

TO: One Law for All and allies  
FROM: Anna von Herrmann, J.D., with input from Megha Bhatt, J.D. Candidate at University of California, Davis, supervised by Professor Karima Bennoune  
DATE: October 22, 2014  
RE: Proposed Public Advocacy Document on Gender Segregation

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## INTRODUCTION

In this document, we argue that the gender segregation of public university events proposed by Universities UK (UUK) violates the United Kingdom's obligations under international human rights law. This proposed segregation violates the nation's commitment to ensure gender nondiscrimination in education and public life. Furthermore, UUK's arguments that its policy is intended to protect speakers' right to freedom of religion and freedom of speech is flawed, as the rights to free exercise of religion and freedom of expression are not absolute and may not be used to violate the rights of others to gender equality. Fundamentalists use the guise of freedom of religion and freedom of speech to push a political agenda in many different contexts. At a case in York University, a student claimed he could not participate in group-work with women for religious reasons. Initially, the student's request was approved by the faculty dean and university human rights center. As Professor Grayson notes, saying the word "religion" should not force accommodation. Religious accommodation claims must be examined on an individual basis. The present controversy with the UUK guidance document is just one topic in an ongoing pattern of gender subordination caused by Muslim fundamentalist groups to push a particular political agenda. If the international community takes these claims seriously and prioritizes religious claims over gender nondiscrimination, basic guarantees of women's rights are weakened for women worldwide.

We recommend that UUK withdraw this portion of its guidance document in conformance with the UK's international obligations under the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). In addition, we recommend that the UUK take positive measures to ensure the substantive equality between men and women in education, in accordance with the CEDAW, particularly in the context of public university events.

## BACKGROUND

On November 22, 2013, UUK published a guidance document titled "External speakers in higher education institutions," aimed to help universities consider the various issues that arise when inviting external speakers to appear on campus.<sup>1</sup> The document provides five hypothetical case studies to illustrate how the guidance may play out in a real-world situation. "Case study 2" presents the situation of an "ultra-orthodox religious group [that] has been invited to speak" at a university event. In the hypothetical, after the speaker is approved by the university, he requests that the audience at the event be segregated by gender. The facts state that the school's feminist society is likely to protest the segregation. The guidance states that in deciding whether to allow the segregation, the university should consider how freedom of speech and equality laws interact.<sup>2</sup> It then states that under the domestic Equality Act 2010, the segregation would only be discriminatory "if it amounts to 'less favourable treatment' of either female or male attendees."<sup>3</sup>

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<sup>1</sup> Universities UK, External speakers in higher education institutions (Nov. 2013), *available at* <https://web.archive.org/web/20131128100101/http://www.universitiesuk.ac.uk/highereducation/Documents/2013/ExternalSpeakersInHigherEducationInstitutions.pdf>.

<sup>2</sup> *Id.* at 27.

<sup>3</sup> *Id.*

To determine if the segregation constitutes less favorable treatment, the guidance states that it is necessary to consider the seating plan, claiming that “if the segregation is to be ‘front to back’, then that may well make it harder for the participants at the back to ask questions or participate in debate, and therefore is potentially discriminatory against those attendees. This issue could be overcome assuming the room can be segregated left and right, rather than front and back.”<sup>4</sup> It continues, “[A]ssuming the side-by-side segregated seating arrangement is adopted, there does not appear to be any discrimination on gender grounds merely by imposing segregated seating. *Both men and women are being treated equally, as they are both being segregated in the same way.*”<sup>5</sup> The guidance therefore clearly states that a “separate but equal” type of gender segregation could be legally permissible under domestic law.

Though the guidance states that side-by-side segregation may still be legally challenged if it is mandatorily imposed on all audience members, it argues that even *mandatory* segregation may be permissible if providing an unsegregated area conflicts with the **speaker’s or organizing group’s religious beliefs**. It writes:

[C]oncerns to accommodate the wishes or beliefs of those opposed to segregation should not result in a religious group being prevented from having a debate in accordance with its belief system. Ultimately, if imposing an unsegregated seating area in addition to the segregated areas contravenes the genuinely-held religious beliefs of the group hosting the event, or those of the speaker, **the institution should be mindful to ensure that the freedom of speech of the religious group or speaker is not curtailed unlawfully**. . . . [The views of those opposed to segregation] do not require an institution to stifle a religious society’s segregated debate where the segregation accords with a genuinely-held religious belief. The s.43 duty<sup>6</sup> requires an institution to secure freedom of speech within the law.<sup>7</sup>

Therefore, while the guidance document states that front-to-back seating segregation would be unlawful because it would facially disadvantage one group, it states that mandatory side-by-side audience segregation may in some circumstances, and on balance with laws pertaining to freedom of religion and speech, be permissible.

The “hypothetical” situation described in case study 2 mirrors scores of real-life public university events in the UK. For example, the advocacy group Student Rights studied 180 university events featuring outside speakers on 21 separate campuses in the UK between March 2012 and March 2013, and gender segregated seating was promoted or implied at approximately one quarter of those events.<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* (emphasis added).

<sup>6</sup> “s.43” refers to Section 43 of the UK’s Education Act of 1986, which requires universities in England and Wales to “take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.” *Id.* at 6.

<sup>7</sup> *Id.* at 28 (emphasis added).

<sup>8</sup> Rupert Sutton and Raheem Kassam, *Unequal Opportunity: Gender Segregation on UK University Campuses*, Student Rights 2 (May 13, 2013), *available at*

In response to criticism of case study 2, UUK has released on its blog a statement arguing that the document is non-binding on universities, and that “[t]he guidance does not promote gender segregation.”<sup>9</sup> Rather, it argues, the guidance merely advises universities to be cognizant of their legal obligations pertaining to freedom of speech and religion. Despite their defense of the guidance document’s legality, UUK has noted on the “External Speakers Report: Legal Opinion,” that segregation is capable of amounting to discrimination.<sup>10</sup> The UUK is correct in recognizing the discriminatory effort of the segregation policies in case study 2. The UUK has temporarily withdrawn portions of case study 2 while its legality is investigated by the Equality and Human Rights Commission (EHRC).<sup>11</sup>

In reality, by allowing gender segregation at public university events, **UUK is not respecting its legal obligations, but violating international law.** The hypothetical described in case study 2 violates both the right to gender equality in education and the right of women and men to participate equally in public life—rights outlined in CEDAW, the ICESCR, and the ICCPR.

