the harms suffered by the applicants, but this is not the case only in relation to rape and FFA; taking this further, Northern Ireland’s criminal offence subjects women who require abortions on any ground to inhuman and degrading treatment, which makes full decriminalisation necessary. As the ECtHR cannot defer to the views of the State where a violation of Article 3 is found, there can be no justification for the breach. Thus, there is the potential for a case challenging Northern Ireland’s abortion law under Article 3 to succeed, particularly in light of the progressive jurisprudence on abortion rights from both the ECtHR since *ABC* and recent decisions of the HRC. While the Supreme Court case failed on this point, the ECtHR could yet change this position.

While no individual complaint has yet resulted in this requirement, several UN bodies have recommended the decriminalisation of abortion, referencing Northern Ireland specifically. On the 23<sup>rd</sup> of February 2018, the CEDAW Committee released an in-depth report on Northern Ireland’s abortion law, finding that the current position amounts to a “grave and systematic” violation of CEDAW.<sup>97</sup> The Committee acknowledged that “despite legal provision for abortion in very limited circumstances, de facto limitations render access to abortion virtually impossible”,<sup>98</sup> and the criminalisation of abortion deprives Northern Irish women of any “real choice in influencing circumstances affecting their mental and physical health.”<sup>99</sup> The “deplorable” options given to women in Northern Ireland force them to choose between “complying with discriminatory laws that unduly restrict abortion or [risking] prosecution and imprisonment”,<sup>100</sup> a dilemma which is worsened by the lack of support structures for women who have had abortions and by the disregard for poor and socially vulnerable women and girls who face additional barriers. Following this finding, the reform of Northern

<sup>96</sup> *ibid* [9]; *Whelan* (n 78) [9].

<sup>97</sup> CEDAW, ‘Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women’ (23 Feb 2018) CEDAW/C/OP8/GBR/1, [1].

<sup>98</sup> *ibid* [20].

<sup>99</sup> *ibid* [42].

<sup>100</sup> *ibid* [81].

Ireland's abortion law is necessary to remedy the UK's ongoing violation of human rights.

### E. CONCLUSION

Northern Ireland's abortion law must be reformed in order to comply with human rights standards. At the very least, the Polish cases and *ABC* require that abortion must be accessible on the grounds for which it is already lawful in Northern Ireland. Furthermore, based on the jurisprudence of the ECtHR, the CEDAW Committee, and the HRC, the prohibition on abortion on the grounds of rape and FFA amounts to a violation of Article 3 ECHR and Article 7 ICCPR. While reform is therefore required to guarantee access to abortion on these grounds, Article 3 and Article 7 can also be used to argue for the full decriminalisation of abortion, since the identified harms are suffered by all women requiring abortions in Northern Ireland and the right to freedom from inhuman and degrading treatment is an absolute one. Section 3 will consider the potential for reform in compliance with these rights, in order to guarantee access to abortion in cases of rape and FFA and the removal of the criminal offence.

## III. REFORMING NORTHERN IRELAND'S ABORTION LAW

Recent statistics show overwhelming support for abortion in cases of rape and FFA in Northern Ireland, and while it is lower for more liberal grounds, there is still majority support for decriminalisation. It will now be considered how Northern Ireland's abortion can be reformed in accordance with the human rights standards established in Section II. As an absolute minimum, Northern Irish women must be able to access abortion services in cases of rape and FFA; however, legalisation on these cases alone would retain the restrictiveness of the law, meaning most abortion-seeking women would still be forced to travel abroad or have illegal abortions in violation of Article 3. Reform could therefore take the form of the extension of the Abortion Act or the provision of abortion on request in line with the European norm, but, as argued in Section II, the full decriminalisation of abortion would also be necessary under either alternative. Finally, law reform alone will not guarantee safe, legal abortions for all abortion-seeking Northern

Irish women; additional measures are necessary to make abortion accessible in practice.

