"By what right? Are they not human beings?"

The human rights case against eugenic birth prevention

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The perfidious notion that there should be "allowable killing" of "inferior" human beings is remarkably persistent. In each age, somewhere on this earth, eugenic "selection" raises its ugly head , often in different guises but generally with the same excuses. "These are defective beings", they say, "with lives not worth living; killing is the only humane way to prevent suffering for themselves and their families and to prevent them being a burden to their community." Eugenics is always utilitarian. It authorizes those in positions of power to pass lethal sentence on those deemed too troublesome to be allowed to live. Employing a calculus of utility, eugenicists pretend to be able to predict just how much suffering will be spared to their victims, and in the long run to their families and the authorities. In this year's April issue of *The American Journal of Bioethics*, two eugenicists argue quite seriously that the *possibility o*f screening out embryos with defects carries with it a *parental duty* to produce only children free of these defects.[i] See how quickly the *right* to choose to abort children with a troublesome condition can become the *duty* to abort these children. And so, quite arbitrarily, they draw up an insidious dividing line between those they deem to have a right to live and those they deem expendable. They do not see that each child is a unique human being—they insist that children with defects can be easily *replaced* by superior children who will have greater well-being and who will not be so much trouble for their parents, families , communities, and the authorities in charge. Under a utilitarian philosophy like this, it is the ones at the most vulnerable edges of society are made to sacrifice the most: this is the reason that French Philosopher, Paul Ricoeur , condemned utilitarianism: ultimately, he says, it is always the weakest members of the human family who are sacrificed for what is claimed to be the greater good.

" a bond of relationship between all human beings"

Way back in the 16th Century, a few good men of religion, three Spanish Dominicans, sent to the New World to the island of Hispaniola, declared a new basis for justice—human rights. They had been offered accommodation in the guest apartments of one of the grand colonial homes but made their home instead in the midst of the slaves in one of the small grim huts designed for slaves. They saw at first hand the heinous mistreatment by the Spanish Conquistadores and the outright killings of so many of those whom they had conquered and now "owned". Together the three Dominican fathers wrote a famous sermon.

And it was Father Anthony of Montesinos who on the Sunday before Christmas in 1511 delivered it before the Spanish grandees. He challenged the abusive aborting of so many vulnerable Indian lives, "deprivation of life before their times". "By what right?", he demanded, "Are they not human beings?"

He proclaimed the rights of the Indians and declared these rights to be the same rights as for every other human being on earth. He enraged Spaniard slave owners . He was summoned to Spain where he valiantly defended the equal human rights of the Indians before the Council of the Indies and the Spanish king.

In the meantime, Bartholome de las Casas—a young wealthy Spaniard with a law degree from the University of Salamanca—rallied to the Dominicans' side. Gave away his wealth, freed his own Indian slaves and declared the relationship between governments and people to be "a human relationship that respects the human rights of all". Las Casas used the term "human rights" and recognized that they are founded on "reason and natural law".

Along with other Thomist scholars at Salamanca University, Francis of Vittoria, sometimes called "the father of international law", began studying this "new doctrine" of human rights and duties . Out of their intense debates came the principles that all human beings have rights as human beings, and that these human rights entail grave obligations on those in authority towards every human being in their power .

"Nature", Vittoria said, "has established a bond of relationship between all human beings".

And some four centuries later, after the murderous eugenics of the Nazi's "Master Race" had been brought to an end through a second world war , the newly formed United Nations returned to that same profound truth, *the bond of relationship between all human beings*, and made it the foundation principle of the Genocide Convention (*Convention on the Prevention and Punishment of the Crime of Genocide*) and the Universal Declaration of Human Rights. These first instruments of modern international human rights law were established on consecutive days in December, 1948. René Cassin, one of the principal drafters of the Universal Declaration, confirmed that it was indeed drafted on the principle of universal inclusion, on **"the fundamental principle of the unity of the human race"**, and this was necessary, he said, because Hitler had started "by asserting the inequality of **men**". [ii]

Nazi eugenics: "conditions considered a basis for killing"

Under Hitler, in the 1930's and 40's, the Nazi medical authorities instituted what they believed to be a very noble, successful programme of eugenic selection. Historians tell us that children with Mongolism (we call it Down's syndrome today) and "severely defective closure of the vertebral column" (Spina Bifida) were listed by Nazi decree to be 'selected' for 'euthanasia'.[iii] The lives of children with these "conditions considered a basis for killing" were terminated by Nazi doctors. [iv] Indeed, according to historian Henry Friedlander, these children comprised the very first group – the original "group" – targeted for eugenic elimination; and the 'health' measures developed in the "child killing programmes" became the prototype for the later eugenic health programmes against

adults with hereditary or congenital conditions and then against Jewish people. "Auschwitz was only the last, most perfect Nazi killing center".[v]

And now today once again Down's syndrome and Spina Bifida are authorized as "conditions considered a basis for killing" and unborn children with these conditions are now being identified and targeted by a Government pre-natal screening programme that facilitates eugenic selection. For some nine out of every ten children identified with these conditions the New Zealand government endorses maternal "choice" to consign the lives of these innocent, utterly defenceless human beings to termination by Government approved doctors.