### **THE INTENT BEHIND GENDER SEGREGATION**

In light of UUK’s assertions that it “does not promote gender segregation” and that the guidance document is intended to protect religious freedom rather than to undermine gender equality, it is important to acknowledge that **gender segregation promoted by religious fundamentalist groups is rarely as benign as the UUK makes it out to be.** At their most basic, gender-based laws and policies promoted by fundamentalist religious groups are very often based in stereotyped and sexist ideas about women and gender relations. Though this is true of fundamentalism in a variety of religions—including extreme Catholicism, Judaism<sup>12</sup>, Hinduism, etc.<sup>13</sup>—most of the analysis below will focus on Muslim fundamentalism, as case

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[http://www.studentrights.org.uk/article/2082/report\\_unequal\\_opportunity\\_gender\\_segregation\\_on\\_uk\\_university\\_campuses](http://www.studentrights.org.uk/article/2082/report_unequal_opportunity_gender_segregation_on_uk_university_campuses).

<sup>9</sup> Nicola Dandridge, Chief Executive of Universities UK, Universities UK’s external speakers guidance does not promote gender segregation – it highlights universities’ legal obligations (Nov. 25, 2013), *available at* <http://blog.universitiesuk.ac.uk/2013/11/25/external-speakers-guidance-segregation/> (emphasis in original).

<sup>10</sup> In the Matter of Universities UK, And in the Matter of the Guidance of External Speakers in Higher Education, Paragraph 9, page 4, <http://www.universitiesuk.ac.uk/highereducation/Documents/2013/ExternalSpeakersLegalOpinion.pdf>

<sup>11</sup> External speakers in higher education institutions, Universities UK, <http://www.universitiesuk.ac.uk/highereducation/Pages/Externalspeakersinhighereducationinstitutions.aspx#UsslRDtIE> (last visited Oct. 20, 2014).

<sup>12</sup> For example, groups of Jewish women have been prohibited, sometimes violently, from congregating to pray at the Western Wall in Jerusalem. Many Orthodox rabbis and worshipers consider women praying at the wall in this way to infringe Jewish halakhic law, and some say that women disturb male worshipers at the wall because their voices are “seductive.” See Pnina Lahav, *Up Against the Wall: Women’s Legal Struggle to Pray at the Western Wall in Jerusalem*, *Israel Studies Bulletin* 19 (2000), *available at*

<http://www.jstor.org/discover/10.2307/41805538?uid=3739560&uid=2&uid=4&uid=3739256&sid=21103716003303>; Frances Raday, *Women of the Wall*, <http://jwa.org/encyclopedia/article/women-of-wall> (last visited Feb. 9, 2014).

<sup>13</sup> Marie-Aimée Hélie-Lucas, “What Is Your Tribe?: Women’s Struggles and the Construction of Muslimness,” *Religious Fundamentalisms and the Human Rights of Women* 22 (2001); *see also* Frances Raday, *supra*, note 12.

study 2 appears to have been adopted largely in response to gender segregation requested by extremist Muslim speakers and groups.<sup>14</sup>

“If I had two sweets – one wrapped and one unwrapped – and threw them in a bin, which one would you pick out and eat?”<sup>15</sup> asked a young man who identified himself as the former head of the London Metropolitan University Islamic Society.<sup>16</sup> “Women are man’s great temptation. . . . They should be covered up,” he continued.<sup>17</sup> In the book *Religious Fundamentalisms and the Human Rights of Women*, Asma M. Abdel Halim describes how the status of women has been presented through “traditional” interpretations of the shari’ah, or Islamic law. She explains how “women have been regarded as lustful creatures whose sexuality is obstructive to the performance of men’s duties, and potentially destructive.” This view, she argues, is reflected in *hijab*, or “segregation of women and men.”<sup>18</sup> **Segregation of public university events at the behest of fundamentalist speakers will in most circumstances reflect this view, separating the sexes so that men are not distracted or tempted by the supposedly inherently sexual presence of women.**

Another author, the Iranian women’s rights advocate, Mahnaz Afkhami, writes that a “resurgence of radical Islamist thought” in some Muslim majority countries has sought to establish “various degrees of gender apartheid in Muslim societies”—from the passage of a bill to segregate hospitals in Iran to “total segregation” of society promoted by the Taliban in Afghanistan.<sup>19</sup> Afkhami continues, “Islamists use the argument of cultural relativity, now in vogue in the West, to deny women’s rights by introducing regimes of gender segregation.”<sup>20</sup>

But some scholars have questioned whether these types of gender discriminatory policies in the name of religious freedom are truly religious; often, these policies are based much more in politics than in upholding the religious freedom of citizens.<sup>21</sup> Maryam Namazie, the spokeswoman for “Fitnah! Movement for Women’s Liberation” and “One Law for All,” makes this argument, stating, “There are a lot of Muslims who freely mix and actually fight against segregation in countries, like Iran. [Gender segregation] is not so much a Muslim demand rather

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<sup>14</sup> See David Batty, UCL bans Islamic group from campus in row over segregated seating, *The Guardian* (Mar. 14, 2013), available at <http://www.theguardian.com/world/2013/mar/15/ucl-bans-islamic-group-over-segregation>; IERA event at UCL on 9 March, University College London (Mar. 11, 2013), <http://www.ucl.ac.uk/news/news-articles/0313/11032013-meeting>; Martin Williams, Inquiry launched after Islamic group holds segregated lecture, *The Guardian* (Apr. 15, 2013), available at <http://www.theguardian.com/education/2013/apr/15/leicester-investigating-islamic-group-gender-segregation>.

<sup>15</sup> Joe Shute, Islamic preachers: the pied pipers of sexual apartheid?, *The Telegraph* (Feb. 9, 2014), available at <http://www.telegraph.co.uk/education/universityeducation/10625879/Islamic-preachers-the-pied-pipers-of-sexual-apartheid.html>.

<sup>16</sup> The current president of the Islamic Society has denied that this man is actually the former head of the Society. *Id.*

<sup>17</sup> Joe Shute, *supra* note 15.

<sup>18</sup> Courtney W. Howland, *Religious Fundamentalisms and the Human Rights of Women* xxi (2001).

<sup>19</sup> Mahnaz Afkhami, Gender Apartheid and the Discourse of Relativity of Rights in Muslim Societies, *Religious Fundamentalisms and the Human Rights of Women* 68 (2001).

<sup>20</sup> Courtney W. Howland, *supra* note 18, at xv-xvi.

<sup>21</sup> Ann Elizabeth Mayer, Religious Reservations to the Convention on the Elimination of All Forms of Discrimination against Women: What Do They Really Mean? *Religious Fundamentalisms and the Human Rights of Women*, 105 (2001).

than an Islamist demand, it's far-right politics.”<sup>22</sup> Even former **UN Secretary-General Kofi Annan** argued that “**politicization of culture in the form of religious ‘fundamentalisms’ in diverse . . . religious contexts has become a serious challenge to efforts to secure women’s human rights.**”<sup>23</sup> When gender segregation is accepted because of stated respect for freedom of religion, it is important to remember that policies of segregation may actually be based more in fundamentalist politics rather than simply religious beliefs.

