Introduction

1. I am a long-standing volunteer (and former trustee) of Abortion Support Network (ASN). In my work with ASN, I have hosted people coming to London for abortions since 2012. I was also a member of ASN’s phone team, providing practical and financial support to abortion-seekers in the Republic of Ireland, Northern Ireland (NI) and the Isle of Man, for a period of about two years. Currently, I act as safeguarding advisor for the charity. The considerable direct contact I have had with abortion-seekers in NI (over the phone and in person) has given me a particular insight into the situation facing women and pregnant people there. I have also recently carried out a piece of research into human rights strategies within abortion activism, which involved a review of relevant national, regional and international jurisprudence, as well as informal interviews with activists in NI.

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?

2. I will restrict myself, here, to pointing to the 2016 Life and Times Survey, which is academically rigorous, and shows very strong public support in NI for abortion to be allowed where there is a risk to the life/health of the pregnant person, where there is a serious/fatal foetal abnormality or where the pregnancy is the result of rape or incest. Importantly, it also demonstrates that there is strong opposition to the criminalisation of abortion-seekers and abortion-providers. When read alongside the NI Social Attitudes survey from 1990, the 2016 survey indicates that support for abortion is increasing, among both Catholics and Protestants. (See http://www.ark.ac.uk/publications/updates/update115.pdf.)

3. Also, it is important, in the NI context, not to assume that political parties’ stance on abortion is in any way representative of public opinion. Post-conflict conditions, in which people tend to vote according to parties’ position on the “constitutional question,” make it possible for politicians to be considerably out of step with public opinion on issues like abortion.

What are the experiences of women in Northern Ireland who have been affected by the law on abortion?

4. When thinking about this question, my mind immediately goes to the personal stories of the NI abortion-seekers who I have, in one way or the other, tried to support through my work with ASN – to people like the young woman who worked so long and so hard to try to cover the cost of her abortion in England that she missed the cut-off point and had to continue the pregnancy, or the Traveller mum who could not read or write but was determined to put all she had into building better futures for her existing two kids. I trust you have got many individual submissions of this nature and hope that you will consider them all carefully.

5. I have three points to make about the impact of the abortion law and the experience of abortion-seekers in NI. Firstly, NI’s abortion law makes it particularly difficult, or even impossible, for some
women and pregnant people to access abortion. Although the funding for abortions in England that has been available since 2017 helps many of those who previously struggled to raise the money to access abortion in England, a multitude of other barriers remain in place. These include being underage, experiencing domestic violence, having caring responsibilities, and not being able to get time off work. Having said this, I would particularly like to highlight the differential impact of the law based on migration status, race and ethnicity, which are rarely fully acknowledged. Undocumented migrants are understandably fearful of travelling, as well as often lacking the relevant paperwork, and asylum-seekers have to relinquish their passports as part of their immigration claim. Although a passport is not strictly speaking required for travel within the UK, it is often demanded by low-budget airlines. In addition, people of colour are met with racism in airports and ferry terminals, meaning they regularly have documentation checked where white people simply walk through. (See for example https://www.theguardian.com/uk-news/2018/jun/11/black-lawyer-accuses-northern-ireland-immigration-of-racial-profiling.) Funded abortions in England are only available to those with an NHS number, which are generally issued on registering with a GP – something which migrants often struggle to do. And, although awareness that funded abortions are now available in England is fairly low across the board in NI, this is exacerbated in marginalised communities, including migrants, people of colour and Travellers. For Travellers, a common further barrier being unable to read or write. Because of discrimination, migrants, people of colour and Travellers are also more likely to be poor and/or to work in precarious jobs, making it more difficult to take a day off work. Another group for whom the impact of the law is often exacerbated is disabled people – many find it difficult, or simply cannot, travel and may be faced with additional problems around continuity of care. Like other marginalised groups, they are also more likely to be out of work.

