1 Executive Summary

1.1 The Commission continues to call for Government to undertake a full public consultation on abortion law in Northern Ireland.

1.2 In 2015, in our response\(^1\) to the Department of Justice’s (DOJ) consultation, we agreed that there was a pressing need to consider a change to the criminal law on abortion to provide for lawful termination of pregnancy as an option for women in certain limited and clearly defined circumstances, including on the ground of lethal foetal abnormality, where such changes are considered compatible with human rights law. We also supported a consideration of whether or not to make provision for abortion in the case of pregnancy resulting from sexual crime, and how, in the event of changes to the criminal law relating to abortion, a right of conscientious objection might be included.

1.3 A number of developments relevant to this Inquiry have taken place since the 2015 DOJ consultation, including the findings and recommendations of the inter-Departmental working group on Fatal Fetal Abnormality (FFA) in 2016\(^2\), and the CEDAW Committee in its Inquiry (2018) into abortion law in Northern Ireland\(^3\); as well as the Supreme Court decision in June 2018\(^4\).

1.4 There is therefore a clear need for urgent Government action and response\(^5\).

1.5 As regards the devolution settlement, we bring to the Committee’s attention the views of the CERD Committee (2016) in relation to the UK Government’s obligations as regards the implementation of the UNCERD across the UK. In particular, its views that the State party has the duty to ensure that the provisions of the Convention are effectively

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\(^1\) ECNI Response to DOJ consultation on abortion 2015.

\(^2\) See DOJ/DOH working group on fatal foetal abnormality (2016), Report of the working group on fatal foetal abnormality. The working group considered evidence from health professionals and evidence provided to the Public Health Agency (PHA) from women and their families.

\(^3\) CEDAW Committee recommended changes including to the legal framework on abortion and sexual and reproductive health rights and services. See CEDAW Committee (2018) Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland and UK Government response (2018).

\(^4\) The UK Supreme Court decision of 7 June 2018

\(^5\) See ECNI (2018), Submission to inform CEDAW List of Issues consideration
implemented in all territories it is responsible for, notwithstanding the specific governance arrangements that it may have adopted\(^6\).

2 **Introduction**

2.1 This submission has been prepared by the Equality Commission for Northern Ireland (‘the Commission’) to inform the Women and Equalities Committee’s Inquiry into abortion law in Northern Ireland.

2.2 The Commission is an independent public body established under the Northern Ireland Act 1998. It is responsible for implementing the equality legislation, including the sex equality and equal pay legislation, in Northern Ireland. We also have responsibilities arising from the Northern Ireland Act 1998 and Disability Discrimination Act 1995 in respect of the statutory equality and good relations duties which apply to public authorities. Further, the Commission and the Northern Ireland Human Rights Commission jointly perform the role, under Article 33 (2) of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), of ‘Independent Mechanism’ in Northern Ireland (IMNI) to promote, protect and monitor the implementation of the Convention.

2.3 We have set out below a response to some of the questions raised by the Committee. The Commission is responding only to those matters that are within its remit and expertise.

3 **Response to Questions**

**Question 1:** What are the views of the general public, women and medical and legal professionals in Northern Ireland about the law on abortion and whether it should be reformed? How have those views changed over time?

**Response**

3.1 The Commission continues to calls for Government to undertake a full public consultation on abortion law in Northern Ireland.

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In 2015, in our response\(^7\) to the Department of Justice’s (DOJ) consultation, *The Criminal Law on Abortion: lethal foetal abnormality and sexual crime*, the Commission expressed disappointment that a full consultation on abortion law had not been undertaken.

We agreed that there was a pressing need to consider a change to the criminal law on abortion to provide for lawful termination of pregnancy as an option for women in certain limited and clearly defined circumstances, including on the ground of lethal foetal abnormality, where such changes are considered compatible with human rights law.

We also supported the Department’s proposal to consider whether or not to make provision for abortion in the case of pregnancy resulting from sexual crime, and how, in the event of changes to the criminal law relating to abortion, a right of conscientious objection might be included.

The Commission has also made clear that this consultation should also include a consideration of amending the abortion law to remove punitive provisions imposed on women who undergo abortion\(^8\).

We also recommended that the DOJ, when considering its proposal to change the law to enable women to choose to terminate their pregnancy where a lethal foetal abnormality has been assessed, or in the event of any further proposals relating to the provision for abortion in the case of pregnancy resulting from sexual crime, ensures that its approach is in compliance with the UK Government’s obligations under the UNCRPD, as well as obligations under the disability equality legislation.

The Committee will be aware that a number of developments relevant to this Inquiry have taken place since the 2015 DOJ consultation.