These often political and sexist motivations must be remembered when analyzing the gender segregation discussed in UUK’s case study 2. **When gender segregation of public university events is promoted at the behest of religious fundamentalists, it may also be based in a politically-motivated desire to marginalize women and impede their full recognition and participation in educational and public life.** To accept gender segregation in the name of freedom of religion without also acknowledging the real-life motivations of those requesting the gender segregation is to ignore attempts to discriminate against women.

### **THE RIGHT TO GENDER EQUALITY GENERALLY**

CEDAW, the ICESCR, and the ICCPR<sup>24</sup>—all of which the UK has ratified—define “**discrimination against women**” as “*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women. . . of human rights and fundamental freedoms.*”<sup>25</sup> This definition may be broken into three elements:

- 1) A **distinction, exclusion, or restriction** on the basis of sex
- 2) With the **effect or purpose** of impairing or nullifying women’s human rights and fundamental freedoms
- 3) In a political, economic, social, cultural, civil or any other **field**.

It seems clear that *segregation*, which distinguishes men from women and excludes or restricts women’s access to certain areas, will at least meet the first and third elements in this

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<sup>22</sup> Andrew Connelly, Muslim gender segregation stirs UK debate, Aljazeera (Jan. 30, 2014), *available at* <http://www.aljazeera.com/indepth/features/2014/01/muslim-gender-segregation-stirs-uk-debate-2014130111242593264.html>.

<sup>23</sup> The Secretary General, In-Depth Study on All Forms of Violence Against Women, UN Doc A/61/122/Add.1 81 (Ju. 6, 2006), *available at* <http://daccess.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement> (emphasis added).

<sup>24</sup> The ICCPR does not explicitly define the term “discrimination.” However, the UN Human Rights Committee, which monitors state compliance with the Convention, has referred to the definition of discrimination against women from CEDAW in interpreting the ICCPR. *See* Human Rights Committee, General Comment 18: Non-discrimination (1989), *available at* [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument).

<sup>25</sup> The Convention on the Elimination of All Forms of Discrimination against Women (hereinafter CEDAW), Art. 1 (Sept. 3, 1981), *available at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (emphasis added); Committee on Economic, Social and Cultural Rights, General Comment 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights) 3 (Aug. 11, 2005), *available at* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2005%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2005%2f4&Lang=en) (emphasis added).

broad definition of discrimination. Of course, some types of segregation which distinguish between men and women—such as single-sex bathrooms or changing rooms—may lack the purpose or effect required by the second element, and therefore will likely not fit into this definition of discrimination.<sup>26</sup> The segregation described in case study 2, however, will in the large majority of cases have this required invidious purpose—as described above—and at a minimum will have this detrimental effect on women, who may feel marginalized in a public space or unable to participate fully in university discussions or debates. The other provisions of CEDAW, the ICESCR, and the ICCPR guaranteeing nondiscrimination in education and public life, therefore, should be interpreted to include a **prohibition on gender segregation like that described in the UUK guidance document.**

A. ICESCR Committee is concerned with “substantive equality” which is missing from Case Study 2

Notably for our purposes, the UN Committee on Economic, Social and Cultural Rights (the ICESCR Committee) has expanded on this definition of discrimination, stating that it is concerned not only with formal gender equality, but also **substantive equality**. While “[f]ormal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner,” substantive equality is concerned with “the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience. Substantive equality for men and women will not be achieved simply through. . . the adoption of policies that are, prima facie, gender-neutral.”<sup>27</sup>

In drawing attention to substantive equality, the Committee is recognizing that **even policies that do not facially disadvantage women may still violate guarantees of gender equality by having discriminatory effects on women.** UUK’s guidance document condoning gender segregation at university events may, as the organization asserts, be “neutral” in its application if women are not forced to sit at the back of the event where they cannot see or hear the speaker as well as men in the front, etc. However, **the separation of men and women in the event by sitting side by side, even if conducted in this “neutral” manner, may still perpetuate stereotypes about gender roles and gender relations, and may send a message to women in the audience that they are separate from or inferior to men.** This type of separation seems to “maintain” rather than “alleviate the inherent disadvantage” that women experience in relation to men in education and public life. As such, a strong argument can be made that case study 2 would violate the spirit of the equality guarantees presented in the ICESCR and promoted by the Committee.

B. Legal analysis of gender segregation starts with CEDAW, ICCPR and ICSECR

First and foremost, **Article 2 of CEDAW** states a basic obligation of all state parties to “**condemn discrimination against women in all its forms**” and to “agree to pursue by all

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<sup>26</sup> Note that single-sex bathrooms and changing rooms, which involve *private* space and privacy rights, present a very different situation than case study 2, which involves *public* university events. For a discussion of gender discrimination issues surrounding single-sex restrooms, see Mary Anne Case, “Why Not Abolish the ‘Laws of Urinary Segregation?’” Toilet: Public Restrooms and the Politics of Sharing, ed. Harvey Molotch (2010) *available at* <http://www.law.uchicago.edu/files/files/tperae.pdf>.

<sup>27</sup> Committee on Economic, Social and Cultural Rights, General Comment 16, *supra* note 25, at 2-3.

appropriate means and without a delay of policy **eliminating discrimination against women.**<sup>28</sup> It continues in **Article 3** that state parties “shall take *in all fields*. . . all appropriate measures. . . to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”<sup>29</sup> Furthermore, **ICCPR Article 2** states that all state parties must respect and ensure all rights of the convention to its people “without distinction of any kind, such as. . . sex.”<sup>30</sup> More specifically, **Article 3** states that all parties must “ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”<sup>31</sup> **ICESCR Articles 2 and 3** have guarantees virtually identical to those in the ICCPR for, but for gender nondiscrimination regarding economic, social, and cultural rights.<sup>32</sup>

Though these conventions also include more specific provisions on gender equality in education and public life (discussed below), these general guarantees of gender equality “in all fields” should be the starting point of any international legal analysis of gender segregation. As a state party to CEDAW, the ICCPR, and the ICESCR, the UK has a fundamental obligation to ensure gender equality and to combat discrimination against women “in all its forms.” As discrimination against women may be interpreted to include the gender segregation promoted in the UUK guidance document, as described above, a strong argument exists that **case study 2 violates the most basic guarantees of these three conventions.**

## **THE RIGHT TO GENDER EQUALITY IN EDUCATION**

### **A. The UK’s International Legal Obligations under CEDAW and the ICESCR**

The UK has ratified various international treaties in which it has committed itself to promote equality for women in education. The state ratified **CEDAW** in 1986, which provides in **Article 10** that state parties must work to “eliminate discrimination against women in order to ensure them equal rights with men in the field of education.”<sup>33</sup> Particularly relevant to the UUK guidance document, **CEDAW Article 10(c)** provides that parties to the convention must ensure non-discrimination, “States parties shall ensure [t]he elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim.”<sup>34</sup> When women are in the classroom alongside men, that act in itself serves to combat particular stereotyped roles of gender. The idea that women do not belong in the classroom or are less deserving of an education is challenged outright when women are physically present in the classroom. CEDAW Article 10(c) recognizes that the presence of women on equal levels as men is one way to eliminate stereotyped concepts of the roles of men and women.

