

# **PASTORAL STATEMENT ON THE TERMINATION OF PREGNANCY**

**Evangelical Lutheran Church in Southern Africa (Natal-Transvaal)**  
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### **A. Introduction**

This paper is written by a Lutheran commission within the context of the transition in South African Society. We have come out of a polarised society, in which the State claimed to be acting on the basis of Christian values and where Christianity, defined in a certain way, was the dominant and favoured faith position. In the changed system since 1994, the State acknowledges that we are a multi-religious society and attempts to treat all religions equally. The State defines itself as a secular state, based on a human rights culture entrenched in a new Constitution (Act 108 of 1996) and a bill of rights.

We are thus in a transition in which the fundamental values of our society are in the process of discussion and redefinition to determine what kind of community we want to be. In this debate, the Christian Church needs to make its voice heard to help shape the direction of this society in flux. We need to be firmly grounded in our basis of faith, to guide us in making responsible decision in the world in which we live.

As a Lutheran Church we stand on the basis of the Biblical witness of the saving act of Jesus Christ, who redeems us through his grace, a gift we need to receive in faith and live out in love. We take our orientation from the Scriptures and from our Confessional Writings. On this basis, we may examine the concrete ethical issues facing us and come to a responsible decision based on our conscience bound by the Word of God.

The issue of termination of pregnancy (or Abortion - the terms will be used interchangeably in this paper) presents us fundamentally with the question of the values of a society, which is confronted with severe social problems. It is one of the grey areas in a human rights culture, and also an area for Christian ethics fraught with ambiguity. We need to come to a responsible position within this ambiguity.

From our Lutheran position, we maintain that God expresses his will for the world in his Word and his Commandments. The latter intend to limit the effect of sin in the world and make us continuously aware of our sinfulness, so that we may flee to his Grace for justification and are transformed by it. We therefore realize that in a fallen world, we often fail to live by his laws, and that there are certain situations in which we need to ask what would be the lesser evil or would lead to the greater good. This decision would be shaped most particularly by the commandment of love as was shown by Jesus Christ. Our interest is thus not how we can remain blameless, this would be an attempt at self-justification, but how we can serve our neighbour in love within the ethical dilemmas of everyday life. Jesus is the one who carries our guilt, which we cannot avoid incurring daily in our ethical decision-making.

We also believe this is the way Jesus himself dealt with the law: The law is there to benefit human life, not vice-versa, (Mk 2:27) and where a norm in a given situation does not serve the commandment of love it may be overruled. Luther spoke of Christian Freedom which is placed in the bounds of Christian Love. Our ethical system should be shaped not by self-interest, or by the desire to be "right", but by love and compassion for our neighbour, particularly for those people who suffer and who are vulnerable.

In the case of abortion our argumentation should have both issues in mind: the criterion gained from the Word of God of the value of human life, and the concern and compassion for the people particularly affected by the dilemma, namely both the mother and her unborn child. We are also interested in finding a position which strengthens relationships of caring and responsibility within our society.

## **B. The gift of Life**

We believe that human beings are created by God in his image and likeness (Gen 1:27-28). This means that they are persons of value and dignity. Human life is a miracle and is valuable in and of itself, regardless of its value to society. Every human being is unique and precious in God's sight.

The miracle of a new human life begins at the moment of conception. The wonder of life and creation includes that which happens already in the womb, (Psalm 139: 13-14), and God's relationship of love with his creature begins long before the person can respond, even before birth (Is 44:24, Jer. 1:5). The ability to stand in awe of the developing life is important in cultivating respect for life and responsibility to children. As human beings we are always in the process of development and human life needs the most protection when it is at its most vulnerable. We are therefore called to care for life, particularly there where it needs protection. This means, among others, small children, the sick and frail, the disabled and also pregnant women and their unborn children.

In order for pregnant mothers and children to receive the care and protection they need, it is important that procreation happens within stable, loving relationships. We are thus committed to strengthening marriages and families as a gift of God, in need of nurture and protection (see "Order of Christian Life" Art 7 of our Church). The gift of life needs a network of relationships in which a foetus can develop into a healthy and fulfilled individual. Such relationships of mutual care, responsibility and interdependence need to be fostered in order for unborn life to be truly valued and protected.

The relationship between the mother and the unborn child is also one of interdependence. In the abortion debate we should not talk of the life of the child versus the life of the mother. The unborn child is not merely part of the mother like a limb or a tooth, nor is it an

independent human being which can live apart from the mother. The foetus is dependent on the mother in every way, and in the same way what happens to the foetus will invariably affect the physical, emotional and spiritual well-being of the mother, whether she carries it to term or not. The mother is deserving of protection and care in the same way as the unborn child.

Not every conception leads to a fully grown human being. A significant proportion (about one fifth) ends in miscarriage, some already very early. However abortion is a conscious decision to end a human life in the process of development, preventing it from reaching its full potential. As such it is the conscious termination of a life, which is precious to God.

### C. The Problem

New life is a gift from God, and conceiving a child should be a joyous moment in the life of any couple, and a precious happening in the life of any woman. To carry a child, bring it into the world and see it and help it grow up is a special privilege and blessing. However, at times, the news of pregnancy is accompanied by shock, anxiety or depression. In some cases the ideal of stable, caring marriages as the context for procreation breaks apart.

