

# **Violating human rights to protect human rights – What a contradiction and whose agenda is it?**

*Sam Orochi Orach*

*Assistant Executive Secretary, Uganda Catholic Medical Bureau*

## **Abstract**

*Abortion is illegal in many countries including Uganda. The pro-abortion international lobbyist have realized that confrontational pressure alone has not born what they desire, the universal legalization of abortion and are now using the “buy-in” technique and more indirect coercion. They are lobbying and buying in policy and decision makers as well as working on the mind-sets of women to view their babies as objects that are dangerous. Abortion painted as human rights good appears to be the best new found strategy for its marketing, focusing on the health of the mothers. The target is to deconstruct and reconstruct the minds of local populations, especially women, and technocrats to become the frontline up-risers and pressure groups to cause legal and policy reforms that will see abortion acceptable legally. But is what meets the eye and ear the real agenda behind all this pressure? What is it that makes one human want to have the total power to decide on the life of another? What is it that makes one human want to see another group of human beings killing each other? Are policy makers and technocrats in developing countries following an agenda known to them? This paper attempts to look at what could be behind the screen of this whole new situation that threatens to eat the poor countries.*

## **Introduction**

The dictionary definition of abortion is "Induced termination of pregnancy and expulsion of an embryo or fetus that is incapable of survival outside the womb."<sup>1</sup> Medically abortion is defined as the termination of gestation or pregnancy before a gestational age that varies in different countries. In Uganda it is up to 28 weeks of pregnancy while in some developed countries it is down to 24 weeks. After that period the early termination of pregnancy is called premature delivery and depending on medical facilities available, the newly expelled foetus, now a baby, may be made to survive.

## **The status of abortion in Uganda**

In Uganda about 40% of pregnancies are “unintended” and 60% are planned (Singh et al, 2006). From all these 15% of pregnancies end up in miscarriages, 16% are aborted, 26% end up in unplanned births and 42% end up as planned births. Of course unplanned births are of both married and unmarried people just like miscarriage and abortions are.

Of all the abortions in Uganda 50% end up without complications, 28% end up with complications but are treated in medical facilities while 22% end up with untreated complications.

## **The Human Rights agenda and the Maputo protocol**

To overcome years of resistance from pro-life activists and nations pro-abortionists have decided to promote the pro-choice or pro-abortion issue from the human rights platform.

The African Union's Protocol on "Rights of Women in Africa" , also called the Maputo Protocol to the African Charter on People's and Human rights (July 11<sup>th</sup> 2003) beautifully addresses issues of reproductive health. The protocol entered into force on November 25<sup>th</sup> 2005, 30 days after the 15<sup>th</sup> instrument of ratification was deposited by Togo (October 26<sup>th</sup> 2005). To date of the 53 African Union members 40 have signed the protocol but only so far 24 have ratified it. Uganda is among those that have signed but not ratified the protocol. The protocol is the first instrument of international law that *explicitly* sets forth the "reproductive right" of women to medical abortion.

Article 14, clause 2c of the Maputo Protocol states that "State Parties shall take all appropriate measures to protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

The United Nations Special Rapporteur on the right to health, Prof. Paul Hunt visited Uganda from 4<sup>th</sup> to 9<sup>th</sup> February 2007. On 8<sup>th</sup> February 2007 he had a "Stakeholders' meeting" in Kampala. One of the objectives of the visit, and of the meeting was "to sensitize stakeholders on the "right to health" approach".

Prof. Hunt stated that many lives of women were being lost due to unsafe abortion and yet they could be saved if abortion was legalized in this country. The Chairperson of the Uganda Human Rights Commission answered that ratification of the Maputo Protocol had not yet been done because the domestic law did not allow it. She said, "In any situation the International Law takes precedence over the domestic law. The Maputo Protocol will be ratified when the domestic law is made suitable". She has since been quoted in Ugandan newspapers defending women's right to choose to abort (The New Vision, Monday 21<sup>st</sup> May 2007; The Daily Monitor, Monday 14<sup>th</sup> may 2007).

### **What is the foetus?**

The word frequently used in the definition and explanations of human rights is the word "human" itself.

