

## NOTE

### PRAYING FOR TORTURE: WHY THE UNITED KINGDOM SHOULD BAN CONVERSION THERAPY

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#### ABSTRACT

*This Note outlines the history of conversion therapy as it moved from mainstream psychology into fringe psychology and extreme religious practice. There is no evidence that conversion therapy can change an individual's sexual orientation from homosexual to heterosexual. The existing evidence shows that conversion therapy increases an individual's depression, internalized homophobia, and suicidal tendencies. In 2017, the British Parliament refused to hold hearings on banning conversion therapy, citing a lack of evidence that the therapy is a widespread problem in the country. However, reports surfaced around the same time stating that some religious groups and psychologists practice conversion therapy regularly. This Note seeks to establish that knowingly practicing conversion therapy on an individual to change their sexual orientation from homosexual to heterosexual should be considered torture and cruel, inhuman or degrading treatment under international and United Kingdom's domestic law. Thus, the United Kingdom should pass a ban on conversion therapy, regardless of whether it is practiced in a religious or psychological context.*

#### I. INTRODUCTION

Josh Parry, an investigative journalist with Liverpool Echo (Echo), recently went undercover to a Mountain of Fire and Miracles Ministry service where he posed as a young man questioning his sexuality.<sup>1</sup> After a group prayer ceremony, Mr. Parry was invited to a private counseling session with the assistant pastor, Brother Michael.<sup>2</sup> The two discussed how Mr. Parry could change his sexual desires and eventually marry a woman.<sup>3</sup> Brother Michael

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1. See Josh Parry, *This is the Reality of Gay 'Cure' Conversion Therapy Taking Place in Liverpool*, ECHO (July 2, 2018, 8:20 P.M.), <http://www.liverpoolecho.co.uk/news/liverpool-news/echo-goes-undercover-gay-cure-13468107> [<https://perma.cc/AT66-NQCN>].

2. *Id.*

3. *Id.*

was trying to convince Mr. Perry to undergo conversion therapy,<sup>4</sup> which generally involves “any form of treatment or psychotherapy which aims to reduce or stop same-sex attraction.”<sup>5</sup>

Brother Michael’s outdated views on same-sex attraction were on full display during his conversation with Mr. Parry. He explained that same-sex attraction was the result of a “deceit of Satan” and that people pretend to be gay for attention.<sup>6</sup> After detailing what was wrong with Mr. Perry’s same-sex attraction, the conversation turned to how Mr. Perry could be cured of his gayness and eventually have a family “with the help of God.”<sup>7</sup>

The Mountain of Fire and Miracles Ministry uses a program known as “Deliverance” to try to convert same-sex desires to heterosexual desires.<sup>8</sup> Deliverance involves depriving participants of food and water for three days to “humble [the] soul” and eventually change their sexual desires.<sup>9</sup> While Brother Michael did not use the term “conversion therapy,” Deliverance is a form of conversion therapy program designed to change or suppress an individual’s same-sex desires.<sup>10</sup> Echo contacted the church before the investigation was published for comment, and head pastor Dr. Desmond Sanusi issued a statement that the church “does not discriminate against people” but did not deny that the church practices conversion therapy.<sup>11</sup>

Generally, conversion therapy refers to efforts to try and change or suppress an individual’s same-sex desires.<sup>12</sup> The practice can take place in both psychological<sup>13</sup> and religious settings.<sup>14</sup> In the psychological context, therapists apply a variety of techniques including induced nausea, vomiting or paralysis after exposing

4. *Id.*; Note, there are several terms for conversion therapy including “reparative therapy,” “ex-gay therapy,” “psychological abuse,” and “sexual orientation change efforts.” These terms will be used interchangeably to refer to conversion therapy in this paper. #BornPerfect: *The Facts About Conversion Therapy*, NAT’L CTR. FOR LESBIAN RTS., <http://www.nclrights.org/bornperfect-the-facts-about-conversion-therapy/#q1> (last visited Apr. 8, 2018) [hereinafter #BornPerfect] [<https://perma.cc/J2V5-33RD>].

5. *Conversion Therapy*, STONEWALL, <http://www.stonewall.org.uk/campaign-groups/conversion-therapy> (last visited Apr. 8, 2018) [<https://perma.cc/RK5V-LPSB>].

6. Parry, *supra* note 1.

7. *Id.*

8. *Id.*

9. *Id.*

10. *See id.*

11. *Id.*

12. Marie-Am. .lie George, *Expressive Ends: Understanding Conversion Therapy Bans*, 68 ALA. L. REV. 793, 794–95 (2017).

13. #BornPerfect, *supra* note 4.

14. *E.g.*, Parry, *supra* note 1.

patients to homoerotic content, electroshock therapy, and having patients wear a rubber band around their wrist and snapping it every time they have a same-sex sexual thought.<sup>15</sup> The ultimate goal of these techniques is to train the person through aversion to change or suppress their same-sex desires.<sup>16</sup>

In the religious context, churches use a series of methods that can include acting out traditional gender roles, programs modeled after Alcoholics Anonymous, prayer sessions, and reenactment of sexual abuse scenes.<sup>17</sup> The ultimate goal of conversion therapy from a religious standpoint is to change the person's sexual orientation by submitting to God.<sup>18</sup>

Conversion therapy promises that it can help an individual who is struggling with his/her sexual orientation by curing his/her same-sex desires.<sup>19</sup> This theory is troublesome for two main reasons. First it reinforces the stigmatization of same-sex attraction by treating gay people like they have a mental disorder.<sup>20</sup> Second there is no scientific evidence that conversion therapy works.<sup>21</sup> On the contrary, there is mounting evidence that conversion therapy is harmful to the individuals who undergo the practice.<sup>22</sup> Thus, many gay rights groups have called for an end to the practice and have pushed legislatures to outlaw the therapy.<sup>23</sup>

Some countries and regional governments have been successful in passing bans on conversion therapy, but these laws tend to only

15. JUDITH M. GLASSGOLD ET AL., REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION TASK FORCE ON APPROPRIATE THERAPEUTIC RESPONSES TO SEXUAL ORIENTATION 22 (2009) [hereinafter APA REPORT].

16. *Id.*

17. See George, *supra* note 12, at 819–20.

18. See *id.* at 819.

19. APA REPORT, *supra* note 15; Melissa Ballengee Alexander, *Autonomy and Accountability: Why Informed Consent, Consumer Protection, and Defunding May Beat Conversion Therapy Bans*, 55 U. LOUISVILLE L. REV. 283, 311 (2017) (noting that one of the advertised benefits of conversion therapy efforts is a “cure”).

20. #BornPerfect, *supra* note 4.

21. U.K. COUNCIL FOR PSYCHOTHERAPY, MEMORANDUM OF UNDERSTANDING ON CONVERSION THERAPY IN THE UK ¶ 8 (2015) [hereinafter MEMO OF UNDERSTANDING]; APA REPORT, *supra* note 15, at 3; U.K. COUNCIL FOR PSYCHOTHERAPY, CONVERSION THERAPY CONSENSUS STATEMENT 1 (2014).

22. ROYAL COLL. OF PSYCHIATRISTS, STATEMENT ON SEXUAL ORIENTATION 2 (2014).

23. See *Conversion Therapy*, *supra* note 5; *Parliament Discusses Ban on Dangerous ‘Gay Conversion Therapies’*, HUMANISTS UK (Oct. 18, 2017), <https://humanism.org.uk/2017/10/18/parliament-discusses-ban-on-dangerous-gay-conversion-therapies/> [<https://perma.cc/9PEV-27GD>]; #BornPerfect, *supra* note 4; *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy> (last visited Apr. 8, 2018) [<https://perma.cc/49EM-HS77>].

target licensed mental health experts.<sup>24</sup> This is concerning because conversion therapy often takes place outside of a practitioner's office in informal and religious settings. Thus, laws centered on only licensed mental health experts do not effectively protect all victims of the practice.<sup>25</sup>

Recently, conversion therapy has received a lot of attention in the United Kingdom (U.K.).<sup>26</sup> In 2015, thirteen of the major psychology associations in the U.K. banded together to disown practicing conversion therapy in a Memorandum of Understanding.<sup>27</sup> Then in July 2017, the Church of England formally passed a motion calling for Parliament to pass a conversion therapy ban.<sup>28</sup> Thus, it seems that there is a growing consensus in the mental health and religious communities: conversion therapy is harmful and should be banned.

Despite calls for a ban from the psychological and religious communities, the government in the U.K. remains resistant to passing a law.<sup>29</sup> In March of 2017, Parliament refused to even hold debates on conversion therapy after a petition to the government failed to reach 100,000 signatures.<sup>30</sup> However, the time to act is now. Conversion therapy meets the legal definition of torture and cruel, inhuman or degrading treatment (CIDT) under international and U.K.'s domestic law because it results in severe physical and psychological suffering and is administered in a discriminatory manner.<sup>31</sup> Therefore, the U.K. has a legal obligation to ban conversion therapy and can be held liable under the Due Diligence Principle of

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24. See, e.g., Law No. 26657, Dec. 2, 2010 (Arg.) (Argentine law forbidding a mental health diagnosis solely on the basis of sexual orientation or gender identity); Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, Nru. 167 (2016) (Malta) (law banning conversion therapy); *Taiwan is Getting Closer to Banning Gay Conversion Therapy*, HORNET (Jan. 30, 2017) <https://hornetapp.com/stories/taiwan-getting-closer-banning-gay-conversion-therapy/> [<https://perma.cc/HUQ2-HXVA>].

