

# **LIBERTY**

## **LIBERTY'S SUBMISSION TO THE WOMEN AND EQUALITIES COMMITTEE INQUIRY ON ABORTION LAW IN NORTHERN IRELAND**

**DECEMBER 2018**

## **ABOUT LIBERTY**

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at [libertyhumanrights.org.uk/policy](https://libertyhumanrights.org.uk/policy)

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## **INTRODUCTION**

1. Liberty welcomes the opportunity to respond to the Women and Equalities Committee's inquiry into abortion law in Northern Ireland. This inquiry's terms of reference include: (1) ascertaining the views of the general public, women, and medical and legal professionals in Northern Ireland about the current legal framework and whether it should be reformed, (2) the experiences of women in Northern Ireland who have been affected by the law on abortion, and (3) understanding the responsibilities of the UK Government under its international obligations for taking action to reform abortion law in Northern Ireland and how this should be reconciled with the UK's devolution settlement.
2. This submission will focus on the third question posed by the Committee, namely the UK Government's international obligations and reconciliation with the UK's devolution settlement. Our response will address four main points as part of this:
  - (1) why access to abortion is undoubtedly a human rights issue;
  - (2) on this basis, why abortion is not a devolved matter;
  - (3) how the current legal framework governing abortion law in Northern Ireland violates the human rights of pregnant people;
  - (4) the UK Government's international human rights obligations to legislate.

## **SUMMARY OF RECOMMENDATIONS**

- Liberty recommends that the UK Government takes heed of its international obligations under the Convention for the Elimination of Discrimination Against Women (the CEDAW Convention) and the General Recommendations made by the Committee for the Elimination of Discrimination Against Women (CEDAW) in relation to abortion law in Northern Ireland. Liberty particularly supports the recommendations made in CEDAW's report of February 2018.
- Liberty recommends that the UK Government complies with its international obligations under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.
- Liberty recommends that the UK Government takes note of case law in the European Court of Human Rights that finds abortion is a human rights issue, and that legislation on abortion must comply with Convention rights – which are conferred into domestic law by the Human Rights Act 1998.

- Liberty recommends that the UK Government adheres to recommendations made by the Council of Europe and the UN to decriminalise abortion and guarantee pregnant people the right of access to safe and legal abortions.
- Liberty recommends that the UK Government should give due consideration to the robust comments made by a number of UK Supreme Court justices in the Northern Ireland Human Rights Commission case of June 2018, which indicated that abortion law in Northern Ireland breaches fundamental human rights and is subsequently in need of reform.
- Liberty asks the UK Government to note its mandate to legislate on abortion law in Northern Ireland, considering human rights are not a devolved matter on the face of the 1998 Northern Ireland Act (the basis for the UK's devolution settlement).
- Liberty urges the UK Government to decriminalise abortion in Northern Ireland in light of the serious human rights violations occurring under ss.58 and 59 of the 1861 Offences Against the Person Act.

## **ABORTION IS A HUMAN RIGHTS ISSUE**

3. Abortion is the right of a pregnant person – the majority of whom are women – to decide whether and when to carry a foetus to term. International human rights bodies – including the UN - have therefore characterised laws proscribing abortion with criminal sanction as discriminatory and a barrier to women's access to health care.<sup>1</sup> By restricting access to safe abortions, states risk violating women's rights under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>2</sup> – of which the UK is a State party.
4. The right to abortion also underpins basic human liberty, dignity and autonomy, irrespective of a person's gender. In certain circumstances, denial of abortion services interferes with – and may even breach – the right to a private life under Article 8 of the European Convention on Human Rights (ECHR). Further, where a lack of access to an abortion results in severe harm to a pregnant person, this also threatens the right to be free from inhuman and degrading treatment (Article 3, ECHR), or in exceptional cases, the right to life (Article 2, ECHR). This has been reaffirmed by the European Court of Human Rights (ECtHR) which has found that Member States are under a positive obligation to create a procedural framework that enables a pregnant person to exercise their right of access to a lawful abortion (*Tysiac v Poland*<sup>3</sup> and *R.R. v Poland*<sup>4</sup>), particularly in consideration of Article 8 ECHR. In *A, B and C v Ireland*, it was

<sup>1</sup> United Nations Human Rights Office of the High Commissioner, '[Abortion](#)', from '[Information series on Sexual and Reproductive Health and Rights](#)', OHCHR.