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<sup>28</sup> CEDAW, *supra* note 25, at Art. 2 (emphasis added).

<sup>29</sup> *Id.* at Art. 3 (emphasis added).

<sup>30</sup> International Covenant on Civil and Political Rights (hereinafter ICCPR), United Nations Human Rights, Art. 2 (Mar. 23, 1976), *available at* <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>31</sup> *Id.* at Art. 3.

<sup>32</sup> International Covenant of Economic, Social and Cultural Rights (hereinafter ICESCR), United Nations Human Rights, Art. 2.2, Art. 3 (Jan. 3, 1976), *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>.

<sup>33</sup> CEDAW, *supra* note 25, at Art. 10.

<sup>34</sup> *Id.* at Art. 10(c) (emphasis added).



Building on this requirement, the **CEDAW Committee has regularly advocated for sex-integrated education and condemned separation of the sexes in educational contexts.** The UN Educational, Scientific and Cultural Organization (UNESCO), a leading international authority on the right to education, has made similar statements, writing that “**Gender must. . . be integrated at all levels of education**, from early childhood to higher education, in formal and non-formal settings and from planning infrastructure to training teachers.”<sup>35</sup> UNESCO recognizes that harmful practices such as forced marriages, early pregnancy, gender-based violence, discriminatory educational laws and policies have prevented access to education for girls and continue to hinder girls from enrolling, completing and benefitting from education.<sup>36</sup> Women have historically been denied equal education due to social and political barriers. CEDAW Article 10 and the **UNESCO recommendations** taken together advocate that non-discrimination and equality are two principles that must be integrated in policy decisions concerning education. The gender segregation described in case study 2 will only further the discriminatory and inequitable practices that women and girls have historically faced. Universities UK is at a crucial juncture in determining the future state of education for women. In accordance with human rights law, Universities UK should adopt a non-discriminatory and more inclusive policy by prioritizing gender integration at all levels of education, including University events with guest speakers.

Even if state parties to CEDAW are not directly discriminating against women, they must “take positive measures to ensure the realization of equality between men and women in education.”<sup>37</sup> These positive measures include policies that will facilitate women’s equal participation in education and remove any structural barriers to this purpose.<sup>38</sup> Women who are sitting in the back of the room or participating in a marginalized manner cannot participate equally in the educational system. Case study 2 violates human rights principles by: 1) directly discriminating against women and also by 2) failing to take positive measures to facilitate women’s equal participation in education. Implementing the policies outlined in case study 2 and prioritizing religious claims of fundamentalist groups, UUK will put in place structural barriers that will be difficult to overcome to achieve women’s equal participation in education. Case study 2 is a violation of human rights standard and sets poor precedent for women’s human rights.

#### B. Argument for religious freedom overlooks the impact of discrimination against women in education

Nicola Dandridge’s position in the UUK blog, noted above, that case study 2 does not promote gender segregation, rather it advises universities of their legal obligation pertaining to freedom of speech and religion overlooks the issue. Article 1 of CEDAW defines discrimination against women as “a distinction, exclusion, or restriction on the basis of sex **with the effect or**

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<sup>35</sup> Gender Equality in Education, UNESCO, (last visited Jan. 2, 2014), *available at* <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-sustainable-development/gender-equality/> (emphasis added).

<sup>36</sup> *Id.*

<sup>37</sup> Marsha A. Freeman, Christine Chinkin & Beate Rudolph. The UN Convention on the Elimination of all Forms of Discrimination Against Women. 271 (2012).

<sup>38</sup> *Id.* at 271.

**purpose** of nullifying women’s human rights and fundamental freedoms.”<sup>39</sup> In effect, a policy that allows gender segregation in public events, nullifies women’s human rights to be equally integrated with men. A religious leader claiming that such policy is a requirement of his faith does not erase the negative impact the policy has on women’s human rights. Therefore, religious freedom, should not overshadow women’s human rights and fundamental freedoms.

The CEDAW committee notes that gender discrimination is not a concept relegated to the poorest countries; rather, it is a “universal problem” affecting women across the globe.<sup>40</sup> The prevailing gender ideology of fundamentalist religious speakers at UUK Universities is likely to separate men and women or to downplay women’s involvement in education. CEDAW’s General Recommendation 25 calls for “the transfer of power and resources between men and women,” which will challenge prevailing gender ideology. Although society as a whole may not hold discriminatory views, if UUK allows the fundamentalist views of a narrow segment of the population, it can easily trickle through the rest of society. The fundamentalist stereotypes of the roles and responsibilities of women and men in the education system has the detrimental effect of reinforcing women’s inferiority and affects their status outside the university system.<sup>41</sup>

In a summary record reporting on Jamaica’s compliance with CEDAW, the Committee stated that “gender segregation did exist in some schools, a practice that was **discouraged by the Committee as it was a form of discrimination** and often led to segregation in the labour market.”<sup>42</sup> In another report on New Zealand, the Committee wrote that it was “concerned about the continuation of gender-segregated thematic subjects, which affects future employment opportunities and perpetuates occupational segregation.”<sup>43</sup> Furthermore, in one report, the Committee cited the opinions of experts who criticized the conversion of certain Nairobi coeducational secondary schools into female-only schools as a form of “protective legislation” for women. One expert stated that the conversion “was in fact negative since it promoted segregation,” and another argued that this “protective legislation was problematic in terms of its impact on the equality of women and men” and did not “accelerate equality.”<sup>44</sup> These comments illustrate the Committee’s overall negative opinions of gender segregation in education. They suggest that the Committee would be unlikely to support the sex segregation that UUK has advocated for in case study 2.

Moreover, the **ICESCR**, which the UK ratified in 1976, recognizes a variety of rights which must be exercised “without discrimination of any kind as to. . . sex. . . or other status.”<sup>45</sup> In

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<sup>39</sup> The Convention on the Elimination of All Forms of Discrimination against Women, Art. 1 (Sept. 3, 1981), available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (emphasis added);

<sup>40</sup> *Id.* at 272.

