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RE: Call for Evidence: Criminal Justice Bill 2023
For: Joint Committee on Human Rights
From: Christian Legal Centre
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Introduction

1. Christian Legal Centre [CLC] is an organisation dedicated to promoting the gospel message and protecting the rights of others to manifest their Christian faith in the public square. For more than a decade, Christian Legal Centre has been at the cultural forefront of supporting Christian freedoms through the courts and tribunals. Christian Legal Centre has played an integral role in precedent setting cases, including representing 3 of the 4 Claimants in their domestic and European Court of Human Right proceedings in *Eweida and Others v the United Kingdom*. We have also been involved in a number of high-profile cases involving end of life matters including the Archie Battersbee and the Indi Gregory cases. The Christian Legal Centre was also involved in a judicial review of the telemedicine abortion regulations, arguing that the change in law risked enabling late-term abortions and made abortion less safe.

2. The following evidence is the product of Christan Legal Centre's experiences through these and dozens of other cases it has supported, many of which involved freedom of speech in the public square and defending the right to life, areas which this consultation response will focus on.

6. *Do proposed changes to powers to tackle antisocial behaviour, including reducing the lower age for issuing Community Protections Notices and extending the power to make Public Space Protection Orders, including sufficient safeguards to comply with human rights, including under the ECHR and the UN Convention on the Rights of the Child?*

3. The issuance of a PSPO, by its very nature, is an interference with Article 10 of the European Convention on Human Rights. For that interference to be justified, it must pursue a legitimate aim and be necessary in a democratic society. Necessity is largely determined by whether, in serving a legitimate aim by issuing the PSPO, the means of limiting freedom of expression were proportionate. The European Court of Human

Rights defines proportionality as being the achievement of a fair balance between various conflicting interests.[1]

4. The domestic courts in England, in *Bank Mellat*, have formulated a 4-prong proportionality assessment in determining whether a litigant's Convention rights have been interfered with:

> *....it is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter. .... I have formulated the fourth criterion in greater detail than Lord Sumption JSC, but there is no difference of substance. In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure.*[2]

5. Increasingly, PSPOs and other restrictions on freedom of public expression, has been determined by viewpoint rather than any constitutional standard. Public speech over contentious issues such as abortion, the Christian moral view on sexuality, and the truth of Christianity (or lack of truth of different world religions) has been treated far more heavy-handedly than have *causes célèbre* such as the environment, racial equality or animal rights.

6. The Christian Legal Centre recently supported Christian Hacking, a pro-life campaigner, who was subject to a PSPO in Waltham Forest. Mr Hacking is a volunteer at the Centre for Bioethical Reform UK, an organisation dedicated to changing abortion laws through peaceful protest and publicly policy engagement. CBR-UK is careful to always operate within the law. As a matter of course, they brief the police about their

[1] *Sunday Times*, 30 ECHR (ser. A) at 38.
[2] *Bank Mellat v HM Treasury (No 2)* [2014] AC 700, para. 74.

protests in advance; the ones at issue in the instant matter were no exception. Despite the police not finding fault with CBR-UK actions, Waltham Forest Council illegally confiscated their banners. They issued a Community Protection Notice banning Mr Hacking, from the whole of the borough of Waltham Forest. The justification for the Community Protection Notice was the protection of the public from images which may cause distress or offense. Those images included aborted babies as part of CBR UK's anti-abortion campaign.

7. Similarly, CLC has defended numerous street preachers who have been arrested because of offending bystanders by preaching on moral and theological themes such as homosexuality and Islam. One such street preacher, Michael Overd, has been arrested 7 times, prosecuted 5 times (all of which eventually resulted in acquitals), and formally interviwed by the police no less than on 8 occassions. He has also been issued a dispersal order pursuant to the same statute governing PSPOs. In another case, CLC supported Pastor Oluwole Ilesanmi, who was arrested by police for preaching on Islam and offending a Muslim bystander. Records show that police then drove him more than 5 miles away to a remote area and de-arrested him, leaving him without any means of getting back to his place of residence. Police than denied that the event happened until evidence was produced to substantiate it. The end result was that Pastor Ilesanmi was awarded a damages settlement for the misconduct he suffered.

8. In the vast majority of CLC's cases where Christians are arrested for allegedly causing a public order offense, they are eventually either de-arrested or acquitted. The stark reality is that police are undertrained and ill equipped for determining what issues may amount to just cause for issuing a PSPO. In relation to PSPOs, Articles 10 and 11 ECHR are far too important to gift police with a discretion to interfere with Convention rights, where they have a history of disproportionately limiting public manifestations of expression because the words spoken may possibly hurt feelings or because of viewpoint discrimination.

8. *Does the Bill give rise to any other significant human rights concerns?*

Proposed Amendments NC1 and NC2 and the Decriminalisation of Abortion

9. Proposed amendment NC1 seeks to take away any criminal culpability for a woman who ends her pregnancy, no matter at what stage of pregnancy, or at what danger or maliciousness to herself or her unborn child. Proposed Amendment NC2 seeks the same, going further and wishing to also decriminalise abortion for the expectant mother and the medical staff as well, and to take away criminal sanction from anyone who conceals the birth of a child.

