



PRO-CHOICE CAMPAIGN



'The emphasis must be not on the right to abortion, but on the right to privacy and reproductive control.'

Ruth Bader Ginsburg

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Attn The Chief Minister

Dear Chief Minister,

Further to your Government's Command Paper on Abortion CO3/2018 published 27th September 2018, please find attached the considered response of the joint Unite the Union/Equality Rights Group Pro-Choice Campaign.

We understand Command Papers to be one important part of a consultative process; and, despite the fact that, in its present form, there is little that we can coincide on, we trust your Government remains open to feedback and measured consideration in the interests of both sides on this important issue.

On our part, you have that assurance.

Yours faithfully,

Gillian Birkett
Regional Officer
Unite the Union

Felix Alvarez
Chair
Equality Rights Group

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RESPONSE TO COMMAND PAPER CO3/2018: ABORTION¹:

- Informed Autonomous Termination
- Mental Health stipulation
- Conscientious Objection
- Life Imprisonment
- Private Practice

CORE ISSUES & DEMANDS

¹ These issues are developed within the body of this submission. References to 'the Bill' pertain to the proposed Bill within subject Command Paper CO3/2018 (CP).

In opening this paper, it is important we reiterate and do not lose sense of the approach our Campaign has adopted throughout; for the proposals we put on the table before Government do not impinge on the rights of others. Quite the contrary, the ideas we have set forth are respectful of the right to choose *on both sides* of the reproductive health fence. Anything else would run contrary to this Campaign’s values.

Modern Gibraltar is majoritarily secular in character; failing to accommodate this fact is electoral dissonance of the highest order. On our side, no legislation is being proposed obligating women of one persuasion or another. **It is Government’s duty to respectfully provide balance in the exercise of fundamental rights.**

It will be recalled that this Campaign set out its formally considered proposals for the modernisation of women’s reproductive rights in Gibraltar at the outset; and, as in the case of US Supreme Court Associate Justice Ruth Bader-Ginsburg, we were (and continue to be) guided by a fundamental conviction that women today deserve more than lip service to their fundamental rights to privacy in the ambit of their lives, but, particularly in the intimacy of their reproductive health.

As an explicit exercise, below is a summary representation of the Proposals our Campaign put forward, set alongside the provisions advanced in subject Command Paper. Presently, it appears we coincide on just one core item: funding.

OUR PROPOSALS	COMMAND PAPER: THE BILL
<p>1. <u>Counselling: Non-directive counselling provided</u> laying out all options. Partner allowed to attend.</p> <p>2. <u>Time Limits:</u> <u>Up to 12 weeks:</u> Woman decides if she wants to abort or no. It’s her choice. <u>12-24 weeks:</u> Termination available for a series of social circumstances: addiction, death of partner during pregnancy, homelessness/risk of, sexual crime (incest, rape) <u>24+weeks:</u> Termination available if woman’s life is in danger, ‘other’ risk factors impacting on mother and foetus when full medical consultation has taken place beforehand</p> <p>3. <u>Funding:</u> fully paid for by GHA</p>	<p>A) <u>Counselling:</u> omitted. The section entitled ‘Beyond the Law’(pp14-15 CP) outlines some vague policy attitudes but does not address the full requirement for non-directive counselling to allow women to make early informed decisions. This very central provision must be statutorily enshrined.</p> <p>B) <u>Time Limits:</u> One timescale is offered to be chosen from the range 10/12/14 weeks in the Command Paper. There is no offering with regard to the stepped gestation stages, accompanying clinically individualised medical developments and professional evaluations.</p> <p>C) <u>Funding:</u> fully paid for by GHA..</p>

Table 1

CORE ISSUES AND DEMANDS:

Adhering to the central principles of women’s suffrage, long established in the struggle for equality, this Campaign is unable to support measures or provisions which run not only counter to women’s interests in an abstract sense, but also against the practicalities of women’s day-to-day lives and concerns.

Any measure which purports to remove agency from women and makes them subject to third party approval in situations where medical science sustains the viability of intervention runs counter to our commitment to women both as a Union and as a Human and Civil Rights organisation in the

community of Gibraltar. Injury is further added to the notion that women seeking control over their reproductive rights must be stigmatized in a mental health certification process, alongside qualification being delimited by extreme circumstances such as rape, incest or danger to life.

It is regrettable to note that, in its Command Paper proposals, Government fails to reflect any element of the proposals put forward at the primary consultation stage not only by the Unite/ERG Pro-Choice Campaign but, it would seem by other pro-choice movements or organisations in this community; and we trust that this second phase of the consultative process will bring balance to its deliberations.

In order to further contribute to the due consultation process on this issue, we would therefore wish to expand upon our most essential points of consideration, as follows:

- **Informed Autonomous Terminations (IAT):** IAT implies all women should be in possession of information in order to make their own decision regarding pregnancy. Thus guided by the professional determinations of accepted medical science, we understand women to have the *fundamental right to decide* over their pregnancy *during the early phase of gestation*.

We therefore accept Government's proposal for an initial 14-week threshold period (s.163A (1) (a) of the Bill, p16 CP) within the acknowledgment that this period is an acceptable window of medical opportunity for women to exercise IAT. **No woman should be obligated to sustain a pregnancy within this first stage.** And, as a reality check, neither the provisions of the *Crimes Act 2011* currently in place, nor any other legislation before it, has ever succeeded in preventing women from exercising choice over their pregnancies, however much outside the law. The regret is that the presently proposed Bill (should it emerge substantially in its present form) faces very similar outcomes; and this Administration will thus have missed the opportunity to make just social advance possible in this arena.