We live in a society in which the pressure to experiment with sexuality affects many young people. Often they become sexually active at a very early age without enough guidance as to how to exercise their sexuality responsibly, and to build lasting relationships. Many women are still dominated in relationships to such an extent that they do not have a free choice in exercising their sexuality. Some may have little access to contraceptives, others may be abused or left alone to care for their children.

The following are some of the reasons which may make the news of pregnancy an existential crisis for the woman concerned:

- a teenage pregnancy which disrupts schooling;
- a pregnancy out of wedlock and the realisation that marriage is not an advisable option;
- other problems in the relationship;
- financial difficulty or poverty;
- the woman may already have too many children;
- the fear of not being able to cope with child rearing;
- the fear of the loss of one's own life;
- a sense of alienation from one's own body;
- the knowledge of the unborn child suffering from congenital abnormalities.

The most serious reasons are rape, incest or any kind of coerced intercourse. This usually means a serious trauma for the woman and may make her feel unable to carry the child to term.

It often happens that unplanned, initially unwanted foetuses grow up into happy, balanced children. This happens if the woman can come to terms with the pregnancy and if she has a support network on which she can depend: a husband or partner, an extended family, friends or congregation. Many women will opt to have the child if they know that there is a support network in place which can assist them.

The lack of such a support system is one of the factors that drives pregnant women into desperation.

-The woman may be married and find that her husband does not give her real assistance, financially or otherwise with the many children already there, and that she can no longer cope. - She may find that her partner leaves her on finding she is pregnant, or that she cannot trust him to really support her when it gets difficult.

- She might be afraid of being rejected by parents or friends, and not be prepared to rely on their help.
- She may fear the censure of her faith community for being pregnant outside of marriage.
- She may also be the primary breadwinner and afraid of losing her job.

The failure to come to terms with the pregnancy means a failure to accept the child and this has very serious long term implications for the mental health of both the child and the mother. The child is dependent for its physical and emotional needs on the mother, and most basically for its sense of self-esteem. If the child does not feel it is accepted and loved, it may develop severe psychological problems and a low self-image. If the mother feels she cannot cope with the child, the result may be child abuse or even abandoning the child, as happens with alarming frequency in South African hospitals.

What are the options for a pregnant mother who cannot accept her pregnancy? One option is adoption, which is a valuable alternative which should be actively encouraged. Nevertheless, many women fear this option. They are afraid of becoming bonded with their child and then having to give it up, they are afraid of the censure of society for not keeping the child or particularly in the case of young girls they have a sense of shame in going through with the pregnancy. In South Africa, adoption through official channels is largely an option only for white mothers. Few black families are willing to adopt children who are not related to them. Intercultural adoption is becoming easier, but it has its own difficulties.

For women who did not want to carry their pregnancy to term, there were few possibilities for legal termination except in the case of rape, incest or certain medical indications. This meant women opted for illegal abortions which are very dangerous to the health of the mother. They came to hospitals with incomplete abortions at high cost to the state. The fact that women are willing to seriously risk their health shows the level of desperation of some mothers when faced with the prospect of an unwanted child.

#### **D. Response of the State**

Until 1975, abortions were illegal. This was increasingly found to be untenable, and thus in 1975 the "Abortion and Sterilisation Act" was adopted. Abortion was permitted in particular, clearly defined circumstances, according to the following indications:

- pregnancy due to rape or incest, or sexual intercourse with a person mentally unfit to give consent,
- where the physical and mental health of the pregnant woman is in danger,
- in the case of malformation of the foetus.

Here the law addressed the medical profession.

However, because of the high rate of illegal abortions and the alarming numbers of abandoned infants, there has long been pressure in South Africa to relax the abortion laws further and to make termination a safe and legal option for more women. The African National Congress made a "pro-choice" platform its own even before it came to power, particularly owing to the pressure of the women in its ranks and because it represents largely the black population which struggles with poverty, too large families and abuse of women.

The State has reacted to the social problem it faces by revising the abortion law in the "Choice on Termination of Pregnancy Act" of 1996. The new legislation now does not merely relax the conditions under which a legal abortion can be obtained, but has made it

dependent solely on the will of the woman concerned before 12 weeks. From 12 to 20 weeks, a pregnancy may be terminated on the advice of a doctor or a social worker and after 20 weeks only on the advice of a medical practitioner if there is risk to mother or foetus. (see text of new law in Appendix ) But abortion is clearly now available on demand during 12 weeks into the pregnancy, without the consent of the partner or husband or the parents/ guardians in the case of a minor being required or any reasons needing to be given.

Several reasons have pushed the State into this position: Some women would still opt for illegal abortions if they did not have the final choice, and feared they might be forced, by family members or health officials, into bearing a child they do not feel they can cope with. It is also difficult and time-consuming to determine which women have serious problems and which of them should be able to bear the child with some assistance. The new bill of rights also gives women the right to control their own sexuality and have the final say in what affects their lives and their bodies. The unborn child is not yet a "juristic person" and thus is not seen to fall directly under the protection of the constitution. Nevertheless, serious questions need to be raised here about what the implications are if the State abdicates its responsibility to protect the unborn. Are only "juristic persons" worthy of protection in the eyes of the State? Can one abdicate one's responsibility to the unborn because they cannot yet have "rights" in the legal sense? What is the role of the State with regard to unborn children? All these questions have a bearing on the value-base of a society, and this is where the church needs to make its voice heard.