<sup>2</sup> Article 12, [the International Covenant on Economic, Social and Cultural Rights](#), United Nations General Assembly, 16 December 1966 - "*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest standard of physical and mental health.*"

<sup>3</sup> *Tysiac v Poland* [2007] ECHR 219

<sup>4</sup> *R.R. v Poland* [2011] ECHR 828

stated that the legislative framework governing abortion should be, “*shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention [ECHR]*”.<sup>5</sup> In relation to Article 3 ECHR, CEDAW highlighted in its General Recommendation 35 on gender-based violence that, “*Violations of women’s sexual and reproductive health and rights, such as ... denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment*”.<sup>6</sup>

5. Considering this clear legal framework, many international bodies have argued that the criminalisation of abortion threatens fundamental human rights. For instance, the 2008 Parliamentary Assembly of the Council of Europe invited Member States to (1) decriminalise abortion with reasonable gestational limits, (2) guarantee women’s effective exercise of their right of access to a safe and legal abortion, (3) allow women freedom of choice and offer the conditions for a free and enlightened choice, and (4) lift restrictions which hinder, *de jure* or *de facto*, access to safe abortions.<sup>7</sup> In April 2016, the Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health also recommended that Governments should decriminalise abortion.<sup>8</sup> Further, in the case of *L.C. v Peru*, CEDAW recommended that the state party, “*review its legislation with a view to decriminalizing abortion when the pregnancy results from rape or sexual abuse*”.<sup>9</sup> More recently, the UN Working Group on discrimination against women in law and in practice released a statement, outlining that “*States across the world should act now to decriminalise abortion and make every effort to ensure women and girls have the right to take their own decisions about pregnancy...*” and “*Issues around access to safe, legal abortion are at the very core of a woman’s fundamental right to equality, privacy and physical and mental health and these are preconditions for the enjoyment of other rights and freedoms*”.<sup>10</sup> It is clear that the real risk of human rights violations - resulting from the criminalisation of abortion in countries across the world - has led to many calls for change from legal bodies on the international stage.
6. This international framework has subsequently underpinned both attempted and successful reform of abortion legislation in other jurisdictions. One of these actions no doubt includes the referendum in the Republic of Ireland, which took place in May 2018. The country voted overwhelmingly in favour of overturning the ban on abortion in the Republic (by 66.4 per cent

<sup>5</sup> *A. B. and C v Ireland* [2010] ECHR 2032

<sup>6</sup> CEDAW, ‘[General Recommendation 35 on gender-based violence against women, updating general recommendation 19](#)’, 24 July 2017.

<sup>7</sup> Parliamentary Assembly of the Council of Europe, ‘[Access to safe and legal abortion in Europe](#)’, Resolution 1607, 16 April 2008.

<sup>8</sup> [Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health](#), 32rd Regular Session, April 2016.

<sup>9</sup> *L.C v Peru*, Communication No.22/2009, CEDAW/C/50/D/22/2009, p.20.

