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BANGLADESH

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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 Bangladesh 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 Bangladesh, as well as the need to protect and promote religious freedom in the country for all, including religious minorities.

(a) Abortion

3. Section 312-316 of the *Penal Code 1860* prohibits abortion in all cases other than where the life of the mother is threatened and a procedure causing the death of her unborn child is performed in good faith with the intent of saving her life. This law was briefly waived in 1972 to allow for abortions by women who were raped during the war that separated East and West Pakistan into Bangladesh and Pakistan.¹
4. The government, however, makes "menstrual regulation" available within the scope of its family planning program, which is able to be used as a means of terminating a pregnancy up to eight weeks after the previous menstrual period. The law requires that actual pregnancy be established as an element of the crime of abortion, and it is more or less impossible for a prosecutor to obtain proof of pregnancy in the event that menstrual regulation is used as a method of abortion.²
5. Groups promoting more liberalized access to abortion worldwide, however, would like to see such access be made available on demand, and claim that it is not just a matter of improving maternal health and reducing maternal mortality and morbidity, but rather is an issue of fundamental human rights, of which abortion is supposedly one.

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.

¹ United Nations Department of Economic and Social Affairs, "Bangladesh Abortion Policy," last accessed 5th October 2017, available at: <https://www.un.org/esa/population/publications/abortion/doc/bangladesh1.doc>.

² 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*.”³ 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*.”⁴
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 Bangladesh is poor, 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.

³ 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.”

⁴ 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. Bangladesh 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. Bangladesh 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 Bangladesh, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(b) Maternal Health

17. Bangladesh's maternal mortality ratio (MMR) in 2015 was 176 maternal deaths per 100,000 live births, down from 569 per 100,000 in 1990.⁵ 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 Bangladesh 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 often 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. It has been estimated that in 2014 only 64% of pregnant women in Bangladesh received some level of prenatal care during their pregnancies, with a 20-point gap between rural and urban women. This is an improvement on previous years, as from 2000 until 2010 this rate hovered between 40% and 53%, but it is still incredibly low by global standards. It has also been estimated by UNICEF that only 31% received the minimum of four visits recommended by the WHO, up from an extreme low of 12% in 2001.⁶

⁵ World Bank, "Maternal mortality ratio (modeled estimate, per 100,000 live births)," 2015, available at: <https://data.worldbank.org/indicator/SH.STA.MMRT>.

⁶ UNICEF, "Maternal Health, Antenatal Care, Current Status + Progress," last accessed 5th October 2017, available at: <https://data.unicef.org/topic/maternal-health/antenatal-care>.

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 estimated need was met in 2012. The vast majority of rural births (of which there were almost 2.5 million in the year under observation) took place without a skilled birth attendant being present, as did around half of the almost 1 million urban births. Moreover, 22% of essential interventions were not covered by the minimum health benefits package.⁷
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 Bangladesh'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, Bangladesh 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) Religious Freedom

23. Islam is established by the constitution as the official religion of Bangladesh, but the constitution also provides for secularism and the promotion of equality for and prohibition of discrimination against members of all religions. Sunni Muslims make up around 90% of the country's population, followed by 9.5% adhering to Hinduism, and the remainder being made up mainly of Roman Catholics (and tiny numbers of other Christians) and Theravada-Hinayana Buddhists.
24. The Penal Code criminalizes statements and acts with "deliberate and malicious" intent against religious sentiments, imposing up to two years' imprisonment, and while it is not explicitly defined as such, it has been deployed against individuals accused of making insults made against Muhammad, effectively making this an anti-blasphemy law.⁸
25. Marriage between members of different religions is permitted, but in the case of Muslims, Hindus, or Christians marrying a person of a different religion, both spouses are required by law to renounce their religion prior to the solemnisation of the marriage.⁹
26. On the societal level, reports have emerged of attacks being perpetrated against members of minority religions, including ones causing death, injury, and property

⁷ UNFPA, "The State of the World's Midwifery 2014," last accessed 5th October 2017, available at: https://www.unfpa.org/sites/default/files/pub-pdf/EN_SoWMy2014_complete.pdf, 58.

⁸ Reporters Without Borders, "Cartoonist arrested over harmless play on name Mohammed," 19th September 2007, available at: <https://rsf.org/en/news/cartoonist-arrested-over-harmless-play-name-mohammed>.