First and most importantly, any living thing (other than God) is a biological cell at the minimum. A biological cell has genetic materials DNA and / or RNA. The youngest foetus, even a second after conception is a cell. The biological definition of "Life" is "The property or quality that distinguishes living organisms from dead organisms and inanimate matter, manifested in functions such as metabolism, growth... and response to stimuli." A living thing needs to take in energy, grows and develops. It also gets rid of waste that may be solid or gaseous and responds to the environment. A foetus takes in

energy through the mother and expels waste gas through the same mother. Living things also reproduce but must develop to that stage. For example a new born baby is living but can not reproduce. But it must be allowed to develop. The same is with the foetus that is already living but must be given time to develop in order to reproduce. Over time, living things change slowly in response to their environment. This latter is a combination of the genetic making (genotype) and effects of the environment to give the visible or expressed or manifested image, also known as the phenotype.

A foetus fits all the descriptions of a living being. But more than that a human foetus is not only a living being like animals, it is a human being. It is obvious that only a human being can be born into a human being. So the human foetus must be a human being in order to be born into a human baby.

"Human being" is a member of the genus "Homo" and the species "*Homo sapiens*," which is true of people's embryos, fetuses, children, teenagers, adults, and everyone else with similar genetic coding. The human foetus is already a human being or a homo sapien. It is simply at the earlier stage of the human being with yet less developed "knowing" and "wisdom".

We can not say because a human foetus is too small it is not a human being. It is simply smaller. That is why the Ugandan law (Penal Code of June 15<sup>th</sup> 1950) clearly recognizes that a foetus is a child and not just a "thing" that can be destroyed at will.

### **Are Human Rights protected during abortion?**

Human Rights are defined as "Rights that belong to an individual as a consequence of being human" (Britannica Concise Encyclopedia; Columbia Encyclopedia). Among the human rights there are "rights that a government and /or private entities may not take action to remove". These are called "negative rights" and include among others the right to life and security of person, equality before the law etc. In its preamble the Universal Declaration of Human Rights (UDHR) talks of "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family". Article 1 of the UDHR states that "All human beings are born free and equal in dignity and rights". It further states that everyone has the right to life (article 3) and no one shall be subjected to torture or cruel, inhuman or degrading treatment (article 5). The UDHR extends these rights to "everyone" irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Nowhere does it exclude the unborn human being. In fact "birth or other status" means birth or status other than birth, which is "before birth". So, is abortion in the interest of human rights or violates human rights?

The pro-abortion arguments focus on the rights of the mother to her body and health and that she needs to take charge or responsibility over her body. The mother is portrayed as somebody acting in "self defence" to protect her body. The mother is made to look at her so called "unwanted" baby as an enemy. But this human being getting branded "an enemy" is totally innocent of the processes of its conception, is unable to defend itself

and did not ask to be conceived. United Nations High Commissioner for Human Rights, Mary Robinson, says “The right to health does not mean the right to be healthy...”<sup>1</sup>. This statement puts some responsibility for the health of an individual back into the hands of the individual. But just like a child, or a baby, a foetus is unable to provide for or take care of its own life and health, the responsibility for the life and health of the foetus falls on the hands of the parents, especially the mother and so is the responsibility for the protection of the rights of this unborn baby.

### **Should abortion therefore be criminal?**

If a foetus, a small human being is driven out or expelled from a womb willingly knowing that it is incapable of surviving out of the womb, it is being killed. The killing is in this case premeditated by the mother and whoever assists the mother in performing the abortion. There is “malice aforethought”<sup>2</sup> Premeditated killing of somebody who has no offence whatsoever is malicious. Premeditated killing is killing with malice aforethought and is “Murder”. Murder is also defined as a result of unprovoked action carried out with intent to cause death or grievous bodily harm likely to cause death (Keith Simpson, 1974)<sup>3</sup>. In such a case the mother clearly thought about the life of the foetus and decided consciously to terminate the life of the foetus. The action of abortion is carried out with the ultimate intent to cause death to the foetus. It is not only grievous and “likely” to cause death but enough to cause death. The premeditated killing of a foetus can not be in “self defence” of ones / mother’s life because the foetus has not done anything to provoke anger in the mother, or to kill or threaten the life of the mother except when the pregnancy becomes malignant, a cancer, in what is called Choriocarcinoma or molar pregnancy.

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<sup>1</sup> United Nations High Commissioner for Human Rights, Mary Robinson, in “25 Questions & Answers on Health & Human Rights” (Health & Health Rights Publication Series Issue No. 1, July 2002)

<sup>2</sup> Specifically in the criminal law, **malice aforethought** is the element of *mens rea* (Latin for "guilty mind") which must accompany the *actus reus* of death, in order to secure a conviction for murder under the common law.