## **E. Response of the Church**

Although we realize that, as a Church, we do not always speak with one voice on this issue, in the realm of ethics, we confirm the dual function of the church: to be a voice addressing the state and society at large on the one hand, and its own members on the other hand.

Firstly, we need to be a critical counterpart to the state when it makes its laws, to determine whether the laws fulfil the criterion of justice, the common good and the protection of vulnerable members of society. We realise we will never attain the ideal society, but we can determine whether we are moving closer to what we would see as God's will for his people, or whether we are moving further away.

Secondly, we need to give pastoral guidance to our own members who are seeking how to live out their lives in responsibility to God's will. We differentiate between what is legal in a society and what should be ethical behaviour for a Christian. In determining this position we seek to guide, support and be compassionate, rather than determine moral laws.

### **1. Our Response to the State**

The revised law on abortion was passed in 1996. It is important that we understand the reasons for the law, and the problems that brought it into being. However, it is equally important that we look at the legislation and its effects critically and continue to voice our concerns, particularly regarding the value of human life. When speaking to the State, we speak as Christians, but mainly on the basis of reason and our common concern to build a society based on human dignity.

We have grave concerns about the possible implications if abortion becomes too easy and too freely available and if the State abdicates its responsibility to protect the unborn. Abortion on demand for any reason within the first twelve weeks, means that abortion is in danger of becoming merely another means of birth control, even though this may not be intended by the law. This can have grave repercussions on the life of the mother and on society as a whole. Methods of birth control have brought great freedom and new opportunities to women which should in general be welcomed. Abortion should, however, never be just a further option of birth control, as there is another life in the equation which needs to be considered.

In order for women to come to terms with an abortion psychologically and/or spiritually, they need to deny that what they are doing is ending a human life. This means, denying the foetus in its status of a human life. However, most women are not able to do this with real honesty. This means they may live with suppressed guilt, which may be with them for many years, sometimes leading to depression or other psychological symptoms. While some women face the tragedy of abortion and work through the pain and the guilt, others deny that there is a problem. This may mean that they no longer allow themselves to marvel at the development of life which should be a fundamental experience of a mother. Some of the miracle and wonder of life needs to be denied in order to be able to live with having terminated a pregnancy, and this is true even more for a society which carries out abortions on a large scale.

Denying the gravity of ending a developing life invariably leads to a cheapening of life and a diminishing of its sanctity. One can only speculate on the effect this eventually has on a society as a whole. If abortion is too easy an option, this may lead the woman to believe that she can rid of a "problem" in her life, without carrying the cost. However, there is invariably a cost involved if human life, even in its most undeveloped form, is no longer protected.

Making abortion easily available eases some pressures on women, but it is inevitable that it will create new pressures. The mother may become susceptible to pressure by the partner, parents or friends to terminate, even if she herself would like to have the child. Many men might welcome the opportunity to evade their responsibilities after irresponsible intercourse. They may withdraw their support if the woman decides against an abortion. Readily available abortion may make some men even less willing to take joint accountability for contraception or responsible sexual intercourse. Usually it is the woman alone who bears the physical and psychological cost of an abortion. We are particularly concerned about the pressures society may bring to bear on a woman expecting a disabled child to terminate the pregnancy.

Many women take time to come to terms with a pregnancy. Abortion may become an "easy option" even for women who would with time and support have accepted their pregnancy. The pressure to decide before the twelve-week deadline (if they want to exercise the right to decide alone), may bring some women to make a choice they may later regret. The decision to end a pregnancy is a traumatic one and an abortion cannot be made undone. The conflict is potentially heightened if abortion is no longer seen only as a last resort, in a desperate situation, but as a morally acceptable alternative under any circumstances.

We are also concerned about the effect on medical practitioners and other health workers. While those who have severe reservations may refrain from performing terminations, others will do so for the sake of the pregnant woman. We respect the freedom of

conscience in both cases. We are gravely concerned however, about pressures being brought to bear on health workers who object, e.g. possible criminalising those conscientious objectors who prevent terminations of pregnancy on demand - Act 10.1 (c). In the case of medical practitioners who perform abortions we are concerned about the psychological toll it will exact on these people, who have been trained and have promised to preserve life, particularly if abortion becomes a routine procedure. Further concerns are:

- What implications does this have on the self-understanding of the medical profession?
- Will abortion be seen as a procedure comparable to removing an appendix or a tumour?
- What safeguards are there to prevent commercial exploitation of abortions and foetal tissues?
- What will be the long term impact on the understanding of the value of human life?

While abortion is in the first instance the dilemma of the pregnant woman, it can never be her issue alone. She stands in a network of relationships with people who are affected, especially the husband or partner, who should if at all possible be involved in the decision-making, though we recognise that making this a legal requirement is very difficult. Although the impression that it is the woman's issue alone may give her the freedom of choice she wants, in the end it may leave her isolated as other people and society abdicate responsibility. This is another step in the individualisation of society and the withdrawal of the responsibility of society as a whole for its vulnerable members. This is a trend in modern society which we view as highly undesirable which should be combatted rather than encouraged.