<sup>10</sup> The Working Group on the issue of discrimination against women in law and practice, ‘[States must act now to allow safe, legal abortions for women and girls, say UN rights experts](#)’, Geneva, 27 September 2018.

to 33.6 per cent).<sup>11</sup> The campaign to repeal the eighth amendment of Ireland’s constitution highlighted the human rights implications of this restrictive law. This was particularly pertinent following two complaints made to the UN Human Rights Committee by (1) Amanda Mellet in 2016<sup>12</sup> and (2) Siobhan Whelan in 2017<sup>13</sup>. The Committee found that by not providing these women with access to abortion, Ireland was in breach of the prohibition of torture, inhuman or degrading treatment and the right to privacy, as well as the right to non-discrimination.<sup>14</sup> The Committee recommended that Ireland should amend its law on abortion to be compliant with its international human rights obligations. The positive result of this referendum therefore signalled a clear victory for human rights, and created the impetus for other countries to follow suit. Similar calls for reform have subsequently been made over the course of this year in New Zealand<sup>15</sup>, Brazil<sup>16</sup> and Argentina<sup>17</sup>.

7. It is therefore undoubtable that abortion is a human rights issue under both international and domestic law. Lack of access to abortion services, whether the consequence of legislative or other means, poses a threat to a number of fundamental rights and freedoms. Many jurisdictions with obstructive abortion laws have begun to take steps towards change, to ensure compliance with international human rights standards. To equally guarantee the UK’s compliance with our international and domestic human rights obligations, Liberty believes that abortion law in Northern Ireland is in need of urgent reform.

## **ABORTION IS NOT A DEVOLVED MATTER**

8. The devolved institutions in Northern Ireland are governed by the Northern Ireland Act 1998. The settlement gives legislative control to the Northern Ireland Assembly for “transferred matters”, which are mainly in the realm of economic and social issues. Under Schedule 2 of the 1998 Northern Ireland Act, matters of national importance will usually remain the responsibility of the UK Government and are known as “excepted matters”, for which the Northern Ireland

<sup>11</sup> BBC News, [‘Irish abortion referendum: Ireland overturns abortion ban’](#), 26 May 2018.

<sup>12</sup> UN Human Rights Committee, [‘Views adopted by the Committee under article 5\(4\) of the Optional Protocol, concerning communication No. 2324/2013’](#), UN International Covenant on Civil and Political Rights, 9 June 2016.

<sup>13</sup> UN Human Rights Committee, [‘Views adopted by the Committee under article 5\(4\) of the Optional Protocol, concerning communication No. 2425/2014’](#), UN International Covenant on Civil and Political Rights, 12 June 2017.

<sup>14</sup> *Ibid.*

<sup>15</sup> In October 2018, an abortion rights advocacy group in New Zealand issued a discrimination complaint to the country’s Law Commission, arguing that New Zealand’s restrictive abortion laws breach pregnant people’s human rights. See: Eleanor Ainge Roy, [‘New Zealand’s ‘degrading’ abortion ban breaches human rights, say activists’](#), The Guardian, 8 October 2018.

<sup>16</sup> In Brazil, Human Rights Watch submitted an *amicus curiae* submission to the country’s Supreme Court, arguing that key international human rights are at risk when abortion is criminalised. These included the rights to life, health, privacy, information, non-discrimination and equality, not to be subjected to cruel inhuman and degrading treatment, and to decide the number and spacing of children. See: Human Rights Watch, [‘Amicus Curiae Submission: Decriminalisation of Abortion in Brazil up to 12 weeks’](#), 25 April 2017.

<sup>17</sup> In August 2018 in Argentina, the House of Representatives was forced to consider a legislative proposal to decriminalise abortion during the first 14 weeks of pregnancy, and to allow terminations after that period in cases of rape, risk of life or health, or severe foetal conditions. Although it passed through the lower house, the Senate rejected this Bill owing to pressure from religious groups. However, it is clear that the human rights arguments for decriminalisation played a significant role in prompting reform, and advocacy groups in the country will continue to vie for change. See: Amnesty International, [‘Argentina: First step to decriminalize abortion is historic for human rights’](#), 13 June 2018, and Daniel Politi and Ernesto Londono, [‘They lost Argentina’s abortion vote, but advocates started a movement’](#), The New York Times, 9 August 2018.