The disturbing truth is that Nazi process of 'selection' has chilling similarities to what occurs in New Zealand today, where each member of the group at risk has to qualify biologically through antenatal testing for the individual right to exist, which becomes in the system a tentative right conditional on the pregnant woman's 'choice' all too often based on her own and others' subjective attitude towards members of the human group identified as having Down syndrome, Spina Bifida or other conditions sought out by the Programme.

Same crime-different language

And now after forty years of "right to choose" indoctrination, of course we find it hard to recognize entrenched evil under its ideological disguise of beneficence. It is the same crime—lethal eugenics—in different language— "freedom to make informed choices". So in the name of "freedom to make informed choices" the New Zealand Government and its Ministry of Health excuses and endorses deeply entrenched attitudinal prejudice against the birth of persons with Down syndrome, Spina Bifida and other conditions.

The language sanitizes the eugenic abortion 'choice'. This appalling "choice" is only being made possible by the knowledge provided by the Government's Programme with the express purpose of providing that 'choice'.

When an ideology takes hold, the medical profession is not immune—we see once again the fragility of medical ethics, the reluctance of doctors to confront their peers, the disbelief that there could be anything morally wrong in something so routine as aborting nine out of every ten children detected prenatally to have Down 's syndrome or Spina Bifida. We find it hard to believe that the medical profession which struggles daily and valiantly to save life, to heal sickness and to ameliorate suffering can also be involved in a crime against humanity.

Writing in the New England Journal of Medicine in 1948, Dr. Leo Alexander, consultant to the Nuremberg War Crimes Tribunal, issued a warning that the Holocaust began with a small modification of traditional medical ethics:
"The beginnings at first were merely a subtle shift in emphasis in the basic attitude of the physicians. It started with the acceptance of the attitude... that there is such a thing as life not worthy to be lived…"
Regarding "ideologically conditioned crimes against humanity", Dr. Alexander warned of the ease with which destruction of life was advocated for those considered either socially useless or socially disturbing.

And when the world finally named what had happened in Rwanda in 1994 a genocide, UN Secretary-General Boutros Boutros-Ghali explained that *"for us, genocide was the gas chamber - what*

happened in Germany. We were not able to realize that with the machete you can create a genocide." [vi]

And now for us, here in New Zealand, we also are very slow to realize that with an ante-natal screening programme and a health system to provide routine abortion on identification of Down syndrome, Spina Bifida and other conditions we can facilitate a terrible persecution of a group, a very real crime against humanity. The medical technology for screening may be new and advanced but the ultimate intention for which it is being put to use is old, evil, barbaric.

The emphasis of our complaint to the International Criminal Court is on *consequences* and *intent*, with genetic screening and selective abortion being the *means*. The situation now is that the group can be targeted through their identification *in utero* and births prevented through selective abortion. Today's technologically sophisticated form of screening for selection for prevention of birth was not available when the *Genocide Convention* was written, but the intent and consequences are the same as pertained during the Nazi atrocities.

The *intent* is to identify unborn children with Down syndrome, Spina Bifida and other conditions so that births to the group can be prevented. The *consequence* is that a substantial part of the group is being systematically destroyed. The screening programme facilitates lethal acts against the group, with abortion being the means of perpetrating those acts:

As Patricia Visieurs Sellers, of the Office of the Prosecutor in The Hague, has recognized:

> "Whether prompted by legislation, or overseen by politicians, doctors, lawyers, or cruel camp commanders, these are acts of genocide. Like massive extermination or killings, the intent to suppress a group prior to its birth and reduce or decimate the membership to a designated purpose is a fundamental crime, one that the Genocide Convention, as recognized in Article II(d), seeks to prevent or punish."[vii]

By what right?

So once again we must ask those most fundamental of all questions seeking justice:

"By what right? Are they not human beings?"

On behalf of these children and their families here in New Zealand, those very questions are being brought before the International Criminal Court in a case that is currently at the preliminary examination stage.

Our concern is to raise awareness of the criminally eugenic nature of the policy and practice of genetic identification of selected conditions leading to routine prevention of births within the group. Our goal is to put an end to this policy that at this present time continues to be implemented with legal impunity through the New Zealand Government's *Antenatal Screening for Down syndrome and other conditions - Quality Improvements* ("*the Programme"*) and the New Zealand health system.

By what right does any government implement eugenic policies? By what right does any doctor practice lethal eugenics? By what right does any mother "choose" on eugenic grounds to abort her child?

We say there is no such right. *For are they not human beings?*

But the official authorities here in New Zealand answer "no"—they are not human beings—they're only foetuses, they say, and with no legal protection because human rights begin only at birth.

But they are wrong. Both reason and science confirm that the unborn child is already in existence, being protected and nurtured in his/her mother's womb. With astonishing accuracy, we can locate the child within definite co-ordinates of space and time. The child is not a generic, anonymous foetus. We can identify the child's father, and whether the child is a son or a daughter. We can ascertain long before birth that the child is a unique member of the human family, biologically, genetically, and genealogically.

And we must be prepared to say and to prove that these are indeed human beings and that it is wrong to deny their right to legal protection. When an evil needs to be uncovered, it's hard at first to get through even to good people. It is hard to penetrate their disbelief which has led them to moral paralysis.

