



## Gibraltar Pro-Life Movement

Response to the Government of Gibraltar's Consultation on  
Abortion Law in Gibraltar

"Both lives matter."

23 November 2018

[gibraltarprolifemovement@gmail.com](mailto:gibraltarprolifemovement@gmail.com)

Tel: 54067935

Chair Person: Karenza Morillo: 54027551

**A Response from the  
The Gibraltar Pro-Life Movement  
To  
The Government of Gibraltar Command Paper:  
*For a Draft Bill to Amend The Crimes Act 2011 To  
Permit Abortion***

**23 November 2018**

## Contents

1. <u>Introduction</u>	<b>P.4</b>
- Background	
- Law and Democratic Implications	
- The Right to Legal Protection of the Unborn Human Being	
- The Science	
2. <u>Executive Summary</u>	<b>P.8</b>
3. <u>Legal Position</u>	<b>P.9</b>
- Current Gibraltar Law	
- Supreme Court Judgment	
- European Court of Human Rights	
- United Nations	
4. <u>The Pro-Life Position</u>	<b>P.12</b>
- The Beginning of Life: the Science	
- The Duty to Protect Innocent Persons	
- Personhood	
5. <u>Biological Development of the Unborn Child</u>	<b>P.16</b>
- Foetal Development	
- Abortion Procedures	
- Foetal Pain	
6. <u>Abortion as a Social Problem</u>	<b>P.20</b>
- Prevention of Abortion as a Positive Strategy	
- Confidentiality Policy in respect of Teenagers	
7. <u>Remarks on the Proposed Legislation</u>	<b>P.24</b>
- Exemption (a): "Mental Health"	
- Exemption (b): Grave harm to Physical or Mental Health	
- Exemption (c): Continuance of Pregnancy Presenting Greater Risk to Life of Mother	
- Exemption (d): Fatal Foetal Abnormality/Serious Disability	
8. <u>Conscientious Objection</u>	<b>P.27</b>
9. <u>Developments/Trends in other Countries</u>	<b>P.30</b>
10. <u>Other Observations/Recommendations</u>	<b>P. 32</b>
- Father's Rights	
- Better Support and Alternatives: Fostering and Adoption Programmes	
11. <u>Conclusion</u>	<b>P.34</b>

# 1. Introduction

## Opening Remarks

1.1 The Gibraltar Pro-Life Movement (**GPLM**) welcomes the opportunity to respond to the Government's Command Paper and the changes to the law on abortion that it proposes. The proposed changes raise profound issues of human rights.

1.2 The GPLM holds that the life of an unborn human being deserves all possible respect, protection and nurturing. All life is equally valuable. The law in Gibraltar at present allows for terminations where the life of the mother is at risk. That this should be considered a requirement is, however, not borne out by medical science. As the Dublin Declaration on Maternal Healthcare<sup>1</sup> puts it: *"As experienced practitioners and researchers in obstetrics and gynaecology, we affirm that direct abortion – the purposeful destruction of the unborn child – is not medically necessary to save the life of a woman"*. The GPLM is opposed to all direct abortion and holds the position, as articulated in the Dublin Declaration on Maternal Healthcare that, "there is a fundamental difference between abortion, and necessary medical treatments that are carried out to save the life of the mother, even if such treatment results in the loss of life of her unborn child". While this distinction may seem a mere matter of semantics, it allows for the equal status of all members of our society in respect of their right to life and their right to treatment, as well as allowing those in the medical community to uphold the Hippocratic injunction to "first, do no harm".

1.3 The GPLM is opposed in principle to the further liberalisation of abortion law and the destruction of human life that will result. Indeed, the GPLM strives to achieve a society in which abortion is not only deemed impermissible but where women are not subject to any social or financial pressures that may lead them to consider an abortion as a supposed 'remedy'. Being pregnant is a temporary situation and not an illness. Thus, the GPLM is committed to ensuring that any legislative reform should recognise the indisputable right to life of unborn human beings and furthermore, to provide for a social and public health framework that will support mothers and fathers in the care of their children, both before and after birth, alternatively provide improved access for foster parents and adoptions.

1.4 There can be no moral or social progress, or any advance in civil rights, without this fundamental right being recognised and the GPLM considers the consultation process to be an opportunity to guarantee the enshrinement of the right to life in the law of Gibraltar. The news that organisations outside Gibraltar are advising the Government to implement abortion on demand demonstrates that there are essentially two competing visions of Gibraltar and its future, at play: the first, a Gibraltar distinguished by its close-knit community, strong family ties and a commitment to equality and care for all; the second, a Gibraltar misguidedly following the trends of other countries in which an abstract commitment to freedom of choice has been elevated to an absolute ideal without deeper consideration of the ethical principles at stake by those who may have a political ideology which, for reasons of their own, seek to undermine the value of human life and the concept of family in our society. The GPLM invites the Government to consider the implications of any liberalisation of the law on abortion in respect of Gibraltar's social and political fabric and pay heed to the divisions that have already become apparent in this debate which not long ago had simply not been featured prominently or at all (as will be further elaborated upon below).

1.5 The GPLM strongly believes that both lives matter - the dignity and rights of the mother and the child are equal and need not be mutually exclusive. The intentional destruction of unborn human beings is not the solution. The dignity and rights of the father are also discussed below. That there is

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<sup>1</sup> <https://www.dublindeclaration.com/>

massive support for the principle of the recognition of the right to legal protection of the unborn human being is highlighted by the more than 6,000 Gibraltarians and Gibraltar residents who signed a petition to the effect that: "*We the undersigned believe that the paramount consideration in any change of Gibraltar Law in respect of abortion must recognise the pre born's indisputable right to life*" See further below.

### **Structure of this Response**

1.6 In the rest of this introductory section, some of the salient aspects of the abortion debate and its implications for the legal and social fabric of Gibraltar will be briefly outlined.

1.7 Following that, the legal aspects of the matter will be analysed in the first place as the Government has stated in its Command Paper that legal matters have been the trigger for the review of Gibraltar's legislation on abortion. This consideration will take into account Gibraltar's law on abortion as it stands at present; the significance of the UK Supreme Court Judgment of the 7<sup>th</sup> June 2018 in respect of Northern Ireland; the principles relevant to abortion to be found in the European Court of Human Right's case law; and the position of pertinent United Nations treaties in respect of this matter together with Gibraltar's own constitutional framework in the Gibraltar Constitution Order in Council 2006 and in particular section 2: "*2(1) No person shall be deprived of his life intentionally*".

1.8 The Pro-Life position in respect of the status of the unborn child will be articulated. It is of concern that there is no consideration in the Command Paper of this central ethical issue. This has implications not only in respect of abortion but also for issues such as conscientious objection. A particular emphasis is placed on the scientific perspective which is unequivocal in position on when human life begins.

1.9 The GPLM has from the outset emphasised that "both lives matter" and therefore it is concerned about the adverse effects of abortion on women, families and society in general which will also be presented.

1.10 The specific proposals of the Command Paper will then be examined and the GPLM will put forward its concerns and make proposals for humane alternatives. The issue of conscientious objection is also addressed.

1.11 Finally, trends in respect of abortion in other countries will be looked at to demonstrate how, at a time when Gibraltar is seeking to align itself with those jurisdictions which permit abortion, a struggle to reverse the effects of the implementation of permissive abortion laws in those same jurisdictions is ongoing. The response will conclude with some further observations on other pertinent matters and a summary of the GPLM's position.

### **Background**

1.12 The question of abortion is naturally a topic of great social concern throughout the civilised world. Following the enactment of the Abortion Act in the United Kingdom in 1967 and the US Supreme Court Judgment in *Roe v Wade* in 410 U.S. 113 (1973), a culture of abortion on demand has developed, not just in the UK and the US, but throughout the West.

1.13 Since 1968 [UK] and 1973 [US], there have been approximately 9,000,000 abortions in the UK and approximately 61,000,000 abortions in the US. This comes at a time when, ironically, the workforce has declined in numbers to such an extent that both countries are reliant on immigration. The cumulative effect after almost 50 years is noteworthy, since by now children born in the 1960's and 1970's would have had their own children and even grandchildren.

1.14 Worldwide there have been over 1,500,000,000 abortions since 1980 and approximately 37,000,000 abortions this year alone [as from the 1st January 2018 to date]<sup>2</sup>.

1.15 These facts and figures highlight the major concern that exists in many sectors internationally that the liberalisation of the law relating to abortion has got completely out of hand.

1.16 Since the Government of Gibraltar appears to be considering legislation which is remarkably similar to that of the UK, it is noteworthy that when (now) Lord David Steel promoted his private bill which led to the enactment of the Abortion Act in 1967, he said in Parliament that he expected there to be some 13,000 terminations a year. In fact as cited above, the actual numbers of abortions are astronomical by comparison.

1.17 The UK National Statistics from The Department of Health and Social Care, quote the number of abortions [from the abortion notification forms returned to the Chief Medical Officers of England and Wales] performed in 2017, to be 189,859 for residents of England and Wales, and 194,668 including non-residents. There were an estimated 3,000 additional abortions that took place in 2017 that are not included in the figures in this report. Including these would give an estimated 197,700 total abortions and 192,900 abortions for England and Wales residents.<sup>3</sup>98% of these abortions are funded by the NHS. An average of one in five [20%] pregnancies end in abortion.