Assembly does not have the authority to legislate on. Under these “excepted matters” in Schedule 2, s. 3(c) includes, “*observing and implementing international obligations, obligations under the Human Rights Convention and obligations under EU law.*”<sup>18</sup> As outlined in this submission, the reform of abortion law in Northern Ireland is an issue which involves implementing the UK’s international obligations as well as the European Convention on Human Rights. Therefore, abortion law is clearly a matter for the UK Government and not a devolved matter on the face of the devolution settlement.

9. Further, even if it could be argued that abortion in Northern Ireland should be a “transferred matter” - devolution is based on the existence of Northern Ireland Ministers being in place. However, the Assembly has been dissolved since January 2017. This further cements the need for the UK Government to legislate, in light of the seriousness of the human rights violations occurring in Northern Ireland, as a consequence of its restrictive legislative framework.

## **ABORTION LAW IN NORTHERN IRELAND VIOLATES HUMAN RIGHTS**

10. Unlike other parts of the UK, abortion law in Northern Ireland is still governed by ss.58 and 59 of the Offences Against the Person Act 1861 (the 1861 Act). This law criminalises the termination of a pregnancy unless there is serious danger to the pregnant person’s life. Breaking this law is punishable by incarceration – for which the maximum penalty is life in prison. This even applies to those who have had abortions following rape, incest or due to fatal foetal abnormalities.
11. The 1861 Act in Northern Ireland criminalises any person who, with intent, procures an abortion, or who knowingly aids someone to induce an abortion – whether or not the person is actually pregnant.<sup>19</sup> The maximum sentence of life in prison is both unjust and disproportionate – particularly considering that any person convicted of this offence after terminating a pregnancy following rape would likely face a longer prison sentence than their attacker.
12. CEDAW found in February 2018 that the UK violates the rights of women by unduly restricting their access to abortion in Northern Ireland.<sup>20</sup> The Committee’s report highlighted that thousands of women and girls in Northern Ireland continue to be “*subjected to grave and systematic violations of rights*”, as they have to either travel outside of Northern Ireland to obtain a legal abortion, or carry their pregnancy to term. The Vice-Chair of CEDAW – Ruth Halperin-Kaddari – further stated that, “*The situation in Northern Ireland constitutes violence against women that may amount to torture or cruel, inhuman or degrading treatment*”.<sup>21</sup> In cases of pregnancies where there is a fatal foetal abnormality, or where the pregnancy

<sup>18</sup> Schedule 2, s. 3(c), [Northern Ireland Act 1998](#), 1998 Chapter 47, 19 November 1998.

<sup>19</sup> See ss.58 and 59 OAPA Act 1861.

<sup>20</sup> Committee on the Elimination of Discrimination against Women, ‘[Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#)’, CEDAW/C/OP.8/GBR/1, 23 February 2018.

<sup>21</sup> OHCHR, ‘[UK violates women’s rights in Northern Ireland by unduly restricting access to abortion – UN experts](#)’, Geneva, 23 February 2018.



resulted from rape or incest, CEDAW noted that the extreme mental anguish of having to carry a foetus to term in such a situation amounted to unjustifiable State-sanctioned violence.<sup>22</sup> The Committee's recommendations include: (1) changing the law in Northern Ireland to stop criminal charges being brought against pregnant people who have abortions and anyone who assists them, and (2) making abortion legal in cases of rape, incest and fatal foetal abnormalities.<sup>23</sup> **Liberty supports these recommendations.**

13. In June 2018, the Northern Ireland Human Rights Commission (NIHRC) received judgment in the UK Supreme Court for an appeal challenging the legality of ss.58 and 59 of the 1861 Act. Although the court dismissed the appeal on the basis that the NIHRC did not have legal standing to bring this challenge, robust comments from the court on the incompatibility of the 1861 Act with human rights law cannot be ignored. There was a majority view, delivered by Lord Kerr that the legislation infringes upon the right to respect for private and family life (Article 8 ECHR) and Lord Kerr and Lord Wilson would have held that the 1861 Act is also incompatible with the right not to be subjected to inhuman or degrading treatment (Article 3 ECHR).<sup>24</sup> Lord Kerr concluded that although no declarations were made, the court's view on the human rights arguments *must* be considered by those who have the power to make this decision.<sup>25</sup> Simply put, as one commentator describes *"the seven judges have given a strong nod that reform is needed"*.<sup>26</sup> **Liberty recommends that the UK Government should give due consideration to the comments made by the Supreme Court justices, and legislate for the reform of abortion law in Northern Ireland.**