### **What should the role of the State be?**

We recognise that it is not the function of the state to legislate on personal morality. Laws have to order society within the given conditions and need to take the given social situation into account. We need to differentiate between what is legal and what is good. Laws try to keep evil within bounds, to keep harm and destruction under control. With the severe social problems South Africa faces, some form of legalised abortion seems inevitable. However, we believe the State has a responsibility, even where resources are scarce, to protect life, even unborn life, wherever humanly possible.

While trying to keep the damage which unwanted pregnancies can cause under control through safe and legal abortions, the State should do all in its power to ensure that this remains a last resort through

- giving pregnant women all the support they need to carry their children to term;
- assisting civil society in providing institutional care for infants who cannot be cared for by their mother, in creches, day care centres and children's homes;
- education for family planning, contraception and through counselling women on options other than abortion;

-promoting working conditions for the furtherance of stable relationships.

While counselling should not put a woman under pressure,

- it should make clear the seriousness of an abortion and its possible emotional and psychological consequences, and should show up ways to deal with these.

They should allow no woman an abortion simply on demand without going through a process of counselling and considering other options. Nevertheless it should be respected that in the end it is primarily the woman who has to live with the consequences of the decision one way or the other. She should therefore be able to make the final decision according to her conscience.

## **2. A pastoral response to our own members**

In a time of rapid transition and change of values and norms in society, many people in our congregations are becoming disorientated and insecure as to how to live their lives as God's children in responsibility to their neighbour. In such a time, the church has the responsibility to give guidance by deepening the members' understanding of their basis of faith which underlies all their decisions in life. We need to sharpen the consciences of our members by the word of God, while being a caring, compassionate community which gives support to members who face difficult situations in their lives. The fact saddens us, that many people who face brokenness and guilt, no longer seek help in a faith community but look elsewhere, because they fear moral judgement and rejection. We ought to be a community which reflects Jesus' practice of love also to those who have failed by the standards of church and society.

Our Lutheran confession teaches us that we Christians are not a group of sinless, perfect people, but a community of sinners who live by the forgiving love of God alone. We are justified by the grace of God, even while we continue to live in a network of sinfulness from which no one is excluded: "For there is no distinction, since all have sinned and fall short of the glory of God; they are now justified by his grace as a gift, through the redemption that is in Christ Jesus" (Romans 3:22-24). It is therefore not for us to judge others, but to confess together our own sins and the sins of our society. Not one of us is sinless in order to cast the first stone (John 8:7).

We confess that the church often failed to provide caring support for people in moral dilemmas. We confess that our judgemental attitude, that of our congregations and society against unmarried mothers, made their already difficult situation even harder. We confess that we have failed to give empathetic guidance to the youth and to make them feel understood in their problems. We have often condoned stereotypes of our society and allowed men to evade their responsibility to the children they have fathered. We confess that we often silently condone the increasingly materialistic, consumerist nature of society, which is child-unfriendly and undermines healthy, responsible and lasting relationships.

We acknowledge that the church has in the past also given and is still giving caring support to members in their dilemma and despair. We want to encourage all forms of help and assistance.

We believe, however, it is our pastoral duty to state unambiguously that ending a pregnancy, even for understandable reasons, is sinful and makes both the person performing the abortion and the person allowing it guilty. Sinful decisions are unavoidable in a fallen world, and it is sometimes necessary to choose between two evils. Yet, abortion is taking a human life, and as such makes us guilty before God.

We believe that we as human beings were created in God's image. However this image of God has been broken like a shattered vase, which needs to be healed and reassembled. We are all part of this brokenness, and our sinful actions contribute to this brokenness. Ending the life of an unborn child is an action which further shatters the image of God. This brokenness needs to be acknowledged and confessed. Otherwise, there can be no healing.

As Christians, we believe and trust that this brokenness can be healed, through the love and saving act of Jesus Christ. Even the tragedy of a life which was never allowed to develop can be taken into his caring and be healed and given meaning. In all humility we entrust ourselves to him in the sinfulness of our decisions. Jesus Christ has taken this

brokenness to the cross so that we may be healed (John 3:16; 2 Cor. 5:19). We can go to the cross with our guilt, also with the guilt of a woman who has chosen to end the life of her unborn child.

Accepting that we are all part of a community of sinners who live by God's forgiveness, mean that we can go into life with its ambiguities courageously. We need not escape from the ambiguity and guilt by relativising the seriousness of our decisions. However we need to ask ourselves continuously what decisions contribute to the brokenness of our society and which may contribute to its healing. If we simply condemn the termination of a pregnancy but leave the woman alone with her problems, we contribute to brokenness rather than healing.

### **What then is our pastoral response to the issue of termination of pregnancy?**

Our responsibility here lies particularly in four areas:

- a) Pastoral Counselling and solace for people directly affected by an unwanted pregnancy: that is the mother, the husband or partner, other family members and friends.
- b) Pastoral Support for medical practitioners and other health workers faced with the moral dilemma of whether to perform terminations.
- c) Education and support for young people who are faced with the pressures and questions of how to live out their sexuality responsibly.
- d) Encouraging members of our churches to build a community supportive of life.