25. See George, *supra* note 12, at 795.

26. See, e.g., Harriet Sherwood, *Church of England Demands Ban on Conversion Therapy*, GUARDIAN (July 8, 2017), <https://www.theguardian.com/world/2017/jul/08/church-of-england-demands-ban-on-conversion-therapy> [<https://perma.cc/7ZQP-TXUR>].

27. MEMO OF UNDERSTANDING, *supra* note 21.

28. *General Synod Backs Ban on Conversion Therapy*, CHURCH OF ENG. (Aug. 7, 2017) <https://www.churchofengland.org/more/media-centre/news/general-synod-backs-ban-conversion-therapy> [<https://perma.cc/Z8Y4-HPBD>].

29. Sherwood, *supra* note 26.

30. Charles White, *Theresa May is Refusing to Make Gay Conversion 'Therapy' Illegal* METRO (Mar. 16, 2017), <https://metro.co.uk/2017/03/16/theresa-may-is-refusing-to-make-gay-conversion-therapy-illegal-6514245/> [<https://perma.cc/22QY-ACAZ>].

31. MEMO OF UNDERSTANDING, *supra* note 21; APA REPORT, *supra* note 15, at 3; U.K. COUNCIL FOR PSYCHOTHERAPY, *supra* note 21.

international law should it fail to protect its citizens from torture at the hands of private citizens.

Part I of this Note discusses the history of conversion therapy in the mental health and religious context and discusses the U.K.'s obligation to prevent torture and CIDT under international and domestic law. Part II of this Note discusses how conversion therapy meets the definition of torture and cruel, inhuman or degrading treatment. This Note concludes that the U.K. has an obligation under international and domestic law to pass a ban on conversion therapy and address the concern that such a ban will violate an individual's freedom of religion.

## II. BACKGROUND

The mental health and religious communities in the U.K. both have a history of using conversion therapy in an effort to help individuals struggling with their sexual orientation.<sup>32</sup> However, mainstream psychology and religious practitioners have distanced themselves from efforts to change sexual orientation as more scientific research on conversion therapy was conducted and as society's view on identifying as gay progressed.<sup>33</sup> Unfortunately, not all have disowned the practice and instead some continue to conduct conversion therapy despite the warnings from mainstream psychologists and some religious leaders.<sup>34</sup>

### A. *Mental Health Institutions and Their Relationship to Conversion Therapy*

Gay men<sup>35</sup> have been subject to regulation in the U.K. since Henry VIII first enacted a sodomy ban in 1533.<sup>36</sup> The law grew even stricter with the Labouchere Amendment of 1885 which out-

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32. Laura A. Gans, *Inverts, Perverts, and Converts: Sexual Orientation Conversion Therapy and Liability*, 8 B.U. PUB. INT. L.J. 219, 220 n.9 (1999).

33. See, e.g., MEMO OF UNDERSTANDING, *supra* note 21; Sherwood, *supra* note 26.

34. E.g., *Change Oriented Therapy*, CORE ISSUES TRUST, <https://www.core-issues.org/change-oriented-therapy> (last visited Apr. 8, 2018) [<https://perma.cc/C58Z-TUKZ>].

35. While there has never been legislation banning sexual contact between women in the U.K., lesbians were subject to discrimination through the medical community's assumption that "there was a pathological association between women's social and economic emancipation and same-sex love, criminality and insanity." Michael King & Annie Bartlett, *British Psychiatry and Homosexuality*, 175 BRIT. J. PSYCHIATRY 106, 107 (1999).

36. GLENN SMITH ET AL., TREATMENTS OF HOMOSEXUALITY IN BRITAIN SINCE THE 1950S—AN ORAL HISTORY: THE EXPERIENCE OF PATIENTS 1 (2004) (banning sodomy between men and women, men and men, and men and animals).

lawed any sexual contact between two males.<sup>37</sup> Punishment for violating the Labouchere Amendment included prison for up to two years.<sup>38</sup> The British government finally decriminalized same-sex contact between men in 1967.<sup>39</sup> But centuries of criminalization meant that stigmatization remained prevalent when conversion therapy peaked in the 1960s and 1970s.<sup>40</sup>

The British psychological community's use of conversion therapy was part of a larger global movement that classified same-sex desires as a mental disorder.<sup>41</sup> Negative attitudes towards homosexuality, along with a desire to enforce traditional gender roles, led the American Psychiatric Association to classify homosexuality as a mental illness in its "Diagnostic and Statistical Manual of Mental Disorders" (DSM) published in both 1952 and 1968.<sup>42</sup> Further, the World Health Organization classified same-sex desires as a mental disorder in its "International Statistical Classification of Diseases and Related Health Problems" (ICD) until 1992.<sup>43</sup> Both the DSM and ICD classifications are important because British psychologists often base diagnoses on these classification systems.<sup>44</sup>

Historically, doctors used various biological and behavioral methods to attempt to rid their patients of same-sex desires.<sup>45</sup> The biological approach often involved procedures like lobotomies, castration, clitoridectomies, cauterization of the spinal cord, convulsive electric shocks, and hormone injections.<sup>46</sup> On the other hand, behavioral methods consisted of aversive conditioning that

37. *1885 Labouchere Amendment*, U.K. PARLIAMENT, <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/collections1/sexual-offences-act-1967/1885-labouchere-amendment/> (last visited Apr. 8, 2018) [<https://perma.cc/HTZ5-PBK7>].

38. *Id.*

39. SMITH ET AL., *supra* note 36.

40. *Id.*

41. APA REPORT, *supra* note 15, at 22; WORLD HEALTH ORGANIZATION, THE ICD-10 CLASSIFICATION OF MENTAL AND BEHAVIORAL DISORDERS: CLINICAL DESCRIPTIONS AND DIAGNOSTIC GUIDELINES 172 (1992).

42. APA REPORT, *supra* note 15, at 22.

43. WORLD HEALTH ORGANIZATION, *supra* note 41, at 172.

44. See BRITISH PSYCHOL. SOC'Y, DIAGNOSIS – POLICY AND GUIDANCE ¶ 4.2, <https://www.bps.org.uk/news-and-policy/diagnosis-policy-and-guidance-mental-and-behavioural-classification-systems-2013> [<https://perma.cc/2A2Z-8LT5>]. See also *News Analysis: Controversial Mental Health Guide DSM-5*, NAT'L HEALTH SERV. (Aug. 15, 2013), <https://www.nhs.uk/news/mental-health/news-analysis-controversial-mental-health-guide-dsm-5/> (calling the DSM a guide to diagnosis) [<https://perma.cc/6RRG-4JA7>].

45. See George, *supra* note 12, at 801–02.

46. *Id.* at 802.

used electric shocks or nausea-inducing drugs in conjunction with homoerotic images.<sup>47</sup>

### 1. A Brief History of Psychological Practitioners' View on Homosexuality

Proponents and opponents of conversion therapy both point to Sigmund Freud's work to substantiate their positions.<sup>48</sup> Freud believed that all men and women had bisexual tendencies and that whether a person identified as homosexual and heterosexual was a result of cultural forces.<sup>49</sup> However, Freud was ambiguous on whether an individual could change their sexual orientation from homosexual to heterosexual.<sup>50</sup> While Freud never categorically denied conversion therapy's viability, he did express serious doubt about the practice and the idea that homosexuality was a disease.<sup>51</sup>

In the wake of Freud's work, psychology began to view homosexuality in a distinctly negative light and as a product of family dynamics.<sup>52</sup> The psychologists leading the charge included Sandor Rado, Irving Bieber, Charles Socarides, and Abram Kardiner.<sup>53</sup> The year after Freud's death, Sandor Rado announced that universal bisexuality had been discredited and argued that same-sex desires were due to parental psychopathology.<sup>54</sup> Rado's theory was that parents forced their children into homosexuality by aggressively deterring them from having sex.<sup>55</sup> This caused women to view penises as a "destructive weapon" and men to view vaginas as "inescapable punishment" which could only be escaped through homosexuality.<sup>56</sup>

As Rado's theory of parental psychopathology grew in popularity, other psychologists began to develop variations on the theory.<sup>57</sup> Irving Bieber advanced the idea that men became gay due to overbearing mothers and distant fathers.<sup>58</sup> Charles Socarides argued

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47. *Id.*

48. Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 790 (2001).

49. *Id.* at 791.

50. *Id.* at 793.

51. *Id.*

52. APA REPORT, *supra* note 15, at 22.

53. Yoshino, *supra* note 48, at 794.

54. *Id.* at 795.

55. SANDOR RADO, ADAPTATIONAL PSYCHODYNAMICS: MOTIVATION AND CONTROL 212–13 (Jean Jameson & Henriette Klein eds., 1969).

56. *Id.*

57. Yoshino, *supra* note 48, at 795.

58. IRVING BIEBER ET AL., HOMOSEXUALITY: A PSYCHOANALYTIC STUDY 310–16 (1962).

that lesbians were the result of evil mothers and rejecting fathers.<sup>59</sup> Abram Kardiner believed that a combination of developmental and social factors led to same-sex tendencies.<sup>60</sup> Accordingly, mainstream psychology rejected Freud's theory of universal bisexuality in favor of parental psychopathology.<sup>61</sup>

Psychologists also rejected Freud's theory that conversion therapy was ineffective.<sup>62</sup> Bieber conducted a widely cited study during the 1950s that concluded that conversion therapy, although more effective in some cases and not others, could successfully change an individual from homosexual to heterosexual.<sup>63</sup> This claim was supported by the American Psychological Association's classification of homosexuality as a mental illness in 1952 in its DSM.<sup>64</sup>

After the Stonewall protests in 1969, the consensus among psychologists that homosexuality was a disease began to change and activists began to put pressure on the American Psychiatric Association to remove homosexuality from the DSM.<sup>65</sup> In 1973, the American Psychiatric Association reversed course and led the movement to remove homosexuality from lists of mental disorders by formally removing homosexuality from the DSM.<sup>66</sup>

However, while homosexuality was no longer considered a mental illness, a new category was created: sexual orientation disturbance.<sup>67</sup> This diagnosis was reserved for those individuals who wished to increase heterosexual arousal through conversion therapy so that they could enter into heterosexual relationships.<sup>68</sup> References to homosexuality were finally erased from the DSM in 1987, which signaled that conversion therapy was no longer a primary treatment method and that homosexuality was normal.<sup>69</sup> The World Health Organization followed suit and removed homosexuality from the ICD's list of mental disorders in 1992.<sup>70</sup>

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59. CHARLES W. SOCARIDES, *THE OVERT HOMOSEXUAL 174-75* (1968).