## THE UK GOVERNMENT'S INTERNATIONAL OBLIGATIONS

14. As the 1861 Act is an Act of Parliament, the decision to repeal sections of that Act - resulting in the decriminalisation of abortion - is a human rights issue and therefore a matter that the UK Government has the authority to act upon. This is owing to the UK's legal obligations under a number of UN treaties and international instruments.
15. First, the UK Government can legislate on this issue as a result of its international obligations under CEDAW. In its 2018 report, the Committee called on the UK Government to decriminalise abortion in Northern Ireland.<sup>27</sup> It outlines that under the international law of State responsibility,

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<sup>22</sup> Committee on the Elimination of Discrimination against Women, '[Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#)', CEDAW/C/OP.8/GBR/1, 23 February 2018.

<sup>23</sup> Ibid.

<sup>24</sup> [In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review \(Northern Ireland\) \[2018\] UKSC 27.](#)

<sup>25</sup> Ibid.

<sup>26</sup> Marie-Louise Connolly, '[Supreme Court rejects NI abortion law case](#)', BBC News, 7 June 2018.

<sup>27</sup> Committee on the Elimination of Discrimination against Women, '[Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#)', CEDAW C/OP.8/GBR/1, 23 February 2018, p.12.



*“all acts of State organs are attributable to the State”*.<sup>28</sup> The devolution arrangement therefore means that the powers of ‘State organs’<sup>29</sup> – i.e. devolved institutions such as the Northern Ireland Assembly - ultimately reside in the UK Government.<sup>30</sup> The Committee also cites Article 27 of the Vienna Convention on the Law of Treaties, which provides that a party to a treaty may not invoke the provisions of its internal law as a justification for its failure to perform it.<sup>31</sup> This means that the UK Government cannot use devolved legislative agreements with Northern Ireland (namely the Belfast Agreement and subsequent Northern Ireland Act 1998) to justify inaction on abortion laws, which violate the CEDAW Convention and the UK’s other international human rights obligations.

16. The UK Government’s obligations under the CEDAW Convention are numerous, and for clarity outlined in full below:

16.1. Article 12, read together with Article 16(1)(e), guarantee women the right to health – including sexual and reproductive health. This applies to enabling access to safe and legal abortion services, as well as the right to decide when to have children and how many to have.

16.2. Article 2(c), (d), (f) and (g) obligate the UK Government to legally protect the rights of women on an equal basis with men, to refrain from engaging in acts or practices that are discriminatory to women, and to enact legislation to modify or abolish existing laws (particularly penal laws) which are discriminatory to women. This provides a clear legal basis for the UK Government to repeal ss. 58 and 59 of the 1861 Act, in order to ensure the law in Northern Ireland is compliant with the CEDAW Convention.

16.3. Article 5, read together with Articles 12 and 16, requires the UK Government to eliminate gender stereotypes that impede equality in the health sector and negatively impact women’s capacity to make free and informed choices about their health care, sexuality and reproduction. Criminalisation of abortion clearly violates this provision, as it stigmatises women, and deprives them of their privacy, self-determination, bodily autonomy, and equality rights. The Committee’s General Recommendation No. 24 further highlights that laws which criminalise medical procedures only needed by women and that punish women who undergo those procedures are barriers to women’s access to health care. This clearly applies in the abortion context, as it is primarily women in Northern Ireland who seek such treatment.<sup>32</sup>

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<sup>28</sup> Ibid.