10. To be clear, these amendments have no place in a civilised society, and are reckless as they relate to the life and dignity of the unborn child and its mother. If successfully adopted, the following situations would no longer be illegal:

    - A woman, at grave risk to herself, fraudulently obtains Mifepristone late into her pregnancy. Notably, any damage she would do to the child if it survived and was born alive would also be without sanction.
    - A child is born alive during a failed late term abortion and nevertheless discarded. Concealing the fact that the mother was pregnant and received an abortion would bring no criminal sanction to either the mother or treating medical team.
    - Any abortion done in violation of the Abortion Act's current procedural requirements would bring no criminal sanction, either on the mother or the medical staff involved.
    - Sex-selected abortions.
    - Any abortion up until the moment of birth.

11. Ms Creasy has been very successful to date in her assertion that CEDAW recommendations must be adopted. This, however, is wrong in law. The Courts have been very clear, that unincorporated treaties, much less so the machinations of an unelected committee of civil servants, cannot dictate English law.[3] Ms Creasy's abortion zeal will do no more than make women far less safe, and lead to far more gruesome instances of abortion. Her strategy of using CEDAW is as opportunistic as it is cynical. Moreover, apart from whatever professional sanction may follow an illegal

[3] *See e.g. R (on the application of SC, CB and 8 children) v Secretary of State for Work and Pensions and others* [2021] UKSC 615, para. 84; and *Dance & Anor v Barts Health NHS Trust & Anor (Re Archie Battersbee)* [2022] EWCA Civ 1106, para. 36*ff.*

abortion, Ms Creasy's amendment would make Ss. 1,2 and 5 of the Abortion Act 1967 dead-letter.

12. It is the position of CLC that not only are the proposed amendments morally repugnant, but they would also violate Articles 2 and 3 of the ECHR.

13. It is is accepted that the unborn child does have some recognition as a person within the meaning of Article 2 of the Convention. It is equally clear from the case-law of the Court that the unborn child has some protection within the meaning of Article 2. The recently retired President of the European Court of Human Rights put in best in his separate opinion in *Vo v. France*:

> *I believe (as do many senior judicial bodies in Europe) that there is life before birth, within the meaning of Article 2, that the law must therefore protect such life, and that if a national legislature considers that such protection cannot be absolute, then it should only derogate from it, particularly as regards the voluntary termination of pregnancy, within a regulated framework that limits the scope of the derogation.*[4]

14. In *H v. Norway*, application no. 17004/90, decision of 19 May 1992, the Commission held that it would not exclude the possibility that in certain circumstances the unborn child may enjoy a certain protection within the meaning of Article 2. In the same decision, the Commission analysed the question of whether the Norwegian law authorising abortion struck "*a fair balance between the legitimate need to protect the foetus and the legitimate interests of the woman in question.*" What is obvious from the Commission's decision is that there is a clear presumption that the unborn child has a legitimate need for some level of protection within the meaning of Article 2.

15. As the Court's case law on abortion and Article 8 suggest, that where a High Contracting Party makes abortion lawful, it must provide an adequate legal framework to regulate the competing interests involved.[5] For that framework to have any regulatory meaning, it must also allow for disputes relating to competing interests (such as the rights of the

[4] *Vo v. France*, [G.C.], no. 53924/00, 8 July 2004, separate opinion of J-P Costa at para. 17.
[5] *Tysiac v. Poland*, application no. 5410/03, judgment of 30 March 2007.

unborn child) to be resolved. It cannot be used solely a mechanism to expand abortion rights. This position is again made crystal clear in the separate concurring opinion in the *Vo* case:

> *In the aforementioned Boso decision, it applied the "fair balance" test to the impugned statute, so that it would have had to reach the opposite conclusion had the legislation been different and not struck a fair balance between the protection of the foetus and the mother's interests. Potentially, therefore, the Court reviews compliance with Article 2 in all cases in which the "life" of the foetus is destroyed.*[6]

16. The Court has also been clear that Article 2, whether read together with Article 8 or alone, creates both positive and negative obligations. In the aforementioned *H v. Norway* decision, a case involving an abortion which took place against the wishes of the child's father, the Court held that a state not only has a duty not to take the life of a person intentionally, but also to take appropriate steps to safeguard life.[7] As such, when a government decides to permit abortion, it remains subject to the obligation to protect and respect the competing rights and interests of everyone and everything involved.[8]

17. Both proposed amendments, NC1 and NC2, would run afoul of the very clear jurisprudence emanating from Strasbourg.

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[6] *Vo v. France*, *op cit.*, separate opinion of J-P Costa at para. 13.
[7] *H. v. Norway*, no. 17004/90, Decision of inadmissibility of the former Commission of 19 May 1992.
[8] *A.B. & C v. Ireland* [G.C.] at para. 249; and *R.R. v. Poland*, no. 27617/04, 26 May 2011 at para. 187.