Written submission from Society for the Protection of Unborn Children (ANI0689)

This paper will examine the human rights aspects of the abortion issue and the consistent opposition to the liberalisation of our abortion laws within Northern Ireland.

Executive Summary

- Northern Ireland’s law is not incompatible with human rights obligations.
- As a devolved matter abortion law is an issue to be decided by representatives of the people of Northern Ireland rather than MPs with no mandate from the electorate in the Province.
- Abortion is presumptively unlawful in Northern Ireland as our legislation safeguards the right to life of children. A doctor who carries out an abortion in order to save the life (or long-term physical or mental health of a pregnant woman has a legal defence against prosecution. While a small number of abortions do take place, Northern Ireland’s laws have saved the lives of over 100,000 babies. Independent statistical analysis carried out by the Advertising Standards Authority verified that this estimate was very probably correct.
- These laws have functioned very successfully and only need to be enforced. They do not criminalise women, they criminalise acts of lethal violence directed at unborn children.
- The right to life is the most fundamental of all human rights. By contrast, a right to abortion has never been recognised in any universal human rights agreement. Human rights are not subject to the ideology of eugenics nor radical feminism. No one has the right to take the life of another human being, even that human being’s mother. Abortion is not healthcare. It is a lethal form of child abuse and all children deserve legal protection.
- The Universal Declaration of Human Rights, 1948, the Declaration of the Rights of the Child, 1959, the Convention on the Rights of the Child, 1989 as well as other human rights instruments recognise the right to life before as well as after birth.

Present abortion law in Northern Ireland

Abortion is presumptively unlawful in Northern Ireland as our legislation safeguards the right to life of children. A doctor who carries out an abortion in order to save the life (or long-term physical or mental health of a pregnant woman, however, has a legal defence against prosecution. While a small number of abortions do take place, Northern Ireland’s laws have saved the lives of over 100,000 babies. Independent statistical analysis carried out by the Advertising Standards Authority verified that this estimate was very probably correct.1

Northern Ireland’s regulation of abortion is based on sections 58 and 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice (Northern Ireland)1945 Act. The purpose of these statutes is the preservation of the life of children prior to birth. It is clear that in Northern Ireland law, the right to life has been determined to commence before birth, certainly by the stage of the viability of the foetus. Our laws have functioned very successfully and only need to be applied. They do not criminalise women, they criminalise acts of lethal violence directed at unborn children.

In Attorney General for Northern Ireland v Senior Coroner for Northern Ireland, the Court of Appeal confirmed this purpose and drew particular attention to the wording of section 25 of the 1945 Act:2

“There are three aspects of the section which are worthy of note. First, the victim of the offence is described as a child then capable of being born alive. Secondly, the foetus in utero is described as a child with a life. Thirdly, the section contemplates that such a foetus can die in utero.” [underlined emphasis added]

The Court also recognised that by citing the offence of child destruction in section 18(1)(a) of the
Coroners Act (Northern Ireland) 1959, the Act extended the definition of “deceased person” to include a foetus in utero then capable of being born alive.

That domestic law in Northern Ireland seeks to preserve the life of the child prior to birth is also demonstrated in the judge’s summing-up in the case of R v Bourne: ³

“The law of this land has always held human life to be sacred, and the protection the law gives to human life it extends also to the unborn child in the womb. The unborn child in the womb must not be destroyed unless the destruction of the child is for preserving the still more precious life of the mother.” [underlined emphasis added]

Domestic law in Northern Ireland recognises the right of the child before birth not to be intentionally deprived of his or her life. Unlike the law in England and Wales, the law in Northern Ireland does not permit the deliberate killing of unborn children, merely acts “for the purpose only of preserving the life of the mother.” ⁴ The protection afforded to the unborn child as a matter of Northern Ireland law corresponds to the protection provided to “everyone” by Article 2 of the European Convention on Human Rights, particularly since the European Court of Human Rights has been clear that it was a matter for national law to determine “when the right to life begins” for the purpose of Article 2. ⁵

Northern Ireland law has done so. The right to life in this jurisdiction begins at conception (note the reference in sections 58 and 59 of the 1861 Act to the woman being “with child”) or, at the latest, when the child is capable of being born alive. It is insufficient for abortion advocates to simply dismiss the Article 2 rights of preborn children as irrelevant when his or her interests do not coincide with his or her mother. That is when the child’s rights may require particular protection.