### **Law and Democratic Implications**

1.18 The abortion debate in Gibraltar appears to have come out of nowhere. Never before has any political party or candidate for the Gibraltarian Parliament uttered a single word about abortion and there is nothing to be found in any previous manifesto on the subject, despite the fact that our last general election took place as recently as 2015. The GPLM is concerned at the suddenness of the eruption of this debate and the speed at which it has taken place, following nearly 100 years (our legislation dates from 1921) of complete silence.

1.19 The debate comes at a time when the political establishment in general, and the Government in particular, is preoccupied with a number of matters including one which could be existentially challenging to Gibraltar, namely, Brexit.

1.20 The concern is that, in this almost unprecedented "perfect storm", insufficient attention and deliberation will be given to the question of the legal protection of the right of the unborn human being in Gibraltar. It is already clear that there are major misapprehensions among the political class, as to the status of the unborn, and the purported 'right' to an abortion, under international law.

### **The Right to Legal Protection of the Unborn Human Being**

1.21 While the "Pro Choice" lobby focuses exclusively on what they call the freedom of choice of a woman to terminate a pregnancy, international law has long articulated the fact that, "the child, by reason of his psychical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth" [Declaration of the rights of the child proclaimed by resolution of the General Assembly of the United Nations 1386 (XIV) of the 20th of November 1959].

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<sup>2</sup> <http://www.numberofabortions.com>

<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/714183/2017\\_Abortion\\_Statistics\\_Commentary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714183/2017_Abortion_Statistics_Commentary.pdf)

1.22 Similarly, there appears to have developed a complete misunderstanding as to the prospect that Gibraltar could be forced to legislate on abortion by reason of international law. This is incorrect as can be seen from the Judgment of the European Courts of Human Rights in the case of A, B and C v Ireland ECHR 16th December 2010 and that of the United Kingdom Supreme Court of the 7th June [2018] UKSC 27].

1.23 The Jurisprudence therefore clearly stipulates that the matter of abortion falls within the, "margin of appreciation", which national Governments have and which is subject to the democratic process and not to imposition from abroad.

1.24 Although there are obviously differing opinions, the Government of Gibraltar is invited to consider the fact that over 6,000 citizens have, to date, signed a statement which reads:

***"We the undersigned believe that the paramount consideration in any change of Gibraltar Law in respect of abortion must recognise the preborn's indisputable right to life".***

1.25 In light of this expression of opinion from the equivalent of 36% of those who voted in the last election, coupled with the jurisprudence mentioned above and the terrible toll that abortion has had in other countries, the GPLM asks Parliament to ensure that the rights of the unborn are enshrined in any change in the law of Gibraltar. In practical terms this must involve the inclusion of a definition in whatever enactment is made akin to the wording in the 1959 declaration e.g: "*in interpreting the provisions of this Act full account will be taken of the fact that a child, by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection before, as well as after birth*".

1.26 The right to life is a fundamental constitutional right contained in Section 2 of the Gibraltar Constitution Order in Council 2006, which reflects Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 which was ratified by the United Kingdom in 1951.

1.27 Gibraltar is therefore at a crossroads and must decide whether it has the courage to promote its own cultural and moral ideals, or whether it follows trends in other countries, particularly at a time when those other countries are trying to row back from the excesses of abortion on request. After the destruction of tens of millions of lives in the western world, the pro-life tide is again rising and it would in our opinion be a grave mistake for Gibraltar to further liberalise abortion law, just at the moment when the rest of the world is pondering the horror of so many lost lives, in the last 50 years.

### **Scientific Considerations**

1.28 While it may be objected that there is no agreement in our society as to when human life begins, it is in fact a commonplace of modern embryology that the life of every individual human organism begins at the moment of fertilisation when the chromosomes of the sperm and the ovum combine to form a zygote, which contains within itself, the organising principle of its own development. There may be disagreement about the amount of respect that should be accorded to human lives at various stages of development, however, once a human individual comes to be, society must acknowledge that life's /individual's interests and rights: this would entail the protection of all human lives from conception until death.

## 2. Executive Summary

2.1 The GPLM has gathered over 6,000 signatures in support of the following statement:

***"We the undersigned believe that the paramount consideration in any change of Gibraltar Law in respect of abortion must recognise the preborn's indisputable right to life".***

This demonstrates a wide commitment across Gibraltarian society to the protection of unborn children and against liberalising the law on abortion.

2.2 There is no reason to consider that there is a legal "mandate" to legislate for abortion. The "margin of appreciation" afforded to states would allow for the Government to enshrine the unborn's right to life in law.

2.3 The science in respect of the commencement of human life is clear: it begins at conception and should therefore be protected as from that point. To deny personhood to human beings in the earliest stages of their development and legislate for abortion is to exclude a class of persons from the legal protections afforded to others. The Government should refuse to consider this possibility and protect the right to life of all human beings without exception.

2.4 The development of the unborn child during its time in the womb is a continuum. It does not allow for any demarcation of points at which the child can be said to be a human being deserving of protection and others at which it is not. **The heartbeat of the child is already detectable as early as 18-22 days after conception;** there can be no doubt that abortion involves the destruction of a living human being which far from being a mere 'cluster of cells' may well feel pain as her life is brought to an end.

2.5 The further legalisation of abortion also will also give rise to various adverse effects to both parents, families and society at large. It is therefore imperative that the socio-economic factors which contribute so substantially to the seeking out of abortions as a supposed remedy to a perceived problem be tackled. It is vital to ensure that social and public health policies are in place to assist vulnerable women and their families.

2.6 The legislative proposals would introduce the UK's abortion laws into Gibraltar with the same problems as have been experienced there. The legal regime in the UK has effectively introduced a policy of abortion on request with the vast majority of abortions being carried out under the "mental health" exception which incorporates social and economic considerations. It also discriminates against people with disabilities and fails to adequately protect the unborn's right to life.

2.7 In the event that the Government decides to press ahead with the liberalisation of abortion law it is imperative that strong protections are afforded to those people who conscientiously object to any involvement in the carrying out of an abortion.

2.8 Developments and trends in other countries show that they are attempting to row back from the consequences of having introduced more liberal laws on abortion. The Government should heed these developments and ensure that Gibraltar does not make the same mistakes.

2.9 The rights of the father in respect of the question of abortion must also be taken into account.

2.10 Improved adoption and fostering policies would also assist in creating a society in which women do not consider abortion to be a necessity in light of social and economic pressures they feel. The Government should seek to promote these and other social policies instead of legislating for abortion.



### 3. Legal Position

#### Gibraltar Law

3.1 The Crimes Act 2011 incorporates certain provisions relating to abortion derived from English statutes, namely, the Offences Against the Person Act 1861 (“OAP”) and the Infant Life (Preservation) Act 1929 (“ILP”). The OAP Act criminalised abortion in the UK. The ILP Act, while it was never intended to regulate abortions at all, has, in light of the judgement in the UK Case *Regina vs Bourne* [1938] 3 All ER 615 and the judicial interpretation placed on the ILP Act in that case, essentially provided for the legalisation of abortion in Gibraltar, “for preserving the life of the mother”.

3.2 Mr Justice MacNaghten read the, “preservation of the life of the mother”, clause found in the ILP Act back into the OAP Act so that it covered all abortion procedures (and not just in the very specific circumstances intended by the ILP Act). Furthermore, he proceeded to interpret the clause ‘widely’ in his directions to the jury:

*“It is not contended that those words mean merely for the purpose of saving the mother from instant death...I think those words ought to be construed in reasonable sense, and, if the doctor is of opinion...that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck... [he] is operating for the purpose of preserving the life of the mother.”*

3.3 With this case, the notion that, “the life of the mother”, encompasses both physical and mental aspects was arrived at, although precisely what might be covered by such a precedent remained unclear. In our view this was too wide an interpretation, as it goes to the purpose of preserving ‘quality’ of life, arguably over the maximum 9 month gestation period and not to preserving the mother’s life, which was the unequivocal wording and intention.

3.4 The OAP Act, ILP Act and the *Bourne* case essentially constitute the law on abortion as it existed in the UK up until the introduction of the Abortion Act in 1967 and the law on abortion as it still stands today in Gibraltar (through the Crimes Act 2011 and the persuasive nature of English case law), that is, abortion is criminalised, although there is an exception when it concerns the preservation of the life of the mother (and to prevent the mother becoming a “physical or mental wreck”).

3.5 It is not strictly speaking true that the current time limit, as suggested in the Command Paper, is 28 weeks – the “time limit” is the point at which the baby is capable of being born alive: this would nowadays be closer to 24 weeks (28 weeks is merely a rebuttable presumption that a baby at that age would be capable of being born alive – reflecting the medical standards at the time – and not a ‘threshold’). As Lord Steel stated:

- *“I remind the House that that Act created a presumption of viability at 28 weeks but no reverse presumption of non-viability below 28 weeks”.*<sup>4</sup>

#### UK Supreme Court Judgment

3.6 The Government, in its Command Paper, suggests that a change in the law on abortion is effectively being “forced” upon it due to the judgement given in *Human Rights Commission for Judicial Review* (Northern Ireland: Abortion) (Rev 1) [2018] UKSC 27 (the “Northern Ireland case”). The substantive judgment in the Northern Ireland case was in fact, that the applicant had no standing to bring the case. Nevertheless, a majority of the judges, in *obiter* comments, stated that, in the event

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<sup>4</sup><https://api.parliament.uk/historic-hansard/commons/1990/jun/21/amendment-of-law-relating-to-termination-1>

that the applicant had standing, they would have found that Northern Ireland law on abortion is incompatible with the right to respect for private and family life, guaranteed by article 8 of the European Convention of Human Rights, insofar only as it prohibits abortion in cases of rape, incest and fatal foetal abnormality. The court's majority thus signalled that if any person affected by Northern Ireland law were to bring a case, then the outcome would appear to be that a declaration of incompatibility would be made. The UK Supreme Court judgment contains many references to the fact that ultimately whether and to what extent a country legalises abortion is fundamentally a question of democratic mandate. In this respect the Government of Gibraltar must take into account the over 6,000 signatures that have been collected in support of the right to legal protection of the unborn.