#### A. POTENTIAL FOR AN FFA GROUND

It was established in Section II that prohibitions on abortions in cases of rape and FFA amount to a breach of Article 3, so it is of critical importance that the law is reformed to allow abortions in these circumstances at the very least. It would be relatively easy to create an exception for FFA, which could be constructed broadly in terms of a *risk* that a foetal abnormality would be fatal. The Isle of Man's previous abortion legislation allowed for abortion if a medical practitioner was of the opinion that "there is a substantial risk that if the child were to be born at full term it would suffer from such physical or mental abnormalities as to be... unlikely to survive birth", as assessed by the good faith opinion of two medical practitioners.<sup>101</sup> Advancements in prenatal testing now allow doctors to assess with relative certainty the risk of FFA, so reliance on medical discretion would rule out the need for a concrete list of conditions or estimates of the length of time a baby would survive post-birth. Genetic testing is possible at an early stage of the pregnancy with very little risk to the pregnant woman or the foetus; non-invasive prenatal testing allows screening for foetal chromosomal abnormalities from the pregnant person's blood, which is possible from the tenth week of pregnancy. While the Committee on the Convention on the Rights of Persons with Disabilities (CRPD) has expressed that laws which explicitly allow for abortion on the grounds of impairment violate the CRPD,<sup>102</sup> an exception for *fatal* impairments, rather than all disabilities, focused on alleviating the suffering of pregnant women carrying fatally abnormal fetuses is less likely to be considered discriminatory. Thus, an exception for fatal foetal abnormalities, such as that previously used by the Isle of Man, would comply with human rights standards.

#### B. RAPE EXCEPTIONS ARE UNWORKABLE

However, rape exceptions are unworkable in practice. It would be impossible to require prosecution as evidence for allowing an abortion, because the delays that occur between reporting rape and the trial would exceed the length of the pregnancy. Furthermore, most cases do not even progress that far and the conviction rate for rape is extremely low; in 2017, there were 926 recorded rapes

<sup>101</sup> Termination of Pregnancy (Medical Defences) Act 1995, section 4(1)(b)(i).

<sup>102</sup> CRPD, 'Comments on the draft General Comment 36 of the Human Rights Committee on Article 6 of the International Covenant on Civil and Political Rights' (2017) [1].

in Northern Ireland, and only around fifty-nine (6.4%) resulted in charges.<sup>103</sup> It is well-established that rape trials subject complainants to “secondary victimisation” and most rapes are therefore not reported; one study estimated that in Britain, 80% of victims did not report their rape to the police and 29% did not even tell friends or family members.<sup>104</sup> The current Isle of Man legislation, while not requiring prosecution, does require the victim-survivor to present an affidavit taken under oath that the pregnancy was the result of rape; they must have made a report to the police “as soon was reasonable in all the circumstances”; and a medical practitioner must be satisfied that there is no medical evidence inconsistent with the allegation.<sup>105</sup> This still places an undesirable burden on rape victim-survivors to report rape immediately, and, as Fiona De Londras and Mairead Enright argue, a pregnant person should not have to satisfy the criminal burden of proof, which may cause further distress and degradation, in order to secure access to abortion.<sup>106</sup> Even where legislation does not require a police report, as in Germany where the law requires a “strong reason to support the assumption” that the pregnancy was caused by rape,<sup>107</sup> any burden of proof imposed still requires medical practitioners to believe the victim-survivor and could subject them to victim-blaming and scepticism as to the honesty of their complaint. Vicky Conway has argued that, as rape exceptions operate from the perspective of suspicion and cynicism, many victim-survivors may risk breaking the law by obtaining abortion pills, make the journey abroad, or carry the foetus to term against their wishes in order to avoid having to report their rape.<sup>108</sup> The onerous burden a rape ground would place women in the position where travelling abroad for an abortion, if they had the means to do so, is a more advisable option. A rape exception would thus be unworkable and would therefore fail to address the UK’s human rights obligations.

### C. ADDITIONAL PROBLEMS WITH EXCEPTIONS – ALTERNATIVES?

There are additional problems which make the introduction of new exceptions to the OAPA an inadequate option for reform. Simply creating exceptions

<sup>103</sup> Public Service of Northern Ireland, *Police Recorded Crime in Northern Ireland: Monthly Update to 31 December 2017* (2018).

<sup>104</sup> Nina Lakhani, ‘Unreported rapes: the silent shame’ *The Independent* (London, 12 March 2012) <[www.independent.co.uk/news/uk/crime/unreported-rapes-the-silent-shame-7561636.html](http://www.independent.co.uk/news/uk/crime/unreported-rapes-the-silent-shame-7561636.html)> accessed 5 February 2018.

<sup>105</sup> Termination of Pregnancy Act, section 5(2).

<sup>106</sup> Fiona De Londras and Mairead Enright, *Repealing the 8th* (Policy Press 2018) 98.

<sup>107</sup> German Criminal Code, section 218a(3).