Law in Northern Ireland and the rest of the United Kingdom

Northern Ireland has had its own government since 1922 and there are more than 200 areas where the laws in the Province and the law in England diverge. There are even more areas of difference between Scotland and England. The nature of devolution is to have separate laws decided by the people of each separate area. There is no legal basis for requiring Northern Ireland’s abortion law to be in line with England’s. Indeed, the principle of self-government and that decisions which impact the people of Northern Ireland should be the responsibility of locally accountable politicians, rather than Westminster, is central to Northern Ireland’s constitutional settlement established by the Good Friday Agreement.

There have been numerous occasions over the past 50 years when proposals to liberalise the law were discussed and rejected.

In 1967 when the Abortion Act was passed, the Parliament of Northern Ireland chose to maintain its existing legal framework. On 10 February 2016 (following the High Court’s Declaration of Incompatibility), in a cross-party vote, the Assembly rejected amendments to the Justice (No 2) Bill to legalise abortion a) on grounds of so-called fatal foetal abnormality, by 59 votes to 40, and b) on grounds of rape by 64 votes to 32. This was simply the most recent consideration of this issue. A comprehensive, although not exhaustive, record would include the following events:

i) On 29 February 1984, the Northern Ireland Assembly voted by 20 to 1 against the introduction of the Abortion Act or any like legislation.

ii) On 24 April 1990, in response to opposition within the Province, the House of Commons defeated an amendment to the Human Fertilisation and Embryology Bill to extend the 1967 Act to Northern Ireland by 267 votes to 131.

iii) On 24 May 1995, following a meeting with a cross-party delegation of Northern Ireland MPs, Prime Minister John Major rejected calls from the Northern Ireland Standing Advisory Commission on Human Rights (SACHR) to introduce new abortion legislation to the Province. In a letter to SACHR’s chairman Sir Patrick Mayhew, the Secretary of State for Northern Ireland said: Local politicians, churches and the overwhelming majority of the representations
received by the Government, have expressed consistently their opposition to changes in the present law.

iv) On 20 June 2000, the New Northern Ireland Assembly resolved: “That this Assembly is opposed to the extension of the Abortion Act 1967 to Northern Ireland.” The motion was carried by acclaim after an attempt to defer it was defeated by 43 votes to 15.

v) On 22 October 2007, following the publications of draft guidance on abortion law and clinical practice by the Department of Health, Social Services and Public Safety, the Assembly resolved: “That this Assembly opposes the introduction of the proposed guidelines on the termination of pregnancy in Northern Ireland; believes that the guidelines are flawed; and calls on the Minister of Health, Social Services and Public Safety to abandon any attempt to make abortion more widely available in Northern Ireland.”

vi) On 22 October 2008, the Westminster government cut short the time to debate a raft of amendments to the Human Fertilisation and Embryology Bill, including one to extend the 1967 Act to Northern Ireland. The decision came following considerable opposition within the Province and a letter from leaders of Northern Ireland’s four main parties urging them to respect the right of the Assembly to make decisions regarding abortion law, and predictions of a 'constitutional crisis' if the amendment passed. The Guardian reported that Diane Abbott MP, “who has tabled a clause to the bill to extend the 1967 Abortion Act to Northern Ireland for the first time said: ‘It seems to me that this programme motion and particularly the order of discussion is a shabby manoeuvre by ministers to stop full debate on some very important matters.’ It was important to be able to discuss the "special case" of Northern Ireland, she said.”

vii) October 2014 the Northern Ireland Department of Justice carried out a public consultation on its proposed changes to the existing legislation. It issued the following figures which give an overview of responses:

- There were 712 individually written responses;
  - 579 of these opposed change, 133 supported change;
- There were 65 responses from representative organisations and interested groups;
  - 47 of these supported change, 18 were against;
- There were 921 letters opposing change written in support of seven lobby campaigns which may have been organised by individual churches or faith groups;
- There were 23,622 petition signatures opposing change. (The petition, called Project Love, was organised by Every Life Counts Ireland. It was made up of 18,000 postcards, which were delivered by hand to the Department; a further 2,197 sent by post.)
- There were 3,425 signatures to the electronic version of the petition on a website called CitizenGo.org.

viii) September 2014 the Assembly’s Justice Committee conducted a separate consultation on its proposals which drew 35,000 responses in favour of maintaining legal protection for unborn children.

