

Mukungu, Kate ORCID: <https://orcid.org/0000-0003-3403-8165> (2018)
Reforming abortion legislation in Northern Ireland; Threats, opportunities and political expediency. In: Socio Legal Studies Conference., 27th-29th March 2018, Bristol University, Bristol, England.. (Unpublished)

Downloaded from: <http://insight.cumbria.ac.uk/id/eprint/5376/>

Usage of any items from the University of Cumbria's institutional repository 'Insight' must conform to the following fair usage guidelines.

Any item and its associated metadata held in the University of Cumbria's institutional repository Insight (unless stated otherwise on the metadata record) may be copied, displayed or performed, and stored in line with the JISC fair dealing guidelines (available [here](#)) for educational and not-for-profit activities

provided that

- the authors, title and full bibliographic details of the item are cited clearly when any part of the work is referred to verbally or in the written form
 - a hyperlink/URL to the original Insight record of that item is included in any citations of the work
- the content is not changed in any way
- all files required for usage of the item are kept together with the main item file.

You may not

- sell any part of an item
- refer to any part of an item without citation
- amend any item or contextualise it in a way that will impugn the creator's reputation
- remove or alter the copyright statement on an item.

The full policy can be found [here](#).

Alternatively contact the University of Cumbria Repository Editor by emailing insight@cumbria.ac.uk.

Reforming abortion legislation in Northern Ireland; threats, opportunities and political expediency



Kate Mukungu
University of Cumbria

Current Situation

- ▶ Abortion is *mostly* illegal in Northern Ireland
- ▶ Exceptions are when the pregnancy has been deemed to threaten the life of the pregnant woman.
- ▶ Or, that the adverse effect on the woman's physical or mental health is both “real and serious” and “permanent or long-term”.

Current Situation

- ▶ Difficult to meet threshold and services are difficult to access. In 2015/16 there were 16 abortions carried out in NI
- ▶ Persistent harassment of women who attempt to use services and the service staff
- ▶ A Court of Appeal judgment in 2004 called for guidance on the law, which still does not exist.

How Did We Get Here?

- ▶ 1861 Offences Against the Person Act – makes ‘procuring a miscarriage’ or assisting a woman to do so punishable by up to life in prison.
- ▶ 1967 Abortion Act in Great Britain, not extended to Northern Ireland – neither Westminster nor Stormont has shown enough political will
- ▶ The Democratic Unionist Party (DUP) have sought to increase restrictions in recent years

Attempt To Extend Abortion Act to NI in 2008



Attempt To Extend Abortion Act to NI in 2008



The Details from 2008

- ▶ Attempts made by Emily Thornberry MP and Diane Abbott MP to amend the Human Fertilisation and Embryology Bill to extend abortion to NI
- ▶ Blocked by Prime Minister Gordon Brown and Harriet Harmon, Leader of the House of Commons
- ▶ Speculation that Labour had deal with DUP in return for supporting increasing detention without charge

Post Good Friday Agreement

- ▶ Healthcare matters were devolved to the Northern Ireland Assembly in 1999
- ▶ Criminal justice devolution was in 2010
- ▶ However, there has been no functioning Northern Ireland Assembly since 26th January 2017 (nor was there from October 2002 to May 2007)

Former NI Department of Justice (DoJ) Minister



Political Setbacks

- ▶ October 2014: David Ford MLA, launched a public consultation on whether to enable abortion in cases of fatal foetal abnormality (FFA) and rape
- ▶ April 2015: he announced he would seek to legislate for FFA only.
- ▶ February 2016: the NI Assembly voted against this - 59 votes to 40. He has since sought two private members' bills regarding FFA

Sarah Ewart, Sadly One of Many



Legal Challenge

- ▶ November 2013 the NI Human Right's Commission (NIHRC) advised DoJ that existing abortion law violated women and girls' rights re. FFA and rape
- ▶ In December 2014 (during the consultation) it launched legal proceedings against DoJ
- ▶ NIHRC argued that three European Convention of Human Rights articles were directly affected

