**Submission**

by Rita Joseph

[Author of *Human Rights and the Unborn Child* [Leiden & Boston, Martinus Nijhoff, (2009) and *Supplementary Submission to the International Criminal Court (2012) re the case against the New Zealand Government’s antenatal screening programme for Down syndrome and other conditions as resulting in genocidal depletion of a protected group under Articles 6 and 7 of the Rome Statute*]

1. In para.1 of Draft Comment No. 6, an addition is suggested:

The Committee routinely observes discrimination which includes: violations to the right to access the built environment, transportation, information and communications on an equal basis with others; negative portrayals of disability in the media and negative portrayals in counselling after prenatal screening programmes… to name but a few examples.

Rationale:

This needs to be recognized at the beginning of the document and is consistent with the excellent point being raised in para. 44:

Likewise, States parties should address stigmatization through modern forms of discrimination, such as a disability-selective antenatal screening policy that go against the recognition of the equal worth of every person.

If this General Comment No. 6 does not recognize upfront today’s ongoing genocide of children detected prenatally to have Down’s syndrome, Spina-Bifida and other conditions, it will be condemned by generations to come as a disgraceful whitewash of a crime against humanity, an unforgivable condoning of a genocidal practice that was widespread and open to full view.

At a time when in some countries more than 90% of children detected prenatally to have Down’s syndrome are subsequently aborted, that a Committee dedicated to anti-discrimination should fail to address with full condemnation such a heinous crime will be seen as infamy. The very Committee which was set up to protect all human beings with a disability must not abandon those most defenseless human beings who are being exterminated because they have been detected in their mothers’ wombs to have a disability.

1. In para. 2, another suggested addition:

…The Committee assumes that, additionally, efforts carried out in States parties to overcome attitudinal barriers to disability have been insufficient to change the way societies view disability, as exemplified by the enduring prejudice, stigma and negative, humiliating stereotypes against persons with disabilities and the lasting misperceptions of disability as a burden for society or an individual problem. The prejudice begins even before a child with a disability is born. The attitudinal barriers to children with disabilities being born are exemplified in the disproportionate representation of children with disabilities identified in prenatal screening programmes and targeted for abortion because these children have a disability.

Rationale:

* Under the Convention on the Rights of Persons with Disabilities (2007), States parties agreed to
* reaffirm *the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination* (c);

This is significant for those States parties which continue to argue invalidly that women’s “right to abortion” justifies disproportionate representation of their children with disabilities in State-approved abortion programmes.

* recognize *also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person* (h);

Abortion of a child on the basis of a disability comprises a discriminatory medical treatment that is a violation of the inherent dignity and worth of that particular child.

* recognize *the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support* (j);

[This is significant for the legal protection of the human rights of those children who are at risk of abortion on the grounds of what some abortion “providers” label as “gross foetal abnormalities”. This term should be outlawed by the medical profession. These children at risk of abortion are children with disabilities “*who require more intensive support*” and States are to recognize *the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support.]*

* recognize *that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child* (r);

[One of the *obligations to that end undertaken by States Parties to the Convention on the Rights of the Child* is the commitment *by reason of his physical and mental immaturity, to provide special safeguards and care, including appropriate legal protection before as well as after birth*. The significant commitment here towards children who are at risk of abortion because of disabilities is to provide legal protection for these children *on an equal basis with other children* i.e., on an equal basis with children after birth and also with children who do not have disabilities.]

* Laws that condone selective abortion violate the Article 3 General Principles of the Disabilities Convention—especially the principle of non-discrimination (3b),

Developing eugenic screening tests intended to be used in identifying human beings in their mothers’ wombs for destruction on account of a genetic or chromosomal “defect” is not consistent with human rights commitments. The incidence of some kind of deformity or disease in a small human being does not constitute a justification for harming or destroying a human life. The clear tradition in all the relevant international human rights instruments insists that physical or mental disability does not constitute an exception to the tight to life—every child “without any exception whatsoever” is entitled to all human rights.

*Every child* includes the embryonic child who is discovered to have a physical or genetic impairment. The *Declaration on the Rights of the Child* Principle 5 requires that the child who is physically or mentally disabled be given the special treatment and care required by his particular condition.

