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## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the United Kingdom’s (UK) failure to promote and defend the right to life, the right to conscientious objection, and the right to freedom of expression. It also highlights the UK’s failure to comply with its obligations under the UN Charter and relevant human rights treaties in respect of inaction in the face of the Middle East genocide of Christians and other religious minorities.

### (a) The Right to Life and Right of Conscience

#### Background

3. In Great Britain, abortion is legal with the consent of two doctors who have assessed that certain conditions have been met.<sup>1</sup> Under the present regime, it has been observed that abortion is, *de facto*, available on demand:

There is some evidence that many doctors maintain that the continuance of a pregnancy is always more dangerous to the physical welfare of a woman than having an abortion, a state of affairs which is said to allow a situation of *de facto* abortion on demand to prevail.<sup>2</sup>

4. The right of medical professionals to conscientiously object is protected by section 4 of the Abortion Act 1967, which provides that “...no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection”. The scope of the clause was recently reviewed by the Supreme Court of the UK. The Court accepted that even outside the confines of the conscience clause, efforts should be made to accommodate conscience. The Court ruled that this will often be a determination that can only be made on a case by case basis.<sup>3</sup>
5. The British Pregnancy Advisory Service (BPAS) is one of the UK’s largest abortion providers. It has launched a campaign – “We Trust Women” – to remove these requirements and safeguards. The campaign makes clear that “the abortion time limit would be removed from criminal law” despite recognizing that “[t]here is no doubt that

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<sup>1</sup> Abortion Act 1967, s. 1 provides:

“(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.”

<sup>2</sup> *Prolife Alliance v. British Broadcasting Corporation* [2002] EWCA Civ 297.

<sup>3</sup> *Greater Glasgow Health Board v. Doogan & Anor* [2014] UKSC 68, 24.

abortions post viability raise particular moral concerns for many people.”<sup>4</sup> The campaign invites members of the public to contact their Member of Parliament (MP) to call for an official government inquiry into abortion law.

6. The campaign is supported by the Chief Executive of the Royal College of Midwives (RCM),<sup>5</sup> Professor Cathy Warwick, who also sits as Chair of Trustees of BPAS. On 9 February 2016, the RCM issued a position statement which supports the aims of the campaign including advocating for a narrow understanding of rights of conscience for medical professionals. The proposal would only protect a subset of those involved in abortion.<sup>6</sup>
7. The RCM has been subject to criticism by its members for failing to consult on this significant policy shift.<sup>7</sup>
8. The RCM argues that the right of professionals to conscientiously object “should be recognized but should only apply to direct involvement in the procedure of terminating pregnancy.”<sup>8</sup> This stands in stark contrast to the findings of a recent Parliamentary Inquiry on Freedom of Conscience. The final report found that:

there is increasing pressure on healthcare practitioners with such a conscientious objection to participate in abortions, both directly and indirectly, regardless of their moral and ethical views. In particular, the [All Party Parliamentary Group] heard of increasing legal and professional pressure to refer patients, inadequate training at medical schools on the subject of conscientious objection, and limited career progression opportunities, both real and perceived, particularly in the field of Obstetrics and Gynaecology.<sup>9</sup>

9. The change for which BPAS is lobbying would dramatically expand the scope of abortion and simultaneously limit the circumstances in which a practitioner can conscientiously object to something which they find morally impossible. It is a dangerous step which fails to consider the rights of the unborn child, the rights of conscience of medical practitioners, and amounts to a distortion of the rights of the mother.

#### *The Right to Life in International Law*

10. Article 6(1) of the ICCPR states, “Every human being has the inherent right to life.” Furthermore, Article 6(5) of the ICCPR states, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and *shall not be carried out on pregnant women.*” The ICCPR’s prohibition of the death penalty for pregnant

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<sup>4</sup> ‘We Trust Women - The Campaign to Decriminalise Abortion across the UK’ (*We Trust Women*) <<http://www.wetrustwomen.org.uk/about-the-campaign/>>.

<sup>5</sup> The Royal College of Midwives is a trade union for midwives.

<sup>6</sup> Royal College of Midwives, ‘Position Paper on Abortion’ (2016) <<https://www.rcm.org.uk/sites/default/files/RCM%20Abortion%20Statement.pdf>>.

<sup>7</sup> A letter entitled “Not in Our Name” has been signed by more than 200 senior midwives and calls on the RCM board to revoke support for the campaign and begin a consultation with its membership <<https://docs.google.com/forms/d/e/1FAIpQLSevaiqiqg5XKzxQx3zmMAFQGe4y1pgqf0hUueCHZYuv8NnWVg/viewform>>.

<sup>8</sup> Above, n. 6.