Removing legal protection from the unborn child by ideological reinterpretation

In any age, one of the gravest obstacles to justice is disbelief based on complacency that nothing really bad like lethal eugenics can happen in our own community. We tend towards incredulity because we trust naively that we are all protected by a free press, independent judiciaries and democratic parliaments elected by well educated citizens.

But an Englishman, Arnold Lunn, writing at time that Nazism emerged triumphant , warned that, in every age, it is one of the hardest things of all to resist a popular new ideology, "to escape the prison of our times, the mental fashion of our age".

The institutions that are meant to provide protection for the vulnerable against the excesses of the new paradigms are the first to cave in. Legislatures, judiciaries, universities, the media.

And so when a new ideology, an extreme radical feminism, swept the world in the 1970's, governments and domestic courts caved in to ludicrous propaganda that included the central fundamentalist tenet that a mother has absolute ownership and disposal rights over her 'foetus' who was ideologically re-defined as 'just a bunch of cells', not a human being until "it" is born.

Yet right from the first drafting of the modern international human rights instruments, the legal language of human rights consistently used the terms "unborn children" and "the child before as well as after birth". It is not valid to replace these terms with the medical textbook term "the foetus" and then claim as the New Zealand Human Rights Commission does that "the foetus" has no right to legal protection under human rights law.

As back in the 30's, dehumanizing language paved the way for medicalized killing. This is still confronting. Small Jewish children were called "Jew-dogs" and "parasites", children who were disabled were disparaged as "life unworthy of life", and the unborn children of Polish and Eastern

workers were labelled “racially inferior offspring”. Always the dehumanizing language came first, then came the exterminations, the aborting of human lives ideologically reclassified as less than human, and totally expendable.

This tactic of dehumanizing the most vulnerable members of the human family by changing the terms by which they are to be referred is a very old, very cruel ploy.

The making of a crime against humanity

The official authorities here say that facilitating measures preventing births within a group is *not* a crime against humanity. This is *not* within the jurisdiction of the International Criminal Court, they say, because this is just individual women exercising their right to make informed choices to continue with or to abort the pregnancy

But we say this *is* a crime against humanity. This is an accumulative crime. So many individual decisions made on eugenic grounds accumulate into a criminal systematic and widespread persecution of the group, a crime against humanity facilitated by an official government programme. Just as the Nazi crimes against humanity—committed on a systematic, widespread scale—were made up of so many discrete inhumane acts committed by individuals, facilitated by individual doctors, and individual government and health officials.

Today, in New Zealand and in other countries around the world, a distinctly eugenic pattern is emerging, a despicable pattern of prevention of births within a targeted group, a pattern that insidiously and inexorably is changing the way we think about the survivors of that group, a pattern that marks them out as curiosities. Their mothers are asked in the streets: “Didn’t you have prenatal screening?”

As eugenic birth prevention increases in popularity, unintended consequences emerge, No one has given aforethought to the growing predicament of the survivors, that they must continue to try to live happily in a society that endorses the eugenics of the Programme.

Proponents of the Programme say this is all voluntary—every woman can make a choice, and the choice to end the pregnancy has no impact on others who choose to have their own children with these conditions.

But the unwelcome truth is that the choice to prevent births to this group impacts gravely on the survivors. It is difficult to live confidently and comfortably in a society where some 90% of mothers make the “informed choice” to prevent births of their children explicitly and openly because their children had the same condition that the survivors are now living with. Lethal prejudice is there in the community, though some will disguise their disgusting prejudice with flattery:

“I admire you so much”, they gush, “I could never raise a child like yours”.

The Programme’s facilitating of the “choice” is actually changing social attitudes towards the survivors. Before identification and “choice” was offered, all children with these conditions were accepted, at the very least, as being born through no fault of the parents. Now parents are being

openly accused of failing to prevent their births. The right to choose to prevent births is fast becoming the duty to choose birth prevention.

The growing of prejudice is an unintended consequence of the Programme's emphasis on "choice". In initiating this policy that promotes and endorses the "choice" to abort children identified to have Downs, Spina Bifida or other conditions, politicians and bureaucrats failed to foresee the reprehensible growth in public prejudice against the survivors, the surviving 10%, the children whose mothers rejected "the choice" to abort them .

The "choice" by 90% of mothers to abort their children on the eugenic grounds is impacting negatively on those 10% of mothers who are now said to "choose" to give birth to their children and are being castigated in public forums for their "choice"—"their choice, their responsibility", "no right to any support from the State", no right to "mainstream schooling", "If you know you are going to have a child with Downs & choose to go ahead with that pregnancy then you should forfeit all Govt assistance for that child & be prepared to pay privately for all their health care costs etc.".

Belonging not ownership

In effect, the Programme reduces the child being screened before birth to an object, a 'choice', a thing of less-than-human status, suspended in a slave-like state between life and death, pending an arbitrary decision by the 'owner' to abort or to keep the child.

Some feminist historians have rightly condemned the shameful old injustices where at many times children were considered the property of their fathers. But over time, they say, a shift has occurred, and we are beginning to understand children as rights-bearers, not simply as objects of protection.