#### **a) Counselling the people directly affected:**

The church needs to signal to the people involved in the crisis of an unwanted pregnancy, that its door is open. The church is willing to provide empathetic counselling. Where possible, skilled counselling, also by women counsellors, should be encouraged by the church.

The counselling process should be understanding, and take seriously the suffering and anguish involved. However, where possible, it should encourage the mother to carry the child to term and to point out support systems and other options such as adoption, foster care etc. Feelings of anxiety, guilt, depression or anger need to be worked through honestly and openly. The counselling process should, where possible, draw in all affected parties and encourage both the father and the mother of the unborn child to seek guidance together from the word of God, and to struggle through this decision before God in prayer. God should be shown as a loving father - also of the unborn child. The counsellor needs to speak openly about sin and guilt, but also show up the cross as a way to healing, comfort and solace, also in this conflict.

The counselling process needs to enable the affected people to come to a decision, in responsibility before God. Even if the counsellor does not agree with this decision, it should be respected, and be made clear that the door to future counselling remains open, particularly if this should become necessary after an abortion. Where an abortion has already taken place, opportunity needs to be given for grief, confession and forgiveness.

Where parents decide to continue with a pregnancy even in difficult circumstances, they should be assured of the strength and blessing of God, and the caring support of the congregation. This is particularly important where parents decide to carry to term a

possibly disabled child.

### **b) Giving guidance to medical practitioners and health workers**

If abortion becomes common practice in the hospitals, it is inevitable that this will put tremendous strain on the conscience of medical practitioners and other health workers. There is a danger that it will polarise the profession, and that those who agree to perform abortions find that more and more of their time is spent ending human life rather than healing it. Pressure can be brought to bear in many ways on practitioners who object to abortions from limiting their career possibilities to presenting them with women where bleeding has already been induced, to force them to become involved in performing an abortion. We object in the strongest terms to attempts to violate the individual conscience in any way and we note that freedom of conscience is protected in the Bill of human rights. We pledge our support to those medical practitioners who face hardships because of decisions of conscience. As a church we support them in this by providing counselling where needed, and by praying with and for them in their difficult situation.

In respect of abortions, all medical practitioners and health workers will have to take their decisions in accordance with their conscience and out of concern for human life. Christian health workers will take this decision in responsibility before God. Whether it is responsible to perform a termination cannot be generally determined but lies within the individual conscience and should be judged case by case, considering among others the following factors, the mental and physical health of woman and foetus, coerced and/or criminal intercourse, and the individual social context. Even medical practitioners and health workers who agree to perform terminations should have the right to refuse in cases where they have conscientious objections. No terminations should be performed unless the woman has been fully informed of other options and of the possible physical and psychological consequences of an abortion. Abortion is not tenable where acceptable alternatives are available, such as a waiting list for adoption / foster care. No termination should be performed on a minor without her having been counselled by a trusted adult and, unless there are very strong reasons to the contrary, having consulted with her parents. Abortions should not be performed without providing information on family planning, including contraceptives and sterilisation, to prevent an unwanted pregnancy in the future.

### **c) Youth**

This is an area where, next to the parental home, the church has direct responsibility, but where they often fail. Young people seldom turn to the church with their questions and crises with regard to relationships and sexuality. Nevertheless, the church cannot abdicate responsibility in this regard. It should support the open discussion of the issue also in schools. No teenage pregnancy should result simply from ignorance about sexuality and contraception. In a time when the HI-Virus has reached alarming proportions and AIDS is prevalent, this education has become even more urgent. The issue of sexuality should therefore be discussed openly in church youth groups and at home. Here it is important to stress the significance of stable relationships, faithfulness and waiting, without making young people, who have already been sexually active, feel rejected. The young people should feel that they can discuss any concern they have, openly. Self-respect and respect for the opposite sex should be taught early, and young girls in particular should be taught that they can say "No" to sexual advances. Patience and sexual abstinence should be presented not as a demand or law, but as an opportunity to

deepen and ripen relationships and put them on a more lasting foundation. The church should find and train leaders of the youth who feel comfortable talking openly about sexuality and who can give young people reliable information and advice.

#### **d) Building a life-supporting community**

The church's response to abortion should never focus on this issue alone, but needs to be broadly based and encompass other relevant aspects. This means, amongst others, building a family and marriage supporting ministry, caring congregations who can support people in crisis such as single mothers or couples in conflict, an environment and atmosphere which is child-friendly, and encouraging joint responsibility for child-rearing by men and women. Adopting or fostering children needs to be promoted as a special calling or ministry, either in normal families or in children's villages. Other networks of support should also be encouraged such as day care centres, children's homes, and places of refuge for single mothers.

The church needs to stand up in society for life-affirming values and challenge the dominant ethos of society which sees value in human life primarily in terms of production and material consumption. We need to challenge images of irresponsible sexuality which do not consider the consequences for oneself and the other. We also need to challenge the increasing trend to seek relationships for one's own benefit, without commitment to the other person. We also need to challenge situations of human degradation and poverty - situations where children cannot grow up in human dignity and situations where women cannot make choices of their own and are abused. There are no short-term solutions to these issues, but they are all part of the web of problems which may drive women to seek abortions.

