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2nd

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**For the attention of the United Nations Committee On The Elimination of
Discrimination Against Women.**

The Convention On The Elimination of Discrimination Against Women was signed by the United Kingdom of Great Britain and Northern Ireland in 1981 and was ratified in 1986. Ahead of the Committee's meeting with the United Kingdom on the 10th July, **fpa** is writing to ask if members of the Committee will explore the issue of the law on abortion and discrimination in the UK. We understand and appreciate that this letter arrives at the eleventh hour, and we are very grateful for your consideration of this issue.

fpa is the UK's leading sexual health charity. Our purpose is to enable people from the UK to make informed choices about sexual health and to enjoy sexual health. We are a member of the International Planned Parenthood Federation, and were formed in 1930. We deliver services and promote good sexual health in England, Northern Ireland, Scotland and Wales.

Ultimately, the aim of this letter is to brief the Committee on the discrimination and inequality suffered by women in Northern Ireland, who do not have the same access to legal, safe, and state-provided abortion as their compatriots in the rest of the UK. We hope that the Committee will again take up the issue and explore it in greater detail when discussing the strength of the UK's compliance with their treaty obligations.

In the sixth periodic report of the UK Government to CEDAW, reference is drawn to the considerable amount of investment to improve early access to abortion services in the UK. However, there has been no progress on providing women in

Northern Ireland with access to this aspect of reproductive health since the CEDAW committee last met with the UK Government in 1999. The recommendations made by the Committee in 1999 to UK government relating to abortion in Northern Ireland have not been implemented. As yet, the UK government has not initiated the process of public consultation in Northern Ireland on reform of abortion, as recommended.

Background

In the UK in 1967, abortion was legalised under a defined set of circumstances. Amended by the Human Fertilisation and Embryology Act 1990 abortion is permitted up to 24 weeks gestation for social reasons, and without a time limit for grounds of foetal abnormality. Abortion in England, Scotland and Wales also is state-funded and provided by the National Health Service, at no cost to women

Northern Ireland is part of the United Kingdom but in 1967 there was a parliament at Stormont in Northern Ireland, and at that stage the question of whether or not to legalise abortion in this jurisdiction was left to Stormont. However with the onset of the 'troubles' in Northern Ireland in the late 1960s the Northern Ireland parliament was dissolved and constitutional power was returned to Westminster in London.

Abortion is legal in Northern Ireland but only in a strictly defined set of circumstances. The grounding statute in Northern Ireland is the Offences Against the Person Act 1861 which contains in sections 58 and 59 the criminal offence of unlawfully procuring a miscarriage. Section 25 (1) of the Criminal Justice Act (Northern Ireland) 1945 also provides 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.' Official statistics reveal that around 60 to 70 abortions are performed each year.

The reality for Northern Ireland women is that those who choose to terminate a pregnancy have to travel to England or overseas with some 1,343 women travelling to England in 2007¹. Women from Northern Ireland usually have to find up to £2,000 to access an abortion in England, with having to pay for travel, accommodation and the abortion procedure itself privately. Women from Northern Ireland are not entitled to a free National Health Service abortion in England despite being UK citizens and paying the same fiscal taxes. The figure estimated by **fpa** in terms of numbers of women travelling to England since the 1967 Abortion Act made abortion legal in the rest of the UK, is as high as 80,000. These numbers clearly demonstrate that there is a demand for abortion services to be provided in Northern Ireland.

¹ Department of Health abortion statistics 2007 (published 19th June 2008).