"Malice aforethought" is a precisely defined legal term that does not correspond to the lay definitions of either of its constituent words. It means one of any of the following states of mind concurrent with an act or omission that resulted in death of a person. In his leading textbook, Glanville Williams says at para 11.2 that it is a term of art if not a term of deception. Murder does not require either spite or premeditation. Mercy killing can be murder, so can a killing where the intent is conceived on the instant.

In English law following Moloney [1985] AC 905, the *mens rea* requirement is an intention to cause death, or to cause serious injury knowing that death will probably result. To that extent, whether on a subjective or objective test, there must be some element of premeditation, even if only of very short duration.

In the United States, the law adds the following three possibilities:

- (a) Intention to cause grievous injury and death resulted.
- (b) Conduct with a "depraved heart" showing lack of care for human life.
- (c) Intent to commit any felony whatsoever ( termed felony murder.)

([http://en.wikipedia.org/wiki/Malice\\_aforethought](http://en.wikipedia.org/wiki/Malice_aforethought) - visited March 7<sup>th</sup> 2007)

<sup>3</sup> Keith Simpson; Forensic medicine 7<sup>th</sup> Edition.

## **Who has the right to destroy the right to life?**

Where then do human rights activists draw the moral authority to urge mothers to violate the rights of the innocent unborn that is defenceless and voiceless? Which law allows that the right of another person should contradict or contravene the right of another human being, especially in Uganda? I believe even pro-abortionists agree there is no such a law at least in Uganda. Which law supports the murder of another person, murder being as earlier defined?

We have herein earlier shown and asserted that a human foetus is not just a being but a human being, a homo *sapien*. If anybody talks about human rights then that should include the rights of the voiceless human beings, among whom is a foetus. These are comparable to babies who are sometimes dumped by the mothers (for which such mother are criminalized and arrested). If a woman has the free choice to kill her foetus without being criminalized why would a woman who, for example tried but failed to abort, be criminalized if she gave birth but decided to dump the baby or kill her / him? Put another way, why should a woman who fails to abort but dumps the newborn baby to die because “she did not want” the pregnancy be criminalized when her counterpart who aborted the same human being for the same reason is not criminalized?

The Constitution of the Republic of Uganda, in Article 22.2, affirms and protects the right to life of that most vulnerable of human persons, the unborn child. It states “No person has the right to terminate the life of an unborn child except as may be authorized by law”. Such a law is not there in Uganda and is, from preceding discussions, not called for in any country. The Ugandan constitution is grounded in the basic human rights principles, and forbids discrimination of the minority and denial of their rights to life and health. The unborn human beings are part of the minority and are voiceless. Currently abortion is illegal under Ugandan laws. Uganda’s Penal Code of June 15<sup>th</sup> 1950 states (section 136) that “Any person who, with intent to procure miscarriage of a woman, whether she is or is not with a child, unlawfully administers to her or causes her to take any poison or other noxious things, or uses any force of any kind, or uses any other means whatever, is guilty of a felony and is liable to imprisonment for fourteen years”. Section 137 further states “Any person who, with intent to procure miscarriage of a woman, whether she is or is not with a child, unlawfully administers to her or causes her to take any poison or other noxious things, or uses any force of any kind, or uses any other means whatever, is guilty of a felony and is liable to imprisonment for fourteen years”. Finally section 138 states that “Any person who unlawfully supplies to or procures it for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony and is liable to imprisonment for three years”.

## **The Stealthy Approach**

From the aforementioned discussions during the meeting of the UN Special Rapporteur on Right to Health, it is clear that pro-abortion (or pro-choice as they are sometimes called) have managed to sell to human rights bodies the free choice to abortion as a

“human rights” issue as a way of causing local uprise against and weakening the local laws. They look at human rights from only the perspective of the mother, completely and deliberately ignoring the life and rights of the other human being, the foetus.

The UN Special Rapporteur on the right to health urges (A/61/338) “human rights experts and organizations to move beyond their traditional techniques – such as campaigning, naming and shaming, and court-based approaches – to engage with health decision-makers to ensure that the right to health informs policies.