As church we should be a prayerful, loving community, which teaches and demonstrates responsibility one for another, and which shows where help is available in difficult situations. We need to lead each other to Christ, who alone is the source of life in all its fullness.

#### **Summary and Conclusion**

In our country, which is in the process of painful transition and redefinition of its selfunderstanding, it is important that we take our stand as a church. We should not only say what we are against in a changing society, but even more clearly what we are for, and in what way we believe we can participate in this process.

We need to say clearly that God is a God of love and life, to whom every human life is infinitely precious, and that therefore, ending a human life, also an undeveloped life, is a tragedy and makes us guilty before God. At the same time we also live in a fallen world, where we often cannot choose the absolute good, but only between evils. We believe we are a community of forgiven sinners living out of grace, becoming guilty again and again. God calls us not into a sinless life, but into a life of service and love. In seeking for what serves life best, we are sometimes forced to make painful decisions, which we can bring before God in prayer.

In the painful issue of whether or not to abort an unwanted child, we recognise that in our society there may be situations where an abortion seems to be the only responsible way out. Yet we are concerned about what the effect of abortions, particularly on a large scale could be on society's perception of the value of human life. We are convinced it will

invariably lead to a cheapening of life and therefore we see abortions are a last resort only, never a means of birth control. We want to promote our ability to marvel at the miracle and the sanctity of life as it unfolds and develops to its full potential.

We do respect the right of both the mother and the medical practitioners and health workers to exercise freedom of conscience in deciding whether an abortion is to be performed. We see our responsibility in sharpening the conscience and broadening support networks, so that fewer women will feel the need to resort to this drastic action. Abortion is a symptom of a much larger problem and needs to be addressed in a comprehensive way.

As a church we want to teach and demonstrate responsibility and respect for one another and build a caring community in which people, even those faced with traumatic moral decisions and those who have made decisions we feel may be wrong, may find help, forgiveness and healing. This we can do in the name of Christ, who gave his life so that our sins may be forgiven and who makes us his instruments of service and love.

## **Appendix A:**

### **The new Law: "Choice on Termination of Pregnancy Act" of 1996.**

**REPUBLIC OF SOUTH AFRICA**  
**CHOICE ON TERMINATION OF PREGNANCY BILL**  
(As amended by the Portfolio Committee on Health (National Assembly))  
[B 80B-96] - ISBN 0 621 27040 7  
**BILL**

To determine the circumstances in which and conditions under which the pregnancy of a woman may be terminated; and to provide for matters connected therewith.

#### **PREAMBLE**

- Recognising the values of human dignity, the achievement of equality, security of the person, non-racialism and non-sexism, and the advancement of human rights freedoms which underlie a democratic South Africa;
- Recognising that the Constitution protects the right of persons to make decisions concerning reproduction and to security in and control over their bodies;
- Recognising that both women and men have the right to be informed of and to have access to safe, effective, affordable and acceptable methods of fertility regulation of their choice, and that women have the right of access to appropriate health care services ensure safe pregnancy and childbirth;
- Recognising that the decision to have children is fundamental to women's physical, psychological and social health and that universal access to reproductive health care, services includes family planning and contraception, termination of pregnancy as sexuality education and counselling programmes and services;
- Recognising that the State has the responsibility to provide reproductive health to all, and also to provide safe conditions under which the right of choice can be exercised without fear or harm;
- Believing that termination of pregnancy is not a form of contraception or population control;
- This Act therefore repeals the restrictive and inaccessible provisions of the Abortion and Sterilization Act, 1975 (Act No. 2 of 3975), and promotes reproductive rights and extends freedom of choice by affording every woman the right to choose whether to have an early, safe and legal termination of pregnancy according to her individual

beliefs.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:--

### **Definitions**

1. In this Act, unless the context otherwise indicates--
  - (i) "Director-General" means the Director-General of Health; (iii )
  - (ii) "gestation period" means the period of pregnancy of a woman calculated, from the first day of the menstrual period which in relation to the pregnancy the last; (iv)
  - (iii) "incest" means sexual intercourse between two persons who are related to each other in a degree which precludes a lawful marriage between them: (iii)
  - (iv) "medical practitioner" means a person registered as such under the Medical. Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974); (v)
  - (v) "Minister" means the Minister of Health; (viii)
  - (vi) "minor" means any female person under the age of 18 years; (vii)
  - (vii) "prescribe" means prescribe by regulation under section 9: (x)
  - (viii) "rape" also includes statutory rape as referred to in sections 14 and 15 of the Sexual Offences Act, 1957 (Act No. 23 of 1957); (ix)
  - (ix) "registered midwife" means a person registered as such under the Nursing Act, 1978 (Act No. 50 of 1978); (vi)
  - (x) "termination of a pregnancy" means the separation and expulsion, by medical or surgical means. of the contents of the uterus of a pregnant woman; (i)
  - (xi) "woman" means any female person of any age. (xi)