60. ABRAM KARDINER, *SEX AND MORALITY* 166 (Charter ed. 1962).

61. Yoshino, *supra* note 48, at 794.

62. *Id.* at 795.

63. IRVING BIEBER, *supra* note 58, at 318-19.

64. Yoshino, *supra* note 48, at 797.

65. *Id.* at 798.

66. Marlena McMurchie, *The Dustbin of Quackery? Senate Bill 1172 and the Legal Implications of Banning Reparative Therapy for Homosexual Minors*, 87 S. CAL. L. REV. 1519, 1521 (2014).

67. *See* George, *supra* note 12, at 802.

68. *Id.*

69. *Id.* at 803-05.

70. WORLD HEALTH ORGANIZATION, *supra* note 41, at 172.

However, not all psychologists believed that homosexuality should have been removed from the DSM and a group of psychologists formed the National Association for Research and Therapy of Homosexuality (NARTH) in 1992.<sup>71</sup> NARTH was a group of mental health practitioners who believed that homosexuality was a mental illness that could be cured through treatment—or conversion therapy.<sup>72</sup> Recently, NARTH has rebranded itself as the Alliance for Therapeutic Choice and Scientific Integrity (ATCSI), but it remains committed to promoting conversion therapy “for persons who experience unwanted homosexual attractions.”<sup>73</sup>

It is important to note that one member of the board of directors of ATCSI is Mike Davidson who is also a member of the board of directors of Core Issues Trust.<sup>74</sup> As discussed below, Core Issues Trust is a major proponent of conversion therapy in the U.K.<sup>75</sup> Mike Davidson is very open about his faith in conversion therapy’s viability and has gone so far as to appear on Good Morning Britain to defend the practice.<sup>76</sup>

## 2. The Psychological Methods Used in Conversion Therapy

Traditionally, there were two avenues available for curing homosexuality: physical and mental interventions.<sup>77</sup> The physical interventions included lobotomies for parts of the brain that stimulated sexual desire, castration, removal of female sex organs, electroshock therapy, and hormone treatment.<sup>78</sup> Additionally, aversion therapy was popular in treating homosexuality.<sup>79</sup> Aversion therapy involves forcing a patient to associate bad feelings with certain thoughts and usually consists of making a patient feel nauseated when viewing same-sex encounters.<sup>80</sup> Sometimes therapists

71. McMurchie, *supra* note 66, at 1521.

72. *Id.*

73. *Mission Statement*, ALLIANCE FOR THERAPEUTIC CHOICE & SCIENTIFIC INTEGRITY <https://www.therapeuticchoice.com/our-mission> (last visited Oct. 8, 2018) [<https://perma.cc/8RSP-UPA5>].

74. *Board of Directors*, ALLIANCE FOR THERAPEUTIC CHOICE & SCIENTIFIC INTEGRITY, <https://www.therapeuticchoice.com/board> (last visited Oct. 8, 2018) [<https://perma.cc/EA9F-3JHU>].

75. *Change Oriented Therapy (COT)*, CORE ISSUES TRUST, <https://www.core-issues.org/change-oriented-therapy> (last visited Oct. 8, 2018) [<https://perma.cc/37DX-BC2R>].

76. Good Morning Britain, *Piers Morgan Challenges Doctor’s Claims That Homosexuality is an ‘Aberration’*, YOUTUBE (Sept. 5, 2017), <https://www.youtube.com/watch?v=dQgq9qA6jGM> [<https://perma.cc/2EBW-DV4Z>].

77. McMurchie, *supra* note 66, at 1522.

78. *Id.*

79. *Id.*; APA REPORT, *supra* note 15, at 22.

80. McMurchie, *supra* note 66, at 1522; APA REPORT, *supra* note 15, at 22.

would also have patients recondition their thoughts during masturbation or have male patients visit female prostitutes.<sup>81</sup> These physical interventions are now considered extreme and there is a movement to replace them with mental interventions.<sup>82</sup>

Proponents of mental interventions believe that homosexuality is the result of unfulfilling same-sex relations as a child that evolves into same-sex sexual desires during puberty.<sup>83</sup> Some proponents of mental interventions take this belief a step further and argue that homosexuality is the result of child molestation.<sup>84</sup> To help a patient overcome these traumas, therapists encourage patients to perform traditional gender roles and behave in either more masculine or feminine fashions respectively.<sup>85</sup> Mental health practitioners also engage in psychotherapy to change or suppress an individual's sexual orientation.<sup>86</sup> Psychotherapy is a broad term for "talking therapies" that involve working through issues by talking with licensed professionals.<sup>87</sup>

### B. *Religious Entities and Their Relationship to Conversion Therapy*

Despite losing popularity among mainstream psychology, conversion therapy is still practiced in religious settings.<sup>88</sup> Some religious communities have a history of holding hostile attitudes towards members of the gay community.<sup>89</sup> Thus, as members of NARTH began expanding their practice, they infused religious language into their materials to attract religiously conservative cli-

81. David B. Cruz, *Controlling Desires: Sexual Orientation Conversion and the Limits of Knowledge and Law*, S. CAL. L. REV. 1297, 1306–07 (1999).

82. See McMurchie, *supra* note 66, at 1522.

83. *Id.* at 1522.

84. *Id.* at 1523.

85. *Id.* at 1522–23.

86. See Laura A. Gans, *supra* note 32, at 223–24.

87. See *Common Types of Psychotherapy*, U.K. COUNCIL FOR PSYCHOTHERAPY, <https://www.psychotherapy.org.uk/about-psychotherapy/types/> (last visited Apr. 8, 2018) [<https://perma.cc/CM5C-3D7B>].

88. See Vicky Beeching, *I Tried to 'Pray the Gay Away,' and Ended up in a Hospital Bed*, INDEPENDENT (Apr. 16, 2015), <http://www.independent.co.uk/voices/comment/i-tried-to-pray-the-gay-away-but-ended-up-in-a-hospital-bed-10182044.html> [<https://perma.cc/F3WS-QADK>].

89. See John P. Dehlin et al., *Sexual Orientation Change Efforts Among Current or Former LDS Church Members*, 62.2 J. COUNSELING PSYCHOL. 95 (2015), for a discussion of the Church of Jesus Christ of Latter-day Saints' history of hostility toward members of the community.

ents.<sup>90</sup> Leaders used homophobia to propel their religious conversion therapy efforts.<sup>91</sup>

Other organizations began springing up and advocating for the use of conversion therapy.<sup>92</sup> One of the largest of these organizations was known as Exodus International.<sup>93</sup> At its peak, Exodus International oversaw 400 ministries in seventeen different countries.<sup>94</sup> However, the organization began suffering several setbacks as prominent leaders either left the group or were kicked out for continuing to show homosexual tendencies.<sup>95</sup> In 2013, Exodus International closed its doors for good when Alan Chambers, then president of the organization, publicly announced his regret for perpetuating conversion therapy.<sup>96</sup>

As Exodus International closed, other affiliate organizations took its place.<sup>97</sup> One such group is known as Exodus Global Alliance.<sup>98</sup> This organization has ministries around the world ready to help those seeking conversion therapy.<sup>99</sup> Its main goal is to help “people affected by homosexuality” and promote “the message that faith in Christ and a transformed life is possible for people who experience same-sex attractions . . . .”<sup>100</sup>

Within the U.K., there are several religious based organizations that focus on giving people conversion therapy.<sup>101</sup> For example,

90. See Moira Donegan, *The Abominable Legacy of Gay-Conversion Therapy*, NEW REPUBLIC (Mar. 13, 2017), <https://newrepublic.com/article/141294/abominable-legacy-gay-conversion-therapy> [<https://perma.cc/9NME-WVES>].

91. See *id.*

92. *Change Oriented Therapy*, *supra* note 75.

93. Jonathan Merritt, *The Downfall of the Ex-Gay Movement*, ATLANTIC (Oct. 6, 2015), <https://www.theatlantic.com/politics/archive/2015/10/the-man-who-dismantled-the-ex-gay-ministry/408970/> [<https://perma.cc/2A8Y-7PYZ>].

94. *Id.*

95. *Id.* (Michael Bussee, cofounder of Exodus International, left the organization and admitted to never seeing a member become heterosexual. John Paulk, former chairman, was pushed out after photographs surfaced of him cruising for men at a gay bar in Washington D.C.).

96. *Id.*

97. See *About Exodus*, EXODUS GLOBAL ALLIANCE, <https://exodusglobalalliance.org/aboutexoduss4.php> (last visited Oct. 13, 2018) [<https://perma.cc/KY38-PMJE>].

