

CAJ's submission no. S.439

**Submission to the Department of Justice in response to
their consultation on the
Criminal Law on Abortion: Lethal Foetal Abnormality and
Sexual Crime**

December 2014

The Committee on the Administration of Justice (CAJ) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

In July 2013 CAJ responded to the Department of Health, Social Services and Public Safety (DHSSPS) consultation '*Guidance on the Termination of Pregnancy: The Law and Clinical Practice in Northern Ireland.*' In this response we reiterated it is now well established that there is a requirement of legal certainty in relation to abortion law and policy in Northern Ireland. This has been established under human rights law in relation to Article 8 of the European Convention on Human Rights (ECHR) again made clear in the European Court of Human Rights judgement in *ABC v Ireland* in 2010. In this submission we raised concerns that the proposed DHSSPS guidance had been drafted in a way which made the document *less* likely to meet the requirements of legal certainty and more likely to be susceptible to litigation. We note that insofar as clear guidance has still not been progressed, the DHSSPS continues to remain in breach of these requirements.

CAJ welcomes the Department of Justice (DoJ) '*consultation on the criminal law on abortion, lethal foetal abnormality and sexual crime*', issued for consultation until January 2015. The DoJ proposes legislation to enable abortion in the cases of fatal foetal abnormality and pregnancy as a result of rape or incest (sexual crime). CAJ supports these proposals. In taking this position we wish to draw attention to the following human rights jurisprudence.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly in 1979 and is widely regarded as an international Women's Bill of Rights. In the 2008 Concluding Observations on the UK the UN Committee which oversees UK compliance with the UN Convention for the Elimination of all forms of Discrimination against Women (CEDAW) raised concerns about the detrimental consequences for women's health in relation to the situation of abortion law in Northern Ireland.¹

In the CEDAW concluding observations of 2013 the Committee expressed regret:

“That a public consultation regarding the possible abolition of criminal abortion laws, as called upon by the Committee in its previous concluding observations (A/63/38, paras. 288 and 289), has not been undertaken, and it is concerned that abortion continues to be illegal in Northern Ireland in all cases except

¹ [CEDAW UN Doc A/63/38, page 142, para 288.](#)

where continuance of the pregnancy threatens the life of the mother, thus making it necessary for women to seek abortion in other parts of the State party.”²

General recommendation 24 by the CEDAW Committee urges that wherever possible legislation criminalizing abortion be amended to remove punitive provisions imposed on women who undergo abortion. The CEDAW Committee in its 2013 concluding observations then went on to hold that:

‘The State party should also ensure that legal abortion not only covers cases of threats to the life of a pregnant woman, but also other circumstances such as threats to her health and in cases of rape, incest and serious malformation of the foetus. The CEDAW Committee has invited the UK to report on developments with respect to this recommendation by July 2014.’³

This echoes the views of another key UN human rights treaty compliance body which oversees the UN International Covenant on Economic Social and Cultural Rights (ICESCR). In 2009 the ICESCR Committee called upon the UK to amend the abortion law in Northern Ireland and made specific reference to these three areas:

‘The Committee calls upon the State party to amend the abortion law of Northern Ireland to bring it in line with the 1967 Abortion Act with a view to preventing clandestine and unsafe abortions in cases of rape, incest or foetal abnormality.’⁴

Similarly when the UK was reviewed in 2012 under the 13th session of the Universal Periodic Review (UPR) led to working group report recommendation that the state party should:

‘Ensure by legislative and other measures that women in Northern Ireland are entitled to safe and legal abortion on equal basis with women living in other parts of the United Kingdom.’⁵

The consultation document also makes reference to the position of the Northern Ireland Human Rights Commission (NIHRC), who have held that in light of ECHR jurisprudence and other international standards the law in Northern Ireland is potentially unlawful. The NIHRC has therefore advised the DoJ that legislation must be introduced to provide for terminations on grounds of rape, sexual abuse (incest) and in cases of serious malformation of the foetus.

² [Full list of Concluding Observations](#), paragraph 50

³ [Concluding Observations on UK CEDAW](#), paragraph 51

⁴ [Concluding Observations of CESCR, 2009](#) paragraph 25

⁵ [Para 110.77, page 99](#)

In relation to the position of the international human rights movement, CAJ is a member of the International Federation of Human Rights (FIDH), an umbrella group of 178 human rights organisations around the world. The FIDH recently released a statement for the *International Day for the Elimination of Violence against Women* (24 November) on the subject of abortion law. The FIDH statement drew attention to there being four countries where abortion is completely prohibited and four other countries (including Ireland) where it is only permitted when the woman's life is in danger. The FIDH notes abortion was prohibited in Poland in 1997, except in cases of rape, incest and foetal abnormality, and that there was a similar attempt in Spain to legislate to this end. FIDH urged the Spanish parliament to reject the Bill and FIDH go on to state that the bill was defeated following "massive protests by defenders of women's rights" and described such laws as violating "women's rights to health and to life by restricting or eliminating their right to control their own bodies."⁶

CAJ draws attention to the above human rights jurisprudence and urges that the changes in the law are progressed to support women who need to attain safe and legal abortion in the instances of fatal foetal abnormality and sexual crime.

⁶ FIDH statement "The prohibition on abortion constitutes violence against women" available [here](#)