In addition to this, the Department of Health, Social Services and Public Safety has twice carried out public consultations on its draft guidance to the medical profession, in 2007 and again in 2008. Its official guidance issued in 2009 and 2010 was subject to two successful legal actions initiated by the Society for the Protection of Unborn Children. While the suitability of advice contained in this Guidance was contested, it is impossible to argue that the Northern Ireland Executive has not engaged in the issues central to abortion law.

Even if the criticism that respondents to public consultations are a self-selecting group (and therefore unrepresentative of the public as a whole) was accurate, this would be equally true of any public consultation carried out by the Westminster Parliament, including the Committee’s own consultations. The results of consultations undertaken by Stormont cannot be dismissed simply because the result of
the exercise does not meet with the approval of the Committee.

Opposition to the liberalisation of the law on the part of a majority of the people of Northern Ireland and from their political representatives has been recognised by successive governments in London. In October 1999 in an interview upon leaving office as the Secretary of State for Northern Ireland the late Dr Marjorie Mowlam MP, who had voted in 1990 for the extension of the 1967 Act to the Province, stated that she regretted:

“...not finding a suitable moment to introduce a review of abortion law in Northern Ireland... Progress is hampered by the lack of support across the parties in Northern Ireland for change in this area - big impediment - as it’s called democracy.”

Nowhere in the British Isles, and perhaps in Europe, have the issues surrounding abortion law been the subject of more comprehensive and ongoing discussion by legislators. Any objective examination of the record would indicate that Northern Ireland’s legislators have, for a number of decades, been actively engaged in these issues and have not sought to avoid their responsibilities in this area of considerable public interest.

In the UK constitutional system, in which the adoption of laws is decided by the legislature and not by referendum, this record should also be seen as a reflection of the views of the Northern Ireland people. Calls for a referendum on a matter, similar to the constitutional referendum in the Republic of Ireland have no legal basis. Neither, social policy, criminal law nor human rights can be decided by a popular vote. The right to life is not bestowed by the State and cannot be removed by government, or parliament with or without the support of the public.

The Convention on the Rights of the Child recognises the need for protection, including appropriate legal protection for all children without exception before as well as after birth. The law in Northern Ireland does that very effectively.

The Abortion Act 1967 was not intended to introduce abortion on demand but this is effectively what has happened. The phenomenon of social abortion has resulted in the loss of over 8 million unborn lives and the untold suffering of countless women. It has also led to a devaluation of human life in general but since disabled children can be legally aborted up to and during birth, attitudes toward the disabled have been profoundly effected.

**Abortions in cases of criminal sexual activity or where a foetus is unlikely to survive after birth**

The Preamble of the Declaration on the Rights of the Child (DRC) 1959 states:

“Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

“Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognised in the Universal Declaration of Human Rights and in the statutes of specialised agencies and international organisations concerned with the welfare of children,...”

The DRC states that the UDHR recognises the need for legal protection for children prior to birth. Despite this on 7 June 2018 the Supreme Court dismissed an appeal for a judicial review of Northern Ireland’s abortion laws but in a politically motivated act, the Court expressed the view that abortion laws in Northern Ireland are ‘incompatible with human rights’ in cases of fatal foetal abnormality and when a child is conceived through sexual crime. These views are not legally binding as the case was dismissed. The Court did not, however, reflect an accurate interpretation of the relevant human rights treaties nor the law in Northern Ireland which recognises the right to life of children before birth. Nor can the European Convention on Human Rights be interpreted in a manner which contravenes the rights articulated by the UDHR and still be considered valid.

The views expressed by the majority on the Supreme Court were also handed down in a judgement
from the High Court in 2015 were rejected by the Northern Ireland Assembly in February 2016 when the current law was reaffirmed.