98. *Profiles on the Right: Exodus Global Alliance*, POL. RES. ASSOCIATES, <https://www.politicalresearch.org/profiles-on-the-right-exodus-global-alliance/> (last visited Oct. 13, 2018) [<https://perma.cc/M6CZ-22EU>].

99. *Find a Ministry*, EXODUS GLOBAL ALLIANCE, <https://exodusglobalalliance.org/findaministry52.php> (last visited Apr. 8, 2018) [<https://perma.cc/Y5JD-R8VJ>].

100. See *About Exodus*, *supra* note 97.

101. See *Resources for Church Leaders – Biblical and Pastoral Responses to Homosexuality*, EVANGELICAL ALLIANCE (Jul. 17, 2012), <http://www.eauk.org/church/resources/theological-articles/resources-for-church-leaders-biblical-and-pastoral-responses-to-homosexuality.cfm> [<https://perma.cc/2B6S-KQD5>]; *Help We Offer*, CORE ISSUES TRUST, <https://www.core->

True Freedom Trust, located in Birkenhead just outside of Liverpool,<sup>102</sup> believes that “the pattern of people’s sexual attractions do[es] change during their lives,” and “aim[s] to promote singleness as equally valuable as marriage” for individuals with same-sex desires.<sup>103</sup> Another organization that advocates for conversion therapy is the Evangelical Alliance.<sup>104</sup> “The Evangelical Alliance is made up of hundreds of organizations, thousands of churches and tens of thousands of individuals” that seek to spread their interpretation of the gospel.<sup>105</sup> The Evangelical Alliance advocates for “accept[ing] active lesbians and gay men,” but with the caveat that they “will come in due course to see the need to be transformed . . . .”<sup>106</sup>

One of the most well-known organizations that advocates for conversion therapy in the U.K. is the Core Issues Trust.<sup>107</sup> The organization believes that western civilization is in “deep trouble” because it is gradually becoming more accepting of LGBT persons.<sup>108</sup> The group’s mission is to support “men and women with homosexual issues who voluntarily seek change in sexual preference and expression.”<sup>109</sup> The group is largely open about the types of therapies it provides for those uncomfortable with their sexual orientation.<sup>110</sup> One of the members, Mike Davidson, has appeared on television to promote conversion therapy and has expressed little to no doubt about its virtues.<sup>111</sup>

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issues.org/help-we-offer (last visited Oct. 13, 2018) [<https://perma.cc/8JD7-REQB>]; *We Believe*, LINC, [http://liveinchrist.eu/we\\_believe.html](http://liveinchrist.eu/we_believe.html) (last visited Oct. 13, 2018) [<https://perma.cc/R2KR-RKCZ>].

102. *What is TFT?*, TRUE FREEDOM TRUST, <http://truefreedomtrust.co.uk/about-us> (last visited Oct. 13, 2018) [<https://perma.cc/L2Y8-S5M2>].

103. Stuart Parker, *Can Sexual Orientation Be Changed?*, TRUE FREEDOM TRUST, <http://truefreedomtrust.co.uk/can-sexual-orientation-be-changed> (last visited Oct. 13, 2018) [<https://perma.cc/M725-WPPS>].

104. *Recent Developments in Counselling Practice*, EVANGELICAL ALLIANCE (Feb. 19, 2015), <http://www.eauk.org/current-affairs/politics/recent-developments-in-counselling-practice.cfm> [<https://perma.cc/JH6H-KUJD>].

105. *About Us*, EVANGELICAL ALLIANCE, <https://www.eauk.org/about-us> (last visited Sept. 30, 2018) [<https://perma.cc/92S7-4RGX>].

106. *Resources for Church Leaders*, *supra* note 101.

107. *About Core Issues Trust*, CORE ISSUES TRUST, <https://www.core-issues.org/about> (last visited Oct. 13, 2018) [<https://perma.cc/6PA9-CHAQ>].

108. *Id.*

109. *Id.*

110. *Help We Offer*, *supra* note 101.

111. *See Piers Morgan Challenges Doctor’s Claims That Homosexuality is an ‘Aberration’*, *supra* note 76.

### C. *How Conversion Therapy Adversely Affects Individuals*

The major psychological associations in the U.K. have banded together to state that there is no evidence that conversion therapy works.<sup>112</sup> The evidence actually shows that conversion therapy is harmful to those who undergo treatment.<sup>113</sup> However, proponents of conversion therapy reject this notion and believe that absence of proof that conversion therapy works is not the same as evidence that it does not work.<sup>114</sup> Proponents often treat individuals with same-sex desires as “guilty until proven innocent,” and are blind to the homophobic and heterosexist treatment of the gay community.<sup>115</sup> As such, many proponents ignore the effects of conversion therapy on gay men and women.<sup>116</sup>

The psychological harms caused by conversion therapy are wide ranging.<sup>117</sup> At the lower end of the spectrum, the effects include anger, guilt, and confusion.<sup>118</sup> On the upper and more serious end of the spectrum, the effects include internalized homophobia, intrusive imagery, depression, sexual impotence, and suicide.<sup>119</sup> One San Francisco State University study found that young people subjected to conversion therapy were eight times more likely to have attempted suicide and six times more likely to have high levels of depression than young gay people who were accepted by their parents.<sup>120</sup> Thus, the psychological harms of conversion therapy can be severe.

The sociological effects of conversion therapy can also be harmful because of the strain it puts on an individual’s personal relationships.<sup>121</sup> For example, providers attempt to convince the victim to blame their sexual orientation on poor parenting.<sup>122</sup> This puts stress on the parent-child relationship and leads to hatred and alienation between the parents and the child.<sup>123</sup> Additionally,

112. MEMO OF UNDERSTANDING, *supra* note 21.

113. Ariel Shidlo & Michael Schroeder, *Changing Sexual Orientation: A Consumers’ Report*, 33 PROF. PSYCHOL.: RES. & PRAC. 249, 254-55 (2002).

114. *Id.*

115. A. Lee Beckstead, *Can We Change Sexual Orientation?*, 37.6 ARCH. SEXUAL BEHAV. 9 (2008).

116. *Id.*

117. Shidlo & Schroeder, *supra* note 113.

118. APA REPORT, *supra* note 15, at 42.

119. Shidlo & Schroeder, *supra* note 113.

120. *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, *supra* note 23.

121. Shidlo & Schroeder, *supra* note 113, at 255.

122. *Id.*

123. *Id.*

many patients lose their support systems altogether.<sup>124</sup> Therapists tell their clients to break up with any same-sex partners and to leave their gay friends behind once therapy starts.<sup>125</sup> Further, some men have reported that even though they do not have pedophile tendencies, they have developed a fear that they might become a pedophile after a conversion therapy provider placed the thought in their head.<sup>126</sup> Thus, gay men and women who undergo conversion therapy often suffer sociological harms through damaged relationships and a lack of support.<sup>127</sup>

Conversion therapy can also have a negative effect on the person's religiosity.<sup>128</sup> Several individuals reported "a complete loss of faith, sense of betrayal by religious leaders, anger at clinicians who introduced punitive and shaming concepts of God, and excommunication."<sup>129</sup> As such, the religious consequences of undergoing conversion therapy can also be significantly adverse.

#### D. *Defining Torture and Cruel, Inhuman or Degrading Treatment*

The international community has not established a singular definition of torture and CIDT.<sup>130</sup> With no clear definition, acts can fall within the meaning of torture and CIDT in some instances or they can be considered acceptable acts in other instances.<sup>131</sup> With numerous domestic laws and international treaties governing the subject of torture from the perspective of the British government,<sup>132</sup> it is necessary to establish which laws are applicable and what the laws have in common to reach a workable definition of torture and CIDT.

##### 1. The Sources of Law Defining Torture and Cruel, Inhuman or Degrading Treatment

The right to be free from torture is so sacred that the United Nations International Criminal Tribunal for the Former Yugoslavia

124. APA REPORT, *supra* note 15, at 42.

125. Shidlo & Schroeder, *supra* note 113, at 255.

126. *Id.* at 255–56.

127. *Id.*

128. *Id.* at 256.

129. *Id.*

130. U.N. VOLUNTARY FUND FOR VICTIMS OF TORTURE, INTERPRETATION OF TORTURE IN THE LIGHT OF THE PRACTICE AND JURISPRUDENCE OF INTERNATIONAL BODIES 2 (2011) [hereinafter U.N. VOLUNTARY FUND].

131. *Id.*

132. *E.g.*, Human Rights Act 1998, c. 42, § 1(3), sch. 1 (UK); European Convention on Human Rights art. 3, Nov. 4, 1950, E.T.S. No. 005; G.A. Res. 217A (III), Universal Declaration of Human Rights (Dec. 10, 1948).

declared that the right has reached the level of a preemptory norm or *jus cogens*.<sup>133</sup> This places the right at the top of the hierarchy of laws, superior to any other law.<sup>134</sup> Thus, even in times of war, national emergency or in the face of terrorism, the right to be free from torture must be respected by everyone.<sup>135</sup> Note, torture is considered *jus cogens*, but CIDT is not.<sup>136</sup>

Furthermore, even assuming that the right to be free from torture is not *jus cogens*, the United Nations (U.N.) considers torture and CIDT to be in violation of international law at a global level.<sup>137</sup> Both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) enumerate the right to be free from torture and CIDT.<sup>138</sup> The drafters of the ICCPR went so far as to include the right to be free from torture among the seven rights that are non-derogable.<sup>139</sup> This means states cannot suspend an individual's right to be free from torture, even in times of emergency.<sup>140</sup> Thus, because the U.K. has signed both the UDHR and the ICCPR, it is bound by international law to secure freedom from torture for its citizens.