3.7 The Government's position appears to be that it has now been "mandated" that it change Gibraltar's law on abortion. This is in spite of the fact that, from a strictly legal point of view, the comments of the judges did not form part of the judgement of the case, no matter their undoubted importance. Even in the event that the Court had issued a declaration of incompatibility, it would then have been up to the Northern Ireland assembly to determine whether, and to what extent, any change in the law needed to be made.

3.8 That those obiter comments in a Supreme Court ruling on Northern Ireland law can be considered to "mandate" any change in Gibraltar law is incorrect. Especially so in light of Gibraltar's own Constitution Order and particular constitutional status. Any change in the law must be a question of political determination: if this is so, then we consider that the Government should state so and allow the democratic process to run its course by at least waiting for the next general election at which candidates can honestly declare their position on abortion.

#### **European Court of Human Rights ("ECHR") and European Convention of Human Rights (the "Convention")**

3.9 The jurisprudence of the ECHR itself does not recognise any "right to abortion". Indeed, it has never excluded the unborn child from the scope of article 2 of the Convention, although it allows states to determine the starting point of the right to life within their legislation, the so-called "margin of appreciation". The Government of Gibraltar should take this opportunity to enshrine in Gibraltar law, the right of the unborn child to life, as it is free to do in accordance with the margin of appreciation accorded to states.

#### **United Nations**

3.10 The right to life of all human beings was recognised by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. There is no United Nations treaty that could be accurately cited as establishing or recognising a right to abortion.

3.11 That certain Treaty monitoring bodies, have interpreted the treaties to which they are subject, as including a right to abortion, does not mean that there does in fact exist such a right, as such interpretations are contentious and do not contribute to the formation of international law on this matter.

3.12 The San Jose Articles<sup>5</sup>, signed by a group of experts including law professors, philosophers, parliamentarians, ambassadors, human rights lawyers and UN General Assembly delegates, recognise this fact:

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<sup>5</sup> [https://sanjosearticles.com/?page\\_id=2](https://sanjosearticles.com/?page_id=2)

**“Article 5.** *There exists no right to abortion under international law, either by way of treaty obligation or under customary international law. No United Nations treaty can accurately be cited as establishing or recognizing a right to abortion.*

**Article 6.** *The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) and other treaty monitoring bodies have directed governments to change their laws on abortion. These bodies have explicitly or implicitly interpreted the treaties to which they are subject as including a right to abortion.*

*Treaty monitoring bodies have no authority, either under the treaties that created them or under general international law, to interpret these treaties in ways that create new state obligations or that alter the substance of the treaties.*

*Accordingly, any such body that interprets a treaty to include a right to abortion acts beyond its authority and contrary to its mandate. Such ultra vires acts do not create any legal obligations for states parties to the treaty, nor should states accept them as contributing to the formation of new customary international law.”*

3.13 In light of the above, the claim that this change is being “mandated” is clearly not borne out.

## 4. The Pro-Life Position

### The Beginning of Life: the Science

4.1 There is an abundance of evidence for what is a recognised scientific fact, as opposed to a philosophical, religious or personal conviction, namely that human life begins at the point of fertilisation, with the human being in its embryonic state possessing its own genetic blueprint in all its complexity, from this initial moment. The citations below, from eminent authorities in the field of embryology, put paid to the notion that there is any debate, from a scientific perspective, as to when human life begins.

- *“Development begins with fertilization, the process by which the male gamete, the sperm, and the female gamete, the oocyte, unite to give rise to a zygote.”*
  - T.W. Sadler, *Langman’s Medical Embryology*, 10th edition. Philadelphia, PA: Lippincott Williams & Wilkins, 2006. p.11
- *“The two cells gradually and gracefully become one. This is the moment of conception, when an individual’s unique set of DNA is created, a human signature that never existed before and will never be repeated.”*
  - *In the Womb*, National Geographic, 2005
- *“Human development is a continuous process that begins when an oocyte (ovum) from a female is fertilized by a sperm (spermatozoon) from a male...Development does not stop at birth...Although it is customary to divide human development into prenatal (before birth) and postnatal (after birth) periods, birth is merely a dramatic event during development resulting in a change in environment.”*
  - *The Developing Human Being* by Keith Moore and T.V.N. Persaud, 7th edition, 2003, p.2
- *“Although life is a continuous process, fertilization (which, incidentally, is not a ‘moment’) is a critical landmark because, under ordinary circumstances, a new genetically distinct human organism is formed when the chromosomes of the male and female pronuclei blend in the oocyte.”*
  - Ronan O’Rahilly and Fabiola Müller, *Human Embryology and Teratology*, 3rd edition. New York: Wiley-Liss, 2001. p.8
- *“In this text, we begin our description of the developing human with the formation and differentiation of the male and female sex cells or gametes, which will unite at fertilization to initiate the embryonic development of a new individual.”*
  - *Human Embryology*, William J. Larsen, 3<sup>rd</sup> edition, 2001, p.1
- *“Human embryos begin development following the fusion of definitive male and female gametes during fertilization... This moment of zygote formation may be taken as the beginning or zero time point of embryonic development.”*
  - William J. Larsen, *Essentials of Human Embryology*. New York: Churchill Livingstone, 1998. pp.1, 14

- *“Virtually every human embryologist and every major textbook of Human Embryology states that fertilization marks the beginning of the life of the new individual human being.”*
  - Kischer, C. Ward, Ph.D, Human Embryologist, *“The Beginning of Life and the Establishment of the Continuum”*. Also: Kischer, C. W. and Irving, D.N. 1997. *The Human Development Hoax*. 2nd edition. p.4
- *“Development of the embryo begins at Stage 1 when a sperm fertilizes an oocyte and together they form a zygote.”*
  - *Life Before Birth* by England, Marjorie A., 2nd ed. England: Mosby-Wolfe, 1996, p.31
- *“Almost all higher animals start their lives from a single cell, the fertilized ovum (zygote)...The time of fertilization represents the starting point in the life history, or ontogeny, of the individual.”*
  - Carlson, Bruce M. *Patten's Foundations of Embryology*. 6th edition. New York: McGraw-Hill, 1996, p. 3

4.2 Furthermore, in 1981, a United States Senate judiciary subcommittee received the following testimony from a collection of medical experts (Subcommittee on Separation of Powers to Senate Judiciary Committee S-158, Report, 97th Congress, 1st Session, 1981):

- *“It is incorrect to say that biological data cannot be decisive...It is scientifically correct to say that an individual human life begins at conception.”*
  - Professor Micheline Matthews-Roth, Harvard University Medical School
- *“I have learned from my earliest medical education that human life begins at the time of conception.”*
  - Dr. Alfred M. Bongioanni, Professor of Pediatrics and Obstetrics, University of Pennsylvania
- *“After fertilization has taken place a new human being has come into being. [It] is no longer a matter of taste or opinion...it is plain experimental evidence. Each individual has a very neat beginning, at conception.”*
  - Dr. Jerome LeJeune, Professor of Genetics, University of Descartes
- *“By all the criteria of modern molecular biology, life is present from the moment of conception.”*
  - Professor Hymie Gordon, Mayo Clinic
- *“The beginning of a single human life is from a biological point of view a simple and straightforward matter – the beginning is conception.”*
  - Dr. Watson A. Bowes, University of Colorado Medical School
- *“Physicians, biologists, and other scientists agree that conception marks the beginning of the life of a human being – a being that is alive and is a member of the human species. There is overwhelming agreement on this point in countless medical, biological, and scientific*

writings.”

- **Report, Subcommittee on Separation of Powers to Senate Judiciary Committee S-158, 97th Congress, 1st Session 1981, 7**
- *“The independent and actual existence of the child before birth, as a living being is a matter of objective science.”* They deplored the *“popular ignorance...that the fetus is not alive till after the period of quickening.”*
- **A declaration from the American Medical Association (AMA) as far back as 1857 (referenced in Roe. vs. Wade) – a position which has only been strengthened by further developments in the field of embryology.**

### **The Duty to Protect Innocent Persons**

4.3 The GPLM maintains that, as scientifically ‘proven’ human beings, unborn children should be afforded protection in law from deliberate destruction. The responsibility of every government is to ensure that public order and security is maintained, and this cannot be possible without the enforcement of laws which ensure that personal choices which inflict harm on others are legislated against. Individuals are not free to choose in any absolute sense. Some choices are lawful whilst others are not and it is a misconception fed to the public in order to justify abortion by merely arguing that one is “free to choose”. It is therefore necessary for society to outlaw certain “choices”, for example the ‘choice’ to hit or kill someone.

4.4 Abortion is an intentional act that ends the life of another human being. Post birth it is defined as murder. The proposal is that pre-birth it be called ‘destruction’ instead and be allowed. But as above life from conception is a continuum which laws must protect throughout; from the environment of the womb to the environment of the ‘outside world’. Any legislation which goes against the protection of human life therefore, undermines the foundation of the Rule of Law.

