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Submission to the Clerk of the Houses of Parliament

For the Joint Select Committee of Parliament reviewing the recommendations contained in the Final Report of the Abortion Policy Review Advisory Group submitted to the Ministry of Health, Jamaica.

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For the Joint Select Committee of Parliament reviewing the recommendations contained in the Final Report of the Abortion Policy Review Advisory Group submitted to the Ministry of Health, Jamaica.

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Catholics for Choice (CFC) is pleased to submit this paper to the Jamaican Parliament for your consideration on the occasion of your review of the recommendations contained in the Final Report of the Abortion Policy Review Advisory Group submitted to the Ministry of Health. We hope our comments illuminate Catholic perspectives that are often kept hidden in debates such as this.

CFC shapes and advances sexual and reproductive ethics that are based on justice, reflect a commitment to women's well-being and respect and affirm the capacity of women and men to make moral decisions about their lives. Through discourse, education and advocacy, CFC works with a global network of prochoice Catholics that includes sister organizations throughout Latin America. Our other programs and projects reach constituents in Europe, Africa and the UN.

CFC supports policy making and governing structures that make a clear separation between church and state. At the same time, we also recognize that religion can make a contribution to law and policy making, particularly where these relate to social justice and the dignity of the human person. We strongly support the right of religious institutions to participate in the life of nations, to express their values, and even to attempt to influence public policy.

With this testimony, CFC will address fundamental Catholic principles, teachings, and traditions that recognize an individual's moral freedom to make the abortion decision and support the establishment of non-restrictive abortion laws. We hope you will consider our perspective as you discuss the Final Report of the Abortion Policy Review Advisory Group.

INTRODUCTION

The Roman Catholic church has had and continues to have a profound effect the world over on laws and policies involving many aspects of sexuality and reproduction, including divorce, contraception and abortion. The church claims its positions on these issues are irrefutable and nonnegotiable—particularly with respect to abortion, which it says is never permissible. Despite these assertions by many bishops and conservative Catholics, however, the fact is that some of the most important Catholic principles, teachings and traditions recognize an individual's moral freedom to make decisions of conscience, such as whether or not to have an abortion.

Some church leaders and conservative Catholic organizations have refused to consider any evidence of theological support for the establishment of non-restrictive abortion laws. These groups and individuals—working with local bishops or independently—have been particularly active in campaigns to restrict or eliminate legal abortion. Not only in Jamaica, but from Ireland to Uruguay, from Poland to Argentina, from South Africa to the United States, the hierarchy of the Catholic church and its allies have intervened in the public policy process to ban or circumscribe access to abortion and other reproductive health services.

While many conservative Catholics claim to be “experts” on this or that aspect of church teaching, a closer inspection of their supposedly definitive statements reveals that the truth often lies elsewhere.

ABORTION AND MORAL DECISION-MAKING

Church teaching on moral decision-making and abortion are more complex than believed.

The Catholic church teaches that direct participation in an abortion is an objectively grave moral sin and always is forbidden. However, Catholic teaching regarding abortion itself and moral decision-making in general does not end with this stark ban. There is much room in Catholic theology for the acceptance of policies that favor access to the full range of reproductive health options, including contraception and abortion.

Catholic teaching regards the well-formed conscience as the final arbiter in moral decision-making.

At the heart of church teachings on moral matters is a deep regard for an individual's conscience. According to the *Catechism of the Catholic Church*, "a human being must always obey the certain judgment of his conscience."¹ The church takes conscience so seriously that as Fr. Richard P. McBrien wrote in his encyclopedic reference and teaching guide, *Catholicism*, even in cases of a conflict with the moral teachings of the church, Catholics "not only may but *must* follow the dictates of conscience rather than the teachings of the Church."² (Italics in the original.)

