ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

UNIVERSAL PERIODIC REVIEW – THIRD CYCLE

Submission to the 35th Session of the Human Rights Council's Universal Periodic Review Working Group

July 2019, Geneva, Switzerland

LESOTHO

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people. 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, and the Organization of American States. ADF International is also a participant in the FRA Fundamental Rights Platform.

2. This report explains why Lesotho must continue to affirm the sanctity of life 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 right to abortion.

(a) Right to Life

3. Lesotho's Penal Code declares abortion to be a criminal offence, except under three circumstances: when the mother's health is implicated, when the child would be born with a mental or physical disability, or when the child was conceived through rape or incest.[1]

4. Lesotho has a struggling healthcare system. The ratio of doctors to population is 0.9 per 10,000; and of nurse-midwives to population at 10.2 per 10,000, both falling well below the regional average.[2] The state's maternal mortality ratio (MMR) in 2015 was 487 maternal deaths per 100,000 live births.[3]

5. High rates of maternal mortality are linked to the high incidence of HIV in Lesotho, an inability to access obstetric care, lack of information, lack of transportation, and lack of health workers, especially in the case of women living in poverty and in remote or rural areas.[4]

6. This notwithstanding, the situation in Lesotho for women facing childbirth is steadily improving. Though still unacceptably high, the MMR has reduced from 629 deaths per 100,000 live births in 1990.[5] A sweeping health reform introduced into ten districts in 2014 has seen investment in over 70 community health centers. Amongst other moves, the reform has ensured a healthy supply of delivery packs to these clinics so that birthing areas can be made safe and sterile despite unreliable access to electricity.[6] Meals, water for bathing and round-the-clock prenatal care are provided, free of charge.[7]

7. While international law does not provide for a right to abortion, pro-abortion organizations and activists continue to put forward the deceptive argument that the full

[1] Penal Code Act, 2010, ¶ 45
[2] United Nations Children's Fund (UNICEF), *Lesotho Health Budget Brief* (Report, November 2017) 3.
[3] World Health Organisation (WHO) et al.,'Maternal Mortality in 1990-2015: Lesotho' (Factsheet, 2015).
[4] Médecins Sans Frontières, 'Maternal Mortality in the Mountain Kingdom' (Press Release, 5 June 2013); WHO, 'Maternal Mortality' (Factsheet, 16 February 2018); WHO et al., (n7).
[5] WHO et al., (n7).
[6] Partners in Health, ''Mountain Kingdom' of Lesotho making huge strides with health reform' (Press Release, 15 May 2018).
[7] Partners in Health, 'Safe Deliveries, Big Smiles at Lesotho Health Center' (Press Release, 28 November 2018).

decriminalization of abortion is necessary in order for Lesotho to fulfill its human rights obligations.

The right to life in international law

8. Lesotho ratified both the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC) in 1992. In 2008, it also ratified the Convention on the Rights of Persons with Disabilities (CRPD).[8]

9. Article 6(1) of the ICCPR stipulates that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life"[9]. The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn.

10. 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."[10] 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.

11. 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"[11]. 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"[12].

12. 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."[13]

13. Article 1 of the CRC defines a child as "every human being below the age of eighteen years."[14] 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."[15] Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition and protection of unborn life.

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[8] United Nations Human Rights Office of the High Commissioner, 'Status of Ratification Interactive Dashboard', *OHCHR*, [Website], http://indicators.ohchr.org/, (accessed 31 May 2019).
[9] International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 6.
[10] *Id.* .
[11] A/C.3/SR.819 ¶ ¶17, 33;; In accordance with the Article 32 of the Vienna Convention, the travaux préparatoires are considered to be a "supplementary means of interpretation."
[12] 6 Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI Art 10.
[13] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), preamble.
[14] CRC (n27) Art 1.
[15] CRC (n27) Art 6.

Legalizing abortion does not make it any safer

14. Since its introduction in 20154 the health reform has seen a doubling of facility-based deliveries (from 6,012 in 2013 to 12,109 in 2017) across a sample of four pilot districts, meaning that women in labor have access to medication and trained professionals.[16] While there is still much room for improvement, these results show that the reform is a positive first step. With goals to scale this reform nationally, the state could continue to see encouraging improvements in the health and wellbeing of mothers and infants alike.[17] Lesotho should thus be commended for pursuing strategies of positive maternal healthcare as an alternative to legalizing abortion.

15. 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 hemorrhage and magnesium sulfate to treat preeclampsia. Problems in many countries with high MMR include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.

16. 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. While most women in Lesotho receive some level of prenatal care during their pregnancies, it was estimated by WHO that, as of 2014, 25.6% of pregnant women did not receive even the recommended four visits.[18]

17. While these issues must be remedied, frequent calls to increase legal abortion access as a necessary precondition to solving them are misguided and factually inaccurate, as Lesotho has proven. Providing more access to abortion will mean more women will suffer from abortion complications.

18. Indeed, 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. Further, abortion can never be safe because it takes the life of the unborn child, and harms the mother, both physically as well as mentally through the loss of her child.

19. In this vein, Lesotho must focus on introducing further measures to reduce recourse to abortion, instead of focusing on legalizing it, in line with paragraph 8.25 of the Program of Action of the International Conference on Population and Development.[19] Measures to reduce recourse abortion include improving access to education, which empowers women and leads to social and economic development.

(b) Recommendations

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

[16] Partners in Health (n10).
[17] *Id.*
[18] World Health Organization, Antenatal Care Coverage, Lesotho https://apps.who.int/gho/data/node.main.ANTENATALCARECOVERAGE4?lang=en
[19] United Nations Population Fund (UNFPA), 'Programme of Action of the International Conference on Population and Development: 20th Anniversary Edition' *International Conference on Population and Development* (2014) 89.

a. Affirm 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 adequate quality health-care, will not make pregnancy and childbirth any safer,

d. Take further measures to improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health; and

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

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