4.5 That innocent persons should not be killed would appear to be common ground amongst all parties in the debate. Indeed, in the famous case of *Roe v Wade* which legalised abortion in the United States, and which has been the subject of an often bitter battle since, it was fully recognised that:

*“If this suggestion of personhood is established, the appellant’s case, of course, collapses, for the fetus’ right to life would then be guaranteed specifically by the [14<sup>th</sup>] amendment”.*

4.6 In *Roe vs. Wade*, the verdict is actually built on the claim that there is no way to say for certain whether or not abortion kills because no one can say for certain when life begins. Justice Harry Blackmun, who authored the majority opinion wrote: *“The judiciary, at this point in the development of man’s knowledge, is not in a position to... resolve the difficult question of when life begins... since those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus.”* [*Roe v Wade*, 410 U.S. 113 (1973)].

4.7 This, of course, is a fallacy as the science (as above mentioned) clearly demonstrates when life begins and there is no philosophically or ethically justifiable means to deny personhood to any member of the human species, as will be elaborated on, below.

## Personhood

4.8 All human beings are persons. Indeed, a dictionary definition reveals the ordinary usage of the term 'person' to be, simply, a human being. The exclusion of certain classes of human being from the concept of personhood has of course, resulted in some of the most shameful episodes in history.

4.9 Personhood is defined by membership in the human species, not by the stage of development within that species. When considered alongside the law of biogenesis - that every species reproduces after its own kind - we can draw only one conclusion in regard to abortion; every single abortion ends the life of an innocent human being:

*"A living being's designation to a species is determined not by the stage of development but by the sum total of its biological characteristics— actual and potential—which are genetically determined.... If we say that [the foetus] is not human, e.g. a member of Homo sapiens, we must say it is a member of another species. But this cannot be."*

- Roland M. Nardone, "The Nexus of Biology and the Abortion Issue," *Jurist*, Spring 1973,154

4.10 Attempts to deny the personhood of the unborn child usually involve philosophical conceptions of personhood such that a person can only be deemed a person where they are conscious, self-aware and so forth.

4.11 However, myriad difficulties lie in attempting to define personhood according to such criteria. The development of the human being is a continuum and there is no clear demarcating point upon which it could be pointed out, that now such and such a human being is a person whereas a few weeks earlier or later, they are not. All human beings have an intrinsic value from the moment of fertilisation until death and such intrinsic value does not change throughout one's development.

4.12 Similarly, such notions as 'viability' to mark the transition from non-person to person are equally ambiguous. Viability - the ability to survive outside the mother's womb - is an inherently problematic concept: medical advances have already decreased the age at which a child can survive outside the mother's womb; it cannot be the case that a century ago such children were non-persons whereas now we consider them persons. Moreover, a new-born remains for much of its childhood, dependent for its basic human needs (to be sheltered, fed, hydrated) for its survival.

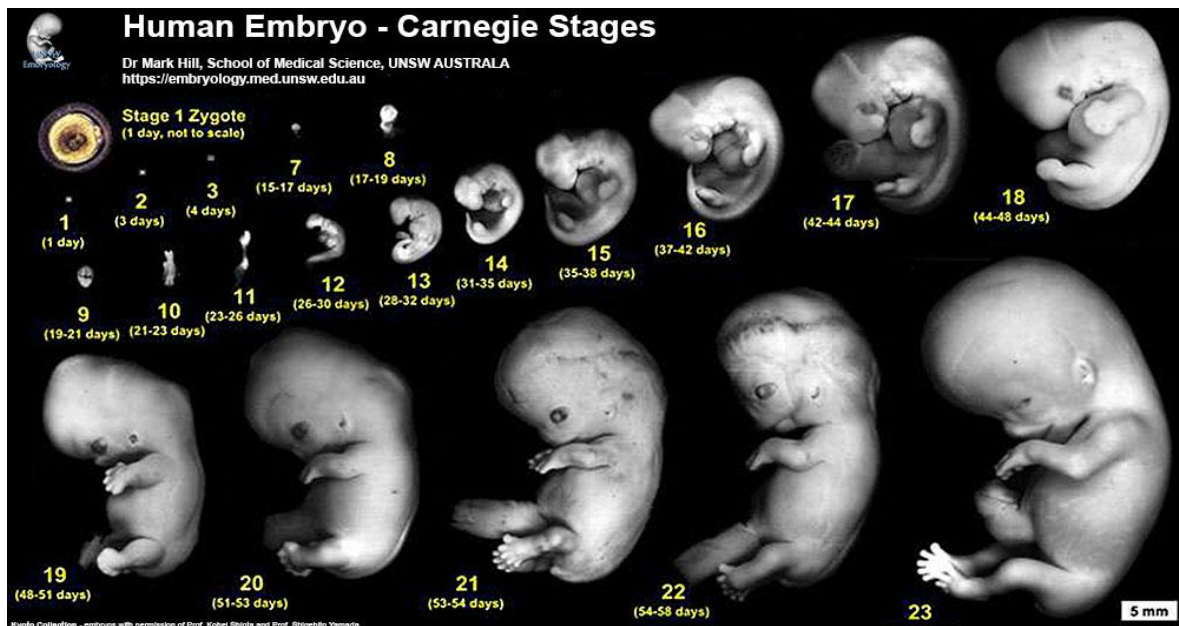
4.13 The only logically consistent position is one that accords personhood to all human beings from the moment of fertilisation until the moment of death.

## 5. The Development of the Unborn Child

### Foetal Development

5.1 The development of the human person occurs on a continuum in which it is not possible to demarcate any points which could be said to be the point at which a human person has come into being: any attempts to do so are completely arbitrary.

5.2 The picture below<sup>6</sup> shows the development of the human embryo during the first trimester (up to the gestational age of 10 weeks). NB: The gestational age is typically two weeks more than foetal age development, i.e. the development above would be up to 14 weeks' gestational age which is the measurement used in respect of the time limits in the UK Abortion Act.



5.3 This is the most crucial period for the development of the foetus with all the major bodily organs and systems forming; some of the major developments during the first trimester are detailed below<sup>7</sup>.

#### By the End of 4 Weeks

- All major systems and organs begin to form.
- The neural tube (which becomes the brain and spinal cord), the digestive system, and the heart and circulatory system begin to form.
- The beginnings of the eyes and ears are developing.

<sup>6</sup>[https://embryology.med.unsw.edu.au/embryology/index.php/Timeline\\_human\\_development#First\\_Trimester](https://embryology.med.unsw.edu.au/embryology/index.php/Timeline_human_development#First_Trimester)

<sup>7</sup> Derived from:

[https://www.hopkinsmedicine.org/healthlibrary/conditions/pregnancy\\_and\\_childbirth/first\\_trimester\\_85,p01218](https://www.hopkinsmedicine.org/healthlibrary/conditions/pregnancy_and_childbirth/first_trimester_85,p01218)



	<ul style="list-style-type: none"> <li>• The heart is beating.</li> </ul>
<b>By the End of 8 Weeks</b>	<ul style="list-style-type: none"> <li>• All major body systems continue to develop and function, including the circulatory, nervous, digestive, and urinary systems.</li> <li>• The arms and legs can be easily seen.</li> <li>• The main organs continue to develop and you can hear the baby's heartbeat using an instrument called a Doppler.</li> <li>• The bones begin to develop and the nose and jaws are rapidly developing.</li> <li>• The embryo is in constant motion but cannot be felt by the mother.</li> </ul>
<b>From Embryo to Foetus</b>	<ul style="list-style-type: none"> <li>• After 8 weeks, the embryo is now referred to as a foetus, which means offspring.</li> <li>• Although the foetus is only 1 to 1.5 inches long at this point, all major organs and systems have been formed.</li> </ul>
<b>During 9 – 12 Weeks</b>	<ul style="list-style-type: none"> <li>• Fingernails and toenails appear.</li> <li>• Eyelids are formed.</li> <li>• Foetal movement increases.</li> <li>• The arms and legs are fully formed.</li> </ul>

5.4 “The fetus is most vulnerable during the first 12 weeks. During this period of time, all of the major organs and body systems are forming and can be damaged if the fetus is exposed to drugs, infectious agents, radiation, certain medications, tobacco and toxic substances.”<sup>8</sup>

5.5 The next picture<sup>9</sup> provides a visual illustration of the child’s development during the second and third trimesters – during which the proposed amendments to the legislation would allow for abortions to take place in specific circumstances, such as fatal foetal abnormality and/or serious disability.

<sup>8</sup>[https://www.hopkinsmedicine.org/healthlibrary/conditions/pregnancy\\_and\\_childbirth/first\\_trimester\\_85,p01218](https://www.hopkinsmedicine.org/healthlibrary/conditions/pregnancy_and_childbirth/first_trimester_85,p01218)

<sup>9</sup>[https://www.hopkinsmedicine.org/healthlibrary/conditions/adult/pregnancy\\_and\\_childbirth/second\\_trimester\\_85,P0123](https://www.hopkinsmedicine.org/healthlibrary/conditions/adult/pregnancy_and_childbirth/second_trimester_85,P0123)

## Fetal Growth From 8 to 40 Weeks



### Abortion Procedures

5.6 Having considered the development of the unborn child in its various stages, it would be appropriate to consider the various abortion procedures used in order to gain a better understanding that abortion is not simply the “termination of a pregnancy” but a procedure which ends the life of a developing human being. It is incumbent on those considering voting on legislation to permit for such procedures to familiarise themselves with what will be entailed.