The *Declaration of the Rights of the Child* (with its clear directive to provide legislative protection for the rights of every child before as well as after birth) is that diagnosis of a disability in a child before birth is not to be counted as grounds for destruction, as grounds for denying that child “the same rights as other human beings”.

1. In the supplementary submission I wrote to the International Criminal Court’s preliminary examination of a case mounted by SavingDowns together with other groups representing parents of children with disabilities against the New Zealand Ministry of Health’s antenatal screening programme, we sought to establish that the group identified in abortion programmes by the presence of Down’s syndrome and other conditions is a protected group under the *Genocide Convention*:

1. The Convention on the Prevention and Punishment of the Crime of Genocide (1948) (Genocide Convention) is integral to the role of the rule of law in protection of universal human rights and in maintaining universal “recognition of the inherent dignity and the equal and inalienable rights of all members of the human family…the foundation…of justice…in the world”.[[1]](#endnote-1) Children with Down’s syndrome and other conditions are included in “all members of the human family” and are entitled to “appropriate legal protection before as well as after birth”. [[2]](#endnote-2)
2. Programmes that enable and facilitate a ‘legal choice’ to eliminate before birth some “members of the human family” on grounds of detection of the possible presence of Down’s syndrome and other conditions are deeply and irrevocably offensive against human dignity and worth. Programmes that tolerate and affirm a subjective choice by individuals and their doctors to project prematurely a “negative value” [[3]](#endnote-3) onto the lives of members of this group on these grounds are “contrary to the purposes and principles of the United Nations”. [[4]](#endnote-4)

1. Firstly, they offend against the inclusion principle: “the principle of the unity of the human race”.[[5]](#endnote-5) The antithesis of this founding premise of international law is to be seen in many abortion programmes in their reintroduction of the Nazi concept of ‘selection’ for elimination of members of a group vilified as expendable on grounds of biological ‘inferiority’. The exclusion in principle of the idea of humanity which constitutes the sole regulating idea of international law is the prerequisite for all race doctrines .[[6]](#endnote-6) In both purpose and consequence, today’s abortion programmes are mired in the ‘scientific racism’ and ‘racial hygiene’ of biological ‘selection’. Both in one of their purposes (identifying Down’s syndrome and other conditions in order to offer the ‘choice’ [the Nazi term was ‘selection’] to prevent birth) and in one of their ultimate consequences (the prevention of significant numbers of births within the group), these abortion programmes are in direct contravention of the founding premise of human rights protection in international law: ‘the fundamental principle of the unity of the human race’.
2. Secondly, such programmes facilitating selection for prevention of birth offend against the other foundation human rights principles of equality[[7]](#endnote-7), inherency[[8]](#endnote-8), inalienability[[9]](#endnote-9) and indivisibility[[10]](#endnote-10). Detection of the presence of Down’s syndrome and other conditions and subsequent selection for genocidal ‘treatment’ such as the prevention of birth on these grounds contravenes the principle of equality. “The notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority…It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character.” [[11]](#endnote-11)