The tragic irony, however, is that children before birth are now considered neither as objects of protection nor as rights-bearers but rather as the property of their mothers, subject to arbitrary treatment and disposal at least as vile as anything that paternalism was ever responsible for.

Mothers do not own their children. All children belong to the human race, belong to a family and a community. Everyone has grave obligations to protect these children who belong here, who are "members of the human family", who have a right to be here.

The pseudo-right to eugenic abortion stands in direct contradiction to the long, hard-won tradition of human rights and freedoms, a tradition forbidding that any one human being should have ownership and disposal rights over any other human being, no matter how small or dependent or troublesome or unwanted.

Human solidarity—"Everyone has duties to the community…"

Universal Declaration Article 29(1)

Adequate nutrition, the protective environment of the mother's womb, and benign medical care are 'basic rights' and because of their fundamental necessity to the nurturing of life, they are the unborn

child's minimum and reasonable demands on the rest of humanity. In every way, the needs of his/her distressed mother also must be met and community commitments made to long term care for as long as is needed for herself and her child.

The UN Conventions make it clear that each child is not the sole responsibility of the mother. The mother is not alone in her duties toward the child "before as well as after birth". Everyone must share that duty, and help her to provide for the basic needs of the child. Everyone includes fathers, families, grandparents, uncles, aunts, doctors, nurses, neighbours, friends, employers and work colleagues—as well as the government departments of health, housing, child welfare, education and employment.

That the child before birth already belongs to the community and is entitled to be born into that community is recognized in Article I of the *Geneva Convention.* Herein lies recognition that imposing measures intended to prevent births within the group will harm that group or community. To harm the child before birth is to harm also the community to which that child belongs.

Mary Ann Glendon, Harvard law professor and a formidable expert on the Universal Declaration, says this:

> …the most pressing task for friends of human rights today is to re-unite what the framers of the Universal Declaration put together, to reunite the two halves of the divided soul of the human rights project – the love of freedom and the sense of one human family for which we all bear a common responsibility.[viii]

Denying guilt, rationalizing eugenics

Yet the New Zealand Programme undermines this common responsibility. The Programme issues a subtle invitation to every pregnant woman to seriously consider the freedom, the 'choice' to prevent births on the grounds of identification of Down syndrome and other conditions; the clear implication is that the possibility of abortion on these specific grounds is deemed by the Ministry of Health to be reasonable, unobjectionable and perhaps even desirable, certainly commendable in the interest of advancing the range of women's 'choices'.

In authorizing the medicalized destruction of selected children (before as well as after birth), Nazi ideologues insisted this was perfectly reasonable, unobjectionable—there could be no guilt:

> This is necessary for the preservation and development of all that lives on this earth…I believe that we have a good conscience before the world when we eliminate life that is unworthy of life…[ix]

The *Nuremberg Trials Record* shows that even when confronted with the enormity of the crimes against humanity, there was stubborn denial of any crime:

> The activity of Lebensborn…consisted of care for other people. Mistakes may have occurred, errors which one may only be able to judge today in retrospect. The basic motives, however, the basic motive for helping and assisting other people was predominant in every case.[x]

Similarly, defendants insisted that their 'work' of terminating lives was only to 'help' women and children:

> I did not help women and children in order to be praised for it. I helped them because I wanted to help them, and because I had to help them. I never expected any thanks for that; but that I would be placed before a court because of my helping activities — that is something I never comprehended and I still cannot understand it — at the end of this trial… I cannot believe that my work was ever a crime.[xi]

New Zealand authorities are providing just such an amoral environment conducive to the ongoing commission of the crime of "destroying in part" the group at risk. Clever dog-whistling sends a subliminal message in the Programme : no guilt is to be attached to the seriously discriminatory practice of preventing births within the group; neither the abortionists providing the destructive 'service' nor the pregnant woman requesting the 'service' is to bear any guilt in the prevention of births within the group; the Health Ministry supports these destructive 'services' and condones the grounds for their commission.

Dr Gerhard Wagner, head of the Nazi physicians in the 1930s, used the health of the adults to justify medical termination of the lives of children deemed burdensome:

> Allow us to form our German state according to our laws and needs… it is irresponsible that the state must provide the money for some genetically ill families who may have several family members in institutions costing thousands of marks annually. The National Socialist state cannot repair the failings of the past, but through the "Law for the Prevention of Genetically Ill Offspring," it has seen to it that in the future the inferior will not be able to produce more inferior children, saving the German people from a steady stream of new moral and economic burdens resulting from genetic illnesses…we prevent unhealthy life from being propagated, saving children and their children from new and enormous misery.[xii]

Fundamentally, in the New Zealand Programme, approval is being given with the same two broad justifications that were proffered in Nazi Germany.

The eugenic purpose of the Nazi abortion programme was rationalized as a 'humane' measure: to prevent births to a group because it would be cruel to give them birth as their lives are "not worth living"; and secondly because they are "a terrible, heavy burden upon their relatives and society as a whole."[xiii] Suffering is made to seem as synonymous with evil and termination of the life of one who suffers as humane and good. Their claim is that they are preventing suffering by preventing births. But suffering is part of being alive—it is part of the human condition—and we respond to it with compassion and love and solidarity—not with killing.