<sup>41</sup> *Id.* at 272.

<sup>42</sup> Committee on the Elimination of Discrimination of Women, Summary record of the 1048<sup>th</sup> meeting 5 (Dec. 24, 2012), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/417/64/pdf/N1241764.pdf?OpenElement> (emphasis added).

<sup>43</sup> Committee on the Elimination of Discrimination of Women, Concluding observations of the Committee on the Elimination of Discrimination against Women: New Zealand 8 (Aug. 6, 2012), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/455/30/pdf/N1245530.pdf?OpenElement>.

<sup>44</sup> United Nations General Assembly, Report of the Committee on the Elimination of Discrimination Against Women: Fourteenth session 45 (May 31, 1995), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/160/44/pdf/N9516044.pdf?OpenElement>.

<sup>45</sup> ICESCR, *supra* note 32, at Art. 2.2.

**Article 13**, the ICESCR describes “the right of everyone to education,” and states that education “shall strengthen the respect for human rights and fundamental freedoms. . . [and] shall enable all persons to participate effectively in a free society.”<sup>46</sup> With regard to higher education specifically, the covenant provides that “[h]igher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means.”<sup>47</sup>

Though CEDAW and the ICESCR do not define the term “**education**,” definitions of the term recognized by other prominent international bodies may be illustrative in interpreting the term. UNESCO has recognized that the term **education is “not equivalent only to schooling.”**<sup>48</sup> If we adopt this more expansive conception of education, as does UNESCO, then the above guarantees of nondiscrimination in education would very likely extend to university events like those described in the UK guidance document. A strong argument can be made, then, that **CEDAW and the ICESCR would prevent the type of sex segregation of university events described in case study 2.**

### C. Distinction between Case Study 2 and Single-Sex Education Intended to Benefit Women

It should be noted that the UK entered a reservation to CEDAW Article 10(c) which states that “the acceptance of the objective of encouraging coeducation is without prejudice to the right of the United Kingdom also to encourage other types of education.” Furthermore, the ICESCR Committee has written that “[i]n some circumstances, separate educational systems or institutions” for women will be permissible under the ICESCR.<sup>49</sup> These comments seem to concern **single-sex classes or schools, which are distinct in their intent and effect from the sex segregation of university events described in case study 2.** Some studies have indicated that single-sex classes or schools can at times benefit girls and women, and these potential benefits were likely the impetus behind the UK’s CEDAW reservation and the ICESCR Committee’s comments about single-sex education.<sup>50</sup> An all-girls school may be the preferred option because girls excel in certain subjects like mathematics and science in all-girls schools, according to a case study conducted in Thailand.<sup>51</sup> In the same study, boys scored better in these subjects in co-educational settings. The main reasons behind this differential is likely caused by the peer dynamics that exist in co-educational systems that might hinder girls’ performance and the fact that boys and girls engage with material in different ways, especially since boys can be more aggressive in answering questions, which has the effect of silencing girls and making girls

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<sup>46</sup> *Id.* at Art. 13.1 (emphasis added).

<sup>47</sup> *Id.* at Art. 13.2(c).

<sup>48</sup> UNESCO, Operational Definition of Basic Education: Thematic Framework 3 (Dec. 2007), *available at* <http://www.unesco.org/education/framework.pdf> (emphasis added).

<sup>49</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (article 13 of the Covenant) 8 (Dec. 8, 1999), *available at* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f10&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f10&Lang=en).

<sup>50</sup> See UNESCO Bangkok, Single-Sex Schools for Girls and Gender Equality in Education (2007), *available at* [http://www2.unescobkk.org/elib/publications/127\\_128/AdvocacyBrief\\_Single\\_Sex\\_Schools.pdf](http://www2.unescobkk.org/elib/publications/127_128/AdvocacyBrief_Single_Sex_Schools.pdf).

<sup>51</sup> *Id.* at 3.

think they are less capable.<sup>52</sup> These are just two examples of situations where an all-girls school is the better educational option.

The UK's **reservation and comment do not affect the UK's obligations under Articles 2 and 3 of CEDAW, the ICCPR, and the ICESCR to promote gender equality and combat gender discrimination in all its forms and in all fields.** Though the UK's Article 10(c) reservation and the ICESCR Committee's comment should be given due consideration, they should *not* be considered to authorize gender segregation in public university events. The basic guarantee of these three conventions is to prevent the gender apartheid that case study 2 supports. Furthermore, the intent of the UK in making this reservation was not to allow the potential for gender segregation in events like public university events outlined in case study 2. A textual reading of the reservation supports this interpretation. The UK's reservation states that they reserve the right to encourage other types of education in addition to co-education. This refers to broader educational systems such as all-girls or all-women schools. Many countries have adopted all-girls systems of education. For example, a UNESCO report cites a study of Nigerian primary schools that found that teachers were more likely to engage in "equity practices"—such as resisting sex-role stereotypes, recognizing female achievements, and affirming girls' performance or abilities—in all-girl schools.<sup>53</sup> The UK reservation should not be interpreted to allow gender segregated public university events in a broader system of co-education.

**None of these potential benefits, though, are relevant to the gender segregation promoted in case study 2;** no arguments have been presented by UUK or any groups requesting segregation that the separation of men and women will benefit girls' education, leadership abilities, or self-esteem in any way. Rather the segregation in case study 2 is intended to placate fundamentalist religious groups which often exhibit sexist views of women and gender roles. The single-sex classes and schools referred to in the UK's CEDAW Article 10(c) reservation and in the ICESCR Committee comment may not fall into the treaties' definition of "discrimination against women" because they can arguably lack the requisite discriminatory intent or effect. The segregation described in case study 2, on the other hand, has never been claimed to provide any benefit to women, and will have discriminatory intent or effect in the majority of cases. It is therefore unlikely that gender segregation of public university events hosting fundamentalist religious speakers was intended to be included in the UK's CEDAW reservation or in the ICESCR Committee's comment on coeducation.

It is also important to note that single-sex environments have also been shown to "promote stereotypical attitudes toward the other sex,"<sup>54</sup> which *is* a legitimate risk of the sex segregation described in case study 2. Ultimately, the UNESCO report concludes that **when "designed in ways that make instructional practices and school culture responsive to gender equity,** single sex-schools may help girls develop academic attitudes and aspirations that are less stereotypical. . . . The effect of single-sex schools **depends on how these schools are organized** and how their teachers are prepared to **foster non-sexist environments.**"<sup>55</sup> Again,

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<sup>52</sup> *Id.* at 3.

<sup>53</sup> Nelly P. Stromquist, *The Gender Socialization Process in Schools: A Cross-National Comparison*, UNESCO 8 (2007), available at <http://unesdoc.unesco.org/images/0015/001555/155587e.pdf>.

