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STATUS OF HUMAN RIGHTS IN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE 41ST SESSION OF THE UNIVERSAL PERIODIC REVIEW

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Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding human rights violations in the United Kingdom of Great Britain and Northern Ireland for the 41st Session of the Universal Periodic Review (UPR).

Background

2. The United Kingdom (UK) is a country located off the western coast of Europe and is made up of England, Scotland, Wales, and Northern Ireland[1]. The current population is estimated at 67 million people[2]. Most of the population is Christian, with approximately 59% identifying as Christian, 4% as Muslim, 1% as Hindu, 7% as unspecified, and 25% as none[3].

3. The UK's previous UPR was held on 4 May 2017[4]. As a result of the review, the UK received 228 recommendations, 96 of which it supported[5]. One recommendation, which the UK noted but did not support, was that the government "[e]nsure that the law governing access to abortion in Northern Ireland fully complies with international human rights law, by decriminalizing abortion and ensuring access to abortion in cases of severe fatal fetal anomalies and where the pregnancy is a result of rape or incest"[6]. There were no recommendations made regarding freedom of religion.

Legal Framework

4. In 1998, in order to "give further effect to the rights and freedoms guaranteed under the European Convention on Human Rights", the United Kingdom adopted the Human Rights Act of 1998. Under Article 2(1) of the Act, "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law"[7]. Article 3 states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment"[8].

5. Prior to 2019, abortion within the UK was regulated by three main laws. The first of these laws is the Offences Against the Persons Act of 1861, which applied to England, Wales, and Northern Ireland[9]. Under Articles 58 and 59 of this Act:

> **58. Administering drugs or using instruments to procure abortion.**
>
> Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with

> the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life[10].
>
> **59. Procuring drugs, &c. to cause abortion**
>
> Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any women, whether she be or be not with child, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be kept in penal servitude[11].

6. In 1929, the UK Parliament passed the Infant Life (Preservation) Act of 1929, which applied only to England and Wales[12]. Section 1 of this Act governs abortion:

> **Punishment for child destruction**
>
> (1) Subject as hereinafter in this subsection provided, any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, shall be guilty of felony, to wit, of child destruction, and shall be liable on conviction thereof on indictment to penal servitude for life:
>
> 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.
>
> (2) For the purposes of this Act, evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be primâ facie proof that she was at the time pregnant of a child capable of being born alive[13].

7. Then, in 1967, the Abortion Act was passed – applying only to Britain, Scotland, and Wales[14], to provide certain defenses to both the Act of 1861 and the Act of 1929[15]. The 1967 act modified, but did not alter or repeal, Sections 58 and 59 of the Act of 1861, nor did it alter or repeal the Act of 1929. Under Section 1 of the Abortion Act 1967:

> **Medical termination of pregnancy**
>
> (1) Subject to the provision of this section, 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 two registered medical practitioners are of the opinion, formed in good faith –
>
> (a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or

(b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

(c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or

(d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped[16].

8. In 2019, because the 1967 Act did not apply to Northern Ireland, Northern Ireland passed the Northern Ireland (Executive Formation) Act 2019 which repealed both sections 58 and 59 of the Act of 1861[17]. Then, in 2020, the government passed the Abortion (Northern Ireland) Regulations 2020, which, again, apply only to Northern Ireland[18].

9. Under Articles 3 and 4 of the Abortion (Northern Ireland) Regulations 2020:

Pregnancy not exceeding 12 weeks

3. A registered medical professional may terminate a pregnancy where a registered medical profession is of the opinion, formed in good faith, that the pregnancy has not exceeded its 12th week.

Risk to physical or mental health where pregnancy not exceeding 24 weeks

4. – (1) A registered medical professional may terminate a pregnancy where two registered medical professionals are of the opinion, formed in good faith, that –

(a) the pregnancy has not exceeded its 24th week; and

(b) the continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman which is greater than if the pregnancy were terminated.

(2) In forming an opinion as to the matter mentioned in paragraph (1)(b), account may be taken of the pregnant woman's actual or reasonably foreseeable circumstances[19].