For Nazi doctors, the actual order to abort children or euthanize them was euphemistically called an 'authorization' to 'treat' the child. "The term 'authorization' [Ermachtigung] was used because the myth of euthanasia as ordered by Hitler was based on the deception that in implementing the

program the state only facilitated and authorized an action a physician wished to take for humane reasons but which the archaic penal code prohibited....the physicians involved in the program assumed that the disabilities listed…would prevent the infant from functioning independently in the adult world." But even the chief physician of the Nazi adult euthanasia program found the procedures for making such a determination faulty; pointing to the case of the blind and deaf Helen Keller, he argued that infancy was much too early to reach a definitive conclusion about a child's future ability."[xiv]

Yet, in New Zealand today, pregnant women are pressured to reach just such a conclusion, to make 'informed choices' (eugenic selections) trying to guess the future quality of life for the human beings *in utero* who, as identified by the NZ Programme, would be born with Down syndrome or other conditions if their births are not 'prevented'. Many of their doctors, no doubt aware of the possibility of future litigation for "wrongful birth", are telling us that they must be "careful" to urge participation in the Programme, in further testing, and must provide full information on the benefits of "the abortion option". The attitudinal prejudice of many doctors today against honouring what Raphael Lemkin, chief architect of the Genocide Convention, writing in 1947, recognized as "a natural right to existence" [xv] for all groups as such must raise doubts about the claim by the NZ Ministry of Health that the NZ Programme is "voluntary". The Programme, with what promises to be a relentless attrition of births to this group, threatens over time to change for the worse the lives of the group with Down syndrome and other conditions and the community attitudes towards this group.

Domestic Lawfulness No Defence

Essentially what we are confronted with here in New Zealand is yet another case of what Hanna Arendt named "the banality of evil"[xvi]—an inhumane practice and policy that masquerades as ordinary, good health care. The crime of imposing measures intended to prevent births within the group has become 'banal' precisely because it is being committed in a daily way, systematically, without being adequately named and opposed. It has become for the perpetrators "accepted routinised and implemented without moral revulsion and political indignation and resistance".[xvii]

Back in the 16th century, Casas declared "Complicity blinks, invites, approves , protects". Complicity consents to a crime not just by counselling but also by "a deaf ear". We must confront the deaf ear being turned by New Zealand politicians and public servants, medical practitioners and pregnant women who facilitate or take part in the crime of eugenic birth prevention under the misconception that it is legal. As far as domestic law applies, the policies and practices appear to be legal. In the light of international law, however, current New Zealand law must be examined for failure to protect the right to existence of the group targeted by New Zealand's Antenatal Programme .

New Zealand domestic law at present may tolerate identification and selection for prevention of birth on eugenic grounds but so did Nazi domestic law. The 'racial hygiene'/medical policies of the Nazis appeared to be legal: "Legislators codified policies into law…They were careful to construct racial policies in accordance with the rule of law."[xviii] Hitler himself guaranteed legal impunity for doctors carrying out abortions on the grounds of suspected 'hereditary taints'.[xix]

Thus, right from the beginning of the drafting history of the Genocide Convention, it was agreed that:

> domestic law could never be invoked as a defense for non-fulfillment of an obligation under an inter-national convention. [xx] (E/AC.25/SR.18)

Localized majorities may not pass laws in violation of non-derogable human rights such as the right to legal protection from arbitrary deprivation of life. [xxi]

"appropriate legal protection before as well as after birth"

It is regrettable that one of the responses we have received from the New Zealand Human Rights Commission claims categorically that "legally protected status as a human being begins at birth. This is the case both internationally and domestically" [emphasis added].

But this is nonsense. It is not the state of "being born" or of "being wanted" or of "being perfect" that confers human rights, it is simply being human. This is the irrevocable legal basis of all human rights.

In 1948, when the Universal Declaration of Human Rights was proclaimed, if we had asked the UN General Assembly "Do unborn children have a right to legal protection?" they would have answered "But of course!"

And the reason I can be so confident about their answer is that right from the first drafting session of Universal Declaration the drafters expressed concern for "unborn children".[xxii] And they went on in subsequent sessions reaffirming their concern to protect the rights of unborn children.

You see, when World War II was over and the nature and extent of Nazi atrocities were more fully revealed, the nations of the world in a moment of grace came together and forged a mighty determination that "never again" would domestic legislatures and their courts be permitted to decriminalize lethal human rights abuse against any vulnerable group of human beings.

Programmed abortion by the Nazi medical establishment was certainly understood at the time of the drafting of the Universal Declaration as one manifestation of what the Universal Declaration's preamble calls "barbarous acts which have outraged the conscience of mankind".

For when the Universal Declaration was drafted, the Nazi programme of decriminalized abortion in Poland and the Eastern Territories was still fresh in the public perception.

> "…protection of the law was denied to the unborn children...Abortion was encouraged…" [xxiii]

Now in the time constraints, I can give you here today only a small sample of the mountain of evidence that the unborn child was included in the Universal Declaration human rights protections. But having researched and compiled the evidence available in the UN archives, I can tell you anyone, anyone who says that the unborn child was not included, is either ignorant or lying in their teeth. It

is just brazen intellectual dishonesty for pro-abortion ideologues to insist today on reading the historical post-World War II Declaration with their 21st century pro-abortion bias.