These developments include the publication by the DOJ of its response to its consultation\(^9\); the findings and recommendations of the inter-Departmental working group on Fatal Fetal Abnormality (FFA) in 2016, which recommended a

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\(^7\) ECNI *Response to DOJ consultation on abortion* 2015.
\(^8\) See ECNI Shadow report to CEDAW 2013
change to Northern Ireland’s laws to allow abortion in cases of FFA\textsuperscript{10}; the findings and recommendations of the CEDAW Committee’s Inquiry (2018) into abortion law in Northern Ireland which found that the UK was responsible for grave and systematic violations of rights under CEDAW\textsuperscript{11}; and the Supreme Court in June 2018 which highlighted the incompatibility of Northern Ireland abortion laws with human rights\textsuperscript{12}.

3.9 Further, a number of surveys have been undertaken in order to gauge public attitudes to abortion law in Northern Ireland\textsuperscript{13}.

3.10 We consider that there is therefore a clear need for urgent Government action and response\textsuperscript{14}.

\textbf{Question 2: What are the responsibilities of the UK Government under its international obligations for taking action to reform abortion law in Northern Ireland? How should these be reconciled to the UK’s devolution settlement?}

\textbf{Response}

3.11 As stated above, the CEDAW Committee’s Inquiry (2018) into abortion law in Northern Ireland found that the UK was responsible for grave and systematic violations of rights under CEDAW\textsuperscript{15}.

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\textsuperscript{10} See DOJ/DOH working group on fatal foetal abnormality (2016), \textit{Report of the working group on fatal foetal abnormality}. The working group considered evidence from health professionals and evidence provided to the Public Health Agency (PHA) from women and their families.

\textsuperscript{11} CEDAW Committee recommended changes including to the legal framework on abortion and sexual and reproductive health rights and services. See CEDAW Committee (2018) \textit{Inquiry report on UK under Art 8 of Optional Protocol CEDAW into abortion in Northern Ireland and UK Government response} (2018).

\textsuperscript{12} Following a judicial review application by the NI Human Rights Commission (NIHRC), a majority of judges of the UK Supreme Court, in its decision of 7 June 2018, concluded that abortion law in Northern Ireland was incompatible with Article 8 (right to respect for private and family life) of the European Convention on Human Rights; though the Court also held it did not have the jurisdiction to make a declaration of incompatibility. For further information see also NIHRC’s Statement on Court decision (7 June 2018)

\textsuperscript{13} These include the results of the 2016 \textit{Northern Ireland Life and Times Survey} and a recent survey by \textit{Amnesty International} (2018).

\textsuperscript{14} See ECNI (2018), \textit{Submission to inform CEDAW List of Issues consideration}. The Commission has set out its wider gender equality policy positions, including its recommendations in this area, in its ‘Gender Equality Policy Priorities and Recommendations’ (2016).

\textsuperscript{15} CEDAW Committee recommended changes including to the legal framework on abortion and sexual and reproductive health rights and services. See CEDAW Committee (2018) \textit{Inquiry report on}...
In its recent replies to the CEDAW Committee’s List of Issues (2018) the UK Government has stated as follows:

“Although the Supreme Court dismissed the appeal on technical grounds, the UK Government recognises the Court's view that the current law on abortion in Northern Ireland insofar as it relates to fatal foetal abnormality, rape and incest is incompatible with Article 8 ECHR. At present, however, no declaration of incompatibility has been made by the courts for consideration or response by the UK Government or a restored government in Northern Ireland. Abortion is a devolved matter for a restored Northern Ireland Executive and Assembly to consider”

3.13 The Committee will also be aware of the recommendations of the UNCRPD Committee on abortion law in the UK as set out in its Concluding Observations (2017).

3.14 As regards the devolution settlement, we bring to the Committee’s attention the views of the CERD Committee (2016) in relation to the UK Government's obligations as regards the implementation of the UNCERD across the UK, including in Northern Ireland. In particular, its views that

‘The Committee reiterates that as the duty bearer at the international level, the State party has the duty to ensure that the provisions of the Convention are effectively implemented in all territories it is responsible for, including the British Overseas Territories and the Crown Dependencies, notwithstanding the specific governance arrangements that it may have adopted’

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17 The Committee was concerned about perceptions in society stigmatizing persons with disabilities as living a life of less value and the termination of pregnancy at any stage on the basis of foetal impairment. The Committee recommended that the State party changes abortion law accordingly. Women’s rights to reproductive and sexual autonomy should be respected without legalizing selective abortions on ground of foetus deficiency. See UNCRPD Committee’s Concluding Observations (2017).