<sup>108</sup> Vicky Conway, ‘On The Difficulties of Rape Exceptions’ (*Human Rights in Ireland*, 13 October 2014) <<http://humanrights.ie/constitution-of-ireland/on-the-difficulties-of-rape-exceptions-repealthe8th/>> accessed 26 February 2018.

for rape and FFA would retain the chilling effect of the law in contravention with Article 8. Given that doctors are reluctant to perform abortions even to save the life of a pregnant person, it is even more unlikely that they would be willing to use their discretion in these cases. In Poland, abortion is legal on the grounds of rape and foetal abnormality, but, as evidenced by the ECtHR cases, it is difficult for women to access abortion on these grounds in practice. Allowing abortions on the grounds of rape and FFA would not remedy the human rights violations established in Section II, as most Northern Irish women in these circumstances would continue to travel abroad or illegally terminate their pregnancies, either through being unable to access abortion services or wanting to avoid the trauma of satisfying a rape exception.

To guarantee access to abortion in such circumstances, it is necessary to provide for abortion on broader grounds, which could be done through the extension of the Abortion Act or by providing for abortion on request in line with the European standard. The extension of the Abortion Act would bring Northern Ireland in line with the rest of the UK, allowing women to access safe, legal abortions in Northern Ireland, relieving the criminal law of its chilling effect and no longer forcing women to travel abroad or risk prosecution and their health through illegal abortions. The social ground would encompass abortion on the ground of rape without imposing any evidential burden on the victim, and FFA would be covered by this ground up to twenty-four weeks and subsequently by the disability ground. However, the Abortion Act is a fifty-year-old statute and needs updating,<sup>109</sup> so a preferable alternative would be abortion on request. The European standard is twelve weeks, which Ireland has proposed, and after expiry of this period abortion is usually still permitted on limited grounds including foetal abnormality. Both options would satisfy the UK's human rights obligations under Article 3.

#### D. DECRIMINALISING ABORTION

As argued in Section II, the full decriminalisation of abortion is also necessary. It is important to consider what the purpose of a law criminalising abortion is; Marge Berer argues that criminal provisions “make sense only for punitive and deterrent purposes, or to protect fetal life over that of women's lives”,<sup>110</sup> and Sally Sheldon has noted that the two commonly alleged purposes of the Abortion Act are to prevent the destruction of foetal life and to prevent harm

<sup>109</sup> See Sally Sheldon, *Beyond Control: Medical Power and Abortion Law* (Pluto Press 1997).

<sup>110</sup> Marge Berer, ‘Abortion Law and Policy Around the World: In Search of Decriminalisation’ (2017) 19(1) *Health and HRJ* 13, 14.

to women.<sup>111</sup> Accordingly, the maximum life sentence imposed by the OAPA is intended to have a deterrent effect in order to protect foetal life. This is premised on particular moral beliefs about foetal life, which is not only an inappropriate basis for a severe criminal offence, but also ignores modern views towards abortion. As established in Section I, the majority of the Northern Irish population support access to abortion in at least some cases. Sally Sheldon argues that moral views alone are “insufficient to ground a criminal prohibition”,<sup>112</sup> and the claimed deterrent function of the offence cannot be used to bolster these moral convictions as a justification, since the offence has proven to be an ineffective deterrent. As outlined above, although the criminal law does have a chilling effect on doctors, thousands of women continue to have abortions, whether illegally or by travelling abroad. Punitive provisions clearly do not achieve the aim of protecting foetal life, and thus cannot be justified on this basis.

Preventing harm to women was part of the rationale behind the provisions of the 1861 Act, since at the time abortion was dangerous and carried a significant risk of death or injury. However, medicine has advanced to the point where early medical abortion is now the norm and is generally safer than pregnancy and childbirth. Furthermore, as highlighted in the first two sections, Northern Ireland's criminal provisions result in harsh prosecutions, the imposition of financial and emotional burdens on women that travel abroad, health risks due to illegal abortions, and human rights violations. Berer points out the irony of arguing that restrictive laws protect women when it is those laws that are “responsible for the deaths and millions of injuries to women who cannot afford to pay for a safe illegal abortion.”<sup>113</sup> Even where abortion has been legalised on broader grounds, the impacts of the criminal law are still felt. While the Abortion Act mitigated most of the force of the 1861 Act, prosecutions for illegal abortions in England still occur; in 2013, one woman was sentenced to three-and-a-half-years in prison (reduced from an initial sentence of eight years) for terminating her pregnancy at thirty-nine weeks,<sup>114</sup> and, in 2015, another woman received a two-and-a-half-year sentence for terminating her thirty-four-week pregnancy.<sup>115</sup> Prosecutions in England are admittedly rare, and there is no recent evidence of doctors being prosecuted for performing abortions in Northern Ireland, but the existence of a criminal offence still creates that risk. Furthermore, the criminalisation of abortion

<sup>111</sup> Sally Sheldon, ‘The Decriminalisation of Abortion: An Argument for Modernisation’ (2015) 36(2) *Oxford Journal of Legal Studies* 334, 347.