<sup>54</sup> *Id.* at 22.

<sup>55</sup> *Id.* at 23 (emphasis added).

because the gender segregation described in the UUK guidance document is *not* designed with the intent of promoting gender equity or fostering a non-sexist environment (and in fact is often promoted for the exact opposite reason) it should not be equated to the potentially beneficial single-sex education described by UNESCO.

In sum, the **gender segregation of public university events described in case study 2 constitutes discrimination against women in education and violates the UK’s international obligations under CEDAW and the ICESCR.**

### **THE RIGHT TO EQUAL PARTICIPATION IN PUBLIC LIFE**

#### **A. The UK’s International Legal Obligations under CEDAW and the ICCPR**

The UK has also committed itself to promoting women’s full and equal participation in public life through CEDAW and the ICCPR. **CEDAW Article 7** requires state parties to “eliminate discrimination against women in the political and public life of the country,” and to ensure that women have the equal right to participate in “non-governmental organizations and associations concerned with the public and political life of the country.”<sup>56</sup> The CEDAW Committee has written that “[t]he political and public life of a country is a broad concept,” referring not only to political participation, but also all aspects of public administration, policy formation, and “many aspects of civil society, including public boards and local councils and the activities of. . . organizations concerned with public and political life.”<sup>57</sup>

Public university events seem to clearly fall within this broad CEDAW definition of “public life.” These public events provide platforms for students and the public at large to discuss pressing political or educational issues of the day. Even if men and women are segregated side-by-side, the separation of the sexes in these public educational events may serve to marginalize women and to send the message to both sexes that women are considered separate from and often inferior to men in public forums. Fundamentalist groups use strategies of explicit or implicit gender subordination and apartheid to reinforce their view that women are inferior to men. For every woman that loses the choice of where to sit, religious fundamentalist groups have gained a considerable amount of power. The culmination of this power results in abusive and discriminatory practices against girls and women in the public and private spheres. **The inability of women to sit where they choose and to be integrated with men in these important public discussions unlawfully limits women’s full participation in public life in violation of CEDAW Article 7.**

The CEDAW Committee has also written that “the most significant factors inhibiting women’s ability to participate in public life have [included] the **cultural framework of values and religious beliefs**. . . . In all nations, **cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active**

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<sup>56</sup> CEDAW, *supra* note 25, at Art. 7.

<sup>57</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 23, Article 7 (political and public life) 2 (1997), *available at* <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom1>.

**participation in public life.**<sup>58</sup> These comments suggest that religious practices that impede women's ability to participate fully in public life are a barrier to be overcome rather than something that must be tolerated in order to protect freedom of religion.

Perhaps the most pivotal tension that case study 2 raises concerns the interests of private organizations whose activities affect political rights. According to Marieme Helie Lucas, The definition of fundamentalisms is, "political movements of the extreme right, which in the context of globalization ... manipulate religion ... to achieve their political aims."<sup>59</sup> Because fundamentalists often have political aims driving their religious claims, their religious beliefs should be subject to limitation in the public sphere, such as public university events. It is true that fundamentalists whose political beliefs require gender segregation have a claim to freedom of association. However, the claim to freedom of association is not an absolute right and must be balanced with concerns of gender discrimination, as will be discussed below.

Article 7(c) is unique in human rights law because it challenges the public-private divide. It describes the right of women to participate in NGOs and associations that concern public and private life. Therefore, private organizations, such as religious groups are bound by Article 7(c) not to discriminate against women. The drafters of the CEDAW considered the freedom of association problem in the *travaux preparatoires* and concluded "as to organizations and associations concerned with public life, the prohibition of discrimination prevails over freedom of association."<sup>60</sup> The spirit of Article 7(b) and 7(c) taken together requires State parties to ensure that women, on equal terms as men, have the right to fully participate in government and in associations concerned with public and political life. The CEDAW committee recognizes "religious organizations" as types of organizations that are included in the broad definition of "associations" codified in Article 7(c). **Therefore, under CEDAW, in public events, discrimination against women cannot be tolerated due to the beliefs of religious organizations.** Case study 2 should be withdrawn in accordance with the UK's obligations under international law.

The segregation described in case study 2 also violates the UK's obligations under the ICCPR. The ICCPR, ratified by the UK in 1976, provides in **Article 26** that "[a]ll persons are equal before the law" and that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as. . . sex."<sup>61</sup> Specific to the right to participate in public life, **Article 25** of the ICCPR guarantees the right and opportunity of every citizen "[t]o take part in the conduct of public affairs,"<sup>62</sup> which is described by the Human Rights Committee as the right to "equal participation in public life of all citizens, without any of the distinctions mentioned in article 2."<sup>63</sup> The distinctions mentioned in Article

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<sup>58</sup> *Id.* at 3 (emphasis added).

<sup>59</sup> Karima Bennoune, *Your Fatwa Does Not Apply Here: Untold Stories from the Fight Against Muslim Fundamentalism*, 14 (2013),

<sup>60</sup> Freeman, *supra*, at 206-207.

<sup>61</sup> ICCPR, *supra* note 30, at Art. 26 (Mar. 23, 1976), available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>62</sup> *Id.* at Art. 25.

<sup>63</sup> Human Rights Committee, General Comment 18: Non-discrimination (1989), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument).

include sex and other protected statuses.<sup>64</sup> While much of the right involves the ability to hold public office and to formally participate in the creation and implementation of law, the Human Rights Committee is also clear that individuals “take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves.”<sup>65</sup> Nowak provides the example of a formal voting process put in place by a state for all citizens where some groups as the aged and sick are not given the true *opportunity* to exercise their right to vote.<sup>66</sup> He argues that States have a duty to, “guarantee with *positive measures* that all formally eligible persons have the actual opportunity to exercise their political rights.”<sup>67</sup> Analogously, giving women the formal right to education but excluding them from the opportunity to participate actively in education at public university events is a violation of Article 25 of the ICCPR.