**Abortion for children conceived through criminal sexual activity**

During the passage of the Abortion Act, a proposal to legalise the abortion of children conceived through criminal sexual activity was debated at length and rejected. At Second Reading it stated that:

1(1) ...a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if that practitioner and another registered medical practitioner are of the opinion formed in good faith -
(d) that the pregnant woman is a defective or became pregnant while under the age of sixteen or became pregnant as a result of rape.

This provision was dropped during the Bill's committee stage. During a subsequent debate over an amendment to legalise abortion for women who “became pregnant as a result of an alleged offence under the sections of [...] the Sexual Offences Act (1956)” David Steel, the sponsor of the Bill, explained the problems with the legalisation of abortion for children conceived through criminal sexual activity saying:

This was one of the matters discussed in detail with the medical profession. The British Medical Association said:

“We recognise that there is a considerable body of public opinion in favour of termination of pregnancy being specifically permitted by law in cases where pregnancy has resulted from rape, incest, or unlawful carnal knowledge of a woman. However, we must point out that considerable difficulties would arise in administering such a law and in addition it would give rise to very complex problems in the field of medical ethics.”

Speaking for the Government, Alice Bacon, The Minister of State in the Home Office, said:

As has been pointed out already, the original Bill before the House contained a provision in Clause 1(1, d) which included rape as dealt with a girl under the age of 16 and a woman who was defective. However, doubts were expressed during Second Reading about the wisdom of tackling the problem by a specific reference to rape.

There were several reasons why this was taken out in Committee. ...it was felt that if a specific reference to rape was kept in the Bill a doctor would be required to determine whether or not a criminal offence had been committed, and it would be very difficult for him to determine that.

Mr Quintin Hogg, later to become Lord Chancellor, also opposed the re-introduction of criminal sexual activity as a ground for abortion because of the inherent problems in doing so. He also alluded to the fact that the case of R v Bourne involved the abortion of a 14-year-old girl who became pregnant after being raped.

The Amendment lumps together a number of offences. First is the question of rape, which depends upon consent. It is utterly inappropriate for a doctor to determine whether a girl has consented or not. If one adopts, as the Amendment does, some objective criterion like whether the girl complained to the police in 48 hours, one is putting a premium on false allegations against perhaps an innocent man.

I agree that there are a few cases of mentally deficient and of girls under 13 who conceive, but this can be dealt with under the existing law, the Bourne judgement...

Also rejecting the amendment Mr Eric Ogden stated:

It goes far beyond abortion for medical or physical reasons, for reasons of the health, safety or well-being of the child. The Amendment would provide that the circumstances of the conception of the future baby would decide whether the child should have the right to live.
And Mr Norman St John-Stevas pointed out that:

Although naturally, we all agree that rape is an unjust and highly immoral action, the child conceived as a result of that unjust an immoral action is completely innocent.

It proved impossible in 1967 to overcome the complex legal problems surrounding the issues of rape, statutory rape, consent and mental capacity. The Supreme Court failed to show how it would resolve these difficulties. It is, therefore, an exercise in futility to seek suggestions on how legislation could be drafted to allow the abortion of children based solely upon the circumstances of their conception.

**International Human Rights Law**

International law is also relevant to this issue. The International Covenant on Civil and Political Rights prohibits the capital punishment of pregnant women so that the innocent are not killed with the guilty. Article 6(5) of the Covenant stipulates:

Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

The travaux préparatoires of the ICCPR makes clear the purpose of this prohibition. The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.

The Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights observes:

A/2929, Chpt. VI, §10 It would seem that the intention of paragraph 4 [5] which was inspired by humanitarian considerations and by consideration for the interests of the unborn child, was that the death sentence, if it concerned a pregnant woman, should not be carried out at all. It was pointed out, however, that the provision, in its present formulation, might be interpreted as applying solely to the period preceding childbirth [E/CN.4/SR.311, p.7 (B)].

Third Committee, 12th Session (1957) A/3764, B118 [actually B117]: There was some discussion regarding the meaning of paragraph 4 [5] of the draft of the Commission on Human Rights (E/2573, annex I B), which provided that the sentence of death should not be carried out on a pregnant woman. A number of representatives were of the opinion that the clause sought to prevent the carrying out of the sentence of death before the child was born [A/C.3/SR.809, §27 (CHI); A/C.3/SR.810, §2 (B), §7 (IR); A/C.3/SR.812, §32 (RI); A/C.3/SR. 814, §42 (CDN)].