- 1st Trimester (0-3 months) Surgical Abortion: Aspiration (Suction) D&C - a cannula is inserted into the woman’s uterus to suck the baby, either in fragments through the tube, or, if it is small enough, in its entirety into a collection jar.
- 1st Trimester Medical Abortion - Abortion Pills - the mother swallows two different types of pills, which combined together deprive the baby of blood and nourishment, and cause severe cramping, contractions and often heavy bleeding to expel the dead baby.
- 2nd Trimester (4-6 months) Dilation and Evacuation Abortion - a sopher clamp is inserted into the uterus to dismember the baby, limb by limb, finally crushing the head.
- 3rd Trimester (7 months - birth) Induction Abortion - Injection and Stillbirth - because the baby is so large at this point, the procedure can take from 3-4 days to complete. The doctor injects a lethal substance into the baby’s head, torso or heart. The woman’s cervix is dilated and after a couple of days she gives birth to a dead baby.

### Foetal Pain

5.7 This is clearly a complex area and one that has become highly politicised with both pro-life and pro-choice advocates marshalling what they consider the facts to argue their case. It is important to note that, irrespective of when the foetus can be considered to feel pain, the issues surrounding the question of the morality of abortion remain untouched.

5.8 In June 2010 the Royal College of Obstetricians and Gynacecologists (RCOG) published a report in which it concluded that foetuses under 24 weeks could not feel pain and therefore did not require pain relief when undergoing surgical procedures or an abortion<sup>10</sup>. This is based on the notion that the

<sup>10</sup> <https://www.rcog.org.uk/en/guidelines-research-services/guidelines/fetal-awareness---review-of-research-and-recommendations-for-practice/>

cortex is required for pain perception and thus a fully developed cortex is required.

5.9 This view does not, however, go unchallenged. Firstly, it is not even clear that experiential and emotional components (and thus sentience) be required before suffering in response to tissue damage can be considered real<sup>11</sup>. The issue is as much a philosophical one and revolves around the definition of pain and questions of foetal sentience.

5.10 Indeed, in the same RCOG report, it is acknowledged that defining pain in the sense of requiring a fully cognitive awareness of it, has provoked a “disquiet in denying a rawer, more primitive, form of pain or suffering that the fetus, neonate and many animals might experience”.

5.11 Mr Martin Ward Platt, a consultant neonatalist (who is supportive of the UK’s abortion laws), responded to the RCOG’s report<sup>12</sup> in stark terms: “So, what is the evidence that the human fetus lacks “awareness”? In a word, there is none”. Furthermore, he criticises the RCOG document as serving political as opposed to scientific ends and observes that researchers have accumulated more and more observational, experimental and pathophysiological reasons to consider that babies at gestations below 24 weeks do feel pain and would benefit from analgesia.

5.12 Likewise, in a paper published the All-Party Parliamentary Pro-Life Group<sup>13</sup>, the crucial question was considered to be:

- *“At what stage of human prenatal development are those anatomical structures subserving the appreciation of pain present and functional?” with the response being that, “the balance of evidence at the present time indicates that these structures are present and functional before the tenth week of intrauterine life.”*

5.13 It is the insistence on arguing for the necessity for a mature cortical function for sentience that leads to observed responses from the foetus in respect to stimuli being dismissed as simply, “withdrawal reflexes”, and yet not all experts agree that neural connections reaching the cerebral cortex are required for pain to be felt at all. The essentiality of an intact cortex for the experience of pain, for example, would not be consistent with the reality of anencephalic infants<sup>14</sup>.

5.14 One of the most prominent studies on foetal pain was conducted by Dr. K.J.S. Anand, one of the key experts asked to testify in front of the House of Representatives Committee on the Judiciary in relation to the Pain-Capable Unborn Child Protection Act in 2005. Other prominent doctors with years of experience with new-borns testified to the evidence that new-borns 20 weeks or younger are capable of experiencing pain including: Dr. Jean Wright (Mercer University Pediatrics) and Dr. Arthur Caplan (Center for bioethics, Chair of the Department of Medical Ethics-University of Pennsylvania).<sup>15</sup>

5.15 Dr. Anand found that:

- *“The neural pathways for pain may be traced from sensory receptors in the skin to sensory areas in the cerebral cortex of new-born infants. The density of nociceptive nerve endings in the skin of new-borns is similar to or greater than that in adult skin. Cutaneous sensory*

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<sup>11</sup> Peter McCullagh, Can fetal suffering be excluded beyond reasonable doubt?, British Medical Journal (25 January 1997, <https://www.bmj.com/content/314/7076/302.2.full>)

<sup>12</sup> <https://fn.bmj.com/content/96/4/F236.full>

<sup>13</sup> <http://www.righttolife.org.uk/wp-content/uploads/2015/03/KS4FetalSentience.pdf>

<sup>14</sup> <https://www.bmj.com/content/314/7076/302.2.full>

<sup>15</sup> Pain of the Unborn: Hearing before the Subcomm. on the Constitution, Comm. on the Judiciary House of Rep., 109th Cong., 1st Session, No. 109-57, 15 (Nov. 1, 2005)

*receptors appear in the perioral area of the human foetus 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 fibres 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."*

- **K.J.S. ANAND, M.B.B.S., D.PHIL., AND P.R. HICKEY, M.D, *Pain and its Effects in the Human Neonate and Fetus*, The New England Journal of Medicine, Volume 317, Number 21, 19 November 1987, pp 1321-1329**

5.16 Furthermore, the administration of anaesthetics directly to the foetus has become a standard medical practice and is considered critical by some:

*"The administration of anesthesia directly to the fetus is critical in open fetal surgery procedures".<sup>16</sup>*

5.17 While there may no *definitive* answer on the question of the point at which the foetus is able to feel pain, and indeed it is not actually determinative of the ethical issues surrounding abortion, those advocating a change in the legislation, especially those who will implement it, should consider that when there is doubt about something, it is better to 'err on the side of caution'.

5.18 Whether foetal pain can be discounted beyond all reasonable doubt, in light of a growing body of evidence that it is real, should be a question kept firmly in mind by those responsible for legislating on abortion.

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<sup>16</sup> Mayorga-Buiza MJ *et al.*, Management of fetal pain during invasive fetal procedures. Lessons learned from a sentinel event, *European Journal of Anaesthesiology* 31, 88, 2014

## 6. Abortion as a Social Problem

6.1 The GPLM is concerned about the numerous adverse effects on women and society in general which can be attributed to abortion. Abortion should not be allowed to become the default option when an unplanned pregnancy arises. Many women, despite the difficult circumstances they may find themselves in, choose to carry their pregnancies to full term. The GPLM advocates for greater support for women who find themselves facing such difficulties.

6.2 To liberalise abortion law would bring about a situation in which women may feel a pressure, amounting to coercion, from various sources to have an abortion. This can take the form of social and medical pressure; pressure and irresponsibility from the father; pressure by the family, especially for underage girls; pressure by employers and every form of material pressure (unemployment, housing problems and financial problems). This notion is in fact supported by the Guttmacher Institute, which claims that 75% of the women who abort say they were led to it by social or financial pressures.

6.3 It is also pertinent to consider what effect on Gibraltar society a liberalisation of abortion law will have given that:

- *“Public attitudes toward abortion were found to be positively and significantly correlated with abortion statutes. Those countries that had the most restrictive statutes vis-à-vis abortion reported the lowest approval ratings for abortion and those countries that permitted abortion on demand reported the highest approval ratings for abortion”*
  - Rita J. Simon, *Abortion: Statutes, Policies, and Public Attitudes the World Over* (London: Praeger Publishers, 1998), 143-4

6.4 Research conducted in the US between 2008 and 2010 on a group of women of childbearing age<sup>17</sup> found that, in general, when deciding on whether to have an abortion, women take into consideration the quality of their relationship and the support they might expect to receive from their partner. Thus, the nature of the relationship with their partner and the challenges they face, especially if the support or presence of the partner is lacking, are all factors that lead women to consider terminating a pregnancy. Greater support should therefore be offered to single women.

6.5 It can be seen that the principle cause of abortion is not necessarily the pregnancy as such but the context in which it happens; with family instability being a key factor. It is the specific circumstances surrounding the pregnancy that induce women, particularly the most vulnerable, to abort. While abortion is becoming more widely seen as a “right” in several societies, it is nevertheless the case that the decision to abort may not always be a free or desired one. This is because abortions often occur when the woman concerned finds herself overwhelmed by actual or perceived pressure, due to various economic, sociological and cultural circumstances.

6.6 Many women regret their abortions and are left with a permanent emotional and/or psychological and/or physical legacy: feelings of guilt and remorse which can lead to more serious mental health problems.

6.7 According to a survey conducted by the Institut français d'opinion publique (IFOP in 2010),<sup>18</sup> 83% of French women consider that “abortion leaves psychological scars that women find difficult to bear”, and 60% of them were of the opinion that “society should do more to help women avoid to

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<sup>17</sup> KS. Chibber, MA. Biggs, SCM. Roberts, D. Greene Foster, “The Role of Intimate Partners in Women’s Reasons for Seeking Abortion”, *Women’s Health Issues*, Vol. 24, no.1, 2014, e131-e138.

<sup>18</sup> Survey conducted by the IFOP at the request of *Alliance Vita*, from February 19 to 23, 2010 among a representative sample of 1,006 women aged 18 years and beyond.

have recourse to abortion”.

6.8 To legislate for the further provision of abortion risks ignoring the real causes of the predicament some women find themselves. The causative circumstances and difficulties women often find themselves facing need to be addressed if a serious attempt to support and empower women is to be achieved.

