



**Report to the Committee on the Rights of the Child  
complementing the United Kingdom periodic review**

on

**the UK systematic violation of the Convention on the Rights of the Child  
caused by its regulation on late abortion and the killing of surviving babies**

**May 2014**

This report is submitted to the Committee on the rights of the child, as a contribution for the review of the implementation of the Convention on the Rights of the Child (CRC) by the United Kingdom. It is submitted by the *European Centre for Law and Justice*, and supported by the following organizations with consultative status with the Economic and Social Council of the United Nations (ECOSOC)<sup>1</sup>: Bureau international catholique de l'enfance (BICE); Réseau Européen de l'Institut de Politique Familiale (IPF); Family & Life ; Priests for Life ; Catholic Family and Human Rights Institute (C-FAM); HazteOir.org; Family Watch International. It was drafted by Dr Grégor Puppinc, Director of the ECLJ, and Dr Claire de La Hougue, attorney.

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<sup>1</sup> This report is also endorsed by several NGOs without ECOSOC status : For Family Rights, Family and Demography Foundation, Russia : Hnutí Pro život ČR, Res Claritatis ; Schreeuw om leven, Cry for life, Netherlands ; Ordo Juris, Poland.

According to Article 2 of the CRC, “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s (...) disability, birth or other status”.

However, it is submitted that the United Kingdom does not respect this provision concerning some categories of children, due to the conditions of their birth: children born alive after an attempted abortion, and fetuses subject to late abortion with a particularly cruel method.

Failed abortions are not exceptional. In 2005, *the British Journal of Obstetrics and Gynaecology* published the findings of Dr. Shantala Vadeyar, a researcher at Manchester’s St. Mary’s Hospital, who said that children as young as 18 weeks had been known to survive for a time outside the womb after attempted abortions. Vadeyar revealed that in the North West, between 1996 and 2001, at least 31 children survived attempted abortions<sup>2</sup>. In 2007, a study published in the *British Journal of Obstetrics and Gynecology*<sup>3</sup> concluded that about 1 in 30 abortions after 16 weeks’ gestation result in a born-alive infant. At 23 weeks’ gestation, the number reached 9.7%.

In 2005, 66 babies survived abortion and were left to die. The CEMACH 2007 Perinatal Mortality report, which gathered data from hospitals in England and Wales during 2005, revealed that:

*“Sixty-six of the 2235 neonatal deaths notified in England and Wales followed legal termination (predominantly on account of congenital anomalies) of the pregnancy i.e. born showing signs of life and dying during the neonatal period. Sixteen were born at 22 weeks’ gestation or later and death occurred between 1 and 270 minutes after birth (median: 66 minutes). The remaining 50 fetuses were born before 22 weeks’ gestation and death occurred between 0 and 615 minutes after birth (median: 55 minutes)”* p. 28<sup>4</sup>. In other words, one of these newborns breathed unaided for more than ten hours.

No more recent data on the number of children born alive after an abortion is available: the statistics following the CEMACH report *Perinatal Mortality 2005* (published 2007) do not include any information about children in this situation. While the Data Sources, p. 5 of the 2005 report (published 2007), began with: “Since 2003, the Confidential Enquiry into Maternal and Child Health (CEMACH) has collected epidemiological and clinical information on: All fetuses delivering after 22 completed weeks of gestation (including legal terminations of pregnancy notifiable under the 1967/1992 Abortion Act)”, the Data Sources of the following report, found at the end of the report, include only a short paragraph, lost among many others : “This year, to allow for a more meaningful comparison, a number of exclusions have been applied to the data within the mortality variation chapter (Chapter 2). The exclusions are to remove all terminations of pregnancy, all lethal and severe malformations, all neonatal deaths below 22 weeks’ gestation and all babies with birth weight below 500g” (*Perinatal Mortality 2006* (published 2008) p. 93).

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<sup>2</sup> <http://www.lifesitenews.com/news/66-british-babies-survived-abortion-all-were-left-to-die-without-medical-ai>

<sup>3</sup> <http://onlinelibrary.wiley.com/doi/10.1111/j.1471-0528.2007.01279.x/abstract>

<sup>4</sup> <http://www.hqip.org.uk/assets/NCAPOP-Library/CMACE-Reports/41.-April-2007-Perinatal-Mortality-2005.pdf>

The UK has changed method so that no mention of neonatal death following failed abortion appears. In the following reports, the Data Sources, having come back to the beginning of the report, read: “CEMACH collects epidemiological and clinical data on all stillbirths and neonatal deaths (see Glossary) in England, Wales, Northern Ireland, the Crown Dependencies of the Channel Islands and the Isle of Man”<sup>5</sup>. Foetuses and infants delivered after a late abortion are no longer mentioned. All statistics are given “excluding notified terminations of pregnancy”.

Abandoning babies to death is in direct contradiction to Article 6 of the CRC:

1. States Parties recognize that every child has the **inherent right to life**.
2. States Parties shall **ensure to the maximum extent possible the survival and development of the child**.