<sup>9</sup> All Party Parliamentary Pro-Life Group, ‘A Report into Freedom of Conscience in Abortion Provision’ (July 2016) 5 <<http://www.conscienceinquiry.uk/wp-content/uploads/2016/07/Final-report-Parliamentary-Inquiry-into-Freedom-of-Conscience-in-Abortion-Provision-All-Party-Parliamentary-Pro-Life-Group.pdf>>.

women implicitly recognizes the right to life of the unborn. As the *travaux préparatoires*<sup>10</sup> of the ICCPR explicitly state, “The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to *save the life of an innocent unborn child.*”<sup>11</sup> Similarly, the Secretary General report of 1955 notes that the intention of the paragraph “was inspired by humanitarian considerations and by *consideration for the interests of the unborn child.*”<sup>12</sup> The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC).<sup>13</sup>

11. Providing access to abortion means that more women suffer from abortion-related complications. There are numerous maternal risks associated with abortion. A major study published in the *British Medical Journal* in 2015 concluded that States with “less permissive” abortion laws “exhibited consistently lower maternal mortality rates.”<sup>14</sup> Although the study explains these differences in terms of other independent factors rather than in terms of abortion legislation itself, it nevertheless concludes, “No statistically independent effect was observed for abortion legislation, constitutional amendment or other covariates.”<sup>15</sup> Because abortion legislation has no effect on maternal mortality, abortion need not be legalized to protect women’s health. Abortion is further associated with a high risk of haemorrhaging, developing sepsis, and developing injuries to internal organs, including intrauterine perforations.<sup>16</sup>
12. Moreover, abortion can never be safe because it takes the life of the unborn child and harms the mother through the loss of her child. It has also been reported that women who have had abortions are more vulnerable to self-destructive tendencies, depression, and other unhealthy behaviour aggravated by the abortion experience.<sup>17</sup>
13. Therefore, the UK must focus on protecting the right to life of the unborn and on helping women get through pregnancy and childbirth safely, rather than ending pregnancies.

#### *Freedom of Conscience in International Law*

14. Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of thought, religion, and conscience to everyone.
15. The Human Rights Committee stated in its General Comment No.22:

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<sup>10</sup> In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a “supplementary means of interpretation.”

<sup>11</sup> Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957. A/3764 § 18.

<sup>12</sup> Report of the Secretary-General to the 10<sup>th</sup> Session of the General Assembly, 1 July 1955. A/2929, Chapter VI, §10.

<sup>13</sup> Preamble: “[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth.*” [Emphasis added]

<sup>14</sup> Elard Koch, Monique Chireau, and Fernando Pliego et. al., *Abortion Legislation, Maternal Healthcare, Fertility, Female Literacy, Sanitation, Violence Against Women and Maternal Deaths: A Natural Experiment in 32 Mexican States*, *BMJ OPEN* 2015:5 e006013, doi:10.1136/bmjopen-2014-006013, p. 1.

<sup>15</sup> *Ibid.*

<sup>16</sup> Gunnel Lindell and Folke Flam, *Management of Uterine Perforations in Connection with Legal Abortions*, *ACTA OBSTET GYNECOL SCAND.* (1995) May 74(5):373-5, available at <http://onlinelibrary.wiley.com/doi/10.3109/00016349509024431>.

<sup>17</sup> David C. Reardon, Philip G. Ney, Fritz Scheuren, Jesse R Cogle, Priscilla K Coleman, Thomas W. Strahan, *Deaths Associated with Pregnancy Outcome: A Record Linkage Study of Low Income Women*, *SOUTHERN MEDICAL JOURNAL*, (2002) August, 95(8):834-841.

The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.<sup>18</sup>

16. While this is most commonly discussed in the context of military service, the same principle applies to medical practitioners expressing a conscientious conviction that abortion involves the impermissible taking of innocent unborn life.
17. Major world religions oppose abortion.<sup>19</sup> Medical professionals should not be forced to choose between their faith and their profession. Imposing a requirement to participate in morally objectionable conduct robs healthcare systems of caring practitioners and would be a regressive step away from the United Kingdom's international obligations.

## **(b) Right to Freedom of Expression**

### *Background*

18. In 2014, then Home Secretary, Theresa May, announced an election manifesto pledge to introduce "extremism disruption orders." These orders are expected to be introduced in a new "Counter-extremism and Safeguarding Bill", likely to be put before Parliament in May 2017.
19. The bill addresses two undefined concepts: "British values", and "nonviolent extremism" and is anticipated to provide for civil orders which could prohibit an individual from "broadcasting" – including via the internet. It is understood that difficulties in finding a suitable definition for these concepts are behind the delays in bringing forward a draft of the as-yet unpublished bill.<sup>20</sup>
20. One definition of extremism which has been proposed reads: "the vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs."<sup>21</sup> This overbroad terminology has been criticized by the Police Chief Constable responsible for counter-radicalization, who said that the proposals could lead to "thought policing."<sup>22</sup>
21. David Anderson QC, Independent Reviewer of Terrorism Legislation, has commented:

If it becomes a function of the state to identify which individuals are engaged in, or exposed to, a broad range of 'extremist activity', it will become legitimate for the state to scrutinise (and the citizen to inform

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<sup>18</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, available at: <<http://www.refworld.org/docid/453883fb22.html>>.