1. Genocide, defined by the United Nations General Assembly in 1946 as “a denial of the right of existence, of entire human groups”, was understood at the time of drafting and completing the Convention to include the group identified to have Down syndrome as a ‘human’ group. The detailed historical records of World War II atrocities that motivated the Genocide Convention reveal that this group had a well-defined and documented place in that set of groups whose humanity was denied or discounted by the Nazi authorities and subjected to biological genocide. Raphael Lemkin, one of the chief architects of the Genocide Convention, placed great emphasis on “the biological aspect” of genocide, observing that Hitler’s conception of genocide was “based…upon biological patterns”.[[12]](#endnote-12) Lemkin described the Nazi concept of ‘race’ as “from the vantage point of biological superiority”—many State authorities today may be said to deal with antenatally identified members of the group with Down syndrome and other conditions from just such a vantage point. Lemkin in delineating the concept of ‘biological genocide’ includes the adoption of measures calculated to decrease the “birthrate of the undesired group”.[[13]](#endnote-13) In 1945, Lemkin, working as foreign affairs advisor to the War Department, assisted Robert Jackson in London with the drafting of the London Charter. The indictment issued on 6 October 1945 incorporated genocide via the third category of crimes: crimes against humanity. [[14]](#endnote-14)
2. Nazi authorities justified selective abortions as “racial emergency situations”: Lemkin, one of three experts on international law chosen to construct the first draft of the Genocide Convention, wrote at the time of the drafting about the “recent Nuremberg proceedings against Nazi doctors who experimented on human beings in concentration camps”, and verified the understanding of abortion at that time as a form of killing:“… the defendants practiced experiments in order to develop techniques for outright killings and abortions.” [[15]](#endnote-15) In the trial of Adolf Eichmann, “artificial abortion in every case and in all stages of pregnancy” at Theresienstadt and at Kovno Ghetto was identified in Count 4 of the indictment as one of the measures intended to advance the "Final Solution of the Jewish Question."[[16]](#endnote-16) Selective abortion was included in the Nazi genocidal measures calculated to decrease the birth rate of the group stigmatized as ‘undesired’ on the grounds of possible hereditary ‘defects’: such abortions were classified by the Nazi authorities as “racial emergency situations”. As early as September 1934, the Reich physician leader, Gerhard Wagner, had issued a circular advising physicians that the Fuhrer would grant them “amnesty for any abortions performed to prevent births of children with hereditary taints”.[[17]](#endnote-17) Henry Friedlander in his study *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* observes that with a legal amendment which “required the consent of the pregnant woman”, the selective abortion ‘procedure’ was ‘regularized’: “Thus the law requiring sterilization for the so-called unfit had been expanded into a law permitting abortion of the proscribed group."[[18]](#endnote-18)

1. Under the biological genocidal ‘health’ programmes of the Nazis, children were ‘scientifically’ classified by the Nazi administrators and doctors as “racially valuable” or “non-valuable”. Members of one of the ‘racially non-valuable’ groups were identified has having the physical traits associated with Down syndrome and were subjected to lethal abuse of their human rights, precisely because of their membership in this distinctive group. Dr Lifton documents the health administrators and professionals’ active participation in “a criminal aspect of positive eugenics known as *Lebensborn*, or “Spring of Life.” Heinrich Himmler had created this institution as part of his plan “to breed the SS into a biological élite ...” [[19]](#endnote-19) The biological genocidal ‘health’ programmes involved killing, seriously harming, or interfering with the life continuity (by preventing births or forcibly transferring children) of  biologically inferior groups.[[20]](#endnote-20)

1. The biological focus of “scientific racism” enabled the Nazi genocidal programmes to extend to a readily identifiable victim group—children and adults with mongolism (Down’s syndrome).[[21]](#endnote-21) Newborn infants with mongolism were identified at birth and placed on a register for lethal medical treatment after a perfunctory examination by a board of ‘specialist’ doctors: the Reich Committee for the Scientific Registering of Serious Hereditary and Congenital Illnesses (*Reichsausschuss zur wissenschaftlichen Erfassung erb- und anlagebedingter schwerer Leiden*), headed by Karl Brandt, Hitler’s personal physician.[[22]](#endnote-22) On August 18, 1939, the committee issued a decree that required reporting of all newborns and infants under the age of three with suspected “serious hereditary diseases.” These “diseases” included Down’s syndrome, deformities, paralysis, deafness, blindness, and others. While physicians had been unofficially killing babies “unfit to live” since at least 1933, the creation of this committee officially authorized such killings. Dr. Karl Brandt explained the aim: “The objective was to obtain possession of these abortions and destroy them as soon as possible after they had been brought into the world.”[[23]](#endnote-23)