At a regional level, Europe also finds the right to be free from torture and CIDT compelling.<sup>141</sup> The Council of Europe was responsible for drafting the European Convention on Human Rights.<sup>142</sup> This convention is a binding international treaty among

133. Prosecutor v. Furundzija, Case No. IT-95-17/1-T, Judgment, ¶ 153 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998).

134. Kamrul Hossain, *The Concept of Jus Cogens and the Obligation Under the U.N. Charter*, 3 SANTA CLARA J. INT'L L. 72, 73 (2005).

135. U.N. VOLUNTARY FUND, *supra* note 130, at 8.

136. Gail H. Miller, *Defining Torture* 10 (Floersheimer Center for Constitutional Democracy Occasional Paper #3, 2005).

137. G.A. Res. 39/46, art. 2, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984).

138. See Universal Declaration of Human Rights, *supra* note 132, art. 5 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."); G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights art. 7 (Dec. 16, 1966) ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.").

139. International Covenant on Civil and Political Rights, *supra* note 138, art. 4.

140. Travis S. Weber & L. Lin, *Freedom of Conscience and New "LGBT Rights" in International Human Rights Law*, 2 J. GLOB. JUST. & PUB. POL'Y 277, 281 (2016); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 137, art. 2.

141. European Convention on Human Rights, *supra* note 132, art. 3.

142. *Do Not Get Confused*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/about-us/do-not-get-confused> (last visited Apr. 8, 2018) [<https://perma.cc/7CDU-XTXV>].

forty-seven European countries, including the U.K., which enumerates the right to be free from torture and CIDT in Article 3.<sup>143</sup>

The European Convention on Human Rights also established the European Court of Human Rights (ECHR), which has jurisdiction over violations of the Convention.<sup>144</sup> Individuals alleging violations of the European Convention of Human Rights can bring a claim against the offending country through the ECHR.<sup>145</sup> If the ECHR finds a violation, the relevant state will have to amend or create legislation to avoid violations in the future.<sup>146</sup>

In *V. v. The United Kingdom*, the ECHR declared that “Article 3 enshrines one of the most fundamental values of democratic society”—the right to be free from torture and CIDT.<sup>147</sup> Thus, the ECHR holds the right to be free from torture and CIDT in high regard.<sup>148</sup>

At the national level, the U.K. incorporated the European Convention on Human Rights into its domestic laws through the Human Rights Act of 1998.<sup>149</sup> Like the European Convention on Human Rights, the Human Rights Act states that, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.”<sup>150</sup> Therefore, torture and CIDT are illegal from global, regional, and national perspectives in the U.K.<sup>151</sup>

## 2. The Elements of Torture and Cruel, Inhuman or Degrading Treatment

As discussed above, there is no single agreed upon definition for torture and CIDT.<sup>152</sup> However, there are common elements among the differing definitions, including (i) the nature of the act,

143. European Convention on Human Rights, *supra* note 132, art. 3 (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”).

144. EUROPEAN COURT OF HUMAN RIGHTS, QUESTIONS & ANSWERS 3, [https://www.echr.coe.int/Documents/Questions\\_Answers\\_ENG.pdf](https://www.echr.coe.int/Documents/Questions_Answers_ENG.pdf) [<https://perma.cc/F5HQ-X4DC>].

145. EUROPEAN COURT OF HUMAN RIGHTS, THE ECHR IN 50 QUESTIONS 5 (2014), [https://www.echr.coe.int/Documents/50Questions\\_ENG.pdf](https://www.echr.coe.int/Documents/50Questions_ENG.pdf) [<https://perma.cc/MEP6-F644>].

146. *Id.* at 11.

147. *V. v. United Kingdom*, 1999-IX Eur. Ct. H.R. 111, ¶ 69.

148. *See id.*

149. *The Human Rights Act*, EQUALITY & HUM. RTS. COMMISSION, <https://www.equalityhumanrights.com/en/human-rights/human-rights-act> (last visited Apr. 8, 2018) [<https://perma.cc/T3MJ-H3Y4>].

150. Human Rights Act 1998, c. 42, § 1(3), sch. 1, art. 3 (U.K.).

151. *See generally* Universal Declaration of Human Rights, *supra* note 132; International Covenant on Civil and Political Rights, *supra* note 138; European Convention on Human Rights, *supra* note 132, art. 3; Human Rights Act 1998, c. 42, § 1(3), sch. 1, art. 3 (U.K.).

152. *See* U.N. VOLUNTARY FUND, *supra* note 130, at 3.

(ii) severe pain and suffering, (iii) the perpetrator's intention, (iv) the purpose of the torture or CIDT, and (v) the involvement of public officials.<sup>153</sup> Accordingly, an act is considered tortuous or CIDT if it satisfies these elements.<sup>154</sup>

First, international bodies will consider the nature of the act in question.<sup>155</sup> Generally, the word "act" is given a broad interpretation<sup>156</sup> and includes omissions.<sup>157</sup> For example, leaving an individual in solitary confinement without food or water is an omission that could rise to the level of torture or CIDT.<sup>158</sup> Additionally, the U.K. makes explicit in its Criminal Justice Act that, "[i]t is immaterial whether the pain or suffering . . . is caused by an act or an omission."<sup>159</sup> Thus, torture and CIDT includes a wide range of both acts and omissions.<sup>160</sup>

Second, international bodies will consider the severity of the pain and suffering that the individual endures.<sup>161</sup> In the *Greek Case*, the European Commission on Human Rights established a hierarchy of severity to help distinguish between acts that are torturous, CIDT or neither.<sup>162</sup> The severity hierarchy reserves the top level for torture, the intermediary level for inhuman treatment, and the lowest level for degrading treatment.<sup>163</sup>

To determine where in the severity hierarchy an act might fall, the ECHR first requires a minimum level of severity.<sup>164</sup> The

153. *Id.* See also Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 137, art. 1 ("For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent or incidental to lawful sanctions.").

154. U.N. VOLUNTARY FUND, *supra* note 130, at 3.

155. See Miller, *supra* note 136, at 6–7.

156. U.N. VOLUNTARY FUND, *supra* note 130, at 3.

157. David Weissbrodt & Cheryl Heilman, *Defining Torture and Cruel, Inhuman, and Degrading Treatment*, 29 L. & INEQ. 343, 378 (2011).

158. Miller, *supra* note 136, at 7.

159. Criminal Justice Act 1988, c. 33, § 134 (U.K.).

160. Weissbrodt & Heilman, *supra* note 157, at 378 (Some acts and omissions that were determined to be torture or CIDT include: solitary confinement, electric shocks, drowning, standing or walking on top of a person, beatings, rape, deprivation of food and water, mock burials, threats of torture).

161. Miller, *supra* note 136, at 8.

162. *Id.* at 9.

163. The Greek Case, 1969 Supp. Y.B. EUR. CONV. ON H.R. (Eur. Comm'n of H.R.) 186.

164. U.N. VOLUNTARY FUND, *supra* note 130, at 7.

ECHR's analysis of the "minimum is, in the nature of things, relative; it depends on all the circumstances of the case."<sup>165</sup> The ECHR will consider things like the duration of the treatment, the physical effects, the mental effects, and the victim's sex, age, and health to determine whether the minimum level of severity has been met.<sup>166</sup>

Further, an act considered CIDT in one case could later be deemed to be torture in another.<sup>167</sup> The ECHR views the European Convention on Human Rights as a "living instrument which must be interpreted in the light of present-day conditions" and thus has an evolving view of severity in torture and CIDT.<sup>168</sup>

In practice, this severity hierarchy was demonstrated in *The Republic of Ireland v. The United Kingdom* when the ECHR ruled that British military interrogators engaged in CIDT, but not torture, after using five interrogation techniques against individuals suspected of participating in Irish Republican Army activities.<sup>169</sup> These interrogation techniques included wall-standing, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink.<sup>170</sup> This ECHR decision remains controversial amongst human rights activists who believe the techniques should be considered torture.<sup>171</sup>

Third, international bodies will consider whether the perpetrator intentionally inflicted harm on the victim.<sup>172</sup> The intent required has been interpreted to mean both the intent to commit the act and the intent to inflict pain and suffering.<sup>173</sup> Thus negligent or involuntary acts performed on an individual do not rise to the level of CIDT or torture, but reckless acts could satisfy the intention element.<sup>174</sup> Moreover, the ECHR made intent easier to prove by creating a rebuttable presumption of torture and CIDT that the state must overcome.<sup>175</sup>

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165. *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) ¶ 100 (1989).

166. U.N. VOLUNTARY FUND, *supra* note 130, at 7.

167. *Id.* at 8.

168. *Id.*

169. *Ireland v. United Kingdom*, 23 Eur. Ct. H.R. (ser. B) at 86 (1978).

170. *Id.*

171. Caroline Murphy, *The Haunting of the Hooded Men*, TRINITY C. L. REV. ONLINE (June 13, 2016), <http://trinitycollegelawreview.org/wp-content/uploads/2016/06/Case-of-the-Hooded-Men.pdf> [<https://perma.cc/8PSE-TMVY>].