**Public university events provide a classic platform for public debate and dialogue, especially on topics of political or cultural importance. As such, individuals must feel free to participate fully and equally in these public university events fully regardless of sex. However, gender segregation of these events serves to marginalize women and to impede their full recognition and membership in these public discussions. When women are marginalized, fundamentalist groups succeed in promoting an agenda of gender segregation that is at its root an agenda masked in freedom of religion and freedom of association claims. Case study 2’s gender segregation of public university events therefore violates the UK’s obligations under the ICCPR.**

The religious stereotypes that many fundamentalist organizations bring to the events like public university events, have to be addressed directly. “Cultural and social, sometimes religious, stereotypes discourage women from exercising their political rights and are often at the root of women’s disadvantaged position.”<sup>68</sup> The UK has a duty to ensure that women are able to participate fully in public debate and in the political arena. Speakers at UUK Universities may encourage debate of current, contested issues in politics. To segregate women and men during these debates sends a clear message to women that their voice and opinions cannot be integrated with the group but rather stands as a separate entity. This type of gender apartheid only serves to empower fundamentalist groups in promoting their agenda of gender segregation and marginalization of women in all aspects of public and private life. The UK should promote the full exercise of political rights for women and avoid taking steps that would further women’s disadvantaged position in the political sphere. The right to equal participation in public life is a fundamental tenet of human rights law and case study 2 should be withdrawn from the UUK’s guidance document to comply with human rights law.

#### **B. The Special Rapporteur on Violence Against Women (SRVAW) and Gender Segregation of Public Space**

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<sup>64</sup> ICCPR, Article 2.

<sup>65</sup> Human Rights Committee, General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) (1996), *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument).

<sup>66</sup> Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary 439 (1993).

<sup>67</sup> *Id.*

<sup>68</sup> Freeman, *supra*, at 211.

In 1994, the UN Commission on Human Rights appointed a Special Rapporteur on violence against women to prevent public and private acts of violence against women.<sup>69</sup> Successive Special Rapporteurs have addressed and **denounced the negative consequences of gender segregation.**

In a General Assembly report, for example, then-Special Rapporteur Dr. Yakin Ertürk of Turkey commented that general societal sex segregation in Saudi Arabia creates “important obstacles to women’s autonomy. . . and ability to participate in the full range of activities available in society and in the workplace.”<sup>70</sup> The report states that many Saudi businesswomen and officials cite sex segregation as “a primary obstacle to women’s ability to participate in the full range of activities and opportunities in the workplace”<sup>71</sup>; when industries are integrated, as in the health sector in Saudi Arabia, outcomes improve, creating “efficient use of resources and delivery of better quality services.”<sup>72</sup>

Of course, the level of sex segregation in Saudi society is considerably more severe and widespread than the limited segregation proposed in case study 2.<sup>73</sup> Still, though, the former-Special Rapporteur’s **discussion of Saudi sex segregation is instructive, because this segregation is based in precisely the type of fundamentalist ideas about women and gender relations as are many of the requests for gender segregation at university events in the UK.** Further, as thousands of Saudi women and women elsewhere are struggling against this pervasive gender discrimination every day, the UK and the rest of the world must endeavor to send a message to nations like Saudi Arabia that gender segregation of public spaces will not be tolerated. By allowing separation of the sexes in public university events, the UK is sending the opposite message to countries like Saudi Arabia and the countless women fighting for basic equality there and in other countries. Saudi Arabia nationals are taking note of the policies enacted in the UK. Pro-segregation Arabs are spreading a particular video to say that segregation in education leads to outstanding results.<sup>74</sup> This type of claim is used to further legitimize the fundamentalist agenda to marginalize women in education and public life. The UUK guidance document and in particular, case study 2 is relevant not only to UUK policy but also to the practice of fundamentalist groups and countries that are eager to latch onto any implied or express approval of gender segregation. UUK guidance drafters must keep this in mind and resolve to send a message to fundamentalist groups that gender segregation aimed at marginalization of women will not be tolerated.

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<sup>69</sup> Special Rapporteur on violence against women, its causes and consequences, United Nations Human Rights (last visited Jan. 5, 2014), <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>.

<sup>70</sup> Yakin Erturk, Special Rapporteur on violence against women, its causes and consequences, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development 2 (Apr. 14, 2009), *available at*

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.6.Add.3\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.6.Add.3_en.pdf).

<sup>71</sup> *Id.* (emphasis added).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 7 (“Saudi Arabia is a sex-segregated society, a policy which is enforced in public institutions, private businesses, restaurants and cafes, and which shapes the architectural design of private homes. Discussions and meetings among men and women are conducted through video conferences or by phone, rather than face to face.”)

<sup>74</sup> “Together to Prevent the Mixing of the University of Benghazi.” 4<sup>th</sup> comment. (April 29, 2014), Available at [https://www.facebook.com/permalink.php?story\\_fbid=556348101149630&id=551784161606024](https://www.facebook.com/permalink.php?story_fbid=556348101149630&id=551784161606024).



Women have a legal right to be free from discrimination in the public sphere and participate actively in their education as our discussion has outlined. Women who have recognized their CEDAW Article 7 rights are in a unique position to set an example for other countries. Encouraging certain fundamentalist-leaning states to promote gender equality is a robust initiative that must be met with internally critical policies. If the UK and other countries hope to effect change in advancing the position of women elsewhere, we must hold our internal policies, like that outlined in case study 2, to high legal standards. This is especially important today when fundamentalist groups seem to be gaining momentum internationally. **International solidarity with these women requires the UK and all nations to reject gender discrimination in all its forms**—even when that discrimination is at the behest of fundamentalist religious groups.

### **THE RIGHTS TO FREE EXERCISE OF RELIGION AND FREEDOM OF EXPRESSION ARE NOT ABSOLUTE**

As noted above, UUK has claimed that case study 2 is intended to balance the legal requirement of gender equality with laws requiring freedom of speech and free exercise of religion.<sup>75</sup> Freedom of speech and religion are of course central human rights guaranteed by international law; under international legal documents such as the ICCPR, the Universal Declaration of Human Rights, and the Declaration on the Elimination of All Forms of Religious Intolerance and Discrimination Based on Religion or Belief, individuals are guaranteed the right to hold religious beliefs and practice a religion of their choosing, and to freely express their ideas.<sup>76</sup>

However, **there are limits to the international rights to freedom of religion and speech, especially when they conflict with other human rights.** While both the rights of gender non-discrimination and of freedom of thought, conscience and religion are non-derogable under the ICCPR<sup>77</sup>—meaning that they may not be violated under any circumstances—freedom of religious *expression* and freedom of speech are subject to limitation.<sup>78</sup> **ICCPR Article 18(3)** explicitly provides that freedom to “manifest” one’s religion may be subject to limitations that “are necessary to protect. . . the fundamental rights and freedoms of others.”<sup>79</sup> Furthermore, **Article 19(3)** provides that freedom of speech “carries with it special duties and responsibilities,” and “may therefore be subject to certain restrictions. . . [f]or respect of the rights. . . of others.”<sup>80</sup> Because the right to gender nondiscrimination is completely non-derogable under Articles 4 and 5 of the ICCPR, while the rights to freedom of religious practice and freedom of expression are

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<sup>75</sup> Nicola Dandridge, *supra* note 9.