Casual disagreement is not sufficient grounds for ignoring moral teachings. Catholics are obliged to know and consider thoughtfully Catholic teaching. After all, as McBrien writes, "the Church, as the Temple of the Holy Spirit, is a major resource of ... moral direction and leadership. It is the product of centuries of experience, crossing cultural, national, and continental lines."³ But in the end, a well-formed conscience reigns. One of the most influential church thinkers, St. Thomas Aquinas, said that it would be better to be excommunicated than to act in a way that contradicted one's conscience.⁴

The teaching on abortion is not infallible, and Catholics have the right to dissent from non-infallible church teachings.

The popular notion that whatever the pope says on a serious topic is infallible is an exaggeration of the principle of infallibility. There is a diversity of opinion regarding infallibility in the modern church. Some theologians reject infallibility altogether; others maintain that only matters of faith—not morals—can be proclaimed infallible; and theologians of a more conservative stripe maintain that all of the pope's declarations on doctrine are directed by the Holy Spirit and thus are free from error. While some claim that the teaching on abortion is infallible, it does not in fact meet the definition of an infallible teaching. Since the doctrine of papal infallibility was first declared during Vatican I, only three teachings have been declared infallible: Pope Pius IX's declaration of the

Immaculate Conception of Mary; Pope Pius XII's declaration of the Assumption of Mary; and the declaration on infallibility itself.

Before the encyclical *Evangelium Vitae* (The Gospel of Life) was published in 1995, there was much speculation among theologians and others that Pope John Paul II would declare the abortion teaching infallible. Then-Cardinal Joseph Ratzinger, the Vatican's chief doctrinal officer, confirmed that the word "infallibly" had been considered in early drafts but was rejected. Ratzinger explained that while the teaching on abortion is authoritative and deserves obedience, the encyclical stopped short of the "formality of dogmatization."⁵ The fact that the late Pope John Paul II—for whom the abortion ban had been a central theme of his papacy—did not make that declaration of infallibility can be read as a sign that such a claim cannot be made.

Catholics have the right to dissent from church teachings in certain circumstances.

While not widely known, Catholics are safeguarded within the church from teachings that may be wrong or are in development, as long as one can find sound, non-frivolous reasons for a differing position. According to the theory of probabilism (from the Latin *probare*, to test or approve), Catholics may dissent from moral teachings if an alternative position is supported by "five or six" reputable theologians—or even one exceptional theologian even if the alternative teaching is more probable.⁶

The latter is no challenge when it comes to theologians' views on abortion, even though theologians who voice positions on abortion that differ from the official position do so at great risk of Vatican censure. As long ago as 1973, noted Catholic theologian Charles Curran wrote that "there is a sizable and growing number of Catholic theologians who do disagree with some aspects of the officially proposed Catholic teaching that direct abortion from the time of conception is always wrong."⁷ (Curran himself was strongly rebuked by the Vatican for this and other divergent views. Even after the Vatican's censure, Curran maintained that his "theological positions represent the mainstream of Catholic theology and are accepted by the majority of Catholic theologians today."⁸)

Catholics share in the development of teaching through the principle of reception.

The teaching authority of the church is not based solely on statements of the hierarchy; it also includes the scholarly efforts of theologians and the lived experience of Catholic people. "Since the

Church is a living body,” the Vatican has declared, “she needs public opinion in order to sustain a giving and taking between her members. Without this, she cannot advance in thought and action.”⁹

The importance of lay Catholics’ experience in the establishment of church law is exemplified in another relatively unknown but theologically sound Catholic concept—reception. The principle of reception, “broadly stated, asserts that for a [church] law or rule to be an effective guide for the believing community it must be accepted by that community,”¹⁰ asserts Father James Coriden, former president of the Canon Law Society of America. Through the centuries, Coriden points out, church law experts have, with diverse arguments and with varying degrees of vigor, reaffirmed an understanding that “the obligatory force of church law is affected by its reception by the community.”¹¹

Like the concept of the primacy of conscience, the principle of reception does not mean that Catholic law is to be taken lightly or rejected without thoughtful and prudent consideration. “Reception,” Coriden has said, “is not a demonstration of popular sovereignty or an outcropping of populist democracy. It is a legitimate participation by the people in their own governance.”¹²

Catholics throughout the world disagree with some church teachings.