You see, it is not just the accumulative evidence in the archives; it is the intention and purpose of the founders and the founding principles that make it impossible for the unborn child *not* to be included in universal human rights protection.

Indeed, it was agreed from the outset that the new international human rights were to be based on principles—historically and philosophically, a rock-solid deontological basis was established for this whole new modern international human rights law project.

The hard truth is that international human rights law cannot be converted now to the utilitarian or consequentialist approach without a catastrophic unravelling of all the human rights protections that have been painstakingly built on principles such as equal protection before the law of every human being, equal safeguards including appropriate legal protection for the child before birth as for the child after birth, and an equal right to development and survival for all members of the human family.

New Zealand is still bound by the Universal Declaration of Human Rights which it helped to negotiate.

The Universal Declaration begins with"recognition of the inherent dignity and the equal and inalienable rights of all members of the human family…the foundation…of justice…in the world".[xxiv]

> "…a statement of general principle which was independent of the existence of the United Nations and had an intrinsic value of its own." [xxv]

Children with "Down syndrome and other conditions" are included in "all members of the human family" and are entitled to "appropriate legal protection before as well as after birth". [xxvi]

Programmes that enable and facilitate a 'legal choice' to eliminate before birth some "members of the human family" on grounds of detection of the possible presence of "Down syndrome and other conditions" are deeply and irrevocably offensive against human dignity and worth. Programmes that tolerate and affirm a subjective choice by individuals and their doctors to project prematurely a "negative value" (to use an old Nazi term) [xxvii] onto the lives of members of this group on these grounds are "contrary to the purposes and principles of the United Nations". [xxviii]

One of the first things agreed in the negotiations by the drafting committee was that the "innocent unborn child" was to be legally protected.

The drafters of the International Covenant on Civil and Political Rights reaffirmed this. While drafting the 'right to life' Article 6 of the Covenant, the only recorded attempt to introduce abortion as an exception to the right to life occurred in the Working Group's 2nd Session (1947). It was put to a vote in the Commission on Human Rights and was resoundingly defeated. A principle was adopted in which the only exception to the unlawfulness of deprivation of a life was to be in the execution of the sentence of a court following on conviction of a crime for which the penalty is provided by law.[xxix]

The ICCPR drafting history records repeatedly and irrevocably that “unborn children are entitled to legal protection. [xxx]

For all practical legal purposes, they recognized that the life of a new human being has begun when a woman is confirmed to be pregnant. It was agreed that from the State's first knowledge of the pregnancy, there is a State responsibility to protect the innocent unborn child from harm, even in circumstances where the mother's right to life had been forfeited for having committed a crime punishable by death.

The drafting records attest that "the principal reason" for providing that the death sentence should not be carried out on pregnant women was "to save the life of an innocent unborn child; that protection should be extended to all unborn children." [xxxi]

What are the foundation principles of human rights?

Six key principles became the foundations stones—inclusion, inherency, equality, inalienability, indivisibility and universality.

Inclusion – meaning that these rights apply to absolutely everyone, including the unborn child.

T**he deliberate use of the terms “every person” or “everyone” throughout the Declaration was to extend the prohibition of discrimination in the application of every human right in the Declaration to every human being.**[xxxii]

Inherency – meaning that these rights were seen as inherent in each human being, not granted by external government. The child’s rights pre-exist birth – they “inhere” in the child’s humanity. To be eligible for membership of the human family, one has only to be human. Morsink, in his meticulous study of the drafting history of the Universal Declaration, observes that when all prohibited discriminations are eliminated:

> “…what we have left is just a human being without frills. And the Declaration says that the human rights it proclaims belong to these kinds of stripped down people, that is to everyone, without exception.”[xxxiii]

From conception to birth, children are ‘human beings without frills’, without the extras that come with maturity, stripped down certainly but yet possessing all the essentials of a new human life. Lacking much in physical size, weight, age, and independence, without a voice, without the power to fend off attacks on their tiny human bodies, our children *in utero* are, nevertheless, human beings with the same inherent human rights as all human beings.

Inalienability— The right to legal protection “before as well as after birth” is one of the equal and inalienable rights of all members of the human family.

No one may destroy that right, nor deprive any human being of that right, nor transfer that right, nor renounce it—that's what *inalienable* means.

And when the International Bill of Rights goes on to say that *it is essential…that human rights should be protected by the rule of law,* it is clear that no one may remove the human rights of the unborn child from the protection provided by the rule of law. The term "no one" means no sovereign country, no legislature, no judiciary—none of these has the authority to de-recognize the human rights of any individual human being or any selected group of human beings.

Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own or their mothers' request.

Equality – in modern human rights law, there could be no concept of some human beings being "more equal" than others – thus the unborn child at risk because of disability has the same right to life as every other member of the human family. Human rights entitlement is not scaled according to age or size or viability or competence or independence or social status.

The Inter-American Court of Human Rights has given us a clear definition of the concept of equality in international human rights law:

> *The notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with the notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified. It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character.*[xxxiv]

The State cannot deny children at risk of abortion for eugenic reasons the human right to be born equal in dignity and rights—human rights protection was never to be premised on the exclusionary pre-condition that the child must be born first. It is not the act of 'being born' that confers human rights, it is being human.