However, other (sic) thought that the death sentence should not be carried out at all if it concerned a pregnant woman [A/C.3/SR.810, §14 (PE); A/C.3/SR.811, §24 (SA)]. The normal development of the unborn child might be affected if the mother were to live in constant fear that, after the birth of her child, the death sentence would be carried out.

The child in the womb is therefore not to be punished for a capital offence committed by his or her mother. Not only would a law allowing the abortion of children conceived through criminal sexual activity violate their right to life, but it would also punish the innocent for the crimes of others.

Once abortion is legalised in exceptional circumstances it quickly gives way to widespread abortion. In 1967 when the Abortion Act was passed it was not foreseen that 50 years on over eight million babies would be aborted. In 1990, Parliament extended the Abortion Act so that disabled babies could be aborted up to birth, a shocking, historic act of discrimination by legislators against disabled people.

In Canada (which had legislation similar to Northern Ireland’s) a new law that permitted abortion, ostensibly on health care grounds, was introduced in 1969. Within 10 years the remaining legal protection for unborn children was undermined by the Courts and the actions of abortionists. Today
there is no legal protection for unborn children in Canada.\textsuperscript{12}

In the Netherlands, abortion for foetal disability has led to the euthanasia of new-born babies with disabilities.\textsuperscript{13} In Denmark, the promotion of abortion following prenatal testing for disability means that under current trends the last baby to be born with Down’s syndrome will be delivered in 2030.\textsuperscript{14}

Regardless of the grounds on which an abortion is performed, its nature does not change. The effects for women and their children are not altered by the fact that abortion in some circumstances is considered more socially acceptable. Fifty years after the passage of the Abortion Act, we now have a much clearer understanding of the prenatal development of the child. There is also overwhelming evidence that abortion has serious consequences for the physical and psychological health of women.

**Conclusion - Valuing all children equally**

Unborn children are one of the most vulnerable groups in society. This is especially true if they are disabled. In Britain, the law permits disabled babies to be aborted right up to birth but the law in Northern Ireland places no less value on the life of a disabled child, even if that life is tragically short. The legalisation of a lethal form of discrimination based upon a child’s disability or circumstances of conception can never be acceptable.

The State has a moral and legal obligation to secure the human rights of everyone within its jurisdiction. While some rights are conferred by the State, the right to life is inherent and derived from human dignity. It is the duty of every State to recognise this right and ensure its protection in law. No State, no agency, no government authority, regardless of public opinion, can abrogate this fundamental human right.

The purpose of Northern Ireland’s legal framework is to prevent the violation of the right to life of children through acts of lethal violence such as abortion. Any attempt to limit, nullify or deny the right to life of children before birth is, therefore, wholly illegitimate and should be rejected.

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**Endnotes**

1 ASA Ruling on Both Lives Matter: https://www.asa.org.uk/rulings/both-lives-matter-a17-370344.html Accessed 4 December 2018

2 [2013] NICA 68; see paragraph [31].

3 [1939] KB 687; [1938] 1 All ER 620; per Macnaughton J.

4 Criminal Justice Act (Northern Ireland) [1945] Section 25 (1): “Provided that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.”

5 Vo v France (App no 53924/00) at [85]


7 Belfast Telegraph 13 October 1999.


9 All quotes are taken from Hansard 13 July 1967.
Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49


In Canada a young mother, Katrina Effert was acquitted of killing her new-born son, Rodney. She strangled him and threw his body over a fence into a neighbour’s property. After she was convicted of second degree murder in a mistrial, at her second trial she was given 100 hours community service and convicted of improperly disposing of a body. While Katrina Effert’s actions could be those of a deranged mind, it is the reasoning of the Court which is relevant to the debate in Northern Ireland. The judge at the second trial concluded that since abortion in Canada was decriminalised and funded by the tax-payer, there was little difference between infanticide and late abortion.

The Groningan Protocols allow doctors to kill seriously disabled children after they are born. Since disabled children are routinely aborted then those the screening procedure fail to detect can be sedated and left to die.

Copenhagen Post 22-28 Jul 11 (vol 14,29) htpp://issuu.com/cphpost/docs/1429-newspaper/1 Accessed 3 December 2018