<sup>112</sup> *ibid* 351.

<sup>113</sup> Berer (n 110) 14.

<sup>114</sup> *R v Catt* [2013] EWCA Crim 1187, [2013] 6 WLUK 263.

<sup>115</sup> BBC News, ‘Shildon woman jailed over poison termination’ *BBC News* (London, 17 December 2015) <[www.bbc.co.uk/news/uk-england-tyne-35121524](http://www.bbc.co.uk/news/uk-england-tyne-35121524)> accessed 26 February 2018.

stigmatises women, and women that choose to have abortions are often labelled “murderers” by anti-abortion activists. The OAPA fails at its aim of protecting foetal life while causing harm to women; therefore legal reform must be aimed at abolishing the outdated criminal offence of abortion.

#### E. ADDITIONAL REQUIREMENTS TO ABORTION ACCESS

Decriminalisation alone will not automatically guarantee all women a right to an abortion—there is a need for further measures to ensure that abortion is accessible in practice. Canada and four Australian States (the Australian Capital Territory, Victoria, Tasmania, and the Northern Territory) are the only places worldwide to have decriminalised abortion, but there remain issues in accessing abortion. Abortion was decriminalised in Tasmania in 2013, but since then access to abortion services has been significantly reduced due to the closing of two clinics on the island and public hospitals remaining reluctant to carry out abortions.<sup>116</sup> In Canada, abortion was decriminalised in 1988, when the Supreme Court struck down the country’s restrictive abortion legislation.<sup>117</sup> There is no federal law regulating abortion, and it is instead considered to be a “medically necessary” service.<sup>118</sup> However, one study showed that women living in rural, Northern, and coastal communities had to travel a considerable distance for abortions, sometimes more than 100km.<sup>119</sup> The abortion pill was not made available in Canada until 2017, and access to it remains limited, with less than half of all Canadian provinces supplying the drug.<sup>120</sup> Thus, Barbara Baird argues that “while decriminalization may be a precondition for the improvement of access to abortion services, it is only when public health departments take responsibility that equitable access will be delivered.”<sup>121</sup>

Therefore, alongside legal reform, action must be taken by medical and social institutions to ensure access to abortion. Katherine Side argues that efforts are required to ensure that there are an adequate number of doctors willing to refer women and perform abortions and that abortion is an economically

<sup>116</sup> Barbara Baird, ‘Decriminalization and Women’s Access to Abortion in Australia’ (2017) 19(1) *Health and HRJ* 197, 203–204.

<sup>117</sup> *R v Morgentaler* [1988] 1 SCR 30.

<sup>118</sup> Christabelle Sethna and Marion Doull, ‘Spatial disparities and travel to freestanding abortion clinics in Canada’ (2013) 38 *Women’s Studies International Forum* 52.

<sup>119</sup> *ibid* 59–60.

<sup>120</sup> Ashley Csandy, ‘Abortion pill available in less than half of all Canadian provinces three months after rollout’ *National Post* (Toronto, 30 March 2017) <<http://nationalpost.com/news/canada/abortion-pill-available-in-less-than-half-of-all-canadian-provinces-three-months-after-rollout>> accessed 26 February 2018.

<sup>121</sup> Baird (n 116) 198.

accessible service for all women.<sup>122</sup> This would require the sufficient training of doctors to perform abortions, funding for the provision of NHS abortion services, access to contraception, and access to medical abortions, including the option for the abortion pill to be taken at home, so that women are not required to travel to and from the clinic over two days to take the drugs. Such a move was approved in Scotland last year,<sup>123</sup> despite an unsuccessful legal challenge from the SPUC,<sup>124</sup> and in England<sup>125</sup> and Wales<sup>126</sup> more recently. Furthermore, the recognition of the right to conscientious objection should not impede access to abortion services. While it is important to respect the religious or moral beliefs of doctors, this cannot come at the cost of unequal abortion provision. In the rest of the UK, doctors who conscientiously object are not required to disclose that this is the reason for denying the woman's request; nor are they obligated to refer the woman to another doctor who would not object on this ground. Emily Jackson expressed concern that some women could mistake this for an indication that they are ineligible for an abortion, particularly those with limited knowledge of the abortion legislation or the lack of confidence to seek a second opinion; even if a woman did then seek a second opinion, this would invariably cause a delay.<sup>127</sup> De Londras and Enright argue that a woman seeking an abortion should be entitled to know whether a doctor would object on grounds of conscience, to save them time and any potential distress; this could be achieved by conducting a census and registering the doctors that would conscientiously object.<sup>128</sup> This would provide an appropriate balance between the rights of doctors and the rights of women seeking abortions.