The approach is shifting from “confrontation” to “convincing” so that critics of abortion may swallow the pill either unknowingly or as a matter of no choice. The voiceless, the unborn, are ignored and the visible mothers are convinced to imagine that their unborn babies are not more precious than whatever regrettable act that may have caused their conception. The “human rights” flag is raised in the faces of women, health ministries and their technocrats. More convincingly, the pill is inserted insight lucrative packages not only as part of the Reproductive health right but also bundled in the same lucrative dollar packages. Wouldn't a health ministry that refuses this dollar package be branded as obstructing progress in reproductive health indicators? A typical example is the Maputo Protocol and the Africa Plan of Action for the implementation of the Maputo Protocol.

The Africa Plan of Action (POA) is to provide \$3.5 billion for sexual and reproductive health services in Africa in 2007 and a total of \$ 16 billion through to 2010 (African Union, Sept 2006). Section 4 of the POA specifically plans to among others “Compile and disseminate data on the magnitude and consequences of unsafe abortion, enact policies and legal frameworks to reduce incidence of unsafe abortion, train service providers in the provision of comprehensive safe abortion care services where national law allows, refurbish and equip facilities for provision of comprehensive abortion care services, provide safe abortion services to the fullest extent of the law, and train health providers in prevention and management of unsafe abortion”

But even before the POA was endorsed by Africa heads of government, the Guttmacher University worked with Ugandan health technocrats to carry out the study on abortions to demonstrate the “cruelty” of fetuses and the Ugandan law on the lives of the mothers. It however did not highlight the cruelty any abortion indeed has on the life of the innocent future citizens of this country, the fetuses. It did not even mention the fact that there are many Ugandans now playing very important roles in the development of the country who survived attempted abortions when they were fetuses. Some of these are likely to be among the health professionals now pushing for and carrying out abortions procedures. It did not highlight whether the mothers who choose to abort have at any moment wished they had themselves been aborted.

Through the Guttmacher University study and dissemination of its results Uganda's Ministry of Health is already implementing the POA advocacy for abortion even before the domestic law is changed. The Ministry, as policy, also allows abortion in a number of cases including pregnancies following rape, incest and defilement (MoH, 2006). In this

sense Uganda's Ministry of health can be said to be violating or preparing to violate the existing law and the rights of the unborn HUMAN BEINGS.

### **So what and whose agenda is it?**

Everybody appreciates that Uganda like all poor counties badly needs money to improve maternal and child health among other health indicators. But what and whose agenda is behind all the efforts to portray legalization of abortion as the magic key to improving maternal health and the pressure on governments to legalize abortion? Has anybody thought of who is behind, probably at the very hind end of the source of all the moneys for "free abortion" campaigns, the studies to "justify" the case, the money to embed it into Reproductive health and rights, and the facilitation of the human rights bodies to campaign for it etc. and its embedment into important and otherwise good documents like the Maputo Protocol? Can any of our leaders, political or technical, stand up and take personal responsibility for luring less informed mothers to kill their babies only to cry years later that "I wish I knew?".

Then what could be the agenda behind the actions by such people standing far behind and the very hind designers and financiers of the abortion crusade? Could this be some sort of a move from old Darwin's theory of natural selection now to "Voluntary" and "Active" deselection of the unfit, unwanted, unexpected etc so that we may end up with some sort of genetic selection? This school of thought stems from studies in other countries.

Leo H. Kahame, David Paton and Rob Simmons (2006) reviewed various studies that had suggested that the dramatic drop in crime rates (murder dropped by 40% and property crime rates fell by 30%) between 1991 and 1999 in the United States had been due to legalization of abortion. This followed the hypothesis by John J. Donohue III and Steven D. Levitt (May 2001) (otherwise known as D & L hypothesis) that "legalization of abortion may lead to reduced crime either through reductions in cohort or through lower per capita offending rates for affected cohorts".

D & L hypothesized that "the smaller cohort that results from abortion legalization means that when that cohort reaches late teens and twenties, there will be fewer young males in their highest-crime years and thus less crime." Their second hypothesis was that children born after legalization of abortion may on average have lower crime rates because: (i) "Women who have abortions are those most at risk to give birth to children who would engage in criminal activities". They name teenagers, unmarried women and the economically disadvantaged. (ii) "Women may use abortion to optimize the timing of child-bearing " thus being able to bear children when they can best nurture them.

To further support the D & L hypothesis, a Pop-Eleches report claims that a cohort study showed that restriction on abortion in Romania in 1970 caused a rise in crime rates. But the review of data from the UK (Leo H. Kahame, David Paton and Rob Simmons (2006)) did not find any conclusive link between legalization of abortion and drop in crime rate. They allude to the fact that crime rate may indeed rise in situation of high population of under employment, poverty, poor access to medical care etc.