<sup>19</sup> Moira Stephens, Christopher F.C. Ian H. Jordens, et al., Religious perspectives on abortion and a secular response. *Journal of Religion and Health*. 2010;49:513–35.

<sup>20</sup> Alan Travis, 'Cameron Terror Strategy Runs Aground on Definition of Extremism' *The Guardian* (3 May 2016) <<http://www.theguardian.com/politics/2016/may/03/david-cameron-terror-strategy-definition-extremism>>.

<sup>21</sup> HM Government, Tackling extremism in the UK. Report from the Prime Minister's Task Force on Tackling Radicalisation and Extremism, December 2013. <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/263181/ETF\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263181/ETF_FINAL.pdf)>.

<sup>22</sup> Vikram Dodd, 'Anti-Radicalisation Chief Says Ministers' Plans Risk Creating "Thought Police"' *The Guardian* (24 May 2016) <<https://www.theguardian.com/uk-news/2016/may/24/anti-radicalisation-chief-says-ministers-plans-risk-creating-thought-police>>.

upon) the exercise of core democratic freedoms by large numbers of law abiding people.<sup>23</sup>

22. The Parliamentary Joint Committee on Human Rights concluded that the authorities would have “wide discretion to prohibit loosely defined speech which they find unacceptable.”<sup>24</sup>
23. Given that this bill was driven by the Home Office under Theresa May, it will likely continue to be pursued with vigour following her appointment as Prime Minister.<sup>25</sup>
24. In light of the overly broad concepts contained therein, the proposed orders pose a significant threat to freedom of expression and freedom of religion. At present, the definition could equally capture a believer or an atheist challenging the truth claim of another religion. Similarly, it demands – with ultimate threat of imprisonment – that citizens “respect” other “beliefs.” This erodes the conditions of free speech and the ability to robustly engage with others that underpin modern democracy.<sup>26</sup>

### *Freedom of Speech in International Law*

25. Article 19 of the UDHR states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 19 of the ICCPR confirms this right, and states that restrictions on freedom of expression are only valid if they are prescribed by law, and necessary to pursue one of the limited aims specified within the Covenant.
26. While there are clear limitations placed on freedom of speech in some international documents, notably Article 20(2) ICCPR and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, there is still a high threshold for when restrictions on freedom of expression are valid. Former UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, has noted that “Article 20 [of the ICCPR] was drafted against the historical background of the horrors committed by the Nazi regime during the Second World War.” Therefore, the “threshold of the acts that are referred to in Article 20 is relatively high.”<sup>27</sup>
27. Moreover, the Special Rapporteur has stated that freedom of speech should not be restricted any further than international law currently allows, noting that “any attempt to lower the threshold of Article 20 of the Covenant would not only shrink the frontiers of free expression, but also limit freedom of religion or belief itself. Such an attempt could be counterproductive and may promote an atmosphere of religious intolerance.”<sup>28</sup> The

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<sup>23</sup> David Anderson QC, Independent Reviewer of Terrorism Legislation, Review of the Terrorism Acts in 2014, September 2015 <<https://terrorismlegislationreviewer.independent.gov.uk/terrorism-acts-report-published-today/>>.

<sup>24</sup> The Parliamentary Joint Committee on Human Rights, The proposed Counter-Extremism and Safeguarding Bill, 95, available at: <<http://www.publications.parliament.uk/pa/jt201617/jtselect/jtrights/105/10507.htm#footnote-022>>.

<sup>25</sup> Fiona Hamilton, ‘Law to Silence Hate Preachers Delayed by Free Speech Fears’ *The Times* (19 August 2016) <<http://www.thetimes.co.uk/article/fears-over-free-speech-delay-law-to-silence-hate-preachers-pz718gfs9>>.

<sup>26</sup> Paul Coleman, *Censored: How European ‘Hate Speech’ Laws Are Threatening Freedom of Speech* (2nd edition, KAIROS Publications 2016).

<sup>27</sup> Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, A/HRC/2/3, 20 September 2006, § 47.

<sup>28</sup> *Id.*, § 50.