It is obvious that all born alive children, as human persons, are entitled to all human rights, especially the right to life, and should be treated the same way. Abandoning and neglecting any of them because of failed abortion and because they were not wanted is a clear violation of their human rights and dignity, due to the conditions of their birth. The classification of ‘unwanted’ constitutes discrimination contrary to Article 2 of the CRC and ignores the scores of parents willing to adopt children who survive abortion. The State should “ensure to the maximum extent possible the survival” of these children. Once born, they should be treated like all other premature children, many of which are saved thanks to neonatal care.

With the advances in medicine, premature babies can be saved as early as 21 weeks, that is to say even before the limit of viability defined by the World Health Organisation (22 weeks). The figures in the United Kingdom show that five babies born at less than 22 weeks gestation out of 247 born alive lived for at least a year, 11 out of 171 born at 22 weeks lived, and 76 out of 332 born at 23 weeks survived<sup>6</sup>.

At present in the United Kingdom, abortion is available on demand until 24 weeks of pregnancy and until birth in case of serious anomaly (ground E)<sup>7</sup>. In other words, abortion is possible in the United Kingdom for viable foetuses, even healthy foetuses. Late abortion is technically difficult to perform (the complication rate is 10 times higher than before 12 weeks) and it happens that viable babies who were supposed to be aborted are born alive. Survival from abortion is viewed as the ‘dreaded complication’. After 21 weeks, some can breathe unaided for a long while.

However, these children are given no medical aid, nor even any basic care<sup>8</sup>. On the contrary: “Guidance from the Royal College of Obstetricians and Gynaecologists recommends babies

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<sup>5</sup> *Perinatal mortality* 2007, published 2009, p. 5; see also *Perinatal mortality* 2008, published 2010, p. 6 and *Perinatal mortality* 2009, published 2011, p. 8, identical, except that CEMACH has become CMACE, Centre for Maternal and Child Enquiries. All reports available at <http://www.hqip.org.uk/cmace-reports/>; there are no CMACE reports for 2010, 2011 and 2012; figures on perinatal mortality are available on the Office for National Statistics website, without any mention of children born alive after an abortion.

<sup>6</sup> <http://www.telegraph.co.uk/health/healthnews/9598649/One-in-ten-babies-born-under-abortion-limit-survives.html>

<sup>7</sup> However, such “serious” anomaly is not necessarily fatal. For example in 2012, according to official statistics, there were 4 ground E abortions (before 24 weeks) due to cleft lip or palate, 191 for cardiovascular system anomalies, including 12 after 24 weeks, although many could have been treated by surgery, 149 for spina bifida, including 5 after 24 weeks, and 544 for Down’s syndrome, including 3 after 24 weeks.

<sup>8</sup> In early 2008, the British Association of Perinatal Medicine said new guidelines were being drawn up to cover babies born alive after abortion.

over 22 weeks which survive abortion should have their hearts stopped by lethal injection”<sup>9</sup>. In other words, doctors are recommended to murder these newborns, while they are trying to save premature babies of the same gestational age.

Concerning the babies who survived abortion in 2005, CEMACH chief executive Richard Congdon said lethal injection had not been given in the 16 abortions over 22 weeks' gestation because death was "inevitable"<sup>10</sup>. In other words, they were left to die.

Even when they cannot survive, these children should be accompanied until death. Abandoning them to die alone, struggling for breath, sometimes wounded by the abortion, without being fed, clothed or cradled is cruel and inhumane. Such barbaric treatment constitutes torture, prohibited by Article 37 of the CRC according to which “*States Parties shall ensure that **no child shall be subjected to torture or other cruel, inhuman or degrading treatment***”.

Killing infants or letting them die is murder in the cruelest way, a direct violation of their right to life and right not to be subject to torture. Every possible care and medical help should be afforded to every child, regardless of the conditions of their birth. This is not only an obvious moral duty, but also an international undertaking. Article 24 of the CRC reads:

1. *States Parties recognize the right of the child to the enjoyment of the **highest attainable standard of health** and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to **ensure that no child is deprived of his or her right of access to such health care services.***
2. *States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:*
  - (a) *To **diminish infant and child mortality;***
  - (b) *To ensure the provision of necessary medical assistance and health care to all children with **emphasis on the development of primary health care;***

In addition to the issue of failed abortion leading to a live-birth, methods of abortion should also be investigated. In the Preamble of the CRC, the contracting parties specifically mention:

*“Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, **before as well as after birth**”,*

Though the Preamble is not legally binding, it gives clear indications on how to interpret the provisions of the Convention.