### **Circumstances in which and conditions under which pregnancy may be terminated**

2. (1) A pregnancy may be terminated--
  - (a) upon request of a woman during the first 12 weeks of the gestation period of her pregnancy;
  - (b) from the 13th up to and including the 20th week of the gestation period if a medical practitioner, after consultation with the pregnant woman is of the opinion that-
    - (i) the continued pregnancy would pose a risk of injury to the woman's physical or mental health; or
    - (ii) there exists a substantial risk that the fetus would suffer from a severe physical or mental abnormality; or
    - (iii) the pregnancy resulted from rape or incest; or
    - (iv) the continued pregnancy would significantly affect the social or economic circumstances of the woman; or
  - (c) after the 20th week of the gestation period if a medical practitioner, after consultation with another medical practitioner or a registered midwife, is of the opinion that the continued pregnancy-
    - (i) would endanger the woman's life;
    - (ii) would result in a severe malformation of the fetus; or
    - (iii) would pose a risk of injury to the fetus.
- (2) The termination of a pregnancy may only be carried out by a medical practitioner, except for a pregnancy referred to in subsection (1)(a), which may also be carried out by a registered midwife who has completed the prescribed training course.

### **Place where surgical termination of pregnancy may take place**

3. (1) The surgical termination of a pregnancy may take place only at a facility designated by the Minister by notice in the *Gazette* for that purpose under subsection (2) The Minister may designate any facility for the purpose contemplated in

subsection (1), subject to such conditions and requirements as he or she may consider necessary or expedient for achieving the objects of this Act.

(3) The Minister may withdraw any designation under this section after giving 14 days' prior notice of such withdrawal in the Gazette.

### **Counselling**

4. The State shall promote the provision of non-mandatory and non-directive counselling, before and after the termination of a pregnancy.

### **Consent**

5. (1) Subject to the provisions of subsections (4) and (5), the termination of a pregnancy may only take place with the informed consent of the pregnant woman.

(2) Notwithstanding any other law or the common law, but subject to the provisions of subsections (4) and (5), no consent other than that of the pregnant woman shall be required for the termination of a pregnancy.

(3) In the case of a pregnant minor, a medical practitioner or a registered midwife, as the case may be, shall advise such minor to consult with her parents, guardian, family members or friends before the pregnancy is terminated: Provided that the termination of the pregnancy shall not be denied because such minor chooses not to consult them.

(4) Subject to the provisions of subsection (5), in the case where a woman is

(a) severely mentally disabled to such an extent that she is completely incapable of understanding and appreciating the nature or consequences of a termination of her pregnancy; or

(b) in a state of continuous unconsciousness and there is no reasonable prospect that she will regain consciousness in time to request and to consent to the termination of her pregnancy in terms of section 2, her pregnancy may be terminated during the first 12 weeks of the gestation period or, from the 13th up to and including the 20th week of the gestation period on the grounds set out in section 2(1)(b)-

(i) upon the request of and with the consent of her natural guardian, spouse or legal guardian, as the case may be; or

(ii) if such persons cannot be found upon the request and with the consent of her *curator personae*;

Provided that such pregnancy may not be terminated unless two medical practitioners or a medical practitioner and a registered midwife who has completed the prescribed training course consent thereto.

(5) Where two medical practitioners or a medical practitioner and a registered midwife who has completed the prescribed training course, are of the opinion that-

(a) during the period up to and including the 20th week of the gestation period of a pregnant woman referred to in subsection (4)(a) or (b)--

(i) the continued pregnancy would pose a risk of injury to the woman's physical or mental health; or

(ii) there exists a substantial risk that the fetus would suffer from a severe physical or mental abnormality; or

(b) after the 20th week of the gestation period of a pregnant woman referred to in subsection (4)(a) or (b). the continued pregnancy

(i) would endanger the woman's life;

(ii) would result in a severe malformation of the fetus; or

(iii) would pose a risk of injury to the fetus, they may consent to the termination of the pregnancy of such woman after consulting her natural guardian, spouse, legal guardian or *curator personae*, as the case may be: Provided that the termination of the pregnancy shall not be denied if the natural guardian, spouse, legal guardian or *curator personae*, as the case may be, refuses to consent

thereto.

### **Information concerning termination of pregnancy**

6. A woman who in terms of section 2(1) requests a termination of pregnancy from a medical practitioner or a registered midwife, as the case may be, shall be informed of her rights under this Act by the person concerned.

### **Notification and keeping of records**

7. (1) Any medical practitioner or a registered midwife who has completed the prescribed training course, who terminates a pregnancy in terms of section 2(1)(a) or (b) shall record the prescribed information in the prescribed manner and give notice thereof to the person referred to in subsection (2).

(2) The person in charge of a facility referred to in section 3 or a person designated for such purpose, shall be notified as prescribed of every termination of a pregnancy carried out in that facility.

(3) The person in charge of a facility referred to in section 3 shall, within one month of the termination of a pregnancy at such facility, collate the prescribed information and forward it by registered post confidentially to the Director-General: Provided that the name and address of a woman who has requested or obtained a termination of pregnancy, shall not be included in the prescribed information.

(4) The Director-General shall keep record of the prescribed information which he or she receives in terms of subsection (3).

(5) The identity of a woman who has requested or obtained a termination of pregnancy shall remain confidential at all times unless she herself chooses to disclose that information.

### **Delegation**

8. (1) The Minister may, on such conditions as he or she may determine, in writing delegate: to the Director-General or any other officer in the service of the State, any power conferred upon the Minister by or under this Act, except the power referred to in section 9.