1. The acts of genocide perpetrated by the Nazi regime against children with Down’s syndrome (the term ‘mongolism’ was commonly used, as were other more gross and intentionally dehumanizing descriptions) were clearly and repeatedly characterized in terms of a ‘faulty’ biological/racial profile. Biologically, these children were perceived to be racially inferior, identified by their distinctive ‘inferior’ physical appearance and traits rendering them ‘unworthy’ of membership. In effect, these children were targeted as an inferior racial group to be consigned to special programmes the purpose of which was “to destroy, in whole or in part, a … group as such”.
2. Mongolism, no less than Jewishness, became the basis for a group identified as ‘racially inferior’ and destined for genocidal acts. The term ‘racial’ netted ‘Mongoloid’ and Jewish children alike and condemned them to the same fate with the same intention. “…Conditions considered a basis for killing also expanded and came to include mongolism (not listed at the beginning...Jewish children could be placed in the net primarily because they were Jewish.” [[24]](#endnote-24) In Nazi Germany, “sterilization courts could rule that **pregnancy could be interrupted for eugenic reasons in a ‘racial emergency’ situation: that is, if the future child was likely to inherit certain defects** or (in all probability) had mixed (Jewish and non-Jewish) parentage.”[[25]](#endnote-25) [Bold type added] In Friedlander’s chapter entitled “Killing Handicapped Children”, he observes that the euthanasia killings proved to be the opening act of Nazi genocide: “The mass murder of the handicapped precede that of the Jews and Gypsies; the final solution followed euthanasia…No substantive difference existed, however, between the killing operations directed against the handicapped, Jews, and Gypsies." [[26]](#endnote-26)
3. The genocidal atrocities of World War II—the inspiration for the Genocide Convention—were the product of an ideology that tolerated and encouraged lethal contempt for groups whose physical characteristics identified them with biological/racial inferiority. Nazi perceptions of genetic inferiority and racial inferiority, both separately and operating together, provided the rationale for the “the eugenic and racial-biological measures of the National Socialist people’s state”.[[27]](#endnote-27) The genocide sought ”physical perfection” and selected for both genes and race which were, of course, inextricably intertwined. Newborns, from all races including the German race, identified to have Down syndrome (or mongolism as it was called in the Nazi programmes) were considered genetically inferior and were eliminated on those grounds. The Nazi process of ‘selection’ has chilling similarities to what occurs in many countries today, where each member of the group at risk has to qualify biologically through antenatal testing for the individual right to exist, which becomes in the system a tentative right conditional on the pregnant woman’s subjective attitude towards members of the human group identified as having Down’s syndrome, Spina Bifida or other conditions sought out by the Programme.
4. The Nazi directors of the German genocidal programmes embraced the concept of ‘life unworthy of life’.[[28]](#endnote-28) The history of propagation of this concept in Germany is revealing and essential to an understanding of what the Nazi leadership called ‘scientific racism’. In 1920, Hoche and Binding argued that “…the principle of ‘allowable killing’ should be extended to the incurably sick… The right to live must be earned and justified…Theirs is not a life worth living; hence their destruction is not only tolerable but humane.”[[29]](#endnote-29) In a 1930s publication *The Face of the Germanic Doctor over Four Centuries*, contemporary German scientists were hailed as having “created the foundation for the eugenic and racial-biological measures of the National Socialist people’s state.”[[30]](#endnote-30) The crucial work — “The Permission to Destroy Life Unworthy of Life” (*Die Freigabe der Vernichtung lebensunwerten Lebens*) [1920] was written jointly by the jurist Karl Binding (University of Leipzig), and Alfred Hoche, professor of psychiatry at the University of Freiburg. Carefully argued in the numbered-paragraph form of the traditional philosophical treatise, the book included as “unworthy life” not only the incurably ill but large segments of the mentally ill, the feebleminded, and “retarded and deformed” children. More than that, the authors professionalized and medicalized the entire concept. And they stressed **the therapeutic goal** [i.e. the intention] of that concept: destroying life unworthy of life is “purely a healing treatment” and a “healing work.”[[31]](#endnote-31) [[32]](#endnote-32)

1. Yet, in many countries today, pregnant women are pressured to reach just such a conclusion, to make ‘choices’ (eugenic selections) trying to guess the future quality of life for the human beings *in utero* who, as identified by screening and abortion programmes, would be born with Down’s syndrome or other conditions if their births are not ‘prevented’. Many of their doctors, no doubt aware of the possibility of future litigation for “wrongful birth”, are telling us that they must be “careful” to urge participation in these screening and abortion programmes, in further testing, and must provide full information on the benefits of “the abortion option”. The attitudinal prejudice of many doctors today against honouring what Lemkin, writing in 1947, recognized as “a natural right to existence” [[33]](#endnote-33) for all groups as such must raise doubts about the facile claim that the abortion option is “voluntary”. These programmes, with what promises to be a relentless attrition of births to this group, threatens over time to change for the worse the lives of the group with Down syndrome and other conditions and the community attitudes towards this group. Already there is a large quantity of anecdotal evidence that mothers who “choose” to bring to birth a child of this group are confronted with offensive questions such as “Didn’t you have the test?” and even more offensive judgments: “Well, it’s your own fault—don’t expect taxpayers to help with the costs—you could have aborted the child”. Insidiously, this accusatory tone arises in encounters with those with disabilities who have survived the prenatal selection process.[[34]](#endnote-34) And survivors of this selection process are becoming fewer:

…almost only Moslems and people with strong religions, who are not allowed to have abortions, are giving life to their babies with Spina Bifida and Hydrocephalus.

