PUBLIC PETITION NO. PE01614

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 adult consensual incest, to provide: that an offence occurs only where one of the participants (even if consenting) was under the age of 21; for those who have previously been convicted of incest when both participants were consenting and over 21 years of age to have any sentences received ended; for convictions to be removed from criminal records of any individuals previously convicted and for a compensation scheme to be established.

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 adult consensual incest;
I wrote to a man who was in jail in Scotland because he was convicted of incest with his adult daughter. (My letters were not delivered to him, but were returned to me. I also wrote to his solicitor, but my letter was ignored;)
I started a worldwide petition on his behalf. (not this one);
I wrote to several major newspapers, Australian politicians and radio personalities about Scotland's laws that mistreat ACI people;
I wrote to the present Scottish First Minister Nicola Sturgeon and to the head of the police in Scotland by email about this issue. (Justice Directorate reply reference: 2015/0027901);
I wrote to the Heads of State and PMs of 20 of the 35 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
The law in its present form is inappropriate, unfair, ineffective and discriminatory. This was substantiated by the article 'Incest in Scots Law: Missed Opportunities in the Scottish Law Commission Review' by James A Roffee of Monash University, Victoria Australia, June 1, 2010
The last review of the law of incest in Scotland came after a review of the Scottish Law Commission (SLC) was published in 1981 (http://www.scotlawcom.gov.uk/files/9312/7989/6877/rep69.pdf). 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 such liberalization of laws has not been 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 judgemental as they were in the past. 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. It could well be the case that public opinion is not nearly as discriminatory as we have been made to believe. With no actual data being presented, we can only speculate as to public opinion. Furthermore, even if the majority of people are against the legalization of ACI relationships, it does not detract from the fact that these laws are a breach of their human rights to personal and sexual autonomy.

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. All reports and studies on incest should distinguish between ACI and abusive forms. The former should not be discriminated against, where the latter is already covered by other laws against paedophilic acts and rape. 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.

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
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 working parent goes to prison for ACI, it means the loss of income for the whole family, including any children. 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. Undoubtedly, this is also psychologically damaging to the children who may be removed from their homes and taken into care as a result of these laws.

Point Three - The Maintenance of Family Solidarity and Cohesion

The SLC 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’). Scotland’s present incest law is an existential threat to ACI families, whose members must live in constant fear of arrest and imprisonment just as homosexuals once did. Scotland’s incest law, at present a thinly disguised but only slightly updated version of the ancient Jewish laws of Leviticus 19 and 20, which made both incest and sodomy capital offences, is what definitely disturbs family cohesion or solidarity in ACI families, and runs against the individual’s natural human rights to have a family. Human rights are at the core of the mission of the United Nations. Democracy means giving greater dignity, equality and rights for all, and I call on the Scottish Parliament to unite in rejecting incestophobia as discrimination that can never be tolerated.

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 Roffe’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 have only a marginally higher risk) 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 the 95-99% of children born with birth defects who were from non-ACI parents. This would include intercourse by people who suffer from genetic defects themselves, and by women over forty who are not yet post menopausal. It would obviously be unjust and unfair to convict and imprison all parents of the 6% of children born each year globally with birth defects. 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 others in the general population?

ACI parents may have greater risks than non-ACIs of having a child born with autosomal recessive disorders, and/or congenital malformations, and/or mild to severe mental deficits and/or SIDS. The combined risk of all those things happening is about 12% in non-ACI couples, possibly 50% for ACI couples.

But from a family perspective, an adult son or daughter having an ACI relationship is
Out from a family perspective, an adult son or daughter having an ACI relationship is more likely to be able to continue the family line, if both parties have good genetics, than if they have a non-ACI relationship with someone with a host of genetic illnesses, or they are part of a gay couple, or if they have no relationships at all.

Because the vast majority of children with birth defects are born to people from non ACI relationships, due to many factors including genetics, lifestyle choices (STDs) and behaviors, (smoking, drinking) exposure to certain medicines and chemicals, infections during pregnancy, or a combination of these and often unknown factors) to try to attend to the problem of birth defects by causing even more suffering i.e. by separating and imprisoning loving ACI couples who are used as scapegoats) the state avoids, ignores and fails to attend to the real causes of the vast majority of birth defects (air, water, land, food and alcohol pollution, toxic pharmaceuticals, paints, pesticides and plastics, electro-magnetic radiation etc.) Even as a primitive and disguised form of eugenics, such a policy that only incarcerates ACI couples, is obviously not only unfair, but totally ineffective in solving the problem of children born with birth defects. Would it not be better to offer genetic counselling to ACI couples who wish to have children rather than criminalize their relationships?

Conclusion

The Scots incest law perpetuates superstitious, bigoted outmoded beliefs and in its present form, its continued existence is unjustified. The present Scots incest law does not provide protection from abuse to all the children or adults in a family, due to the only grounds for an incest charge under the existing law being based on vaginal-penile penetration. 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 to reflect a more common sense point of view, to give ACI couples equal rights under the law.

Unique web address

http://ww3.parliament.scot/GettingInvolved/Petitions/adultconsensualincest

Related information for petition

Do you wish your petition to be hosted on the Parliament’s website to collect signatures online?

YES

How many signatures have you collected so far?

0

Closing date for collecting signatures online

01 / 08 / 2016

Comments to stimulate online discussion

If Abraham the Patriarch of Judaism who the Bible says married his step-sister Sarah, came to live in Scotland today, would everyone agree that he and his wife should go to prison? In Israel he would not go to prison because ACI is not illegal there now.
Many children are born with birth defects because their parents married late, or smoked or drank alcohol whilst pregnant, should we put these parents in prison for creating sick children?

Is it fair to jail only ACI people for their tiny contribution to the total number of children born with birth defects, when the vast majority of birth defect cases are born to non-ACI parents? What good comes from such imprisonment?

More than half the people on the planet live in about 35 countries where ACI is legal. If ACI is so bad for society, what are the terrible social problems caused by ACI in countries (or states in the case of New Jersey and Rhode Island) where ACI is not illegal like: Argentina, Armenia, Azerbaijan, Belgium, Brazil, People's Republic of China, Estonia, France, Georgia, India, Israel, Italy (if no scandal is caused), Ivory Coast, Japan, North Korea, South Korea, Latvia, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, New Jersey, Pakistan, Portugal, Rhode Island, Russia, Serbia, Slovenia, Spain, Thailand, Turkey, Ukraine?

Wouldn't legalizing ACI and not wasting tax payers' money on prosecuting and sentencing ACI people to jail for years, save a great deal of public money which could then be used to better educate all people about the risks of having a child with birth defects and how to avoid them?

If children have to be taught to hate, and racism, incestophobia, homophobia, and class hatred are learned and become a sort of mass hysteria, conditioned into us, how do we de-institutionalise such hatred and mass paranoia?