Adequate access to abortion also requires universal access to information and counselling services, and Northern Ireland would also require more widespread access to prenatal screening. Women should be able to access services free of shame and stigma; decriminalisation would be a step towards this, but additional "buffer zones" could be imposed around abortion clinics to prevent anti-abortion activists from protesting within a certain radius. The CEDAW Committee identified that the social context of abortion in Northern Ireland, which is dominated by the

<sup>122</sup> Side (n 4) 103.

<sup>123</sup> Libby Brooks, 'Women in Scotland will be allowed to take abortion pill at home' *The Guardian* (London, 26 October 2017) <[www.theguardian.com/world/2017/oct/26/women-scotland-allowed-take-abortion-pill-at-home](http://www.theguardian.com/world/2017/oct/26/women-scotland-allowed-take-abortion-pill-at-home)> accessed 26 February 2018.

<sup>124</sup> *SPUC Scotland, Re Judicial Review* [2018] CSOH 85, [2018] 8 WLUK 140.

<sup>125</sup> Haroon Siddique, 'Use of second abortion pill at home to be allowed in England' *The Guardian* (London, 25 August 2018) <[www.theguardian.com/world/2018/aug/25/use-of-second-abortion-pill-at-home-to-be-allowed-in-england](http://www.theguardian.com/world/2018/aug/25/use-of-second-abortion-pill-at-home-to-be-allowed-in-england)> accessed 25 August 2018.

<sup>126</sup> BBC News, 'Women allowed to take abortion pill at home in Wales' *BBC News* (London, 29 June 2018) <[www.bbc.co.uk/news/uk-wales-44643459](http://www.bbc.co.uk/news/uk-wales-44643459)> accessed 25 August 2018.

<sup>127</sup> Emily Jackson, *Regulating Reproduction* (Hart 2001) 86.

<sup>128</sup> De Londras and Enright (n 106) 80–81.

anti-abortion rhetoric of politicians and religious figures, coupled with the lack of family planning places women in “double jeopardy”<sup>129</sup> which is worsened by the presence of anti-abortion protesters harassing women seeking abortions.<sup>130</sup> The Committee recommended urgently that sections 58 and 59 of the OAPA be repealed and legislation be enacted to allow abortions on health grounds without requiring long-term or permanent effects on the woman’s health, as well as abortions in cases of rape and severe foetal impairment.<sup>131</sup> The provision of adequate sexual and reproductive health services, including protection against anti-abortion protesters, is also recommended.<sup>132</sup> The human rights of abortion-seeking women in Northern Ireland will therefore only be realised fully where abortion is decriminalised and additional requirements are put in place to ensure that women are able to access safe, legal abortion services in practice, free from any financial or emotional burden or stigma.

## F. CONCLUSION

While it is necessary to provide for abortions in cases of rape and FFA, reformulating the law to include these grounds alone would not fully address the human rights issues within Northern Ireland’s abortion law. That approach would retain the chilling effect of the criminal offence, and the alternative of a rape exception would be unworkable as it would place an onerous burden on rape victims, so that travelling abroad would continue to be the best option. A more adequate alternative would be to extend the Abortion Act or provide for abortion on request for up to twelve weeks of pregnancy. The full decriminalisation of abortion is also necessary, as the OAPA fails to achieve its purported aims, creates a chilling effect on doctors, harms women, and perpetuates abortion stigma. Alongside decriminalisation, extra-legal measures would also be necessary to ensure that access to abortion is unimpeded.

## CONCLUSION

Northern Ireland’s abortion law is exceptionally restrictive compared with the rest of Europe, yet Northern Irish politicians have remained unwilling to update the 150-year-old legislation guiding the country’s abortion regime due to the perceived dominance of anti-abortion views. This has also given Westminster an excuse for inaction, despite overwhelming evidence that the majority of Northern

<sup>129</sup> CEDAW (n 97) [51].