The consequence of these actions is that hospitals are cutting down their budgets and closing interdisciplinary Spina Bifida teams.

In the near future the small group of young survivors will not have access any more to the services for Hydrocephalus & Spina Bifida where our organisations fought for.

We, the Spina Bifida and Hydrocephalus population, are like the Incas: a dying population.

We are eliminated totally, probably because people have been influenced by the hidden message of primary prevention: that they should not been born anymore.[[35]](#endnote-35)

1. From the opening sentence in the Preamble to the *Universal Declaration of Human Rights* (1948). This appears also in the Preambleof the *International Covenant on Civil and Political Rights* (1966) and was characterized by the Commission of Human Rights as “a statement of general principle which was independent of the existence of the United Nations and had an intrinsic value of its own.” (GAOR, A/2929 Chapter III para 4.) The intended complementarity of the *Genocide Convention* (1948), the *Universal Declaration* and the *ICCPR* is further strengthened by the fact that many of the drafters were doing double duty at the time in the drafting of all three instruments. [↑](#endnote-ref-1)
2. The *Preamble* to the *Convention on the Rights of the Child (1990)* reaffirmed what was agreed in the *Declaration on the Rights of the Child* *(1959)* “…the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth...” Understanding this in the context of Principle 1 of the *Declaration* (“Every child without any exception whatsoever is entitled to these rights …”), it is clear that the degree of this immaturity is not to be allowed to diminish in any way the child’s inherent humanity: human rights are equally valid for the child before birth as for the child after birth *without any discrimination whatsoever.* For historical evidence that the *Universal Declaration of Human Rights (1948)* and the *Convention on the Rights of the Child* recognized the child before birth as entitled to human rights protection, see Rita Joseph: *Human Rights and the Unborn Child* ( Leiden & Boston, Martinus Nijhoff Publishers, 2009) especially Chapter 2: *UDHR Recognition of the Child before Birth: Analysis of the Texts*, Chapter 8: *Rights of the child before birth*—*Legislative History of the Convention on the Rights of the Child*. [↑](#endnote-ref-2)
3. The term was used by German jurist Karl Binding to describe ‘beings’ or ‘existences’ with impairment (‘incurable idiots’) in the influential 1920 publication authored jointly with Alfred Hoche: *Die Freigabe der Vernichtung Lebensunwertem Lebens* (*Permission for Destroying Lives Not Worth Living*); cited and translated as "beings who are not only worthless but even manifest negative value" in Henry Friedlander: *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* (Chapel Hill: University of North Carolina Press, 1995) p. 15; also cited and translated as “not merely worthless but actually existences of negative value” in Burleigh, Michael: *Death and Deliverance: Euthanasia in Germany 1900-1945* (Cambridge, England: Cambridge University Press, 1994) pp.17-8. The ‘negative value’ is calculated as "a terrible heavy burden upon their relatives and society as a whole". [↑](#endnote-ref-3)
4. *Universal Declaration of Human Rights* Article 29(3). [↑](#endnote-ref-4)
5. René Cassin, one of the principal drafters of the human rights architecture, affirmed that the Universal Declaration was indeed drafted on the principle of universal inclusion, on **“the fundamental principle of the unity of the human race”**, and this was necessary because Hitler had started “by asserting the inequality of men”. Quoted in Morsink, Johannes: *The Universal Declaration: Origins, Drafting and Intent*, Philadelphia: University of Pennsylvania Press, 1999, p.39. [↑](#endnote-ref-5)
6. Hannah Arendt understood the Nazi policy of racism as a denial of universal inclusion of “all members of the human race”. In exploring the origins of "race thinking" of Nazi Germany, Arendt understood Hobbes to have "provided political thought with the prerequisite for all race doctrines, that is, the exclusion in principle of the idea of humanity which constitutes the sole regulating idea of international law". (*The Origins of Totalitarianism* (1951) p. 157)