Legal Challenge

- ▶ Article 3: freedom from torture / inhumane treatment
- ▶ Article 8: Right to private and family life
- ▶ Article 14: Rights without discrimination

A Legal Step Forward then Back

- ▶ In November 2015, the High Court in Belfast found in favour of NIHRC, re. Article 8
- ▶ However, the NI Court of Appeal overturned this decision on 29th June 2017
- ▶ A further appeal was heard by the UK Supreme Court over 3 days in October 2017 – await ruling

Another Legal Setback

- ▶ In 2012, a NI girl aged 15, accompanied by her mother, travelled to England for a privately funded abortion
- ▶ They legally challenged the lawfulness of the English Department of Health for denying the girl an NHS funded abortion
- ▶ The High Court of England ruled against the daughter and mother

Another Legal Setback

- ▶ It concluded that GB NHS regions weren't required to fund abortions for NI women,
- ▶ This was because the devolved power in NI (mainly) viewed this form of treatment as unlawful.
- ▶ Following appeal, on 14th June 2017, the UK Supreme Court upheld the High Court's decision

However, by 29th June 2017,
Westminster announced the English
NHS would waive abortion fees for
NI women

Orchestrating a Political U-Turn



The Political U-Turn

- ▶ Following poor general election results, the Conservative Party agreed a “supply and confidence” arrangement with the DUP
- ▶ Stella Creasy MP tabled an amendment to the Queen’s Speech to commit to fund NHS abortions in England for NI women
- ▶ Tory MPs showed enthusiastic support

Funding The U-Turn

- ▶ To save the “supply and confidence” deal, Philip Hammond, Chancellor of the Exchequer voiced commitment to fund NHS abortions
- ▶ This negated need to debate Queen’s Speech
- ▶ Amendment withdrawn, rebellion averted and concession to NI women granted – for now

Threats

- ▶ DUP holding the balance of power in Westminster – (except where fear of falling off the edge of a cliff can be used to gain concessions)
- ▶ As with marriage equality, NI at risk of being left behind rest of UK and Ireland, should the Irish people vote to repeal the 8th amendment in May
- ▶ Brexit and the loss of the European Convention of Human Rights

Opportunities

- ▶ New leader in Sinn Fein more pro choice than party.
Pro-choice MLA from the Green Party
- ▶ UN's Convention on the Elimination of Discrimination Against Women (CEDAW)
- ▶ Momentum regarding marriage equality – parallel bills entering Commons and Lords.

Opportunities

- ▶ The dysfunctionality of the Northern Ireland Assembly!
Now is time to put pressure on Westminster
- ▶ People in UK appear genuinely shocked at regressive nature of NI politics regarding gender justice – issue of abortion is gaining momentum
- ▶ Pro-choice activists engaged in genuinely collaborative activism e.g. Alliance for Choice

A4C Activists



Analysis

- ▶ Ethno-nationalism, the legacy of colonialism and internal conflict has a polarising effect. Please do not underestimate the scale of the challenge
- ▶ Legislative change needs political leadership. The consociational assembly will not reform abortion law
- ▶ Pro-choice women are left torn between local ownership of politics and bodily autonomy

Analysis

- ▶ Regardless of who is in power in Westminster, cross party intervention needed, as happened on 29th June
- ▶ Political expediency, is arguably both the biggest threat and opportunity to achieving abortion reform
- ▶ In complete support of the agency and activism of NI women, they need support in GB, Ireland and beyond

Civil Disobedience



Civil Disobedience in Action

- ▶ In May 2016 Diana King, Collette Devlin and Kitty O' Kane decided to use this tool to push for legislative reform and protest against prosecutions
- ▶ Their selflessness gives grounds for optimism amidst such adversity
- ▶ They inspire reflection on how far one is prepared to take activism. So?



ALLIANCE FOR CHOICE



cumbria.ac.uk

University of
Cumbria 

TEN
years
2007-2017