(2) The Director-General may, on such conditions as he or she may determine, in writing delegate to an officer in the service of the State, any power conferred upon the Director-General by or under this Act or delegated to him or her under subsection (1).

(3) The Minister or Director-General shall not be divested of any power delegated by him or her, and may amend, or set aside any decision taken by a person in the exercise of any such power delegated to him or her.

### **Regulations**

9. The Minister may make regulations relating to any matter which he or she may consider necessary or expedient to prescribe for achieving the objects of this Act.

### **Offences and penalties**

10. (1) Any person who -

- (a) is not a medical practitioner or a registered midwife who has completed the prescribed training course and who performs the termination of a pregnancy referred to in section 2(1)(a);
- (b) is not a medical practitioner and performs the termination of a pregnancy referred to in section 2(1 )(b) or (c); or
- (c) prevents the lawful termination of a pregnancy or obstructs access to a facility for the termination of a pregnancy,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years,

Any person who contravenes or fails to comply with any provision of section 7 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

### **Application of Act**

11. (1) This Act shall apply to the whole of the national territory of the Republic.

(2) This Act shall repeal

- (a) the Act mentioned in columns one and two of the Schedule to the extent set out in the third column of the Schedule; and
- (b) any law relating to the termination of pregnancy which applied in the territory of any entity which prior to the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), possessed legislative authority with regard to the termination of a pregnancy.

### **Short title and commencement**

12. This Act shall be called the Choice on Termination of Pregnancy Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE CHOICE ON TERMINATION OF PREGNANCY BILL, 1996**

1. The Bill's primary object is to provide for the termination of a pregnancy On request up to and including the 12th week of pregnancy and thereafter, in certain circumstances.

2. The Bill provides in clause 2 for a pregnancy to be terminated up to and including the first 12 weeks of pregnancy at the request of the pregnant woman. It is proposed that a medical practitioner or a registered midwife who has undergone the prescribed training be permitted to terminate a pregnancy in this period. After the first 12 weeks of pregnancy, it is proposed that only a medical practitioner be permitted to terminate a pregnancy because of the complicated procedures involved.

2.1 The Bill provides that a pregnancy may be terminated after the first 12 weeks of pregnancy up to and including the 20th week of pregnancy if a medical practitioner, after consultation with the pregnant woman, is of the opinion that--

- (i) the continued pregnancy would pose a risk of injury to the woman's physical or mental health;
- (ii) there exists a substantial risk that the fetus would suffer from a severe physical or mental abnormality;
- (iii) the pregnancy resulted from rape or incest; or
- (iv) the continued pregnancy would significantly affect the social or economic circumstances of the woman.

2.2 The Bill also provides that a pregnancy may be terminated after the 20th week of pregnancy if a medical practitioner, after consultation with another medical practitioner or a registered midwife, is of the opinion

- (a) the continued pregnancy would endanger the woman's life;
- (b) the continued pregnancy would severely malform the fetus; or
- (c) the continued pregnancy would pose a risk of injury to the fetus.

3. The Bill provides for the Minister to designate the facilities in which pregnancies may be surgically terminated and if the Minister withdraws the designation he or she must give prior notice to that effect,

4. The Bill provides for the promotion of counselling before and after a pregnancy is terminated.

5.1 It is proposed in clause 5 that only the consent of the woman concerned is required for the termination of a pregnancy. It is also proposed that a minor should be advised to consult her parents, guardian, family members or friends before a pregnancy is terminated, but that the termination of the pregnancy should not be denied if such minor chooses not to consult them.

5.2 Provision is also made for the termination of the pregnancy of a woman who severely disabled or in a state of continuous uneasiness in certain circumstances with *inter alia* the consent of her legal guardian, spouse, natural guardian or *curator personae*.

6. A woman who requests the termination of pregnancy shall be informed of her rights under this Act.

7.1. The Bill provides for a medical practitioner or registered midwife who terminates a pregnancy to record certain information and to give notice thereof in the prescribed manner. The person in charge of a facility where a pregnancy is surgically terminated shall also collate the information referred to in subclause ( 1 ) and forward it by registered post confidentially to the Director-General. who is obliged to keep record of such information.

7.2 The identity of a woman who has requested or obtained a termination of pregnancy shall remain confidential at all times unless she herself chooses to disclose that information.

8. The Minister may delegate certain powers to the Director-General and the Director-General may also delegate certain powers to an officer in the services of the State. The Minister or Director-General may amend Or set aside any decision taken by a person in the exercise of such power delegated to him or her.

9. The Minister may make regulations relating to any matter he or she may consider necessary or expedient to prescribe for achieving the objects of this Act.

10,1 Clause 10(1) provides *inter alia* that no person may procure or prevent the termination of a pregnancy in contravention of this Act. A contravention of this section shall be an offence punishable with a fine or to imprisonment for a period not exceeding 10 years.

10,2 Clause 10(2) makes the failure to notify on the termination of a pregnancy an offence, punishable with a fine or imprisonment for a period not exceeding six months.

11. Clause 11 provides that existing legislation regarding the termination of a pregnancy be repealed by this Act.

The Bill has been published for comment, and public hearings were held on 15 and 16 October 1996.