<sup>76</sup> Donna J. Sullivan, Gender Equality and Religious Freedom: Toward a Framework for Conflict Resolution, 24 New York University Journal of International Law & Politics 795, 805 (1992); Human Rights Watch, Germany: Discrimination in the Name of Neutrality – Headscarf Bans for Teachers and Civil Servants in Germany 56 (Feb. 26, 2009).

<sup>77</sup> ICCPR, *supra* note 30, at Art. 4.

<sup>78</sup> The ICCPR distinguishes the underlying right to freedom of religious belief from the right to religious expression or practice. While nothing can limit the right to religious belief under the ICCPR, the right to religious expression is subject to limitation. *See* Karima Bennoune, Secularism and Human Rights: A Contextual Analysis of Headscarves, Religious Expression, and Women’s Equality under International Law, 45 Columbia Journal of Transnational Law 399-400 (2007).

<sup>79</sup> ICCPR, *supra* note 30, at Art. 18(3).

<sup>80</sup> *Id.* at Art. 19(2).

subject to these limitations, **the rights to express religious belief and to free speech “can indeed be trumped by gender equality by [their] very terms.”**<sup>81</sup>

It follows, then, that “restrictions may be imposed on religious law and practice [and on free speech] if they are necessary to protect women’s human rights and fundamental freedoms and are prescribed by law.”<sup>82</sup> This view was reflected in the UN Human Rights Committee General Comment No. 28: Equality of Rights Between Men and Women, which read that “Article 18 [of the ICCPR] may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion.”<sup>83</sup> Furthermore, the UN Human Rights Committee General Comment No. 22 states that Article 18.3 of the ICCPR permits restrictions on the freedom to manifest religion or belief only if those limitations prescribed by law and necessary to protect the fundamental rights and freedoms of others.<sup>84</sup> Gender nondiscrimination is a non-derogable, fundamental right. Therefore, restrictions on the manifestation of religious belief, such as gender segregated audiences proposed in case study 2, are legally valid. In implementing limitations on religious expression, “States parties should proceed from the need to protect the right guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in Articles 2, 3, and 26.”<sup>85</sup> The right to gender equality is present in each of the three abovementioned Articles of the ICCPR. In conclusion, the law supports restrictions on religious expression. The law also allows restrictions, like gender-integrated public events because the restriction serves the non-discriminatory goals present in ICCPR Articles 2, 3 and 26.

As gender segregation of public university events is prohibited by guarantees of gender nondiscrimination in various international human rights treaties to which the UK is a party—including CEDAW, the ICCPR, and the ICESCR—the ICCPR explicitly provides that **freedom of religious practice and freedom of expression may be limited as necessary to prevent this infringement of the human right to gender equality.**

The concept that freedom of religious practice may be limited when necessary to protect the right to gender nondiscrimination could apply to individuals using *any* type of religion to infringe the fundamental rights of others. Though the UUK guidance document responded to requests for gender segregation from fundamentalist Muslim groups, similar requests may arise from other fundamentalist groups including fundamentalist Christians, Orthodox Jews, or any other group.<sup>86</sup> The response to these fundamentalist groups should be the same: freedom of

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<sup>81</sup> ICCPR, *supra* note 30, at Art. 4 and 5; Karima Bennoune, *supra* note 63, at 397 (emphasis added).

<sup>82</sup> Donna J. Sullivan, *supra* note 61, at 810.

<sup>83</sup> UN Human Rights Committee, General Comment No. 28: Equality of Rights Between Men and Women (Art. 3), UN Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

<sup>84</sup> Human Rights Committee, General Comment No. 22: Freedom of Thought, Conscience or Religion (Article 18), UN Doc. CCPR/C/21/Rev.1/Add.4 (Jul. 30, 1993).

<sup>85</sup> *Id.*

<sup>86</sup> See Andrew Connelly, Muslim gender segregation stirs UK debate, Aljazeera (Jan. 30, 2014), available at <http://www.aljazeera.com/indepth/features/2014/01/muslim-gender-segregation-stirs-uk-debate-2014130111242593264.html> (“Universities UK. . . published guidelines that contained a case study allowing for respect of the rights of a visiting orthodox religious speaker to segregate an audience by gender. Separate seating provisions for men and women is common in Islam, Judaism and other faiths, supposedly for reasons of comfort and focus.”); British university group rethinking position on gender segregation, United Press International (Dec. 13, 2013), available at [http://www.upi.com/Top\\_News/World-News/2013/12/13/British-university-group-rethinking-](http://www.upi.com/Top_News/World-News/2013/12/13/British-university-group-rethinking-)

religious expression will not be tolerated as the reason to allow gender segregation in public university events.

## CONCLUSION

As demonstrated above, the gender segregation of public university events proposed by UUK in case study 2 violates the UK's obligation to promote gender nondiscrimination under international human rights law. Through CEDAW, the ICESCR, and the ICCPR, the UK has committed itself to ensuring gender equality in all fields, including education and public life. Though UUK has publicly defended case study 2 by arguing that gender segregation must be permitted to protect speakers' rights to freedom of religion and freedom of speech, these rights are not absolute. Freedom of religious expression and freedom of speech may be limited when necessary to prevent the violation of the human rights of others. Because the segregation proposed in case study 2 violates the non-derogable right of gender nondiscrimination, it cannot be justified in the name of freedom of speech or religion.

The issues raised by the UUK guidance document exist within the broader struggle for women's human rights. There is likelihood of renewed controversy surround women's rights in education and in the public sphere, as well as other areas, if fundamentalist claims are legitimately entertained. Fundamentalists aim to normalize personal religious codes within the legal system.<sup>87</sup> The main strategy they employ to do so is control of female sexuality through gender discrimination.<sup>88</sup> We must set the standard for gender equality in effort to uphold the important work that human rights advocates, members of civil society and state governments have produced. The international community should show solidarity with women across the world that face human rights challenges.

Case study 2 is an assault on secular human rights values. States that allow "shariafication" within their borders are empowering religious fundamentalists with no recourse of accountability. This is a dangerous, rights-hindering approach that threatens the protection of women's human rights and legitimizes a policy of gender apartheid. We recommend that UUK withdraw its case study 2 recommendations from its guidance document and institute policies to ensure substantive equality for men and women in the university system, in conformance with the UK's obligations under international law.

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position-on-gender-segregation/UPI-62211386966652/ ("While many Orthodox Jews believe men and women should not mix in social settings, the question is most likely to come up for Muslims.").

<sup>87</sup> Pragna Patel. 'Shariafication by stealth' in the UK. (Oct. 2014) Available at: <https://www.opendemocracy.net/5050/pragna-patel/%27shariafication-by-stealth%27-in-uk>.

<sup>88</sup> *Id.*