172. U.N. VOLUNTARY FUND, *supra* note 130, at 4.

173. Miller, *supra* note 136, at 14.

174. U.N. VOLUNTARY FUND, *supra* note 130, at 4.

175. Miller, *supra* note 136, at 13.

Fourth, courts will consider the purpose or motive behind the actions to determine if the act is torture.<sup>176</sup> Note, the purpose of the act often determines whether it is considered torture or CIDT.<sup>177</sup> Purposes that amount to torture include, but are not limited to, extracting a confession, obtaining information, punishment, intimidation and coercion, and discrimination.<sup>178</sup> Thus, only certain specific purposes will amount to torture.<sup>179</sup> In cases where the act was performed without a specific purpose in mind, the act can be considered CIDT but not torture.<sup>180</sup>

Fifth, international bodies have held that an act must be undertaken by a government official to be considered torture or CIDT.<sup>181</sup> Private acts can also be considered torture if there is sufficient state inaction.<sup>182</sup> U.N. Special Rapporteur on Torture Nigel S. Rodley argues that the state action element is satisfied when public officials fail to prevent or rectify ill-treatment, even by private actors.<sup>183</sup> The ECHR also took a broad view of the public official element when it held that the U.K. government's failure to protect four children from their abusive parents made the U.K. responsible for CIDT.<sup>184</sup> Hence in Europe, states must avoid committing torture and CIDT and they must protect individuals within their borders from private forms of torture and CIDT.<sup>185</sup>

Thus, for an act to be considered torture or CIDT, it must meet the five elements discussed above.<sup>186</sup> Whether an act is torture or CIDT depends on the degree to which it satisfies the severity and purpose elements listed above.<sup>187</sup>

### 3. State Responsibility Under the Due Diligence Principle

The state actor requirement for the definition of torture and CIDT has been expanded to go beyond merely just state acts; private acts can also rise to the level of torture or CIDT.<sup>188</sup> Under the

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176. U.N. VOLUNTARY FUND, *supra* note 130, at 4.

177. Weissbrodt & Heilman, *supra* note 157, at 386.

178. Miller, *supra* note 136, at 15.

179. *Id.* at 15–16.

180. Weissbrodt & Heilman, *supra* note 157, at 387.

181. *Id.* at 388.

182. Miller, *supra* note 136, at 18.

183. *Id.*

184. *Id.*

185. U.N. VOLUNTARY FUND, *supra* note 130, at 5.

186. *Id.* at 3.

187. *Id.*

188. See RALPH G. STEINHARDT ET AL., INTERNATIONAL HUMAN RIGHTS LAWYERING: CASES AND MATERIALS 529–32 (2009).

Due Diligence Principle, states can be held accountable for failing to do their due diligence to prevent the violation of a human right within their borders.<sup>189</sup> This principle was first advanced in the *Velásquez-Rodríguez v. Honduras* case out of the Inter-American Court of Human Rights in 1988.<sup>190</sup>

Since then, the principle has spread to other international bodies.<sup>191</sup> In a Declaration on the Elimination of Violence Against Women, the U.N. pushed for states to “[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons.”<sup>192</sup> Recently, the ECHR held in *Opuz v. Turkey* that states must “take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.”<sup>193</sup> Thus, despite the public official element, states can be held accountable for private acts under the Due Diligence Principle if they shirk their responsibilities to protect human rights.<sup>194</sup>

### III. ANALYSIS

In 2013, Juan E. Méndez, U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, called on states to “repeal any law allowing intrusive and irreversible treatments, including . . . ‘conversion therapies’” in his report to the U.N. Human Rights Council.<sup>195</sup> Mr. Méndez’s Report is encouraging, but Special Rapporteur Reports are only recommendations and are not binding.<sup>196</sup>

Then in 2015, the U.N. Human Rights Council reported that, “when forced or otherwise involuntary,” conversion therapy can

189. *Id.*

190. *Id.* at 526 (“An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”).

191. *Id.* at 529–32.

192. G.A. Res. 48/104, U.N. Declaration on the Elimination of Violence Against Women art. 4(c) (Dec. 20, 1993).

193. *Opuz v. Turkey*, 2009-III Eur. Ct. H.R. 107, 159.

194. *Id.*

195. Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, at 23, U.N. Doc. A/HRC/22/53 (2013).

196. *About the Mandate*, ANTI-TORTURE INITIATIVE, <http://antitorture.org/rapporteur-ship/about-the-srts-mandate/> (last visited Apr. 8, 2018) [<https://perma.cc/TMF3-5XB7>].

“breach the prohibition on torture and ill-treatment.”<sup>197</sup> The report went on to recommend that states ban conversion therapy, with no specification on only involuntary conversion therapy.<sup>198</sup> However, this report is only advice for best practices, not binding law.<sup>199</sup> Consequently, it is on states to follow and implement these best practices.

The European Parliament adopted a resolution in March 2018 that encouraged “initiatives prohibiting LGBTI conversion therapies.”<sup>200</sup> European Parliament resolutions are non-binding on member states and therefore do not have legal weight.<sup>201</sup> However, resolutions can be used to encourage the European Commission or member state governments to take action themselves.<sup>202</sup>

Some state and local governments have taken steps to pass bans on conversion therapy within their districts. For example, Argentina,<sup>203</sup> Brazil,<sup>204</sup> Malta,<sup>205</sup> Switzerland,<sup>206</sup> and Taiwan<sup>207</sup> have all made conversion therapy illegal. Further, Beijing and Henan in China,<sup>208</sup> and California, Connecticut, Illinois, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, the District of Columbia, and several local governments in the United States<sup>209</sup> have either held practitioners liable for performing con-

197. U.N. High Commissioner for Human Rights, *Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity*, at 11, U.N. Doc. A/HRC/29/23 (May 4, 2015).

198. *Id.* at 20.

199. *See id.* at 3.

200. Resolution of 1 March 2018 on the Situation of Fundamental Rights in the EU in 2016, EUR. PARL. DOC. P8\_TA-PROV(2018)0056 (2018).

201. *European Parliament: Jargon Buster*, BBC (Nov. 23, 2015), <http://www.bbc.com/news/uk-politics-parliaments-34715703> [<https://perma.cc/J9L2-585B>].

202. *Id.*

203. Law No. 26657, Dec. 2, 2010 (Arg.) (Argentine law forbidding a mental health diagnosis solely on the basis of sexual orientation or gender identity).

204. Mateus Rodrigues & Raquel Morais, *Juiz Federal do DF Altera Decisão que Liberou ‘Cura Gay’ e Reafirma Normas do Conselho de Psicologia*, G1 (Dec. 15, 2017) <https://g1.globo.com/df/distrito-federal/noticia/juiz-federal-do-df-altera-decisao-que-liberou-cura-gay-e-restabelece-normas-do-conselho-de-psicologia.ghtml> [<https://perma.cc/TDY9-GTD3>].

205. Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, No. 167 (2016) (Malta) (law banning conversion therapy).

206. *LGBT Rights in Switzerland*, EQUALDEX, <http://www.equaldex.com/region/switzerland> (last visited Apr. 8, 2018) [<https://perma.cc/2W4N-DZQ3>].

207. *Taiwan Finalizes Conversion Therapy Ban*, MEDIUM (Feb. 24, 2018), <https://medium.com/shanghaiist/taiwan-finalizes-conversion-therapy-ban-adb417e5ff44> [<https://perma.cc/8VTV-57GF>].

208. Jonathan Kaiman, *Chinese Court Rules ‘Gay Cure’ Treatments Illegal*, GUARDIAN (Dec. 19, 2014), <https://www.theguardian.com/world/2014/dec/19/chinese-court-gay-straight-conversion-clinic> [<https://perma.cc/7746-L5HL>].

209. *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, *supra* note 23.

version therapy or passed a conversion therapy ban. Additionally, psychological associations in Chile,<sup>210</sup> India,<sup>211</sup> Israel,<sup>212</sup> Lebanon,<sup>213</sup> South Africa,<sup>214</sup> and the U.K.<sup>215</sup> have expressed doubts about conversion therapy's credibility.

Thus, there is a growing global consensus surrounding conversion therapy and its harmful effects. Therefore, the U.K. should take advantage of this growing global consensus, the advice from its own psychological community,<sup>216</sup> and the calls from the Church of England,<sup>217</sup> to take a stand and say that conversion therapy is torture and CIDT and is now illegal. What follows, is the argument for why conversion therapy is torture and CIDT.

A. *Conversion Therapy is Torture and Cruel, Inhuman or Degrading Treatment Under International and United Kingdom's Domestic Law*

The legal definition of torture has five elements: (i) the nature of the act, (ii) severe pain and suffering, (iii) the perpetrator's intention, (iv) the purpose of the torture or CIDT, and (v) the involvement of public officials.<sup>218</sup> Thus, conversion therapy must meet each of these elements to be considered torture and CIDT.

210. Michael K. Lavers, *Chilean Officials: Conversion Therapy is a "Grave Threat"*, WASHINGTON BLADE (Feb. 19, 2016), <http://www.washingtonblade.com/2016/02/19/chilean-officials-conversion-therapy-is-a-grave-threat/> [<https://perma.cc/943N-H937>].

211. See *Indian Psychiatric Society Official Statement: Homosexuality is Not a Mental Illness*, ORINAM (Feb. 6, 2014), <http://orinam.net/indian-psychiatric-society-homosexual-not-mental-illness/> (stating that homosexuality is not a mental illness) [<https://perma.cc/NN8Z-VAZ8>].

212. Judy Siegel-Itzkovich, *Health Ministry Warns Against Conversion Therapy for Homosexuals*, JERUSALEM POST (Oct. 6, 2014), <http://www.jpost.com/Israel-News/Health/Health-Ministry-warns-against-conversion-therapy-for-homosexuals-378122> [<https://perma.cc/6MS9-9S2G>].

213. Dan Littauer, *Lebanon Says: Being Gay is Not a Disease and Needs No Treatment*, HUFFINGTON POST (Nov. 9, 2013), [http://www.huffingtonpost.co.uk/dan-littauer/gay-treatment-lebanon\\_b\\_3585192.html](http://www.huffingtonpost.co.uk/dan-littauer/gay-treatment-lebanon_b_3585192.html) [<https://perma.cc/9JWE-KD2U>].