Concerned by inconsistencies in the interpretation of the law in May 2001 **fpa** applied to the High Court in Belfast for judicial review of the failure of the (then devolved) government department responsible for the provision of health care to provide adequate information on, and access to, legal abortion services within Northern Ireland. **fpa's** case was an attempt to force the court to clarify when abortions are legal under Northern Irish law. A year and a half after the case was heard Lord Justice Kerr dismissed **fpa's** application for judicial review. He asserted that there was no lack of clarity in the law but rather that the law itself was difficult to apply. As such, the Court found that guidance issued by the Department of Health, Social Services and Public Safety (DHSSPS) would not change the difficult aspects of the law. This task, it was suggested was for the legislative process, either in amending the law or passing new law. The High Court did however further restrict the meaning of "physical and mental health". The judgment set out principles for legal abortion and asserted that these should be referenced in the future in deciding when abortion is permissible. Lord Justice Kerr distilled the law into the following principles:

- Operations in Northern Ireland for the termination of pregnancies are **unlawful unless performed in good faith for the purpose of preserving the life of the mother**;
- The 'life' of the mother in this context has been interpreted by the courts as including her physical and mental health;
- A termination will therefore **be lawful where the continuance of the pregnancy threatens the life of the mother, or would adversely affect her mental or physical health**;
- The adverse effect on her mental or physical health must be a '**real and serious**' one, and must also be '**permanent or long term**';
- In most cases the risk of the adverse effect occurring would need to be a probability, but a possibility might be regarded as sufficient if the imminent death of the mother was the potentially adverse effect;
- It will **always be a question of fact and degree** whether the perceived effect of non-termination is sufficiently grave to warrant terminating the pregnancy in a particular case.²

(emphasis added)

In October 2004, **fpa** succeeded on appeal in getting a declaration that the DHSSPS had failed in its duties. In the Northern Irish Court of Appeal all three judges found the DHSSPS to be in breach of its duty under Article 4 of the Health and Personal Social Services (Northern Ireland) Order 1972. It was held that there was evidence of confusion among health care professionals as to the legal rules on abortion and that the DHSSPS had not done what it might reasonably be expected to do in investigating abortion practice.

² Family Planning Association of Northern Ireland, Re an application for Judicial Review. [2003] NIQB 48, (07 July 2003), at para 37.

DHSSPS subsequently issued draft guidance on termination of pregnancies in Northern Ireland in January 2007 as an attempt to clarify the law on abortion in Northern Ireland.

Following the Good Friday Agreement in 1998 the Northern Ireland Assembly was established but was dissolved again in 2002 but restored again in 2006. On 22 October 2007 The Assembly debated the content of the proposed guidelines and voted to reject them. Strong emotive arguments were invoked by politicians as to why the guidelines should not be instigated, constructed in terms of 'preserving foetal life' without any recognition that the denial of women's agency and choice is as just as much a moral issue. New reviewed guidance is due to be published in October 2008.

The need for action

Now, under devolved government, Northern Ireland has the opportunity to define itself anew. However, on matters concerning abortion, Northern Ireland retains a particular and peculiar legal position. While the last 30 years have seen a global trend toward liberalisation of national abortion laws, Northern Ireland has not taken the opportunity to lift the restrictions on abortion and afford women better reproductive choice. It is an urgent priority to strive for a future in Northern Ireland where women have the right to a safe and legal abortion, and that this right is not unduly restricted. It really is of utmost importance that the law surrounding abortion in Northern Ireland continues to be scrutinised and the best of efforts are made to promote better reproductive rights for women in Northern Ireland. It is important that emotive and moral arguments cloaked in terms of preservation of foetal life can no longer be stronger forces than law or human rights in Northern Ireland.

We believe as an organisation that the lack of provision of abortion to women in Northern Ireland is discriminatory and are currently campaigning with other pro-choice organisations in an effort to see the 1967 Abortion Act extended to Northern Ireland. For many Northern Irish women, travelling for and paying for a private abortion is likely to be beyond their means, and these women are not afforded choice and are ultimately forced into carrying an unwanted pregnancy to full term. Restricting abortion has the effect of denying women access to a procedure that may be necessary for their full enjoyment of their right to health. Only women live with the physical and emotional consequences of an unwanted pregnancy. The denial of safe abortion services constitutes sex discrimination. In conditions of therapeutic need, men are not exposed to the legal denial of, and criminal punishment for resorting to safe medical services, while women often face legal and practical obstacles in seeking a therapeutic abortion. Denying women access to medical services that enable them to regulate their fertility and make their own private decisions on matters concerning their body amounts to a refusal to provide health care that only women need. Consequently, women are exposed to health risks that are not experienced by men. The rights of the woman can no longer remain invisible in the context of abortion.