Special Rapporteur further recommended that “expressions should only be prohibited under Article 20 if they constitute incitement to imminent acts of violence or discrimination against a specific individual or group.”<sup>29</sup>

28. Similarly, UN General Comment No. 34 makes it clear that restrictions on the right to freedom of expression “should not go beyond what is permitted in paragraph 3 [of Article 19] or required under article 20.”<sup>30</sup>

29. Hence, while there are limitations placed on speech in international law, the overwhelming emphasis in the international human rights documents is the protection of freedom of speech, and restrictions should not go beyond what is already in place.

### **(c) Failure to take steps to prevent genocide in line with international obligations**

#### *Background*

30. The situation in Syria and Iraq is catastrophic and has led to one of the worst humanitarian crises in decades. The number of Christians has dropped from over 2 million to 1 million in Syria, and from 1.4 million to under 260,000 in Iraq.

31. Reports from the region have brought evidence to light showing that ISIS/Daesh has assassinated church leaders, committed torture, mass murders, kidnapping, sexual enslavement, systematic rape and sexual abuse of Christian and Yazidi girls and women, and engaged with destructions of churches, monasteries, cemeteries, and other places of religious value. ISIS/Daesh has documented its specific intent to destroy Christian groups in Syria and Iraq in its official propaganda videos and newspapers, including *Dabiq* - the official ISIS/Daesh magazine used for propaganda and recruitment. It is clear that Christians are particularly targeted for destruction, with *Dabiq* carrying a front cover with an image of the Vatican flying the black ISIS/Daesh flag.

32. Her Majesty’s Government has thus far refused to acknowledge that genocide is occurring in the Middle East. On 9 February 2016, in response to Lord Alton’s oral question in the House of Lords, the Earl of Courtown confirmed that Her Majesty’s Government would not take a view on whether genocide was occurring in the Middle East, as such a decision was a matter for the “international judicial system” and not Governments or other non-judicial bodies.

33. On 20 April 2016, the House of Commons passed a motion declaring ISIS/Daesh to be committing genocide, and directing the government to take concrete action at the Security Council.

#### *Obligations under international law*

34. Genocide, the “crime of crimes”, is an internationally recognized legal term, defined in Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (“the Convention”). The United Kingdom acceded to the UN Convention on the Prevention and Punishment of the Crime of Genocide on 30 January 1970. The Convention requires States to take positive steps to prevent genocide.

35. The Council of Europe was the first major international institution to condemn the actions of ISIS/Daesh in the Middle East as genocide. On 27 January 2015, the Parliamentary Assembly of the Council of Europe adopted Resolution 2091 (2016) entitled “Foreign fighters in Syria and Iraq” specifically recognizing the atrocities as genocide and

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<sup>29</sup> *Id.*, § 47.

<sup>30</sup> UN General comment No. 34, 12 September 2011, CCPR/C/GC/34, § 49.

reminding member states of their obligation to prevent genocide and calling upon them to take all necessary measures to prevent it from occurring.

36. On 4 February 2016, the European Parliament adopted a resolution on the systematic mass murder of religious minorities by ISIS/Daesh, which passed by an overwhelming majority. The resolution also recognized that the atrocities had reached the threshold of genocide, and called for a referral to the International Criminal Court.
37. Both the Council of Europe resolution, and the European Parliament resolution, were tabled by a number of British Members of Parliament and Members of the European Parliament.
38. On 17 March 2016, Secretary of State John Kerry denounced the ISIS/Daesh atrocities as genocide. The Australian Parliament and the Canadian government have also recognized the ongoing genocide.
39. As a signatory to the 1948 UN Genocide Convention, the United Kingdom has a clear obligation under international law to “prevent and punish” acts of genocide. In order to take decisive action to prevent genocide, the very first step must be the recognition that genocide is in fact taking place, particularly in light of the horrific and overwhelming evidence emanating from the region.
40. The Government has proposed that recognition of genocide must be made by the “international judicial system.” However as a permanent member of the United Nations Security Council, the UK is well positioned to trigger the mechanisms contained within the “international judicial system” – it is simply refusing to do so.

#### **(d) Recommendations**

41. In view of the above, ADF International recommends the following:

- Take steps to recognize and honour the international obligations to protect the right to life from conception to natural death;
- Work to end abortion in accordance with international obligations to protect the life of the unborn;
- Ensure that the right to freedom of thought, conscience, and religion is duly recognized and respected;
- Ensure that medical professionals have a right to object to participating in abortion and other procedures on the grounds of conscientious objection;
- Avoid vague terms, such as “nonviolent extremism” and “British values”, in legislative proposals.
- Ensure proposed legislation with the potential to impact upon freedom of religion and freedom of expression is the subject of full public consultation.
- Robustly protect freedom of expression.
- Recognize ISIS/Daesh crimes as genocide and comply with the obligation to prevent and punish acts of genocide.