Department of Health figures show that 185.122 abortions were carried out in England and Wales in 2012, including 2860 at 20 weeks or more. 160 abortions were done after 24 weeks, including 38 between 28 and 31 weeks, and 28 after 32 weeks. 66 babies were thus

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<sup>9</sup> <http://www.dailymail.co.uk/health/article-512129/66-babies-year-left-die-NHS-abortions-wrong.html> and <http://www.lifesitenews.com/news/66-british-babies-survived-abortion-all-were-left-to-die-without-medical-ai>

<sup>10</sup> <http://www.hqip.org.uk/assets/NCAPOP-Library/CMACE-Reports/41.-April-2007-Perinatal-Mortality-2005.pdf>

aborted after 28 weeks, which was the viability limit defined by the WHO until 1975: an infant born at that gestational age can survive without medical help.

Among the 160 late abortions, 43% were by dilatation and evacuation, 22% by feticide with surgical evacuation, 17% medical (mostly antiprogesterone) and 17% feticide and medical evacuation.

In the case of dilatation and evacuation, the cervix is dilated then the “content of the uterus” is pulled out with a clamp. In the end, the pieces are examined to make sure everything has been removed. This means that the body is gathered like a puzzle, because in many cases it has been dismembered during the operation. If there was no feticide injection first, or if the injection did not cause death<sup>11</sup>, the foetus was alive while its members were being torn off one after the other. This frightfully cruel method is inhumane and constitutes torture.

Foetuses and neonates can feel pain as much or more than adults<sup>12</sup>. *“The neural pathways for pain may be traced from sensory receptors in the skin to sensory areas in the cerebral cortex of newborn infants. The density of nociceptive nerve endings in the skin of newborns is similar to or greater than that in adult skin. Cutaneous sensory receptors appear in the perioral area of the human fetus in the 7th week of gestation; they spread to the rest of the face, the palms of the hands, and the soles of the feet by the 11th week, to the trunk and proximal parts of the arms and legs by the 15th week, and to all cutaneous and mucous surfaces by the 20th week. The spread of cutaneous receptors is preceded by the development of synapses between sensory fibers and interneurons in the dorsal horn of the spinal cord, which first appear during the sixth week of gestation. Recent studies using electron microscopy and immunocytochemical methods show that the development of various types of cells in the dorsal horn (along with their laminar arrangement, synaptic interconnections, and specific neurotransmitter vesicles) begins before 13 to 14 weeks of gestation and is completed by 30 weeks.”* Scientific studies prove that the foetuses are responsive to touch after 8 weeks<sup>13</sup>. A foetus can feel as early as 14 weeks<sup>14</sup> and at 20 weeks it has the *“physical structures necessary to experience pain”*<sup>15</sup>. Researchers *‘have observed that the fetus reacts to intrahepatic vein needling with vigorous body and breathing movements, which are not present during placental cord insertion needling’*<sup>16</sup>.

Where children slated for abortion are concerned, it is clear that *“the best interests of the child”* (article 3 of the CRC) are given no consideration. Although *“States Parties undertake to*

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<sup>11</sup> According to a study, the injection effectively induced fetal death in 87% of women. This means that 13 % survived. Nucatola D, Roth N, Gatter M. A randomized pilot study on the effectiveness and side-effect profiles of two doses of digoxin as fetocide when administered intraamniotically or intrafetally prior to second-trimester surgical abortion. *Contraception*. 2010 Jan;81(1):67-74. doi: 10.1016/j.contraception.2009.08.014. Epub . Available at <http://www.ncbi.nlm.nih.gov/pubmed/20004276>

<sup>12</sup> Anand and Hickey, “Pain And Its Effects In The Human Neonate And Fetus” *The New England Journal Of Medicine*, Volume 317, Number 21: Pages 1321-1329, 19 November 1987. Available at <http://www.cirp.org/library/pain/anand/>

<sup>13</sup> *“A motor response can first be seen as a whole body movement away from a stimulus and observed on ultrasound from as early as 7.5 weeks’ gestational age. The perioral area is the first part of the body to respond to touch at approximately 8 weeks, but by 14 weeks most of the body is responsive to touch.”* Myers LB, Bulich LA, Hess, P, Miller, NM. Fetal endoscopic surgery: indications and anaesthetic management. *Best Practice & Research Clinical Anaesthesiology*. 18:2 (2004) 231-258.

<sup>14</sup> <http://press.endocrine.org/doi/abs/10.1210/jcem.86.1.7090>

<sup>15</sup> For instance : Glover V. "The fetus may feel pain from 20 weeks" ; in *The Fetal Pain Controversy, Conscience*. 25:3 (2004) 35-37.

<sup>16</sup> Giannakoulopoulos X, Sepulveda W, Kourtis P, Glover V, Fisk NM. Fetal plasma cortisol and  $\beta$ -endorphin response to intrauterine needling. *Lancet*. 344 (1994) 77-81, p.77, col.2, para.3.

*ensure the child such protection and care as is necessary for his or her well-being” (Art. 3-2), neonates are left to die without any care while fetuses are torn to pieces. Their most basic human rights are openly violated: right to life, right to basic care, right not to be subject to torture.*

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