The consensus of the faithful, or *sensus fidelium*, cannot be said to support the hierarchy’s position on reproductive health care. Catholics all over the world have rejected soundly the church’s ban on contraception and in many countries only a minority of Catholics agree with church leaders on abortion.

The majority of U.S. Catholics (61%) are in favor of legal abortion.¹³ In the U.S., Catholic women have abortions at the same rate as women in the population as a whole.¹⁴ Majorities of Catholics in Bolivia (66%), Colombia (54%) and Mexico (69%) feel abortion should be permitted under all or some circumstances.¹⁵ In Italy, which is 97% Catholic, 74% favor the use of RU-486 (a drug used instead of surgical methods in some early abortions).¹⁶ Sixty-one percent of French Catholics and 51 percent of Slovakian Catholics do not consider abortion wrong if the family has a very low income.¹⁷

CATHOLIC TEACHING ON ABORTION

Although the Catholic church says that the absolute prohibition on abortion is both “unchanged” and “unchangeable,” this does not comport with the actual history of abortion teaching, and dissent, within the church.

Catholic church teachings on abortion have changed over time.

The *Catechism of the Catholic Church* contains only six paragraphs on abortion out of 2,865 paragraphs. This brief section starts: “Since the first century the Church has affirmed the moral evil of every procured abortion. This teaching has not changed and remains unchangeable.”¹⁸

The reference to the first century is to a document called the *Didache*, a document thought to be the teaching of the original twelve Apostles, which states “thou shalt not kill a child by abortion.”¹⁹

The *Didache*, however, was not discovered until the late 19th century,²⁰ so cannot retrospectively be considered as proof of any alleged continuum in Catholic teaching on abortion.

While the Catholic church always has taught that abortion is a sin, the reasons for judging abortion sinful have changed over time. In fact, through most of history, the church did not pay much attention to abortion except as a sexual issue. The early prohibition of abortion was not based on concern about the fetus or beliefs about whether the fetus was a person. It was based on a view that only people who engage in forbidden sexual activity would attempt abortion.

As philosophers Dan Dombrowski and Robert Deltete point out:

“Official opposition to abortion in the history of Catholicism has been based at different times on two distinct types of arguments: the *ontological* view is that the human fetus is a person from the earliest moments of conception, hence to abort it is either murder or something closely approximating murder; the *perversity* view is that sex is only licit within marriage and for the primary purpose of having children, hence abortion perverts sex and is immoral in the same way that contraception is immoral.”²¹

The perversity view is no longer much-argued in the Catholic church. Church officials and anti-choice Catholics now focus on the ontological view, which holds that abortion is a form of murder. This view, however, is based on faulty science. The “fetus as person” argument dates back to the 17th century, when scientists, looking at fertilized eggs through magnifying glasses and primitive microscopes, imagined that they saw tiny, fully formed animal fetuses. Neither St. Augustine (5th

century) nor St. Thomas Aquinas (13th century), two of the most important thinkers in the Catholic church, considered the fetus in the early stages of pregnancy to be a human person.

The church does not know when the fetus becomes a person.

While the church hierarchy has since rejected the notion that a fetus is a fully formed person, it has not categorically stated that fetuses are not persons, merely stating that it does not know when a fetus becomes a person. In its last statement on abortion, the 1974 “Declaration on Procured Abortion,” the Vatican acknowledged that it does not know when the fetus becomes a person: “There is not a unanimous tradition on this point and authors are as yet in disagreement.”^{22,23}

The U.S. Supreme Court explored this point at some length in its *Roe v. Wade* decision and concluded: “When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer.”²⁴

There is a history of legitimate Catholic dissent from church teaching.