   [↑](#endnote-ref-6)
7. The human rights principle of equality: in modern human rights law, there can be no concept of some human beings being “more equal” than others. Thus the unborn child at risk has the same right to life as every other member of the human family. Appropriate legal protection must be in accord with Article 7 of the Universal Declaration:

   “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

   This entitlement to equal protection before the law and by the law, without any discrimination, is a fundamental principle conditioning the entire field of international human rights law. Human rights entitlement is not scaled according to stage of development, size, abilities, independence or wantedness. [↑](#endnote-ref-7)
8. The human rights principle of inherency: human rights are seen as inherent in each human being, not granted by external government. The child’s rights pre-exist birth; they “inhere” in the child’s humanity. The child’s “immaturity…before as well as after birth” is not to be allowed to diminish in any way his or her inherent humanity. To be eligible for membership of the human family, one has only to be a human. Morsink, from his immense knowledge of the drafting history of the Universal Declaration, observes that when all prohibited discriminations are eliminated:

   “…what we have left is just a human being without frills. And the Declaration says that the human rights it proclaims belong to these kinds of stripped down people, that is to everyone, without exception.” *Women’s rights in the Universal Declaration*, Human Rights Quarterly, Vol. 13, 1991, p.230.

   From conception to birth, children are ‘human beings without frills’, without the extras that come with maturity, stripped down certainly but yet possessing all the essentials of a new human life. Lacking much in physical size, weight, age, and independence, without a voice, without the power to fend off attacks on their tiny human bodies, our children *in utero* are, nevertheless, human beings with the same inherent human rights as all human beings. [↑](#endnote-ref-8)
9. The right to legal protection “before as well as after birth” is one of the equal and inalienable rights of all members of the human family. No one may destroy that right, nor deprive any human being of that right, nor transfer that right, nor renounce it—that’s what inalienable means. Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own or their mothers' request. [↑](#endnote-ref-9)
10. The indivisibility principle requires human rights protection of both the mother and her unborn child; and prohibits the individual state from abandoning laws that protect the unborn child on the excuse that it has a priority obligation to protect “the reproductive rights” of the child’s mother. When the indivisibility principle is applied, the individual state’s misperceived duty to provide expectant mothers with abortion “services” cannot be performed at the neglect of the more fundamental duty to uphold the rights of their children to "special safeguards and care including appropriate legal protection before as well as after birth”. The right to life is “the supreme right”[UN Human Rights Committee General Comment 6 (1) & (3)] ; and “basic to all human rights. (***Jailton Neri Da Fonseca*** v. Brazil**, Case 11.634, Report No. 33/04,** Inter-American Court of Human Rights**., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 845 (2004), para. 68)** It is a “non-derogable” right. [ICCPR Article 4(2)] [↑](#endnote-ref-10)
11. I-A Court HR, Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84 of January 19, 1984, Series A, No. 4, p. 104, para. 55. [↑](#endnote-ref-11)
12. Raphael Lemkin : *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress*, (Washington, D.C.:  Carnegie Endowment for International Peace, 1944) pp. 80-1 [↑](#endnote-ref-12)
13. Lemkin, p.86. [↑](#endnote-ref-13)
14. Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, November 14, 1945–October 1, 1946 (42 vols., 1947–1949), i, pp. 11–30. [↑](#endnote-ref-14)
15. Lemkin, Raphael, “Genocide as Crime under International Law”, *American Journal of International Law*, Vol. 41(1), Jan. 1947, pp. 145-151 at (pp.147-8). [↑](#endnote-ref-15)
16. Shofar FTP Archive File: people/e/eichmann.adolf/transcripts/Sessions/Session-001-01, 11 April, 1961. [↑](#endnote-ref-16)
17. Cited in Henry Friedlander: *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* (Chapel Hill: University of North Carolina Press, 1995) p.30. [↑](#endnote-ref-17)
18. Ibid. [↑](#endnote-ref-18)
19. Robert Jay Lifton: *The Nazi doctors: medical killing and the psychology of genocide* (New York: Basic Books, 1986) p.43. [↑](#endnote-ref-19)
20. “Doctors were central to *Lebensborn*; its medical director, Gregor Ebner, signed orders for sterilizing “nonvaluable” (insufficiently Nordic) children, and supervised a “medical” sequence in which some of those children judged “nonvaluable” were shipped to their deaths in concentration camps….while a few doctors resisted, and large numbers had little sympathy for the Nazis, *as a profession* German physicians offered themselves to the regime. So also did most other professions; but with doctors, that gift included using their intellectual authority to justify and carry out medicalized killing. Doctors promoted the idea that collective German existence was a medical matter, and many succumbed to the temptation articulated as early as 1922 by the popular writer Ernst Mann. Mann, in defending direct medical killing, considered illness “a disgrace to be managed by health control.” His principle was that “misery can only be removed from the world by painless extermination of the miserable!” (Lifton pp.43-4). [↑](#endnote-ref-20)
21. Lifton, p.17. “Making widespread use of the Darwinian term ‘selection’, the Nazis sought to take over the functions of nature (natural selection)… in orchestrating their own ‘selections’, their own version of human evolution. In these visions the Nazis embraced… a newer (nineteenth- and twentieth-century) claim to ‘scientific racism’.” [↑](#endnote-ref-21)
22. Lifton, p.52. Also see Burleigh, M: *Death and Deliverance: Euthanasia in Germany 1900-1945* (Cambridge, England: Cambridge University Press, 1994). “All physicians were required to register every case of genetic pathology with the courts and failure to do so was punishable. The reports were filed in specially created data banks. Public health officials, teachers, and social workers were also required to report children suspected of having a disability...” p.17 [↑](#endnote-ref-22)
23. *Forgotten Crimes: The Holocaust and people with Disabilities.* A Report by Disability Rights Advocates, California, 2001 pp 13-14. [↑](#endnote-ref-23)
24. Lifton, p.56. [↑](#endnote-ref-24)
25. Lifton, p.42. [↑](#endnote-ref-25)
26. Friedlander, p.22. [↑](#endnote-ref-26)
27. Lifton, p.31. [↑](#endnote-ref-27)
28. Gerhard Wagner: Head of the Nazi Physicians in Wagner, Gerhard: “Rasse und Bevölkerungspolitik,” *Der Parteitag der Ehre,* vom 8, bis 14, September 1936. *Offizieller Bericht über den Verlauf des Reichsparteitages mit sämtlichen Kongreßreden*, Munich: Zentralverlag der NSDAP., 1936, pp.150-60. Available at: <http://www.calvin.edu/academic/cas/gpa/pt36rasse.htm>.