⁹ Md. Kamruzzaman, *International Journal of Education, Culture and Society*, Vol. 1, No. 2, 2016, pp. 44-51, "Interreligious Marriage in Bangladesh: From Human Rights Perspective," 28th September 2016, available at: <http://article.sciencepublishinggroup.com/html/10.11648.j.ijecs.20160102.13.html>.

damage, as well discrimination in employment and housing being levelled against members of religious and ethnic minorities.¹⁰ Christians have reported refusals by Muslim landlords to rent property to them. Attacks have also been aimed at Hindus and their property, including the destruction of hundreds of statues, monasteries, temples, and homes.¹¹

27. Open Doors USA has reported that Christians have been effectively forced out of their communities in order to avoid having to renounce their faith or being subject to physical and mental abuse.¹²
28. A convert to Christianity from Islam, Hossain Ali, was also hacked to death on 22nd March 2017 by three Islamist assailants in his hometown of Garialpara, Kurigram in northern Bangladesh, who approached him on motorbikes, threw a Molotov cocktail at him, and attacked him with sharp weapons, killing him on the spot. He had been active in evangelising Muslims in his region, having become a Christian in 1999 and having been persecuted by his family for doing so (his steadfastness eventually leading to their own conversion), as well as by the government which withheld his salary from him for a number of months due to his faith.¹³
29. In June 2016, a Christian in the north-western village of Bonpara was murdered in a knife attack for which the so-called “Islamic State” or Da’esh claimed responsibility. Sunil Gomes was hacked to death at his grocery store soon after attending Sunday prayers at a nearby church, and Da’esh stated that it was just one of a number of its operations planned throughout Bangladesh.¹⁴
30. Da’esh has also claimed responsibility for a number of attacks, including a bombing on 24th October 2015 of a Shia Ashura celebration which killed two and injured many more, as well as the November 2015 non-fatal shootings of an Italian Catholic priest and a Baha’i community leader.¹⁵

¹⁰ The Indian Express, “Hindus and minorities discriminated against in Pak, Bangladesh: US,” 31st July 2012, available at: <http://archive.indianexpress.com/news/hindus-and-minorities-discriminated-against-in-pak-bangladesh-us/981559>; Akhtar Ali, *USA Today*, “Brutal killings target Bangladesh religious minorities,” 13th June 2016, available at: <https://www.usatoday.com/story/news/world/2016/06/13/brutal-killings-target-bangladesh-religious-minorities/85842236>.

¹¹ Mohshin Habib, *Gatestone Institute International Policy Council*, “Minority Hindus targeted in Bangladesh,” 21st November 2013, available at: <https://www.gatestoneinstitute.org/4058/hindus-bangladesh>.

¹² Open Doors USA, “World Watch List: Bangladesh,” last accessed 5th October 2017, available at: <https://www.opendoorsusa.org/christian-persecution/world-watch-list/bangladesh>.

¹³ Brianna Nishie, *Open Doors USA*, “Grieving the death of a true martyr in Bangladesh,” 17th July 2017, available at: <https://www.opendoorsusa.org/christian-persecution/stories/grieving-the-death-of-a-true-martyr-in-bangladesh>.

¹⁴ The Guardian, “Christian murdered in latest Bangladesh attack,” 5th June 2016, available at: <https://www.theguardian.com/world/2016/jun/05/christian-murdered-latest-bangladesh-attack-isis>.

¹⁵ DW, “‘Islamic State’ claims responsibility for Bangladesh bombings: monitor,” 24th October 2015, available at: <http://www.dw.com/en/islamic-state-claims-responsibility-for-bangladesh-bombings-monitor/a-18803452>; The Times of India, “ISIS claims attack on Italian priest in Bangladesh,” 19th November 2015, available at: <http://timesofindia.indiatimes.com/world/south-asia/ISIS-claims-attack-on-Italian-priest-in-Bangladesh/articleshow/49848826.cms>.

31. The June 2017 removal of a statue representing the Greek goddess of justice in front of the Supreme Court in the capital of Dhaka, motivated by protests that it was “un-Islamic,” has been cause for concern. Although many of the opponents of the removal were members of secular and left-wing movements, Christians also fear that it represents the government conceding ground to Islamism in breach of its secular polity, and that churches, especially those with iconography and statuary of saints, could be targeted in the same way in the future.¹⁶

(d) Recommendations

32. In light of the aforementioned, ADF International suggests the following recommendations be made to Bangladesh:
 - 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;
 - 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;
 - f. Ensure that the right to freedom of religion or belief is guaranteed and protected within Bangladesh, and that Christians and other religious minorities are treated equally and with respect to all of their human rights and fundamental freedoms by both society and the State;
 - g. Dedicate as many resources as possible to combatting and defeating the so-called “Islamic State” or Da’esh and other terrorist and extremist groups operating within Bangladesh’s borders; and
 - h. Ensure that Bangladesh’s secular polity is maintained and refrain from conceding to the demands of radical Islamists, especially when doing so threatens the wellbeing, security, and religious freedom of religious and ethnic minorities.

¹⁶ Open Doors USA, “A move toward Islamization in Bangladesh?” 15th June 2017, available at: <https://www.opendoorsusa.org/take-action/pray/move-toward-islamization-bangladesh>.



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