Indeed improvement in these parameters as well as improvement in the keeping of law and order may all contribute significantly to drop in crime rates.

But given as it may, that promotion of abortion gets rid of people who are prone to be criminals, or to control population so that resources are enough hence better life and less crime rate among the few or even to “weed” out persons with disability, such intentions would constitute a genetic cleansing of human race.

What about an agenda of eugenesis therefore? In fact D & L argued that with fertility reduction, largely due to abortion, being greater in black women (12%) than in white women (4%) and the homicide rates of black youths being roughly nine times higher than those of white youths, racial differences in the fertility effects of abortion were likely to translate into greater homicide reductions. Is somebody relating this to the fact that we have more HIV/AIDS prevalence in Africa? If so then is the abortion of babies who may be HIV infected being viewed by somebody as a part of HIV infection control among the Africans. What about aborting more boys? A lot of the transmission of HIV has been blamed on the unfaithful behaviours of men. One could argue that in the same way if more boys were aborted then in future we might have fewer unfaithful married men infecting their wives.

So will anybody be surprised if sooner or later we get packages for Reproductive Health and Rights “to improve access to in-utero determination of foetal gender”? This is not a new thing in this world but in this new era of pro-abortion campaign one might need to read more in between the lines.

Following from the D & L hypothesis, might we be dealing with rich Ugandans who are consciously fueling the pro-abortion pressure in order to eliminate the poor in order to improve life for the elite? It looks far fetched but is it totally unthinkable?

Similarly is the case for fetuses that will be born disabled. Let us begin this analysis by asking if there is anybody, at least in Africa and in Uganda in particular, who would wish that his relative or wife or husband or fiancé who gets disabled in adulthood be killed? The “yes” answer in Uganda is perhaps the most unlikely at the moment. Here I am talking about examples of people who develop severe brain damage as results of accidents or brain infections (meningitis or encephalitis), or develop paraplegia (both lower limbs paralyzed with no control over urinary system and bowel) etc. Usually we manage them and still moan them when they eventually die. This is sometimes after very many years caring for them; this is particularly so for people who get brain damage at time of birth. We know such adult disabled persons themselves do not want to be killed or abandoned. But should these then be different from a child yet to be born with congenital disability?

We know that in countries where abortion is legalized disabled fetuses are often even more vulnerable to the decisions of the mothers. The only difference is that the disabled fetuses are even less protected by the law than the non-disabled. For example in the United Kingdom the “Human Fertility and Embryo Act of 1990” puts 24 weeks of

gestation as the upper limit for abortions but allowed disabled babies to be aborted up to birth. This literally means that if the foetus reaches maturity but is not wanted by the mother the doctor must make the baby not come out alive. Again in Britain “prenatal diagnosis for conditions such as Down’s syndrome is increasing and foetuses with the condition are routinely aborted, even though many might be capable of leading fulfilling lives” (Sunday Times, November 27<sup>th</sup> 2005). The “fulfilling” life here might even be better than that of an adult who becomes vegetative after severe accident but whom we all want to cherish and care for till natural course takes him or her to death. But again similarly, has anybody ever asked any disabled person if he / she regrets having been born alive?

It is reported (Sunday Times, November 27<sup>th</sup> 2005) that in Britain at least 50 children survive being aborted yearly. If the D & L hypothesis is correct, has anybody carried out study of crime rates among such abortion survivors and their mothers? Has anybody found out what proportion of such survivors, given equal opportunity, grow into important executives? Has anybody studied the mothers of such surviving babies if “their wishes” to abort continued into desire to kill such babies after birth and their subsequent adulthood? Has anybody ever found out how ashamed but appreciative such mothers have been to see such children giving them pride in society? How many of such mothers have lived to feel that the agenda to abort was a good one and their own? Have any of those doctors encountered such abortion survivors in their adulthood and if so how have they felt?

## **Conclusion**

African advocates and lobbyists as well as health policy makers need to be double-careful in rushing to legalize abortion. This caution is sounded not simply from a moral perspective. Analysis made above provide enough ground for health professionals to take time and begin to read the scripts behind the scripts when up taking packages put on the table covered with sweet interventions that on the surface appear to be the magic solution to our reproductive and maternal health problems. You may be shocked that far behind the source of that money is primarily a pro-abortion campaign or even a eugenic agenda. How would Ugandan health professionals and leaders like history to judge them?

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