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BOTSWANA

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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name "Alliance Defending Freedom"), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.

2. This report explains why Botswana should continue to affirm the sanctity of life on the part of all human beings, including the unborn, and why it should resist calls to liberalize access to abortion due to the fact that there is no international human right to abortion. It also deals with the issue of high levels of maternal mortality and morbidity in Botswana.

(a) Abortion

3. Prior to 1991, abortion was generally illegal in Botswana due to Penal Code provisions modelled on the British *Offences Against the Person Act 1861*, with general principles of criminal law allowing for the life of a pregnant woman to be saved via medical treatment even if this had the necessary outcome of ending the life of her unborn child.[1]

4. Language has since been added to the Penal Code, however, allowing abortions to be carried out in the case of "rape, defilement, or incest," when continuing the pregnancy is deemed to pose a risk to the pregnant woman's life or physical or mental health, or when there is evidence that the child would suffer from a severe abnormality or disease rendering them seriously handicapped. Such abortions are permitted within sixteen weeks' gestation and must be carried out by a registered doctor in a government hospital or registered private clinic, and the approval of two practitioners in required in cases other than the aforementioned "rape, defilement, or incest."[2]

5. Organisations supporting liberalisation of abortion laws argue that expanded access to abortion is required as a matter of international human rights law and in order to reduce high levels of maternal mortality in the country, and that despite the relatively liberal abortion regime, practitioners refuse to carry it out where it would be legal to do so, as well as lack of access in rural or poorer areas.[3]

The right to life in international law

6. A so-called international "right to abortion" is incompatible with various provisions of international human rights treaties, in particular provisions on the right to life.

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[1] United Nations Department of Economic and Social Affairs, Botswana Abortion Policy, http://www.un.org/esa/population/publications/abortion/doc/botswa1.doc.
[2] Ibid.
[3] Ibid.

7. Article 6(1) of the ICCPR states, “Every human being has the inherent right to life.” The ICCPR’s prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn.

8. Although the ICCPR allows for the death penalty to be imposed on both adult men and women, it explicitly prohibits applying the death penalty to pregnant women. Article 6(5) states that the “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.” This clause must be understood as recognizing the unborn child’s distinct identity from the mother and protecting the unborn child’s right to life

9. The *travaux préparatoires* of the ICCPR explicitly state that “the principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to *save the life of an innocent unborn child*.”[4] Similarly, other early UN texts note that the intention of the paragraph “was inspired by humanitarian considerations and by *consideration for the interests of the unborn child*.”[5]

10. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states that “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*.”

11. Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of “child” attaches. Moreover, Article 6 of the CRC holds that “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition and protection of unborn life.

Legalizing abortion does not make it safe

12. The medical infrastructure in Botswana is in dire need of improvement, with an inadequate number of trained health professionals and unsanitary, poorly-equipped health facilities. Women who receive abortions will still face the same poor conditions faced by women who give birth and deal with similar complications, such as bleeding and infection. Providing more access to abortion will mean more women will suffer from abortion complications.

13. High rates of maternal mortality have less to do with the legality of abortion per se than with an inability to access obstetric care, lack of information, and lack of health workers, especially in the case of women living in poverty and in rural areas.

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[4] A/C.3/SR.819, para. 17 & para. 33; In accordance with the Article 32 of the Vienna Convention, the travaux préparatoires are considered to be a “supplementary means of interpretation.”

[5] Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI, Article 10.

14. Further, abortion can never be safe because it takes the life of the unborn child, and harms the mother through the loss of her child.

Reducing recourse to abortion

15. Botswana must focus on introducing measures to reduce recourse to abortion, instead of focusing on legalizing it, in line with paragraph 8.25 of the Programme of Action of the International Conference on Population and Development. Measures to reduce abortion include improving access to education, which empowers women and leads to social and economic development, as well as facilitating healthy decision-making.

16. Botswana must also focus on helping women get through pregnancy and childbirth safely, rather than helping women end their pregnancies. Given the maternal health crisis in Botswana, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(b) Maternal Health

17. Botswana's maternal mortality ratio (MMR) in 2015 was 129 maternal deaths per 100,000 live births, down from 243 per 100,000 in 1990.[6] Every maternal death is a tragedy. It devastates the woman's family, in particular the woman's children, and affects the entire community socially and economically. The high number of maternal deaths in Botswana is a pressing and urgent human rights concern.

Necessary maternal health interventions

18. Almost all maternal deaths are preventable, particularly when skilled birth attendants are present to manage complications and the necessary drugs are available, such as oxytocin (to prevent haemorrhage) and magnesium sulphate (to treat pre-eclampsia). Problems include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.

19. The World Health Organization (WHO) recommends a minimum of four prenatal visits with trained health workers, in order to prevent, detect, and treat any health problems. Although it has been estimated that in 2007 around 90% of pregnant girls aged 15-19 in Botswana received some level of prenatal care during their pregnancies, it was estimated by UNICEF that over a quarter did not receive the minimum of four visits recommended by the WHO.[7]

20. UNFPA also documented that with regard to availability of midwives, nurses, clinical officers and medical assistants, physicians, and OB/GYNs, only 41% of the

[6] World Bank, Maternal mortality ratio (modeled estimate, per 100,000 live births), 2015, http://data.worldbank.org/indicator/SH.STA.MMRT.

[7] World Health Organization, Global Health Observatory country views – Botswana statistics summary (2002 – present), http://apps.who.int/gho/data/node.country.country-BWA; UNICEF, Maternal Health, Antenatal Care, Current Status + Progress, https://data.unicef.org/topic/maternal-health/antenatal-care.

estimated need was met in 2012, and no data was available on the proportion of births in which skilled birth attendants were involved, especially in rural areas where the number of births made up close to half of all births in the country.[8]

21. These issues must be remedied, but frequent calls to increase legal abortion access as a necessary precondition to solving them are misguided. Legalizing abortion also does not guarantee that pregnancy and childbirth will become safer when the real problems with Botswana's health-care system do not involve lack of access to abortion. Providing more access to abortion will mean more women will suffer from abortion complications.

22. In line with paragraph 8.25 of the ICPD, Botswana must focus on introducing measures to avoid recourse to abortion by way of investing in social and economic development and by providing women with support throughout and after pregnancy.

(c) Recommendations

23. In light of the aforementioned, ADF International suggests the following recommendations be made to Botswana:

    a. Affirm that there is no international human right to abortion and that the right to life applies from conception until natural death, and as such that the unborn child has the right to protection of his or her life at all points;

    b. Resist calls to further liberalize abortion, and instead implement laws aimed at protecting the right to life of the unborn;

    c. Recognize that the legalization of abortion, in a country with high levels of maternal mortality and morbidity and with severe problems with access to proper health-care, will not make pregnancy and childbirth any safer;

    d. Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health; and

    e. Focus on safely getting mothers and babies through pregnancy and childbirth, with special attention paid to improving health-care access for women from poor and/or rural backgrounds.

[8] UNFPA, The State of the World's Midwifery 2014, 64, https://www.unfpa.org/sites/default/files/pub-pdf/EN_SoWMy2014_complete.pdf.

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