Dissent from church teachings is permissible, and the church has a long tradition of disagreement among its members on official teachings, interpretations of those teachings, and ways that those teachings are expressed. At various points during its history, the church has recognized views that were at one time in opposition to official teachings. Theologians whose opinions at one time clashed with prevailing papal views and were later recognized include St. Thomas Aquinas, the biblical scholar Fr. Marie-Joseph LaGrange, and leading theologians Fr. John Courtney Murray and Fr. Henri de Lubac, who was singled out for special praise by Pope John Paul II some years after his views were criticized by Pope Pius XII.

“Although the Catholic’s first and proper instinct is to be guided by the official teachings as presently understood and interpreted,” writes McBrien, “one must nonetheless take into serious account the theological work that continues to be produced alongside, and sometimes even over against, these conventional interpretations.”²⁵

Canon laws calling for automatic excommunication for abortion make significant exceptions.

While church law cites obtaining an abortion among offenses that incur *latae sententiae* (automatic) excommunication, there are exceptions. Canon law recognizes that people who habitually lack the use of reason are not capable of committing a crime.⁷ Everyone else is considered at least capable of committing a crime by violating canon law, but not all of them are subject to penalty. For example, people under the age of seventeen; those who were unaware that they were violating a law; and those who acted in self-defense with due moderation, among others, are not subject to canonical penalties, though they may have committed a crime.

The law considers a host of mitigating factors, similar to those found in secular legal systems, before meting out punishment. People who would receive a lesser penalty include those who act in the heat of passion, those under the influence of drugs or alcohol, those who act with immoderate force in self-defense, and even in the most serious cases, those forced through fear or necessity or serious inconvenience. Canon law also tempers penalties for persons who did not knowingly and freely violate its precepts. It has also been argued that people should not be punished, or should be punished less severely, who in conscience believe that their act in a specific case was justified.

ABORTION AS AN ETHICAL CHOICE

From a prochoice Catholic position, a consideration of some of the basic tenets of Catholicism reveals that abortion not only should be legal but also can be a moral choice.

The sanctity of life includes women's lives.

Human persons are the “crown of divine creation,”²⁶ and the Catholic tradition demands respect for life and human dignity. In the case of abortion, church leaders have tended to focus this respect on the developing fetal life—giving it the benefit of the doubt that it is fully human—to the great detriment of women, whose personhood is not in question at all.

In many cases, the choice to have an abortion is a life-affirming one—both for the woman herself and for the rest of her family. Women who live in countries where abortion is illegal or unavailable and women who experience troubled or unsupportable pregnancies face a difficult situation. Legal restrictions do not stop many women from obtaining abortions—they travel out of country, making trips that involve considerable time and financial expenditures and, thus, often delay the procedure or obtain an illegal abortion. Since an early abortion is safer—and in most cases, less morally complex—this delay causes additional health risks for women already in a difficult situation. Making abortion illegal does not prevent it and causes deaths and adverse health consequences for

women. Approximately 70,000 women die each year as a result of illegal abortions in the developing world and countless others suffer grave injury.²⁷

The taking of life is permitted in some circumstances.

While the sacredness of the human person is a core value in the Catholic tradition, many theologians and church leaders maintain that the taking of a person's life can be a moral act under certain circumstances. For example, the Just War theory, a set of principles defining the moral use of force, recognizes that the taking of life in war, while never a good in itself, can sometimes be warranted by serious circumstances. The Just War theory not only accepts the taking of human life in war in cases where one's life or that of another is directly threatened, but also recognizes that war can be warranted to protect values proportional to life itself, including a nation's integrity.

Could not a "just abortion" theory admit that threats to a woman's physical and emotional health are a violation of bodily integrity comparable to national integrity? Could not a woman's capacity to care for existing children and children to come, her ability to function as a member of our society and her sense of identity and purpose be seen as values to be considered along with the potential value of fetal life?