6. Secondly, whilst restrictive abortion law makes it harder for people to access abortion, it does not significantly reduce the overall number of abortions. Although it does prevent particularly marginalised people from accessing abortion (as discussed in paragraph 5 above), the majority of NI abortion-seekers are simply made to travel to England for abortion (or to order safe but illegal abortion pills online, see paragraph 7 below) – incurring additional expense, having to get up at the crack of dawn to travel to a place they do not know, away from family and friends, and having to rush back onto another flight afterwards, bleeding and groggy. In this sense, NI’s abortion law seems less about ‘saving unborn lives’ than about punishing women.

7. Finally, as procuring your own abortion is punishable by life imprisonment, NI’s law clearly criminalises women and pregnant people. Since 2015, four women have been prosecuted for resorting to safe but illegal abortion pills and, on International Women’s Day in 2017, the police commenced a “crackdown on abortion pills” with raids on abortion activists’ homes. (See http://www.independent.co.uk/news/uk/crime/northern-ireland-abortion-pill-raids-police-women-homes-workplacesa7627211.html.) Criminalisation also affects health workers, and the ‘chilling effect’ of the threats of prosecution contained in the Department of Health, Social Services and Public Safety’s draft guidance (see https://www.health-ni.gov.uk/sites/default/files/consultations/dhssps/termination-pregnancy-responses-2013.pdf) can be seen in the falling number of lawful abortions carried out in NI since 2013. In this climate, even those with a legal right to abortion in NI are made to travel, and the voices of those with most knowledge and direct experience (women, pregnant people and health workers) are stifled.

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?
8. As a state party, the UK is responsible for upholding its obligations under international human rights treaties such as the Convention for the Elimination of Discrimination Against Women (CEDAW), throughout the entire of the UK, including NI. The Memorandum of Understanding with devolved administrations makes it clear that “the UK Government... has power to ensure that [they] take action to give effect to the UK's international obligations.” (Welsh Govt, Devolution: Memorandum of Understanding and Supplementary Agreements Between the UK Government, the Scottish Ministers, the Welsh Ministers, and the NI Executive Committee (Cm 7864, 2010) footnote 6, 55 – https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/238423/7864.pdf) In addition, the UK Human Rights Act 1998 also incorporates the European Convention on Human Rights (ECHR) into domestic law.

9. The 2018 CEDAW inquiry report states that NI’s abortion regime discriminates against women in a number of different ways, and that the “deliberate maintenance of criminal laws disproportionately affecting women and girls, subjecting them to severe physical and mental anguish that may amount to cruel, inhuman and degrading treatment” constitutes gender-based violence. (See CEDAW 'Report of the inquiry concerning the UK of GB and NI under article 8 of the Optional Protocol to the CEDAW, ADVANCE UNEDITED VERSION' (2017) UN Doc, s72) The fact that CEDAW Committee recognises NI’s abortion law as both a grave and a systematic violation of human rights is particularly noteworthy, in light of their high thresholds for meeting these standards.

10. In the subsequent Northern Ireland Human Rights Commission (NIHRC) judicial review (In the matter of an application by the NIHRC for Judicial Review (NI) [2018] UKSC 27, 2018 UKSC 2017/0131), the Supreme Court expressed the clear view that the current abortion law in NI is incompatible with human rights. Though the NIHRC was found not to have standing to bring the case, the Supreme Court was also clear that, should an individual victim return to court in relation to the law, a formal declaration of incompatibility would in all likelihood be made. Such cases are being prepared and have started making their way through the courts.

11. The UK government now has an opportunity, before individual victims are dragged through the courts in order to produce a declaration of incompatibility, to set things right. The most appropriate way to do this would be by repealing sections 57-58 of the Offences Against the Person Act 1861 (OAPA), effectively decriminalising abortion and leaving it up to the NI Assembly to legislate when it is back up and running. Although it is clear that the UK government has the responsibility to address the human rights violations entailed by NI’s abortion law, which is not affected by the devolution settlement (see paragraph 9 above), repealing sections 57-58 of OAPA, i.e. removing a piece of old British law, is likely a publicly more acceptable solution than, for example, drafting new legislation or extending the 1967 Abortion Act to NI.

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