<sup>130</sup> *ibid* [19]–[20].

<sup>131</sup> *ibid* [85].

<sup>132</sup> *ibid* [86].

Ireland is actually in support of liberalised abortion laws. The chilling effect of the criminal offence means that doctors are unwilling to perform abortions even on lawful grounds, forcing women to travel abroad or have illegal abortions in virtually all circumstances. It has been argued that Northern Ireland's abortion law violates Article 8 due to the chilling effect of the OAPA and Article 3 due to the prohibition of abortion on the grounds of rape and FFA and the criminalisation of abortion. Reform must ensure access to abortion in cases of rape and FFA, but the full decriminalisation of abortion is also necessary and non-legal measures such as additional funding, the training of doctors, and buffer zones are essential in order to fully realise the human rights of abortion-seeking women.

One currently significant barrier to abortion law reform is the fact that the Northern Irish Assembly has been without an executive since January 2017, and negotiations to restore power-sharing between the two main political parties have failed.<sup>133</sup> The Northern Ireland Health Department completed a report on abortion in cases of FFA in 2016, but due to the lack of an executive to approve the document, the report was only released in April 2018. The report confirmed the need for a change in the law and recognised the serious adverse effects the current position could have on a woman's wellbeing, but with no executive, the Northern Irish Assembly cannot act upon this.<sup>134</sup> Considering the reluctance of previous UK governments to extend the Abortion Act in the past and Theresa May's recent deal with the Democratic Unionist Party,<sup>135</sup> which takes a strong anti-abortion position, it is unlikely that the current government would be willing to liberalise Northern Ireland's abortion law, even if power-sharing is restored to Westminster. However, the CEDAW Committee has stated that devolution cannot be used as a justification for the failure of the UK government to protect human rights,<sup>136</sup> Westminster has a responsibility to address the violations resulting from Northern Ireland's abortion law, regardless of the Northern Irish political situation. Efforts have been made to introduce equal marriage to Northern Ireland in the absence of the Northern Irish executive,<sup>137</sup> and, following the Irish referendum, Stella Creasey tabled an emergency debate in Parliament to raise the issue of abortion in Northern Ireland

<sup>133</sup> Henry McDonald, 'May fails to reach deal to restore Northern Ireland power-sharing' *The Guardian* (London, 12 February 2018) <[www.theguardian.com/uk-news/2018/feb/12/theresa-may-arrives-in-belfast-for-stormont-assembly-talks](http://www.theguardian.com/uk-news/2018/feb/12/theresa-may-arrives-in-belfast-for-stormont-assembly-talks)> accessed 27 February 2018.

<sup>134</sup> Department of Health NI, *Healthcare and the Law on Termination of Pregnancy for Fetal Abnormality* (2016).

<sup>135</sup> BBC News, 'Conservatives agree pact with DUP to support May government' *BBC News* (London, 26 June 2017) <[www.bbc.co.uk/news/uk-politics-40403434](http://www.bbc.co.uk/news/uk-politics-40403434)> accessed 27 February 2018.

<sup>136</sup> CEDAW (n 97) [52]-[53].

<sup>137</sup> BBC News, 'Same-sex marriage legislation for NI' *BBC News* (London, 28 March 2018) <[www.bbc.co.uk/news/uk-northern-ireland-43570541](http://www.bbc.co.uk/news/uk-northern-ireland-43570541)> accessed 31 March 2018.

and advocate for decriminalisation across the UK.<sup>138</sup> The Women and Equalities Committee also launched an inquiry into abortion law in Northern Ireland,<sup>139</sup> and while this may not result in legal change, the increasing focus on this issue is making it harder for the government to continue avoiding the fact that the current legal position is indefensible, and reform is long overdue.

<sup>138</sup> Heather Stewart, 'MPs call on May to decriminalise abortion in Northern Ireland' *The Guardian* (London, 3 June 2018) <[www.theguardian.com/uk-news/2018/jun/03/mps-call-on-may-to-decriminalise-abortion-in-northern-ireland](http://www.theguardian.com/uk-news/2018/jun/03/mps-call-on-may-to-decriminalise-abortion-in-northern-ireland)> accessed 9 July 2018.

<sup>139</sup> The Women and Equalities Committee, 'Inquiry: Abortion Law in Northern Ireland' (*www.Parliament.uk*, 20 September 2018) <[www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2017/abortion-law-northern-ireland-launch-17-19/](http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2017/abortion-law-northern-ireland-launch-17-19/)> accessed 4 October 2018.