    [↑](#endnote-ref-28)
29. Robert Proctor: “Racial Hygiene: Medicine under the Nazis”, p. 178. [↑](#endnote-ref-29)
30. Lifton, p.31. [↑](#endnote-ref-30)
31. Lifton, p.46. [↑](#endnote-ref-31)
32. On 1 July 1940, the RMdl circulated a decree...Continuing to hide the real intent of the program, it informed public health officials that "under expert medical supervision, the psychiatric children's ward at Gorden near Brandenburg on the Havel will provide all available therapeutic interventions made possible by recent scientific discoveries." (Friedlander, p.47)

    [↑](#endnote-ref-32)
33. Raphael Lemkin: “As in the case of homicide, the natural right of existence for individuals is implied: by the formulation of genocide as a crime, the principle that every national, racial and religious group has a natural right of existence is claimed.” ‘Genocide’, *The American Scholar* (1947) p.229. [↑](#endnote-ref-33)
34. In October 2007, the House of Commons Committee on Science and Technology examining Britain’s 1967 Abortion Act, was warned by Britain’s Guild of Catholic Doctors that eugenic abortion is degrading public perception of people with disabilities: “We remain deeply concerned about the use of screening tests to identify children with disabilities before birth when the usual outcome is that the children be killed.” [↑](#endnote-ref-34)
35. Pierre Mertens is President of the International Federation for Spina Bifida and Hydrocephalus (IF). His article “A Future With Purpose, A Future With Choice” is available at: <http://www.perso.ch/dupuism/AFutureWithPurpose3.pdf>. [↑](#endnote-ref-35)