10. In sum, abortion law varies within the UK, as different laws apply to England, Scotland, Wales, and Northern Ireland. Since its previous UPR, portions of the UK have taken steps to expand access to abortion and further strip away protections for the unborn, as is indicated by the passage of the Abortion (Northern Ireland) Regulations 2020. Moreover, despite the fact that in 2020, 209,917 abortions were committed in England and Wales alone – the most abortions to occur in one year since the Abortion Act was passed[20] – abortion advocates attempted to further expand abortion by proposing to allow abortions up to 28 weeks gestation, instead of the current limit of 24 weeks gestation. That attempt ultimately failed, but it is a perfect example of the continual attacks on the already weakened protections for the unborn in the UK.

11. The UK is a party to the European Convention on Human Rights (ECHR), Articles 2 and 8 of which state:

> Article 2
>
> 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law[21].
>
> Article 8
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others[22].

12. The UK is also a party to the Convention on the Rights of People with Disabilities (CRPD), Article 15 of which states:

> 1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
>
> 2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment[23].

13. Under Article 6 of the Convention on the Rights of the Child (CRC), to which the UK is a party:

> 1. States Parties recognize that every child has the inherent right to life.
>
> 2. States Parties shall ensure to the maximum extent possible the survival and development of the child[24].

14. Similarly, Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which the UK is also a party, states that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life"[25].

Eugenic Abortion

15. Within the UK, there is a rise in eugenic abortions. In particular, unborn babies identified as potentially having Down syndrome are being targeted for abortion. The law regarding abortion in England, Scotland, and Wales permits abortion up until the 24th week of pregnancy[26]. However, abortions are permitted up until birth if there is "a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped"[27]. This vague and broad definition has paved the way for abortion to be permitted in cases of genetic anomaly, such as Down syndrome[28].

16. The National Health Service (NHS) currently offers all pregnant women the option for prenatal screening for Down syndrome[29]. But, even the NHS admits that these tests are not completely accurate test stating that "[s]ome people will be told that they or their baby have a higher chance of having a health condition when in fact they do not have the condition"[30]. The purpose of these screenings should be to inform parents of what to expect when their child is born. The reality, however, is quite different. In fact, doctors treat the diagnosis like a death sentence. One mother, whose unborn baby was screened for Down syndrome, shared what hearing the news from her doctor was like: "The doctor said to us: 'I'm sorry, I'm so sorry.' The nurse on duty cried. I don't think anyone said anything at all positive . . . . It wouldn't have been any different if they'd told me my child wasn't going to make it"[31]. Her son, despite having Down syndrome, is now living a completely normal, healthy, and happy life. Unfortunately, many parents who are told that their unborn baby has Down syndrome do not choose life, and decide instead to abort their otherwise healthy baby. In 2020, 693 abortions were carried out on babies in the UK who were suspected of having Down syndrome[32].

17. In 2020, three individuals, one of whom had Down syndrome, filed a claim for judicial review alleging that the abortion law permitting abortions after 24 weeks if there is a "substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped" was both discriminatory towards individuals with Down syndrome as well as those with other disabilities and violated the ECHR[33]. After a two-day hearing, two senior judges dismissed the case because they found no incompatibility with the law[34]. The judges acknowledged "that there will be some families who positively wish to have a child, even knowing that it will be born with severe disabilities . . . . But the evidence is also clear that not every family will react in that way"[35]. One of the claimants, described how this ruling further stigmatises people with Down syndrome, "We face discrimination every day in schools, in the workplace and in society. Thanks to the verdict, the judges have upheld discrimination in the womb too"[36].

Conclusion

18. The fact of the matter is that abortion is not healthcare, it is the killing of an innocent life. It is an indisputable scientific fact that the human child in the womb is a living, distinct biological organism and belongs to the species *homo sapiens*. Thus, any justification of abortion fundamentally rests on the proposition that some members of the human race do not even have the most basic of human rights, the right to life.

19. The UK must take steps to protect the life of the unborn. To do this, it must reform its laws to restrict abortion which would protect the most vulnerable among us. The government must recognise the inherent dignity of the human person, from conception to death.