fpa counsels approximately half of all Northern Irish women who travel to England for an abortion each year. Each woman's set of circumstances are different, and the **fpa** are approached by many women who find themselves in desperate situations. The **fpa** have received calls from women who have gone to illegal abortionists, or attempted to buy abortion medication from rogue internet sites; with the potential of having severe health implications for the women concerned. Furthermore, since Northern Ireland was excluded from the 1967 Abortion Act, there have been at least five **known** deaths due to unsafe abortion practices.

Under CEDAW, which the UK government has signed and ratified, the UK government are failing to meet their treaty obligations in providing under article 12.1 to take 'all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.' Furthermore under Article 16.1(e), the UK Government have not taken appropriate steps to meet their obligations to ensure on a basis of equality of men and women – the same rights to decide freely and responsibly on the number and spacing of their children.

In short, the current legal position in Northern Ireland criminalises and discriminates against women on the basis of where they live. A woman from Newcastle, County Down in Northern Ireland cannot receive an abortion whereas a woman from Newcastle upon Tyne across the water in England can. It is also an equality issue, in that women should be afforded the same reproductive rights and choice that is available in the rest of the UK.

In summary there are a number of concerns:

1. **Access to abortion in Northern Ireland is still unduly restricted.**
2. Some 1,343 travelled to England last year to access a safe and legal abortion. Because of the logistical difficulties and expense involved in making this journey, **women from Northern Ireland tend to obtain abortions later in pregnancy.**
3. **Women want to have the opportunity to access an abortion in Northern Ireland**, but are arbitrarily prevented from doing so. Research carried out by Marie Stopes International found that women who travelled from Northern Ireland to the UK to access an abortion would have preferred to have been able to have accessed the service in Northern Ireland.³
4. **Women generally do not receive advice or guidance from Northern Irish clinicians** about the abortion procedure either before or after the abortion procedure, nor do they receive any aftercare.
5. The existing legal position in Northern Ireland carries with it the social demand that women should keep the fact that they had an abortion a

³ "The Other Irish Journey: A survey update of Northern Irish women attending British abortion clinics, 2000/2001. Ann Rossiter and Mary Sexton. Voice for Choice/Marie Stopes International.

secret, or at the very least, that they should be extremely cautious about whom they tell. **Women should be able to talk more openly about abortion** in Northern Ireland, without such a social stigma attached. Changing the legal position on abortion would enable women to do this.

In a 21st working century, and the year 2008, it is unacceptable that Northern Irish women are at the peril of an outdated, arbitrary and restrictive law on abortion. Northern Irish women are denied the same rights that are available to those throughout the rest of the UK, and their lives continue to be regarded as insignificant as and less important than those of their fellow nationals. Women in Northern Ireland should be able to access freely abortion free of charge within Northern Irish shores. The current legal position prevents Northern Irish women from doing so. The UK Government can no longer ignore the human rights implications for women in Northern Ireland by the restriction of the abortion law here. It really is of the utmost importance that the law surrounding abortion in Northern Ireland is scrutinised very closely and efforts are made to promote better reproductive rights for women in Northern Ireland.

The existing legal position in Northern Ireland as it stands at the minute is outdated and ambiguous, and its application is uncertain, inconsistent and violates the standards of international human rights law. Thus, **fpa** calls on the Committee to take all these factors into consideration when evaluating the UK's compliance with the Convention On The Elimination of Discrimination Against Women. The UK has ratified the Convention, and is therefore legally bound to put all its provisions into practice. We sincerely request that the Committee remind the UK of its Treaty obligations and that the failure to provide women in Northern Ireland access to a safe and legal abortion within Northern Irish shores, is in violation of their Treaty obligations, and that it is violating women's human rights. It would be very much appreciated, and we would be very grateful, if the Committee could facilitate this request.

Yours sincerely,

Dr Audrey Simpson
Director fpa in Northern Ireland