Church leaders have applied an inconsistent ethical paradigm to difficult issues and have opted in the case of abortion not to trust women to make decisions concerning their bodily integrity, physical health and emotional well-being and their children's and families' futures. This is not acceptable to most Catholics and is not a sound basis for crafting public policy.

The principle of the lesser of two evils.

While some modern theologians reserve the term "evil" for only the most extreme violations of human rights, such as genocide, murder and torture, some Catholics do consider abortion an "evil." The consistent thinking of the Catholic church has affirmed the principle of accepting the lesser of two evils in difficult situations, which may apply to consideration of abortion for those who regard abortion as an evil. This approach reasons that sometimes it is necessary to choose one evil in order to prevent a greater evil. Abortion may be a lesser of two evils in cases where a woman's life or health is in jeopardy or continuing a pregnancy compromises her ability to care for existing

children and family members. Thus, a pregnant woman may choose the removal of a cancerous uterus even if it entails the death of the fetus because the intention is the preservation of her life, accepting the termination of prenatal life as a lesser evil.

Church teaching on the preferential option for the poor.

The Catholic church has an evolving tradition of the “preferential option for the poor,” a teaching that was highlighted in the 1991 encyclical of Pope John Paul II, *Centessimus Annus* (on the 100th anniversary of *Rerum Novarum*). In this encyclical, Pope John Paul II emphasizes the church’s “constant concern for and dedication” to the poor, and recalls Pope Leo XIII’s call for states to “remedy the condition of the poor in accordance with justice.”²⁸

In light of the church’s preferential option for the poor, individuals and policymakers should consider the issue of legal abortion within the context of poverty and from the viewpoint of the poor. Abortion should never be considered a solution to the problem of poverty nor a means to limit the number of poor people or as a method of population control. Reducing the need for abortion through efforts to prevent unintended pregnancy and help women with unintended pregnancies would be preferential. However, poor women have an especially compelling need to have access to safe and legal abortions when they decide it is necessary so that they can support the children they already have and ensure that they are able to give them what they need for a safe and secure life.

Poor women suffer the most when abortion is illegal. Some 70,000 women worldwide die every year as a result of unsafe, illegal or clandestine abortion.²⁹ In the United States, Medicaid-eligible women wait on average 2–3 weeks longer than other women to have an abortion because of difficulties they have in obtaining the necessary funds.³⁰

The Catholic church’s compassion toward the poor as enshrined in its social teachings offers a framework through which support for legalization of abortion can and should be validated. Legalizing abortion not only saves lives and preserves the health of poor women; it also honors the human rights and autonomy of all women as decision makers.

Separation of Church and State

Even in a predominantly Catholic country, laws governing access to abortion need not adhere to the official Catholic position. The Second Vatican Council’s *Declaration on Religious Freedom*

reinforced the call for Catholics to respect the positions of people of other faiths. This is particularly significant given that the Catholic church's position on reproductive matters, including abortion, is more conservative than that of other major faith groups. In addition, as noted, many Catholics do not support the position of the church on abortion.

Sound public policy would affirm respect for developing life while clearly recognizing the need for women to have the option of choosing an abortion. Catholics can support public policies that acknowledge the moral agency of women, respect developing life and appreciate the Catholic tradition while honoring the views of other faith groups.

Conclusion

Church teachings, tradition and core Catholic tenets—including the primacy of conscience, the right to dissent and support for the separation of church and state—leave room for support for a more liberal position on abortion. Not only has the church acknowledged that it does not know when the fetus becomes a person but it also has not declared its position on abortion to be an infallible teaching. Catholics the world over can, in good conscience, support access to abortion and can affirm that abortion can be a moral choice.