#### **Prevention of Abortion as a Positive Strategy**

6.9 The GPLM views abortion as an act of violence, against the child, the woman, and the family, and that the causes of this violence are principally social and preventable ones. Aside from the health issues that abortion contributes to, abortion has a considerable impact on the whole of society, including demographic consequences. The GPLM feels that Gibraltar should learn from the mistakes other countries have made, and which many are now attempting to reverse.

6.10 The GPLM therefore advocates for a wide-ranging social policy which addresses the issues which drive women to abort, based on the following social rights and values:

- The conviction that every human life has value;
- That the family is a fundamental unit of society;
- That every woman and couple have a right not to feel an insurmountable pressure to abort;
- That the State and society in general need to uphold and support sustainable family life; and
- That progress can only be achieved on the basis of personal responsibility.

6.11 These are concepts supported by various declarations and conventions including:

- **The Universal Declaration of Human Rights** (Article 16)
- **The European Convention on Human Rights and Fundamental Freedoms** (Article 12)
- **The International Covenant on Civil and Political Rights** ( Article 23, paragraph 2 )
- **The Human Rights Committee** which underscores that “The right to found a family implies, in principle, the possibility to procreate and live together” and that the family is “the natural and fundamental group unit of society” which is entitled to protection by the state.
- **The European Social Charter** which guarantees to “the family as a fundamental unit of society ...the right to appropriate social, legal and economic protection to ensure its full development” (Article 16). This “development” primarily concerns having and raising children. The recognition accorded to the couple by society through marriage is due to its contribution to the common good by founding a family, i.e. through procreation and the upbringing of children.
- **The Beijing Platform for Action**<sup>19</sup> which states that “*Women make a great contribution to the welfare of the family and to the development of society, which is still not recognized or considered in its full importance. The social significance of maternity, motherhood and the role of parents in the family and in the upbringing of children should be acknowledged. The upbringing of children requires shared responsibility of parents, women and men and society as a whole. Maternity, motherhood, parenting and the role of women in procreation must not be a basis for discrimination nor restrict the full participation of women in society.*”
- **The International Covenant on Economic, Social and Cultural Rights**<sup>20</sup> stipulates in Article 10.2 that “*special protection should be accorded to mothers during a reasonable period before and after childbirth*”.
- **The Declaration of the Rights of the Child** of 20 November 1959 recognises in its preamble that “*the child, by reason of his physical and mental immaturity, needs special safeguards and*

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<sup>19</sup> UN, Report of the Fourth World Conference on Women, 4-15 September 1995.

<sup>20</sup> UN, *International Covenant on Economic, Social and Cultural Rights*, adopted and opened for signature, ratification and accession by the General Assembly in its Resolution 2200 (XXI) of 16 December 1966.

*care, including appropriate legal protection, before as well as after birth". Thirty years later this affirmation was renewed in*

- **The preamble of the Convention on the Rights of the Child** *"The child shall enjoy social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care."*

6.12 Every time a woman has an abortion for an economic or social reason it means that society has not provided the means to accommodate the rights to housing, family protection, motherhood protection, protection of life before birth, conciliation of family life and working life and so forth.

6.13 To a very large extent, the frequency of abortion depends on political choices that shape the social models of sexuality, maternity and family. The GPLM therefore encourages a proactive and innovative approach to address the issue on abortion. It should begin with:

- The legal recognition of the right to life of the pre-born child.
- A thorough assessment of the issues affecting women and families.
- The implementation of strategies and policies which support maternity, foster a culture of personal responsibility and accountability, encourage responsible sexual and relationship behaviours, establish the means to facilitate conciliation of family and working life and empower women and families to resist pressures which lead to abortion.

6.14 The GPLM considers that further analysis of issues affecting women and families is required and proposes that the Government might initiate a separate consultation in respect of issues affecting women and families which the GPLM would be eager to contribute to.

6.15 It is necessary to encourage young people to be accountable for their actions and help them understand that with certain freedoms come responsibilities - abortions will in contrast, have the adverse effect.

6.16 Prevention of abortion should therefore begin with a better sexual and affective, as well as physiological education, which accurately informs about the feminine cycle and the development of the child, about the relational dimension of sexuality, as well as about the concrete truth of abortion and its consequences. Sexual education should include increased awareness of self, with an opportunity to build a sense of self value and respect; cover areas like rights and consent; love and relationships; responsibility and self-control.

#### **Confidentiality Policy in Respect of Teenagers**

6.17 The GPLM notes that the GHA Well Person Unit has already adopted similar confidentiality policies to the NHS in relation to teenagers between 13 and 16 years of age. This policy states that they will receive treatment without the consent or knowledge of their parents. It is assumed that this will also be the case if and when abortion is provided locally. As regards to abortions in UK, a 13-year-old girl can potentially have an abortion without her parent's knowledge and with no written evidence on her main medical records. The GPLM feels that this is irresponsible and dangerous, and completely disproportionate in comparison with current legislation on the legal minimum age for driving; drinking alcohol; eligibility for the electorate; and eligibility for Housing.

## 7. Remarks on the Proposed Legislation

### The Proposed Legislation

7.1 The proposed legislative amendments mirrors, with little to no attention paid to Gibraltar's particular characteristics, the UK's Abortion Act 1967, as amended by the Human Fertilisation & Embryology Act 1990 and would legalise abortions in the following circumstances:

*(a) that the pregnancy has not exceeded its [tenth]/[twelfth]/[fourteenth] week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or*

*(b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or*

*(c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or*

*(d) that there is a substantial risk that [the child is suffering from a fatal foetal abnormality]/[or if the child were born it would suffer from such physical or mental abnormalities as to be seriously disabled].*

7.2 These proposed sections will be referred to as exemptions (a), (b), (c) and (d) below. The time limit was 10/12/14 weeks would only apply to Ground A. In the circumstances envisaged under sections (b), (c) and (d), there is no time limit at all.

### Exemption (a): "Mental Health"

7.3 In the UK, the statistics show that the most commonly used ground upon which abortions are performed is that concerning a risk of physical or mental injury to the mother. For example, in 2016 the vast majority of abortions (97%) were undertaken on this ground and of that 98%, 99.8% of cases were reported as being performed because of a risk to the woman's "mental health". This has been criticised in the UK as essentially allowing for "abortion on demand" (or more accurately "abortion on request").

7.4 Despite the requirement for two registered medical practitioners to be of the opinion, "formed in good faith", that there is such a risk, this has not prevented abortions being performed simply because the mother does 'not feel ready'; the pregnancy is the result of contraceptive failure; and other issues which do not constitute medically diagnosed, "mental health", issues.

7.5 In fact, the legislation does not even require the registered medical practitioners to be psychiatrists and in practice no actual medical evaluation is carried out; there is not even a requirement to see the mother before signing off the destruction of the unborn child.

7.6 Indeed, in the words of one author in favour of liberalising the UK's abortion laws, "*contemporary abortion practice reflects this same evolution in attitudes, with the broad wording of s 1(1)(a) having permitted doctors to exercise their discretion liberally in favour of authorising abortions. However, in the context of a consistently liberal interpretation, the requirement for two medical*



*signatures becomes an entirely bureaucratic one, serving no obvious broader purpose.*<sup>21</sup>

7.7 The introduction of the proposed legislation would therefore effectively introduce a regime of abortion on request.

7.8 The actual medical evidence also shows that, if anything, abortions on the grounds of a risk to the mental health of a mother should be exceedingly low, rather than the principle basis on which abortions are carried out.

7.9 The Royal College of Obstetricians and Gynaecologists states: *“Women with an unintended pregnancy should be informed that the evidence suggests that they are no more or less likely to suffer adverse psychological sequelae whether they have an abortion or continue with the pregnancy and have the baby.”*

7.10 This raises the question of how it can be the case that in the UK, the vast majority of abortions are carried out due to a risk to the mother’s mental health, when the studies show that carrying the baby to full term does not impact negatively on the mother’s subsequent chances of experiencing mental health problems<sup>22</sup>.

7.11 Furthermore, some studies have indicated that having an abortion may impact negatively on the mental health of the mother. For example, one recent study concluded that, *“there is no available evidence to suggest that abortion has therapeutic effects in reducing the mental health risks of unwanted or unintended pregnancy. There is suggestive evidence that abortion may be associated with small to moderate increases in risks of some mental health problems.”*<sup>23</sup>

7.12 Far from “mental health” reasons being an adequate ground upon which to permit abortions (and the UK experience suggests this would be the most commonly used ground here in Gibraltar as well), there is data to suggest that allowing abortions may in fact cause mental health problems in women subsequent to having an abortion. It is of paramount importance that this be considered as the latest evidence shows that rather than protecting the mental health of women, abortions may in fact be the cause of psychological harm.

#### **Exemption (b): Grave Harm to Physical or Mental Health of the Mother**

7.13 This exemption would appear to put on a new statutory footing to the law as it currently stands in Gibraltar at present. As previously articulated, the GPLM does not consider that a direct abortion can ever be justified and neither does medical science bear out the notion that a direct abortion would ever be required to save the life of the mother. In certain, extreme (and extremely rare) cases it may be necessary to carry out certain medical procedures, even induce labour early, in order to save the life of the mother, which may result in the death of the child. This would be the case where the treatment of a proportionately grave pathological condition of the mother requires urgent medical intervention which cannot wait until the child is viable. Nevertheless, the aim should always be to care for both the mother and the unborn child and, in all but the rarest cases, through a combination of expectant management and specific therapeutic intervention, it is possible to treat life-threatening conditions arising in pregnancy.