<sup>29</sup> This point is substantiated in the case of [Robinson v Secretary of State for Northern Ireland and Others \(Northern Ireland\)](#) [2002] UKLHL 32, by Lord Hobhouse who states at para 66: *“The [Northern Ireland] Assembly is entirely a creature of the Westminster statute. It is an organ of devolved government within a quasi-federal structure”*.

<sup>30</sup> Parliament UK, [‘Devolved Parliaments and Assemblies’](#), parliament.uk.

<sup>31</sup> Article 27, [Vienna Convention on the Law of Treaties](#), 23 May 1969.

<sup>32</sup> NB: this is not to erase the many Trans men, non-binary and gender non-conforming people in Northern Ireland who also seek abortions and are also calling for urgent reform to the law.

- 16.4. Article 12 and 16, read with Articles 2 and 5, have been interpreted by the Committee to require state parties – including the UK – to legalise abortion, at least in cases of rape, incest, threats to life and/or health of the pregnant person, or severe foetal impairment. This positive obligation includes providing access to healthcare services, and the provision of accessible, safe and legal abortions.
17. CEDAW’s 2018 report found that the UK is in violation of multiple Convention Articles and General Recommendations. Considering the UK Government’s legal obligation to comply with the Convention, and its authority to act on “excepted matters”, **Liberty believes the UK Government must urgently comply with its international obligations set out by CEDAW.**
18. Second, the UK ratified the International Covenant on Civil and Political Rights (ICCPR) in 1976 and is subsequently bound by its provisions. This legal instrument is one of the two treaties that give legal force to the Universal Declaration of Human Rights. There are a number of Articles in the Covenant which are breached by abortion law in Northern Ireland, namely:
- 18.1. Article 7 prohibits cruel, inhuman or degrading treatment – it is clear that the 1861 Act violates this provision from the numerous comments made by CEDAW, the UN Human Rights Committee and the NIHRC UK Supreme Court judgment (as outlined previously in this submission).<sup>33</sup>
- 18.2. Article 17 prohibits the arbitrary or unlawful interference with privacy and family life. The 1861 Act also violates this right, as has been made clear by the ECtHR judgments referenced above (considering the same principles and violations apply with respect to Article 8 ECHR).<sup>34</sup>
- 18.3. Article 3 provides that state parties must “*undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant*”.<sup>35</sup> As abortion law in Northern Ireland predominantly impacts women, it is clear that the 1861 Act has a discriminatory effect as women are barred from enjoying their other Covenant rights on an equal basis with men.
19. Third, the UK is signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR). This Covenant is the second international treaty that gives legal force to the Universal Declaration on Human Rights. The 1861 Act in Northern Ireland violates two main provisions set out in this treaty, namely:
- 19.1. Article 12, which provides for the right of everyone to enjoy the highest attainable standard of physical and mental health. This includes an obligation on state parties to take

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<sup>33</sup> Article 7, [International Covenant on Civil and Political Rights](#), General Assembly resolution 2200A (XXI), 23 March 1976.

<sup>34</sup> Article 17, *Ibid.*

<sup>35</sup> Article 3, *Ibid.*

steps to achieve the full realisation of this right. The 1861 Act in Northern Ireland acts as a barrier to pregnant people's access to healthcare when seeking abortion services. Therefore, there is a clear violation of this right – as has been articulated by a number of UN bodies (outlined previously in this submission).

19.2. Article 3, which ensures the equal right of men and women to enjoy all the economic, social and cultural rights set out in the Covenant. When read with Article 12, abortion law in Northern Ireland has a disproportionate impact on women's ability to attain the highest standard of health care when seeking a termination.

20. Liberty encourages the UK Government to legislate for abortion reform in Northern Ireland, in order to be compliant with its international obligations under the ICCPR and ICESCR.