In a pluralistic society in which many major faith groups recognize the possibility of abortion's morality, Catholics need not work to legally restrict access to abortion. Current Catholic theology makes a clear distinction between the moral teachings of the Catholic church and the right of legislators to use prudential judgment in developing public policy. To quote Vatican II authors again: "It is of supreme importance, especially in a pluralistic society, to work out a proper vision of the relationship between the political community and the Church... The political community and the Church are autonomous and independent of each other in their own fields."³¹

We commend the Parliamentarians of Jamaica for their careful consideration of these issues. We hope our testimony has helped illuminate a side of this debate that is frequently silenced.

¹ *Catechism of the Catholic Church*, second edition, Doubleday, 2003, section 1790.

² Richard P. McBrien, *Catholicism*, Study Edition, Winston Press, 1981, p1004.

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- ³ Richard P. McBrien, *Catholicism*, Study Edition, Winston Press, 1981, p1004.
- ⁴ St. Thomas Aquinas, as quoted in T. O'Connell, *Principles for a Catholic Morality*, Crossroad, 1978/1990, Chapter 8.
- ⁵ *National Catholic Reporter*, April 7, 1995.
- ⁶ The Catholic Encyclopedia, "Probabilism," www.newadvent.org/cathen/12441a.htm, viewed June 26, 2007.
- ⁷ Charles Curran, *Jurist*, 32:183, 1973.
- ⁸ Richard N. Osterling, "Curran on the Carpet," *Time*, June 21, 2005.
- ⁹ Vatican, *Communio Et Progressio* (On the Means of Social Communication), 115, 1971.
- ¹⁰ James A. Coriden, "The Canonical Doctrine of Reception," *The Jurist*, 1990.
- ¹¹ *Ibid.*
- ¹² *Ibid.*
- ¹³ Belden Russonello & Stewart, *The View from Mainstream America: The Catholic Voter in Summer 2004*, Catholics for a Free Choice, July 2004.
- ¹⁴ Guttmacher Institute, *Perspectives on Sexual and Reproductive Health*, 2002.
- ¹⁵ Belden Russonello & Stewart, *The Attitudes of Catholics on Reproductive Rights, Church-State, and Related Issues: Three National Surveys in Bolivia, Colombia and Mexico*, Catholics for a Free Choice, December 2003.
- ¹⁶ Catholics for a Free Choice, *A World View: Catholic Attitudes on Sexual Behavior & Reproductive Health*, 2004.
- ¹⁷ *Ibid.*
- ¹⁸ *Catechism of the Catholic Church*, second edition, Doubleday, 2003, section 2271.
- ¹⁹ "The Didache, or Teaching of the Twelve Apostles," translated by Charles H. Hoole, available at www.earlychristianwritings.com/text/didache-hoole.html, accessed May 23, 2007.
- ²⁰ *Ibid.*
- ²¹ Daniel Dombrowski, "A Brief, Liberal Catholic Defense of Abortion," *Conscience*, Spring 2002.
- ²² "Declaration on Procured Abortion," Sacred Congregation for the Doctrine of the Faith, 1974, fn 19.
- ²³ Some church leaders speak of abortion as murder. When they do so, it is an informal, emotional, shorthand way of expressing opposition to abortion. Calling abortion murder may indeed reflect that particular church leader's view, but in fact, the church does not officially teach that abortion is murder, because the church has no formal position on when the fetus obtains a soul and/or attains personhood.
- ²⁴ *Roe v. Wade*, 410 U.S. 113 (1972).
- ²⁵ Richard P. McBrien, op.cit., p1004.
- ²⁶ Richard P. McBrien, op.cit., p1004.
- ²⁷ World Health Organization, *Safe abortion: Technical and policy guidance for health systems*, 2003.
- ²⁸ *Rerum Novarum*, n35.
- ²⁹ World Health Organization, op.cit.
- ³⁰ Heather Boonstra and Adam Sonfield, "Rights without Access: Revisiting Public Funding of Abortion for Poor Women," *The Guttmacher Report on Public Policy*, April 2000.
- ³¹ *Gaudium et Spes*, 76.