Indivisibility – meaning that legal protection of the rights of one set of human beings cannot be sacrificed to enhance the rights of another set. The life of the child at risk of abortion is not to be sacrificed to promote, for example, women's rights or as the New Zealand government puts it "to expand women's choices".

And finally **Universality** -- the same non-derogable human rights are to be upheld in every age by every culture and everywhere— references to World War II were deleted from the original draft of the Preamble as well as from all other passages that sought to situate the Universal Declaration in the specific post-war period.[xxxv]

Each Universal Declaration human rights principle was explored and debated thoroughly before they set it down for posterity. Human rights principles were first "recognized" in the Declaration and then codified in binding international law of the subsequent Conventions. Any re-interpretation of the Conventions that claim to de-recognize the rights of children before birth to legal protection is

invalid –a complete nonsense for such a re-interpretation would represent a rupture with the foundation principles the Covenants have been entrusted to codify.

Respecting the dignity of every human being *"without any exception whatsoever"*

And so the Covenants recognize that every human being has an immutable dignity, a dignity that does not change with external circumstances such as levels of ability or disability, independence, or prognoses of quality of life, or functionality or wantedness. For the group with Down syndrome and other conditions, it is their essential and irrevocable humanity that entitles them to 'recognition of the inherent dignity and inalienable rights of all members of the human family'. It is this recognition that obliges us to travel in human solidarity with them, to be attentive to their needs, to provide them with the best attainable care, in their homes, in local communities, in education and health facilities, in places of employment and of recreation; and to correct, rather than encourage, entrenched attitudinal prejudice that condones prevention of births to the group.

The truth is that every human being coming into existence at conception has a right to be here. Every unborn child has a right to exist, a right to be born. Every child has the inherent and inalienable right to membership of the human family. That membership is inclusive of all the billions of natural variations of abilities and appearances and personalities and problems. Though we are not endowed with equal abilities, we each have an equal right to be born, a right to be given before as well as after birth equal protection of the law against lethal medical interventions.

There can be no compromise, no accommodating lethal eugenic "choice", not even for a specified limited number of conditions targeted by the Programme. Technological advances are already spiralling—some prenatal tests on the horizon are promising identification of some three hundred conditions that may place babies in line for eugenic choice.

We can't go any further down this track. We must draw a line here, now. Take a stand in human solidarity with every mother and with every child before as well as after birth. Today we commit to the human rights defence of every child with Down syndrome, every child with Spina Bifida, every child with any condition being "considered a basis for killing". We defy eugenics and we recommit to loving "every child, without any exception whatsoever". We are one human family.

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[i] Malek, J. & Daar J.: "The Case for a Parental Duty to Use Preimplantation Genetic Diagnosis for Medical Benefit", *The American Journal of Bioethics*, Volume 12, Issue 4, 2012.

[ii] Quoted in Morsink, Johannes: *The Universal Declaration: Origins, Drafting and Intent*, Philadelphia: University of Pennsylvania Press, 1999, p.39.

[iii] Henry Friedlander : *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* (Chapel Hill: University of North Carolina Press, 1995) p. 45

[iv] Robert Jay Lifton:"*The Nazi doctors: medical killing and the psychology of genocide*" (1986) p.56.

[v] Ibid, p. 302.
[vi] Front-line Interview, PBS (January 21, 2004).

[vii] Patricia Visieurs Sellers served from 1994-2007 with the UN International Criminal Tribunal for the Former Yugoslavia (ICTY), Office of the Prosecutor (The Hague, The Netherlands). The quotation can be found at http://www.enotes.com/genocide-encyclopedia/reproduction.
[viii] "A World Made New", Radio National Encounter Interview with Mary Ann Glendon, 11th August, 2002.

[ix] Wagner, Gerhard: "Rasse und Bevölkerungspolitik," *Der Parteitag der Ehre,* vom 8, bis 14, September 1936.

[x] Defendant Guenther Tesch, *Nuremberg Trials Record*, *Vol.V*. p. 87. Available at: http://www.mazal.org/archive/nmt/05/NMT05-T0087.htm.

[xi] Defendant Inge Viermetz, *Nuremberg Trials Record*, *Vol.V*, p. 87. Available at: http://www.mazal.org/archive/nmt/05/NMT05-T0087.htm .

[xii] Wagner, Gerhard: "Rasse und Bevölkerungspolitik," *Der Parteitag der Ehre,* vom 8, bis 14, September 1936. *Offizieller Bericht über den Verlauf des Reichsparteitages mit sämtlichen Kongreßreden*, Munich: Zentralverlag der NSDAP., 1936, pp.150-60. Available at: http://www.calvin.edu/academic/cas/gpa/pt36rasse.htm

[xiii] Quote from Binding cited in Michael Burleigh: *Death and Deliverance: Euthanasia in Germany 1900-1945* (Cambridge, England: Cambridge University Press, 1994) p.17.

[xiv] Friedlander, pp. 57-8.

[xv] Raphael Lemkin: "A]s in the case of homicide, the natural right of existence for individuals is implied: by the formulation of genocide as a crime, the principle that every national, racial and religious group has a natural right of existence is claimed." 'Genocide', *The American Scholar* (1947) p.229.