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<sup>21</sup> <https://academic.oup.com/ojls/article/36/2/334/2472463>

<sup>22</sup> Report can be obtained here: [https://web.archive.org/web/20120325013129/http://aomrc.org.uk/publications/reports-a-guidance/doc\\_download/9432-induced-abortion-and-mental-health.html](https://web.archive.org/web/20120325013129/http://aomrc.org.uk/publications/reports-a-guidance/doc_download/9432-induced-abortion-and-mental-health.html)

<sup>23</sup> <http://journals.sagepub.com/doi/abs/10.1177/0004867413484597?journalCode=anpa>

### **Exemption (c): Continuance of Pregnancy Presenting Greater Risk to Life of Mother**

7.14 Similar considerations as elaborated upon in respect of Exemption (b) apply in this case. Moreover, in respect of (c) (“*that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated*”) it is interesting to note that at one point during the debate on its introduction in the UK, an amendment was tabled to set a 24 week threshold (this was ultimately not accepted) on the basis that: “*there are doctors today who argue that an abortion at 12 weeks is so safe that it is actually a good deal safer than any pregnancy brought to term, so it could be argued that one was more likely to save the life of a woman if her pregnancy were never allowed to come to term and were always aborted as early as possible —that is the logical consequence of the argument: to end all human births. So we have introduced this precautionary, 24-week limit, safeguarded by the Infant Life (Preservation) Act.*” If the logic of the ‘pro-choice’ movement were to win out, all pregnancies would be terminated in the first trimester given this is apparently a “safer” choice than giving birth. The GPLM in any case, maintains that both mother and child must be cared for and treated to the fullest extent possible.

### **Exemption (d): Fatal Foetal Abnormality/Serious Disability**

7.15 In respect of exemption (d), two options have been put forward, namely, to provide for abortions in cases where there is a substantial risk of fatal foetal abnormality or there is a substantial risk of “serious disability” to the child. The second would be in line with current UK law and is clearly more permissive than the first alternative. In the UK Ground D allows for abortions essentially up to just before term. This is a significant assault on the rights of the unborn with disabilities. What constitutes being “seriously disabled”?

7.16 The terms are vague but in the UK abortions have taken place after 24 weeks on the grounds that the child would be born with a cleft lip and palate<sup>24</sup> or had “chromosomal abnormalities” such as Down Syndrome<sup>25</sup>.

7.17 Ironically, during the debates on the Human Fertilisation Embryology Bill when these amendments were being discussed, some on the pro-choice side were exceedingly indignant when it was suggested that this was opening the floodgates to abortions due to all manner of disabilities, for example:

*Mr. Doran: “It is not a case of widespread abuse of the 1967 Act, of abortions being performed willy nilly, on request, and of reasons for them being invented afterwards. It is not a case either of abortions being performed for trivial reasons—and the suggestion that they have occurred because of the risk of cleft palates or hare lips is intended to trivialise the medical decision.”*<sup>26</sup>

7.18 The fact is, however, that such abortions, while rare, have come to pass under the legislation. The fact that the numbers are difficult to ascertain is due to there being no requirement in law for the doctors to state or confirm the actual disability ‘relied on’ in terminating the child’s life. Ann Widdecombe MP expressed her opposition forcefully:

*“I never thought that the day would come when I would have to stand here and argue in the House of Commons, the mother of Parliaments and the centre of civilisation, that it is wrong not to extend the same protection to a child a few hours before birth as applies to a child that has been born prematurely and already enjoys the full protection of the law. It is wrong, morally repugnant and an insult to the*

<sup>24</sup> <http://news.bbc.co.uk/2/hi/health/3252350.stm>

<sup>25</sup> <https://www.telegraph.co.uk/news/health/news/8438261/More-than-120-abortions-after-upper-time-limit.html>

<sup>26</sup> <https://api.parliament.uk/historic-hansard/commons/1990/jun/21/amendment-of-law-relating-to-termination-1>

*handicapped.”<sup>27</sup>*

7.19 If abortions are to be allowed in cases of “serious disability”, people with disabilities are to be afforded less of a right to life than others. The consequences of this would be to engender a culture in which people with disabilities are considered to be of less value than other human beings; if such a disability is explicitly stated to be a justification for ending their life before they are born, how could it be otherwise? This also flies in the face of the principles of non-discrimination, equality and respect for people with disabilities enshrined in Gibraltar’s own Disability Act 2017.

7.20 In respect of fatal foetal abnormality, the tragic fact that an unborn child should have a medical condition that will severely limit its life expectancy, provides no justification for the intentional destruction of that child. Moreover, there is always the possibility that a misdiagnosis has been made and the term itself is not a medical one: all persons are ultimately ‘fatal’. The GPLM strongly urges the Government to instead invest in perinatal hospice and palliative care so that parents may be provided with the necessary care and support to allow them a dignified and meaningful relationship with their child, however short their time together may be.

7.21 The prevention of eugenic abortions on the basis of the health of the child depends on value which each individual society places on all human life, as well as its commitment to equality. The Government has an important role in setting this example and the proposed legislation would send the wrong message.

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<sup>27</sup> Ibid.

## 8. Conscientious Objection

8.1 There is a need to be protection for doctors, from having to refer a patient to another doctor in order to have an abortion – a procedure they object to on ethical grounds. The case law in the UK suggests that adequate protection has not been given to those medical professionals who do not wish to participate in an abortion, either directly or indirectly.<sup>28</sup> Since the proposed conscientious objection clause is a copy of that in the UK, the same issues will arise. This issue was brought to the fore in the *Glasgow Midwives* case (*Greater Glasgow Health Board v Doogan & Anor* [2014] UKSC 68).

8.2 In the event that the law on abortion is liberalised in Gibraltar, the GPLM considers that the strongest possible protection for conscientious objectors should be provided for.

8.3 To that end, the Conscientious Objection (Medical Activities) Bill<sup>29</sup>, which has reached the report stage in the House of Lords, is instructive. We consider that a robust measure such as provided for in the Bill is essential already and even more so in the (hopefully unlikely) event that local abortion laws are relaxed.

8.4 The text of the Bill is reproduced below. This would have to be adapted to take into account the specifics of Gibraltar’s legal position and may be capable of further development but it provides a good basis on which to build in order to provide genuine protection of freedom of conscience in health care:

### ***Conscientious objection***

*(1) No medical practitioner with a conscientious objection to participating in—*

*(a) the withdrawal of life-sustaining treatment;*

*(b) any activity under the provisions of the Human Fertilisation and Embryology Act 1990; or*

*(c) any activity under the provisions of the Abortion Act 1967, including activity required to prepare for, support or perform termination of pregnancy, shall be under any duty to so participate.*

*(2) For the purposes of subsection (1)—*

*“medical practitioner” means any person appearing in the registers of—*

*(a) the General Medical Council,*

*(b) the Nursing and Midwifery Council,*

*(c) the Health and Care Professions Council, or*

*(d) the General Pharmaceutical Council;*

*“participating in an activity” includes any supervision, delegation, planning or supporting of staff in respect of that activity.*

*(3) An employer (A) must not discriminate against or victimise an employee of A’s (B) who makes use*

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<sup>28</sup> Cf. <http://www.conscienceinquiry.uk/wp-content/uploads/2016/12/Pro-Life-APPG-Freedom-of-Conscience-in-Abortion-Provision.pdf>

<sup>29</sup> <https://services.parliament.uk/bills/2017-19/conscientiousobjectionmedicalactivities.html>

*of the protections set out in this section—*

*(a) as to B's terms of employment;*

*(b) in the way A affords access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*

*(c) by dismissing B;*

*(d) by subjecting B to any other detriment.*

*(4) In any legal proceedings—*

*(a) the burden of proof of conscientious objection shall rest on the person claiming to rely on it;*

*(b) a statement on oath by a person to the effect that they have a conscientious objection shall be sufficient evidence for the purpose of discharging the burden of proof imposed upon them under subsection (4)(a).*

*(5) Nothing in this Act shall be taken to diminish any protections and exclusions in section 4 of the Abortion Act 1967 (conscientious objection to participation in treatment) or section 38 of the Human Fertilisation and Embryology Act 1990 (conscientious objection).*

## 9. Developments/Trends in Other Countries

9.1 Far from there being any resistance to abortion law in other jurisdictions, permissive abortion laws are under continuing scrutiny and subject to attempts to change in the law even if, to date, success in this endeavour has been limited. Nevertheless, they indicate a cultural trend towards limiting and even prohibiting abortion based on a greater recognition of the human status and rights to life of the unborn child. Gibraltar can to date pride itself in that it has not gone down the path that is now being reconsidered in various jurisdictions and in our view, it would be a miscarriage of justice to do so. Some examples are provided below.

### United Kingdom

9.2 Since the introduction of the Abortion Act 1967, it is instructive to note that the architect of the Abortion Bill, Lord David Steel, has himself since expressed misgivings about the effect it has had. This is of particular importance as the proposals in the Command Paper essentially look to implement the UK's abortion law but with a lower threshold in cases where, "the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman":

- *"Lord Steel, architect of the 1967 Abortion Act, says today that abortion is being used as a form of contraception in Britain and admits he never anticipated "anything like" the current number of terminations when leading the campaign for reform.*

*The Liberal Democrat peer, whose Bill legalising abortion in certain circumstances marks its 40th anniversary on Saturday, says an "irresponsible" mood has emerged in which women feel they can turn to abortion "if things go wrong".*

*"Everybody can agree that there are too many abortions," he says in an interview in today's Guardian, calling for better sex education and access to contraceptive advice and a debate over sexual morality to help bring the numbers down".<sup>30</sup>*

9.3 There have also been several attempts over the years to lower the threshold for abortion as currently provided for in the Abortion Act. It would be very ironic that in Gibraltar where we pride ourselves on our emancipation after centuries of colonial rule we were to import a crucial law such as that which relates to the termination of human life from the United Kingdom. It will be recalled that one of the constituent nations of the UK, Northern Ireland has taken a much more robust position on the protection of the unborn.