[1] *United Kingdom*, THE WORLD FACTBOOK (13 Jul. 2021), *available at* https://www.cia.gov/the-world-factbook/countries/united-kingdom/.
[2] *Id*.
[3] *Id*.
[4] *Universal Periodic Review – United Kingdom of Great Britain and Northern Ireland*, UNHRC, https://www.ohchr.org/EN/HRBodies/UPR/Pages/GBIndex.aspx.
[5] UPR of United Kingdom of Great Britain and Northern Ireland. UNHRC, https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/GB/MatriceRecommendationsUK.docx.
[6] *Id*. at A/HRC/36/9/Add.1 – Para 3.
[7] Human Rights Act of 1998, art. 2(1).
[8] *Id.*, art. 3.
[9] Offences Against the Person Act 1861: Geographical Extent, *available at* https://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/58?view=extent.
[10] Offences Against the Person Act 1861 sec. 58, https://www.legislation.gov.uk/ukpga/Vict/24-25/100/crossheading/attempts-to-procure-abortion.
[11] *Id*. at sec. 59.
[12] Infant Life (Preservation Act 1929: Geographical Extent, *available at* https://www.legislation.gov.uk/ukpga/Geo5/19-20/34/section/1.
[13] Infant Life (Preservation) Act 1929 sec. 1, https://www.legislation.gov.uk/ukpga/Geo5/19-20/34/section/1.
[14] Abortion Act 1967: Geographical Extent, *available at* https://www.legislation.gov.uk/ukpga/1967/87/section/1?view=extent.
[15] Meg Gibson, *A Comparison: Northern Ireland's Approach to Abortion Law Compared to England and Wales*, CAMBRIDGE UNIVERSITY, https://www.culs.org.uk/per-incuriam/a-comparison-northern-irelands-approach-to-abortion-law-compared-to-england-and-wales.
[16] Abortion Act 1967, sec. 1, https://www.legislation.gov.uk/ukpga/1967/87/section/1.
[17] Northern Ireland (Executive Formation etc) Act 2019, sec. 9, https://www.legislation.gov.uk/ukpga/2019/22/section/9.
[18] The Abortion (Northern Ireland) Regulations 2020, *available at* https://www.legislation.gov.uk/uksi/2020/345/part/2/chapter/1/made.
[19] *Id*.
[20] *Abortion Statistics*, England and Wales: 2020, DEP'T OF HEALTH & SOCIAL CARE (1 Oct. 2021), https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2020/abortion-statistics-england-and-wales-2020.
[21] European Convention on Human Rights, art. 2, https://www.echr.coe.int/documents/convention_eng.pdf.
[22] *Id*., art. 8.
[23] Convention on the Rights of Persons with Disabilities, art. 15, https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.
[24] Convention on the Rights of the Child, art. 6, https://www.ohchr.org/en/professionalinterest/pages/crc.aspx.
[25] International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 6 I.L.M. 368 (1976), 999 U.N.T.S. 171, art.6.
[26] Sylvia Hui, *Woman with Down Syndrome Loses UK Abortion Law Challenge*, AP (23 Sep. 2021), https://apnews.com/article/europe-health-laws-england-scotland-7d9b6fc9d4f5b0b325b4927c4c15cf2f.
[27] *Id.*
[28] *Id*.
[29] *Screening Tests in Pregnancy*, NHS, https://www.nhs.uk/pregnancy/your-pregnancy-care/screening-tests/.
[30] *Id*.
[31] Allison Gee, *A World Without Down's Syndrome*, BBC (29 Sep. 2016), https://www.bbc.com/news/magazine-37500189.
[32] *Press Release – 693 Abortions in 2020 Where Baby had Down's Syndrome – Number Likely to get Worse*, DON'T SCREEN US OUT (10 Jun. 2021), https://dontscreenusout.org/press-release-693-abortions-in-2020-where-baby-had-downs-syndrome-number-likely-to-get-worse/.
[33] Allison Gee, *supra* note 31.
[34] *Id*.
[35] *Id*.
[36] *Id*.