214. *Homosexuality – Position Statement*, S. AFR. SOC'Y OF PSYCHIATRISTS, <https://www.sasop.co.za/position-statements> (last visited Apr. 8, 2018) [<https://perma.cc/23ZB-AUM7>].

215. MEMO OF UNDERSTANDING, *supra* note 21.

216. *Id.*

217. *General Synod Backs Ban on Conversion Therapy*, *supra* note 28.

218. U.N. VOLUNTARY FUND, *supra* note 130, at 3; See also Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 137, art 1. ("For the purposes of this Convention the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination

First, conversion therapy is an act under the definition of torture because the methods used in treatment satisfy the international community's broad understanding of the word "act."<sup>219</sup> The biological and behavioral techniques that a psychologist or pastoral counselor provide to individuals are acts by their very nature because they are affirmatively treating an individual.<sup>220</sup>

Even the food and water deprivation practiced by some churches that use Deliverance constitutes and act because the term act covers omissions.<sup>221</sup> For example, the Mountain of Fire and Miracles Ministry in Liverpool holds a three-day prayer session where participants go without food or water.<sup>222</sup> As far back as the *Greek Case*, deprivation of food and water was found to be an act of torture.<sup>223</sup> Thus, Deliverance when practiced without food or water, is an example of an act that could rise to the level of torture and CIDT.

Second, conversion therapy meets the definition of severe pain and suffering because there is evidence that conversion therapy causes extremely harmful psychological and physical problems.<sup>224</sup> To determine if something causes severe pain and suffering, the ECHR will consider the physical effects, mental effects, sex, age, and mental state of the victim to determine if the minimum level of severity has been met.<sup>225</sup>

The mental effects of conversion therapy include things like depression, internalized homophobia, inability to build meaningful relationships, and suicide.<sup>226</sup> As one study put it, young, gay individuals who are rejected by their families are eight times as likely to attempt suicide than individuals who are accepted by their family.<sup>227</sup> In *Güveç v. Turkey*, the ECHR found that Turkey had committed a torture violation of the European Convention on Human Rights because it failed to adequately address a young

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of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent or incidental to lawful sanctions.”).

219. U.N. VOLUNTARY FUND, *supra* note 130, at 3.

220. *See id.*

221. *See id.*

222. Parry, *supra* note 1.

223. U.N. VOLUNTARY FUND, *supra* note 130, at 3–4.

224. Miller, *supra* note 136, at 8.

225. *Id.* at 10.

226. Shidlo & Schroeder, *supra* note 113 at 254–56.

227. *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, *supra* note 23.

man's psychological problems and his repeated suicide attempts.<sup>228</sup> Thus, it seems conversion therapy dramatically increases an individual's suicidal thoughts, which means it could rise to the level of torture and CIDT.

Further, the ECHR will also consider things like the victim's age and the victim's state of health when determining severity.<sup>229</sup> Accordingly, a teenager undergoing conversion therapy is more likely than an adult to have a claim for torture and CIDT. Also, people who go through conversion therapy are often described as "vulnerable" due to their mental state.<sup>230</sup> This also suggests that victims of conversion therapy do not have the best mental health before entering the practice.<sup>231</sup> Hence, conversion therapy practiced on minors is even more likely to be torture and CIDT because of the victim's age and vulnerable mental state.

Placing an act within the hierarchy of severity established by the ECHR is done on a case-by-case basis.<sup>232</sup> Because the methods of conversion therapy vary and the victims of conversion therapy vary in age and vulnerability,<sup>233</sup> it would be difficult to put conversion therapy squarely within one category. Thus, depending on the circumstances, conversion therapy might find itself in the torture category or the CIDT category.

Within the severity hierarchy established in the *Greek Case*, conversion therapy satisfies at least degrading treatment, the lowest form of CIDT, because of its humiliating nature.<sup>234</sup> In *Campbell v. United Kingdom*, the ECHR held that treatment "itself will not be 'degrading' unless the person concerned has undergone—either in the eyes of others or in his own eyes—humiliation . . ." <sup>235</sup> The Court did not lay out specific elements for what humiliation "in the eyes of others" means, but the Court did say that whether a practice is common in the state could be evidence of humiliation in the eyes of others.<sup>236</sup> When it comes to humiliation in "his own eyes," the Court looks to medical evidence showing the individual suf-

228. EUROPEAN COURT OF HUMAN RIGHTS, DETENTION CONDITIONS AND TREATMENT OF PRISONERS 8 (2018).

229. U.N. VOLUNTARY FUND, *supra* note 130, at 7.

230. *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, *supra* note 23.

231. *Id.*

232. U.N. VOLUNTARY FUND, *supra* note 130, at 7.

233. See *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, *supra* note 23; #BornPerfect, *supra* note 4; Beeching, *supra* note 88.

234. The Greek Case, 1969 Supp. Y.B. EUR. CONV. ON H.R. (Eur. Comm'n of H.R.) 186.

235. Campbell v. United Kingdom, 1982 Eur. Ct. H.R. 293, 301.

236. See *id.* at 310.

ferred adverse psychological effects from the treatment.<sup>237</sup> The substantial adverse psychological effects of conversion therapy, including internalized homophobia, depression, and suicidal tendencies,<sup>238</sup> should satisfy the medical evidence necessary to show humiliation in one's own eyes. Thus, conversion therapy meets the minimum requirements for degrading treatment on the severity hierarchy.

Third, conversion therapy satisfies the third requirement of intention because those administering conversion therapy must provide the therapy intentionally.<sup>239</sup> Conversion therapy would most likely meet this definition because it is unclear what it would mean to negligently perform conversion therapy on an individual. Some have voiced concerns that conversion therapy bans put practitioners who help individuals struggling with their sexual orientation at risk.<sup>240</sup> However, this ignores the distinction between helping a person work through issues dealing with their sexuality and forcing an individual to choose heterosexuality over homosexuality.<sup>241</sup>

Fourth, the purpose of conversion therapy plays a role in whether it will be classified as torture or CIDT.<sup>242</sup> An act could rise to the level of torture when its purpose includes things such as extracting a confession, obtaining information, punishment, intimidation and coercion, and discrimination.<sup>243</sup> Conversion therapy could fall into the category of either punishment or discrimination.

Conversion therapy could be considered punishment when viewed from a religious perspective.<sup>244</sup> Proponents argue an individual has same-sex attractions because of some past sin or because the individual is living in sin.<sup>245</sup> This leads proponents to argue that they are providing the therapy as a way to save the individual from their sin.<sup>246</sup> Some argue that because conversion therapy is a

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237. *Id.* at 302.

238. See Shidlo & Schroeder, *supra* note 113, at 254–55.

239. See U.N. VOLUNTARY FUND, *supra* note 130, at 4.

240. The Church in Malta, *The Bill on Conversion Therapy* 7–8 (2016).

241. See Beeching, *supra* note 88; see also Donegan, *supra* note 90 (providing a brief history of conversion therapy).

242. See U.N. VOLUNTARY FUND, *supra* note 130, at 4.

243. See Miller, *supra* note 136, at 15.

244. See Shidlo & Schroeder, *supra* note 113, at 256.

245. *Id.*

246. André P. Grace, *The Charisma and Deception of Reparative Therapies: When Medical Science Beds Religion*, 55 J. HOMOSEXUALITY 545, 551 (2008).

“cure,” it cannot also be a punishment.<sup>247</sup> However, in light of the evidence that conversion therapy is harmful to the individuals, it is clear that proponents are using the therapy as a way of eradicating homosexuality.<sup>248</sup> Thus, individuals are subjected to conversion therapy as a punishment for having same-sex desires. Further, this eradication of homosexuality could also constitute discrimination against gay people. As noted above, discrimination is one purpose that distinguishes torture from CIDT.<sup>249</sup> Therefore, this discriminatory motive against gay people would likely elevate conversion therapy from CIDT to torture.

Fifth, the acts must be committed by public officials to be considered torture.<sup>250</sup> Many therapists in the U.K. work with the National Health Service, a publicly funded organization that provides healthcare in the U.K.<sup>251</sup> Consequently, the therapists that work for NHS meet the definition of a public official because they work for a state organization. Even therapists that do not work for NHS and religious leaders who run their own practices can satisfy the public official element under the Due Diligence Principle. Under the Due Diligence Principle, states have both the responsibility to investigate past crimes and to take steps to prevent crimes that they know are likely to occur.<sup>252</sup> In *Osman v. United Kingdom*, the ECHR found that the U.K. had a positive obligation to prevent private actors from committing human rights abuses when “authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual . . . .”<sup>253</sup> Thus, under the Due Diligence Principle, the U.K. has an obligation to prevent private actors from committing human rights abuses.

Currently, Parliament is claiming willful blindness to the issue of conversion therapy in the U.K. Parliament refuses to hold debates on a conversion therapy ban because it feels that the practice is not a major issue in the country.<sup>254</sup> Additionally, Parliament feels the

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247. *See id.* (referencing testimonies of “ex-gays” who claim to have found a “cure”).

248. *See id.*

249. *See* Miller, *supra* note 136, at 15.

250. *See* Weissbrodt & Heilman, *supra* note 157, at 388.

251. *About the NHS*, NAT'L HEALTH SERVICE, <https://www.nhs.uk/NHSEngland/the-nhs/about/Pages/overview.aspx> (last visited Apr. 8, 2018) [<https://perma.cc/7CYK-MNU>].

252. STEINHARDT ET AL., *supra* note 188, at 531.

253. *Osman v. United Kingdom*, 2000-III Eur. Ct. H.R. 245, 305 (1994).

