Name of petitioner
Richard Morris

Petition title
Adult Consensual Incest (ACI)

Petition summary
Calling on the Scottish Parliament to urge the Scottish Government to amend the law against incest so that it is not applicable in the cases where participants are both consenting adults over the age of 21. In addition, for those who have been convicted in such circumstances to have both the custodial and non-custodial elements of their sentences reviewed with a view to being quashed in light of any change to the law.

Action taken to resolve issues of concern before submitting the petition
Before I submitted this petition:
- I researched and almost finished writing a book about incest;
- I wrote to one man in Scotland convicted of incest with his daughter and to his lawyer and I started a world-wide petition on his behalf.(not this one);
- I wrote to several major newspapers and Australian politicians and radio personalities about Scotland's law of mistreatment for ACI people;
- I wrote to the present Scottish First Minister Nicola Sturgeon and head of the police in Scotland by email about this. (Justice Directorate reply reference: 2015/0027901);
- I wrote to Her Majesty Queen Elizabeth II asking for a Royal Pardon for victims of UKs unfair and retrograde anti-ACI laws;
- I wrote to the Heads of State and PMs of 20 states and countries that do not punish ACI people and asked them to promote human rights for ACI people in the UK and USA.

Petition background information
Public fears, prejudice and bigotry about ACI are mostly due to ignorance created over many years mostly by the church and church-influenced governments and
newspapers, in much the same way as public fears and bigotry about homosexuality were created. In general, societies have a tendency to target isolated individuals and to attack anything perceived to be different as a threat. The SLC report's argument for keeping this out-dated law rests on four points: the central unifying one, (that supposedly interconnects and reinforces the other three), was 'public opinion.'

Public opinion and public disgust with the very idea of incest was claimed to be the principle reason why the Scots incest law should be maintained in its present (unfair and discriminatory) form. I will discuss 'public opinion' before I come to the other three points.

**Point One - Public Opinion.**

Public opinion has changed dramatically since the 1980s when the report was written. For example, many western countries have passed legislation that has reflected the liberalization of attitudes to sex and relationships but this has not extended to ACI relationships. France, and many others that adopted the Napoleonic code, legalized consensual adult incest about 200 hundred years ago along with many other formerly taboo practices.

People's attitudes to human rights have changed a lot, especially with greater awareness of the UN rules about human rights, more widespread knowledge of the Universal Declaration of Human Rights and especially the right to personal and sexual autonomy; fewer people, even the religious can afford to be so very moralistic and judgmental as in the past, and most people are better educated, travel to more distant places more often and are more tolerant and understanding of a great diversity of cultures and types of sexual relationships than ever before.

When the report was written, no public opinion polls were taken about incest in Scotland and claims that the report was based on public opinion are dubious at best; i.e. the claims were unsubstantiated by any evidence. When contacted, the Public Affairs – Crime and Justice team at IPSOS.com said "they are not aware of any poll that has been conducted on this issue".

The public at the time of the 1981 Scottish Law Commission report on incest may have been ignorant of the law and conflated any healthy, happy and consensual adult incest (non-coerced, non-abusive) relationships with the abusive, coercive, child abuse type of incest. This ambiguity of meanings of the word incest may have been exploited in the report, giving the impression that all incestuous acts are tainted with one universally negative meaning. Of the few countries that the report compared Scots incest laws to, only one of them (France) allows ACI but the report hid this fact, this important bit of truth from the public, surreptitiously and disingenuously disguising it in legalese, misleading anyone reading the report into thinking that all modern countries are opposed to and criminalize adult consensual incest, which they indubitably are not and do not.

As was the case with other types of relationship, incest was made into a taboo and stigmatized, largely by the church, but it is still more common than one would think.

**Point Two - Protection of the child and other family members**

By definition, ACI does not involve anyone under the age of 21. Therefore it involves only adults and excludes anyone under the legal age of consent, and even those a bit older who still may be psychologically immature, and vulnerable to abuse but legally adults in every respect. Children are protected from sexual and other abuse by other laws, and there is no need for the double criminalization of the offence. In other countries, such as England and Australia the crime of 'child sexual abuse' has replaced the more stigmatizing and psychologically damaging term 'incest'. Victims of child sexual abuse do not benefit from being stigmatized when associated with the taboo word 'incest.' (Another reason why the present law needs reforming urgently).

Punishing ACI couples does nothing for the protection of the child or other family members. If a parent goes to prison for ACI, it means if there are young children in the family, they have lost the family income from the family breadwinner. If adult siblings are involved in ACI, how can a jail sentence for them protect anyone else in the family?
The two are being punished for being in love with each other. It punishes the whole family, and splits them up by denying it the income it could have derived from two working adults, now sent to prison and humiliated. It is not protecting a family to disgrace it and humiliate it, by associating it and other family members with criminal sentencing of an ACI couple in the family and the stigma of incest.

Point Three - The Maintenance of Family Solidarity and Cohesion

The Report produced no evidence that ACI disturbs family cohesion or solidarity any more than fornication, promiscuity, divorce, homosexuality, prostitution or adultery does. All these acts are no longer subject to criminal punishment, as they may have been under Ecclesiastical Law. Incest was a sin according to the Christian church and under Ecclesiastical Law it was punished by various penances, and 'dispensations' (or 'fines').

Point Four - The Genetic Argument

The criminalization of ACI sexual relationships because of a purported higher risk of birth defects in children of close kin breeding does not stand up to rational argument.

According to Dr James A Roffee's paper (Incest in Scots Law: Missed Opportunities in the Scottish Law Commission Review),

"the genetic argument has been assessed and disregarded in England and Wales. A number of reasons in support of such a conclusion include: that genetics has not been used as a past rationale; that there is great doubt as to the greatly increased risk of a variety of diseases would justify a criminal offense; and that it was not significant in achieving the aims of protection of family and children. If the incest law was justified on the grounds of genetic defects of potential offspring, and thus override the sexual autonomy principle, not only would this be a relatively remote concern it would also have the added implication of labeling any defect caused to the offspring as a legal wrong."

Since all people who mate have a 2-3% chance of having a child with a birth defect, (consanguineous couples are only marginally higher) then consistency in the law would require criminalizing "all bad fruit-producing intercourse" and thus would criminalize the large number of sexual acts that produced children with birth defects. It would obviously be unjust and unfair to convict the parents of the 6% of children born with birth defects each year world-wide. So why imprison a minuscule number of people in ACI relationships who only have a slightly higher risk of having a child with a birth defect than the general population does?

Conclusion

Thus there are no valid reasons to discriminate harshly against the ACI section of the community on the basis of:

1. public opinion; 2. protection of the child and family 3. solidarity of the family and community 4. genetic safety argument.

The Scots incest law perpetuates superstitious, bigoted outmoded beliefs but in its present form, its continued existence is unjustified. The present Scots incest law does not provide protection to all the children or adults in a family, but many, though abused, gain a lifelong stigma, and psychological trauma though their persecutor, goes 'Scot free' because he or she did not violate a vagina with a penis, the only grounds for an incest charge under the existing law.

However the law does unnecessarily and unfairly punish consensual adult incest, breaching the rights to sexual autonomy for all consenting adults that is accepted in other more developed countries.

The law of incest in Scots law should be reformed.

Unique web address

http://www.scottish.parliament.uk/GettingInvolved/Petitions/ACI
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