21. It is also worth noting that on a domestic scale, judges and parliamentarians have prodded the UK Government to act, to ensure abortion law in Northern Ireland is compliant with human rights standards:

21.1. First, judicial commentary from the 2018 NIHR judgment outlined the need for reform of abortion law in Northern Ireland. Lord Mance stated that the 1861 Act is “*untenable*” and in need of “*radical reconsideration*”.<sup>36</sup> He also outlined that “*those responsible for ensuring the compatibility of Northern Ireland law with the Convention rights will no doubt recognise and take account of these conclusions, at as early a time as possible, by considering whether and how to amend the law, in the light of the ongoing suffering being caused by it...*”.<sup>37</sup> Therefore, the UK's highest court has signalled that the UK Government should act both expediently and decisively due to the seriousness of the human rights violations in Northern Ireland. To date, this has not yet happened.

21.2. Second, in October 2018 the Northern Ireland (Executive Formation and Exercise of Functions) Bill required the Secretary of State for Northern Ireland to provide guidance to Northern Ireland civil servants and senior officials on abortion, same-sex marriage law and wider human rights. The Bill passed through the House of Commons with a cross-party amendment that places an obligation on the UK Government to review Northern Irish abortion and same-sex marriage laws as a result of human rights rulings in absence of a Northern Ireland Assembly. This Bill received Royal Assent on 1 November. Therefore, under this Act, the UK Government has clear authority to act specifically on the issue of abortion. As s.4(1) of the Act stipulates: “*In the absence of Northern Ireland Ministers to address the matters identified by recent, current and future court proceedings in relation to the human rights of the people of Northern Ireland, the Secretary of State must issue*

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<sup>36</sup> [In the matter of a an application by the Northern Ireland Human Rights Commission for Judicial Review \(Northern Ireland\) \[2018\] UKSC 27](#) at para 135.

<sup>37</sup> Ibid.

*guidance to senior officers of all Northern Ireland departments which will specify how to exercise their functions in relation to – (a) the incompatibility of the human rights of the people of Northern Ireland with the continued enforcement of sections 58 and 59 of the Offences Against the Person Act 1861 with the Human Rights Act 1998...”.<sup>38</sup>* Coupled with the obligation on the Secretary of State to report guidance on a quarterly basis to the House of Commons, there is a marked impetus for the UK Government to take action and address the human rights violations occurring in Northern Ireland while the Northern Ireland Assembly is dissolved.

22. Subsequently, Liberty believes that the UK Government’s international human rights obligations are clear. The CEDAW Convention, ICCPR and ICESCR outline the fundamental rights and freedoms that all citizens residing in the UK should enjoy. These international instruments confer a legal duty on the UK to ensure domestic laws are not only compliant with these provisions, but that the government actually promotes these rights through its legislation and policy. Additionally considering the judicial pressure on the UK Government to act, it is evident that there is a basis in law for the UK Government to guarantee abortion laws across the country are compliant with human rights standards. Therefore, as abortion law in Northern Ireland currently breaches a number of fundamental rights, the mandate for the UK Government to legislate now could not be clearer.

## **CONCLUSION**

23. As this submission has indicated, the UK Government has an obligation to act under international and domestic law to decriminalise abortion in Northern Ireland. The current legal framework – governed by the outdated and unjust 1861 Act – continues to violate the human rights of thousands of people every year. The UK Government has the authority to debate and legislate for decriminalisation - as is made clear by international treaties, ECtHR jurisprudence, domestic legislation and case law. Further, the clear mandate to act on human rights matters set out in the UK’s devolution agreement, and the absence of a Northern Ireland Assembly, strengthen calls for parliamentarians in Westminster to address this matter with urgency. Liberty recommends that the UK Government fulfils its human rights obligations by legislating for the repeal of ss.58 and 59 of the 1861 Act in Northern Ireland, to protect and promote the rights of pregnant people across the country.

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<sup>38</sup> S.4(1), [Northern Ireland \(Executive Formation and Exercise of Functions\) Act 2018](#), 2018 Chapter 28, 1 November 2018.