### United States

9.4 Ever since the Roe v Wade judgment, the United States has seen bitter division between the pro-life and pro-choice camps. In recent years, the tide has begun to turn in a pro-life direction.

9.5 Indeed, even at the outset, Dr. Bernard Nathanson, co-founder in 1969 of the National Association for the Repeal of Abortion Laws [NARAL], had this to say about the Roe v Wade ruling:

*"Of course, I was pleased with Justice Harry Blackmun's abortion decisions, which were an unbelievably sweeping triumph for our cause, far broader than our 1970 victory in New York or the advances since*

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<sup>30</sup> <https://www.theguardian.com/uk/2007/oct/24/politics.topstories3>

*then. I was pleased with Blackmun's conclusions, that is, I could not plumb the ethical or medical reasoning that had produced the conclusions. Our final victory had been propped up on a misreading of obstetrics, gynecology, and embryology, and that's a dangerous way to win."*

- Bernard N Nathanson, M.D., *Aborting America* (New York: Pinnacle Books, 1979), 163.

9.6 Dr. Nathanson would eventually abandon his support for elective abortion and note that *"The basics [of prenatal development] were well-known to human embryology at the time the U.S. Supreme Court issued its 1973 rulings, even though the rulings made no use of them."* [Ibid, 201]. He also noted the dramatic increase in abortions once it was legalised:

*"There were abortions in this country before abortion was legal, but the number skyrocketed once it was legalized. There are now fifteen times more abortions annually in this country than there were the year prior to Roe v. Wade."*

- Dr Bernard Nathanson, *Aborting America* (New York: Doubleday, 1979), 40-1

9.8 As mentioned, however, there are clear signs of a turn towards a more pro-life position – individual states have acted with Ohio passing a bill criminalising abortion of fetuses when a heartbeat is detected<sup>31</sup> and the prospect of an overturning of Roe v Wade on a federal level has also become a real possibility with the latest appointment to the Supreme Court<sup>32</sup>.

### Spain

9.9 In December 2013, the Spanish Council of Ministers adopted a Bill ("the organic law for the protection of the life of the conceived and the rights of the pregnant woman"), which proposed to end abortion on demand. While this was ultimately shelved, it is symbolic of the growing awareness that abortion on demand (which it is likely the proposals in the Command Paper will de facto lead to) is not a right and that more must be done to protect the unborn.<sup>33</sup>

### Hungary

9.10 Hungary enacted a new constitution in 2012 which contains explicit provisions that protecting the unborn child, namely article II which reads as follows:

- *"Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception."*<sup>34</sup>

9.11 The government also ran a pro-life campaign in 2011 promoting adoption as an alternative to abortion.<sup>35</sup>

### European Union

9.12 The 'One of Us' European Citizens' Initiative<sup>36</sup> was launched in 2012 by citizens from EU

<sup>31</sup> <https://www.nytimes.com/2018/11/16/health/ohio-abortion-ban-heartbeat-bill.html>

<sup>32</sup> <https://www.npr.org/sections/health-shots/2018/07/10/627666535/if-high-court-reverses-roe-v-wade-22-states-likely-to-ban-abortion?t=1542899259409>

<sup>33</sup> Cf. <http://ecj.org/pdf/analysis-of-the-new-spanish-abortion-draft-bill-ECLJ.pdf>

<sup>34</sup> <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>

<sup>35</sup> <https://www.lifenews.com/2011/05/06/after-new-constitution-hungary-launches-pro-life-ad-campaign/>

<sup>36</sup> <https://oneofus.eu/about-us/our-vision/>

countries to push for the de-funding of programmes involving abortion and collected nearly 2 million signatures across Europe and is further evidence of the growing cultural trend which is challenging the morality and legality of abortion.



## 10. Other Observations/Recommendations

### Father's Rights

10.1 No consideration is given to the father's rights in the matter. During the parliamentary debates on the Abortion Act 1967 the father's rights to be involved in the process were considered but ultimately rejected. The effect of not considering a father's rights would be to effectively protect those irresponsible fathers who are quite happy for the abortion to take place and offer nothing to those fathers who want to be responsible and even take sole parental responsibility for the child after birth. It also leaves fathers open to abuse; if a relationship turns sour, a woman may decide to abort ultimately to castigate her partner.

10.3 'Equality': if a mother wants to abort and a father wants to keep his child, he should have the protection of law to maintain that child alive. He may then take sole parental responsibility for the child post birth, so that if the mother so wishes, she has nothing to do with her child post birth. Removing the father from the decision-making process, is an infringement of his right to equality and his constitutional right to family life.

### Better Support and Alternatives: Fostering and Adoption Programmes

10.4 In adherence to the principle that "both lives matter", the GPLM has already communicated to the Hon Chief Minister, the Hon Minister of Health and other politicians, its dissatisfaction with the existing systems of guidance and support to women (including teenagers) who may be considering terminating their pregnancies; and the need for improved age appropriate education for both genders in all schools.

10.5 Women contemplating abortion are usually acting out of fear and are unable to make proper decisions from an unclear or anxious mind. They may experience feelings of inadequacy or isolation from unsupportive partners and relatives. Women must not feel they have nowhere to turn to and that their only option is to abort. Only by building new support systems, to cater for the emotional, psychological, financial, educational and professional needs which arise, will mothers not feel powerless and victims when pregnant.

10.6 In the meantime, improved fostering and adoption facilities are required for children unwanted by their biological mother/ parents. Once a baby is conceived, it is the duty of the law (and the community it is born into, i.e. its human family) to continue to protect the unborn's right to life. There is no need to progress to an abortion, when real and plausible alternatives exist. There are millions of want-to-be parents fostering and adopting much wanted children across the globe. There are profitable businesses in respect of adoption. That is, there is a demand for these unborn children whose mothers would have their lives destroyed. The gestation period of 9 months is not long by comparison to the average human's lifespan. On balance it surely makes more sense to support mothers in these few months so that a human being may live.

10.6 The reinforcement of better education and support structures and the provision of real alternative solutions will provide the foundation necessary to minimise unwanted pregnancies. Improved understanding of the reasons leading women to abort is required, in order to best provide an infrastructure which supports women and their families effectively. Alternative positive and life-affirming options and support need to be provided for women in "crisis pregnancies" during pregnancy, birth and beyond. Responsibility for the protection and nurturing of life lies with the whole community and not just Government.

## 11. Conclusion

11.1 The GPLM urges the Government to seriously consider the legal, ethical and social aspects of this matter and to hold back from hasty implementation of legislation which would have profound and far-reaching consequences for Gibraltar.

11.2 There are various legal, scientific and ethical reasons for why abortion should not be permitted. The GPLM represents an ever-growing cross-section of Gibraltarian society that believes that the law must remain largely unchanged and continue to provide legal protection to the life of the unborn child. There should be no liberalisation of the law on abortion and the Government should seize this moment to enshrine the unborn child's right to life in its legislation.

11.3 The GPLM is also keen to work with the Government and other interest groups on matters affecting women and families and to help support a holistic approach to the abortion question by tackling the social and financial issues that may lead women to seek out an abortion.

11.4 The GPLM reminds the Government of the overwhelming response it has had from a cross-section of the community and of the fact that, to date, it has collected over 6,000 signatures (the GPLM has few resources and we believe the numbers would be more if we had more time and resources) to support our petition to Government to recognise the right to life of the unborn. People from all walks of life and of different faiths and none have indicated to the GPLM that they are deeply affected by this issue and are strongly against the legalisation of abortion in the manner proposed.

11.5 If the most basic of human rights is denied to the unborn, the natural progression is that it will eventually extend to those who are weak and of no apparent value to society (i.e. direct euthanasia at the tail end of our human life experience).

11.6 The arguments for abortion usually centre on the rare cases, such as rape, those which account for less than 1% of abortions. The NHS National Statistics cite that 97% of all abortions in the UK are carried out on healthy babies from healthy mothers.

11.7 The unborn child is a unique, living, human being with the equal human rights as the rest of us. The right to life is the most fundamental of human rights and protecting human life at all its stages is the hallmark of a strong, protective, compassionate, intelligent and progressive society. Abortion is a direct violation to the right to life of the unborn person. The focus should be on protecting the unborn, including those with disabilities, from any harm.

11.8 When there are countries which are lowering the cut-off date for abortions substantially, due to advances in technology which clearly indicate the humanity of the unborn from its conception, Gibraltar should not be looking to liberalise the law on abortion.

11.9 True social progress is found in the protection of the individual and the family: mother, father and baby. This is an opportunity for Gibraltar to lead the way in true progression and social evolution. Our aim is to ensure that Gibraltar remains a beacon of humanity, hope and justice, shedding light destroying the darkness of the industrialised, profitable destruction of children.

11.10 As a caring and progressive community, we need to come up with better solutions to support mothers, fathers and children. Solutions exist. Our community's women, men and children deserve better. Each and every life matters.