It is important to note that IAT does not hold any less relevance at any other point in the gestation cycle, however. Our consideration (as amply set forth in our initial Proposals document) traces informed guidance and professional intervention steps throughout the period from 14-24 weeks and beyond. **Indeed, we urge Government to retain provisions that admit the possibility of pregnancy termination up to and beyond the 24-week period as currently stands under s.161(3) of the Crimes Act.**²

It is our view that any proposed Bill to modernise Gibraltar law on the question of reproductive rights must fully acknowledge these staged developmental periods and steps. Cutting corners or proposing indeterminate stipulations will leave women in an abyss of interpretation which may vary from administration to administration, despite a centrepiece of formal, professional codes of conduct and medical ethics which, though significant in their aims, are by no means immune from administrative policy formulation or reinterpretative pressures.

This being the case, Government should be cognisant of the long-term effect that the absence of well-defined provisions will have on women for a considerable time into the future. A socialist/liberal administration, we would hope, will be anxious to avoid women being abandoned to unprogressive legislation open (due to pliable phrasing) to easy manipulation in the direction of illiberal treatment in years to come.

² This Campaign does not support reducing the Time Limits. **Please note that the last paragraph on p12 CP contains a serious error**, which deduces that the Time Limit of 10-14 weeks was 'proposed by the various groups'. This is incorrect inasmuch as this Campaign proposed a wide schedule of Time Limits staged to run from 12 to 24+ weeks. See Table 1 above.

- **Mental Health stipulation (s.163A (1), ss.(a), (b) & (d)) of the Bill, pp16&17 CP):** The principle of women's agency is one that the Women's Movement has established for over two centuries³. That the proposed Bill should attempt to enshrine access to termination based on a woman's mental health takes us back to the pathologizing of women's right to personal autonomy. It is uncomfortably reminiscent of the 'hysteria' label early psychiatry pinned on women when evaluating their human wish to control their lives and circumstances in societies which met them with restrictions and limitations to their development. The device of introducing 'mental health' as a statutory qualifier is particularly incongruous when medical science acknowledges and supports terminations as safe and ethical in the early window (between 12 to 14 weeks). It is unacceptable that Government should be proposing that women should have to be certified as being mentally ill – alongside other extreme circumstances such as rape, incest or a danger to life itself.

That women making informed decisions about themselves should be thus treated is an affront we urge Government to reconsider and amend.

- **Conscientious Objection (s.163C of the Bill, p18 CP):** The right of one citizen to object on an issue on conscience grounds should not obstruct the rights of another. This principle is recognised formally under *s.6b of the Civil Marriage Amendment Act 2016* in its provision that no Registrar's objection may prevent a civil marriage from taking place; and this is effected through the inclusion of a statutory guarantee. As a reasonable minimum, the Bill proposed by this Command Paper can do no less, *at the risk of treating one group of citizens differently from another when it comes to exercising a fundamental right*.
- **Life Imprisonment (p13 CP):** We strongly disagree with the proposal to retain the penalty currently enshrined under *s.162 of the Crimes Act 2011*. The Bill must decriminalise abortion once and for all. Criminalisation rests on an attitude which overlooks the fact that the vast majority of terminations today are early and non-surgical in nature. *Life imprisonment is a wholly disproportionate penalty*.

Continuing to criminalise women does nothing for providing the circumstances in law that will lead to prevention and management of unwanted pregnancies. An enlightened approach of support, information, counselling and medical care stands a much higher chance of reducing both 'hidden' and 'known' abortion in Gibraltar. Continuing to impose life imprisonment is (whether we like it or not) draconian and a principle of unenlightened Victorian values dissonant with our modern democracy. Maintaining the penalty will also maintain Gibraltar's less than positive reputation internationally in this area of modern personal rights. Furthermore, the life imprisonment penalty, in effect, constitutes a **double jeopardy** for women who are distressed at having pregnancy imposed upon them despite safe and medically approved opportunities for termination being legitimately available to them, and thereafter are heavily criminalised when seeking alternatives to a law which thwarts fundamental rights of self-determination.

³ 'Consider, I address you as a legislator, whether, when men contend for their freedom, and to be allowed to judge for themselves respecting their own happiness, it be not inconsistent and unjust to subjugate women, even though you firmly believe that you are acting in the manner best calculated to promote their happiness?'. Mary Wollstonecraft, 'A Vindication of the Rights of Women', 3rd Edition, 1796.

- **Private practice (s.163A (4) of the Bill, p17 CP):** The ERG/Unite Pro-Choice Campaign supports proposals that medical provision in this area should remain primarily within the remit of the Gibraltar Health Authority. We do not favour the emergence of private abortion clinics. However, we also believe that individuals should not be precluded from being able to consult with private doctors regarding abortion. Arrangements should be in place, however, for private medical practitioners to be able to provide a service limited to the prescription of early non-surgical medication treatment but refer their patients to GHA consultants and facilities for later-stage treatment and attention.

OTHER CONSIDERATIONS:

- Under its current Constitution, Gibraltar is responsible for its domestic affairs. Westminster need not be a necessary template, and, consequently, pleading this reference does little to justify not living up to our own aspirations in social justice.
- Under proposed provisions (**s.163A (3) of the Bill, p.17 CP**), the Minister for Health is stipulated with the power to export any medical treatment for the termination of pregnancy to any other jurisdiction. We understand that in exceptional and specialised cases of medical complexity referral outside of Gibraltar may be desirable and unavoidable.

Nonetheless, such powers must be clearly defined and limited as exceptional by any proposed legislation to avoid any possibility of it degenerating into a covert form of treatment whereby Gibraltar effectively ‘exports’ access to abortion whilst failing to make clear and concrete statutory provisions at home. That scenario would be unacceptable, hypocritical and counter to the interests of our society as it progresses towards the realisation of all its democratic rights.