254. *See supra* note 30.

Memorandum of Understanding is sufficient to prevent conversion therapy in the U.K.<sup>255</sup>

However, there is evidence that conversion therapy is still a problem in the U.K. today. On a recent Good Morning Britain segment, Mike Davidson, a member of the Core Issues Trust, advocated for conversion therapy on national television.<sup>256</sup> While there, Davidson admitted to performing conversion therapy on ten patients a week.<sup>257</sup> Further, a report by Michael King has suggested that roughly seventeen percent of all therapists in the U.K. have performed conversion therapy at some time in their career.<sup>258</sup> Also, organizations like the Core Issues Trust, True Freedom Trust, and the Evangelical Alliance advertise conversion therapy on their websites and in their ministries.<sup>259</sup> Additionally, in May 2017, the Mountain of Fires and Miracles Ministry offered conversion therapy at a Comic Con event in London.<sup>260</sup>

Therefore, there is evidence that Parliament, at the very least, should know about conversion therapy in the U.K. due to the issue being brought to their attention via the petition system<sup>261</sup> and the public advertisement of the practice on television and in newspapers.<sup>262</sup> Also, organizations like the Core Issues Trust, True Freedom Trust, Evangelical Alliance, and the Mountain of Fires and Miracles Ministry continue to practice conversion therapy, which demonstrates that the Memorandum of Understanding does not prevent religious leaders from performing conversion therapy.<sup>263</sup> This means that the Due Diligence Principle is implicated because

255. Letter from Helen Jones, MP, Chair of the Petitions Committee, to Jeremy Hunt, MP, Secretary of State for Health (Mar. 21, 2017), <https://petition.parliament.uk/archived/petitions/174988> (follow link under “Other parliamentary business” section) [<https://perma.cc/JKV3-WAXE>].

256. *Piers Morgan Challenges Doctor’s Claims That Homosexuality is an ‘Aberration’*, *supra* note 76.

257. *Id.*

258. ANNIE BARTLETT ET AL., THE RESPONSE OF MENTAL HEALTH PROFESSIONALS TO CLIENTS SEEKING HELP TO CHANGE OR REDIRECT SAME-SEX SEXUAL ORIENTATION 1 (2009).

259. See *Help We Offer*, *supra* note 101; *What is TFT?*, *supra* note 102; Parker, *supra* note 103; *Recent Developments in Counselling Practice*, *supra* note 104.

260. Charles White, ‘Pray the Gay Away’ Event Happening at Same Place and Time as Comic Con, METRO (May 26, 2017), <http://metro.co.uk/2017/05/26/pray-the-gay-away-event-happening-at-same-place-and-time-as-comic-con-6664775/> [<https://perma.cc/V4PE-EHSQ>].

261. *Petition – Make Offering Gay Conversion Therapy a Criminal Offence in the UK*, *supra* note 30; Letter from Helen Jones, *supra* note 255.

262. *Piers Morgan Challenges Doctor’s Claims That Homosexuality is an ‘Aberration’*, *supra* note 76.; White, *supra* note 260; Parry, *supra* note 1.

263. Parry, *supra* note 1; *Help We Offer*, *supra* note 101; *What is TFT?*, *supra* note 102; Parker, *supra* note 103; see also *Recent Developments in Counselling Practice*, *supra* note 104.

Parliament should know about the issue and is not taking sufficient steps to prevent the problem.

Accordingly, conversion therapy satisfies the five elements of torture and CIDT and is illegal under international and U.K.'s domestic law. Therefore, the U.K. has an obligation to pass a law that bans conversion therapy in the country, whether practiced by psychologists or religious leaders.

B. *Religious Objections to a Conversion Therapy Ban Fail Because the Practice Falls Within the Public Health Exception to Permitted Religious Actions*

The freedom of religion is considered one of the most important rights in a liberal society.<sup>264</sup> At the international level, both the UDHR and the ICCPR declare that everyone shall have “the right to freedom of thought, conscience and religion” and to manifest that religion into worship, observance, practice, and teaching.<sup>265</sup> At the regional level, the European Convention on Human Rights also declares that “[e]veryone has the right to freedom of thought, conscience and religion” but qualifies the right to manifest that religion through “limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”<sup>266</sup> Hence, the right to freedom of religion is an important right codified by multiple treaties, but is not without limits.

Some religious leaders have used the right to freedom of religion to argue that a conversion therapy ban would discriminate against individuals seeking to manifest their own religious identities.<sup>267</sup> Proponents of the practice claim that a conversion therapy ban removes the freedom of choice by restricting methods of therapy.<sup>268</sup> Specifically, proponents argue that a conversion therapy

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264. MEGAN PEARSON, PROPORTIONALITY, EQUALITY LAWS, AND RELIGION: CONFLICTS IN ENGLAND, CANADA, AND THE USA 3 (Silvio Ferrari et al. eds., 1st ed. 2017).

265. Universal Declaration of Human Rights, *supra* note 132, art. 18; International Covenant on Civil and Political Rights, *supra* note 138, art. 18.

266. European Convention on Human Rights, *supra* note 132, art. 9.

267. Mike Davidson, *Core Issues Trust Responds to Bishop's Claims on Synod 'Conversion Therapy' Vote*, CORE ISSUES TRUST (July 31, 2017), <https://www.core-issues.org/blog/mike-davidson/core-issues-trust-responds-to-bishop-s-claims-on-synod-conversion-therapy-vote> [<https://perma.cc/EQ57-S83Z>].

268. Beeching, *supra* note 88.

ban allows individuals to choose to move “towards” being gay, but not away from it.<sup>269</sup>

This debate over choice is defined by the distinction between religious belief and religious conduct.<sup>270</sup> Historically, courts have used the distinction between religious belief and religious conduct to help them navigate when restrictions have violated an individual’s religious freedom.<sup>271</sup> The historically negative attitudes that religions have had regarding same-sex desires has made the distinction between religious belief and religious conduct especially important to the conflict between religious freedom and gay rights.<sup>272</sup> Here, the religious belief is that same-sex desires are sinful and should be eliminated, whereas the religious action concerns subjecting individuals to conversion therapy to change same-sex desires to heterosexual desires.

Under the European Convention of Human Rights, the right to a religious belief is unqualified, but the right to a religious conduct is limited.<sup>273</sup> One such limitation is on practices that adversely affect public health.<sup>274</sup> Here, the adverse effects of conversion therapy, like increased chances of suicide, should be considered enough to trigger the public health limitations of religious actions because of the widespread medical condemnation of the practice.<sup>275</sup> Additionally, the widespread condemnation from the U.K. psychological community<sup>276</sup> should also be considered evidence that conversion therapy raises public health concerns. Therefore, while a conversion therapy ban would restrict an individual’s religious action, the restriction is justified because of public health concerns.

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269. Davidson, *supra* note 267.

270. PEARSON, *supra* note 264, at 26.

271. *Id.* at 25–31.

272. See generally PEARSON, *supra* note 264 (discussing the conflicts between religion and gay rights and how a principle of proportionality could be used to balance the two interests); Weber & Lin, *supra* note 140 (arguing that prioritizing LGBT rights demotes the importance of freedom of conscience); ALICE DONALD & ERICA HOWARD, THE RIGHT TO FREEDOM OF RELIGION OR BELIEF AND ITS INTERSECTION WITH OTHER RIGHTS (2015) (establishing a set of principles courts should use to resolve conflicts between religion and gay rights); ROBERT WINTEMUTE, SEXUAL ORIENTATION AND HUMAN RIGHTS: THE UNITED STATES CONSTITUTION, THE EUROPEAN CONVENTION, AND THE CANADIAN CHARTER (1995) (analyzing the viability of the gay rights movement in a human rights context through the lens of western society).

273. European Convention on Human Rights, *supra* note 132, art. 9; PEARSON, *supra* note 264, at 26.

274. European Convention on Human Rights, *supra* note 132, art. 9.

275. *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, *supra* note 23; MEMO OF UNDERSTANDING, *supra* note 21.

276. MEMO OF UNDERSTANDING, *supra* note 21.

#### IV. CONCLUSION

Historically, conversion therapy was used by psychologists to attempt to “cure” gay individuals of their homosexuality. As the practice waned in popularity among psychologists due to a lack of evidence of its efficacy and growing evidence of its psychological harms, the practice grew in popularity among religious conservatives who saw it as a way to save their loved ones from sin. However, the harm that conversion therapy has on individuals rises to the level of torture and CIDT because of the practice’s severe adverse effects and the discriminatory purpose with which conversion therapy is often applied. Therefore, the U.K. should pass a ban that makes practicing conversion therapy illegal, in both psychological and religious settings.

The British government has remained resistant to passing a conversion therapy ban, citing a lack of evidence that conversion therapy is a widespread phenomenon within the country. This reasoning not only disregards the damage that conversion therapy does to the LGBT community, but also turns a blind eye to the ongoing torture committed by organizations like Core Issues Trust within the country. The victims of conversion therapy deserve legal protections and international law obligates the U.K. to provide them.

In March 2018, the European Parliament passed a nonbinding resolution calling for member states to ban conversion therapy.<sup>277</sup> Should the European Union decide to act on this call from the European Parliament, the U.K. will fall behind much of Europe in protecting its gay citizens because of its vote to leave the European Union. Therefore, to remain a European leader in civil rights protections, the U.K. should ban conversion therapy sooner rather than later.

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277. Resolution of 1 March 2018 on the Situation of Fundamental Rights in the EU in 2016, Eur. Parl. Doc. P8\_TA-PROV(2018)0056 (2018).