[xvi] Hannah Arendt: *The Origins of Totalitarianism* (1951).
[xvii] "So if a crime against humanity had become in some sense "banal" it was precisely because it was committed in a daily way, systematically, without being adequately named and opposed. In a sense, by calling a crime against humanity "banal", she was trying to point to the way in which the crime had become for the criminals accepted, routinised, and implemented without moral revulsion and political indignation and resistance." Judith Butler: "Hannah Arendt's challenge to Adolf Eichmann", *The Guardian*, Monday 29 August 2011. Hannah Arendt's "banality of evil" was the subject of a recent series of articles in *The Guardian*.
[xviii] Robert Proctor: *Racial Hygiene: Medicine under the Nazis* (Harvard University Press, 1988), p. 285 from Chapter 10: "The politics of knowledge".
[xix] Cited in Henry Friedlander: *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* (Chapel Hill: University of North Carolina Press, 1995) p.30.

[xx] See also Nehemiah Robinson: *The Genocide Convention: A Commentary* (New York, Institute of Jewish affairs, 1960) p.73.
[xxi] See, for example: "The Word 'Laws' in Article 30 of the American Convention on Human Rights", Advisory Opinion OC-6/86, May 9, 1986, Inter-American Court of Human Rights, (Series A), No. 6 (1986). para. 22.

[xxii] UN Doc.E.CN.4/21.

[xxiii] *Nuremberg Trials Record*: "The RuSHA Case", March 1948, Volume IV, p 1077. Available at: http://www.mazal.org/archive/nmt/04a/NMT04-T1076.htm

[xxiv] From the opening sentence in the Preamble to the *Universal Declaration of Human Rights* (1948). This appears also in the Preamble of the *International Covenant on Civil and Political Rights* (1966) and was characterized by the Commission of Human Rights as "a statement of general principle which was independent of the existence of the United Nations and had an intrinsic value of its own." (GAOR, A/2929 Chapter III para 4.) The intended complementarity of the *Genocide Convention* (1948), the *Universal Declaration* and the *ICCPR* is further strengthened by the fact that many of the drafters were doing double duty at the time in the drafting of all three instruments.
[xxv] GAOR, A/2929 Chapter III para. 4.

[xxvi] The *Preamble* to the *Convention on the Rights of the Child (1990)* reaffirmed what was agreed in the *Declaration on the Rights of the Child (1959)* "…the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth..." Understanding this in the context of Principle 1 of

the *Declaration* ("Every child without any exception whatsoever is entitled to these rights …"), it is clear that the degree of this immaturity is not to be allowed to diminish in any way the child's inherent humanity: human rights are equally valid for the child before birth as for the child after birth *without any discrimination whatsoever.*

[xxvii] The term was used by German jurist Karl Binding to describe 'beings' or 'existences' with impairment ('incurable idiots') in the influential 1920 publication authored jointly with Alfred Hoche: *Die Freigabe der Vernichtung Lebensunwertem Lebens* (*Permission for Destroying Lives Not Worth Living*); cited and translated as "beings who are not only worthless but even manifest negative value" in Henry Friedlander: *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* (Chapel Hill: University of North Carolina Press, 1995) p. 15; also cited and translated as "not merely worthless but actually existences of negative value" in Burleigh, Michael: *Death and Deliverance: Euthanasia in Germany 1900-1945* (Cambridge, England: Cambridge University Press, 1994) pp.17-8. The 'negative value' is calculated as "a terrible heavy burden upon their relatives and society as a whole".

[xxviii] *Universal Declaration of Human Rights* Article 29(3).

[xxix] " It shall be unlawful to deprive any person, from the moment of conception, of his life or bodily integrity, save in the execution of the sentence of a court following on his conviction of a crime for which this penalty is provided by law." UN Doc.E.CN.4/21

[xxx] See the records of the UN Commission on Human Rights 5th Session (1949), 6th Session (1950), 8th Session (1952) and 12th Session (1957).

[xxxi] Bossuyt, Marc J., *Guide to the "Travaux Préparatoires" of the International Convenant on Civil and Political Rights*, Dordrecht, Boston, Lancaster: Martinus Nijhoff Publishers, 1987, p. 121. A/3764 para.113; A/C.3/SR.810 para. 2; A/C.3/SR.811 para. 9; A/C 3/SR.812 para. 7; A/C.3/SR.813 para. 36; A/C 3/SR 815 para. 28.

[xxxii] See Johannes Morsink: "Women's rights in the Universal Declaration", *Human Rights Quarterly*, Vol. 13, p.230.

[xxxiii] See Johannes Morsink: "Women's rights in the Universal Declaration", *Human Rights Quarterly*, Vol. 13, p.230.

[xxxiv] I-A Court HR, Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84 of January 19, 1984, Series A, No. 4, p. 104, para. 55.

[xxxv] Koskenniemi, Martii, "The Preamble of the Declaration of Human Rights" in Godnundur Alfredson and Asbjorn Eide, (eds.), *The Universal Declaration of Human Rights: A Common Standard of Achievement*, The Hague, Nijhoff, 1999, pp.32-3.