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ZAMBIA

The Center for Family and Human Rights (C-Fam) is a nongovernmental organization which was founded in 1997 and has held Special Consultative Status with the UN Economic and Social Council since 2014. We are headquartered in New York and Washington, D.C. and are a nonprofit, nonpartisan research and advocacy organization that is dedicated to reestablishing a proper understanding of international law, protecting national sovereignty and the dignity of the human person.

INTRODUCTION

1. In 2020, the ministers and high representatives of 34 countries met to launch the Geneva Consensus Declaration (GCD), in which they committed to promoting four objectives: improve women's health, protect human life, strengthen the family as the basic unit of society, and defend the sovereignty of nations with regard to their laws and policies to protect life.¹ Zambia was one of the original cosponsors of the GCD. This report focuses on Zambia's fulfillment of its commitments to human rights in the context of the four pillars of the GCD.

THE GENEVA CONSENSUS DECLARATION

2. The language of the GCD is drawn exclusively from documents agreed by consensus, including core UN human rights treaties, the founding documents of the UN such as the Universal Declaration of Human Rights (UDHR), and major meeting outcomes such as the Beijing Declaration and Platform for Action and the Programme of Action of the International Conference on Population Development.

PROTECTING WOMEN'S HEALTH

3. At the 1994 International Conference on Population and Development (ICPD), nations pledged "to enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant."² This commitment is echoed in the GCD, alongside reaffirmations of the importance of women's equal rights and their contributions to society, both in terms of education, employment, and civic engagement and through the family. The unique and essential role of women as mothers was recognized in the Beijing Declaration and Platform for Action adopted at the 1995 UN Fourth World Conference on Women.³ Both of these landmark conferences, as well as the subsequent Millennium Development Goals and Sustainable Development Goals, include commitments to reduce maternal and child mortality, and while significant progress has been made around the world, critical gaps remain, especially for those in the poorest, most remote, and resource-deprived areas.
4. According to the United Nations Population Fund, Zambia has reduced maternal mortality by 300 percent in the last sixteen years.⁴ From 2002 to 2018, the maternal mortality ratio dropped from 729 to 278 deaths per 100,000 live births, an improvement assisted by greater availability of skilled attendants and enhanced training for nurses and midwives. Nevertheless, Zambia's maternal mortality, and that of the sub-Saharan African region more broadly, remains high by global standards. The Saving Mothers, Giving Life initiative (2013-2018) introduced a multi-system approach to reduce maternal mortality in districts in Zambia, and reported a 41% reduction in deaths in those districts. Their approach focused on the labor, delivery, and postpartum period and worked to reduce delays in seeking and accessing care. Data from UNFPA show that while Zambia's fertility rate remains relatively high at 4.01 children per woman.⁵ According to UNAIDS, the HIV epidemic in Zambia disproportionately affects women.⁶ This, along with malaria, anemia, and malnutrition continue to contribute to maternal

morbidity and mortality.

5. Zambia's Termination of Pregnancy Act of 1972 is among the most liberal abortion laws in sub-Saharan Africa, allowing abortion in the case of risk to the life or health of the pregnant woman, including mental health, as well as in cases where the child is diagnosed with physical or mental abnormalities. It also allows for abortion on the basis of socio-economic grounds. The law specifies that abortions must be performed in registered hospitals and that the procedure must be approved by three doctors, one of whom must be a specialist.⁷ Despite widespread claims that liberalizing abortion laws will reduce maternal deaths, Zambia continues to report high mortality due to complications of abortion, and its reductions in overall maternal deaths over the last sixteen years occurred without significant further changes to the law with regard to abortion. In 2009, the Guttmacher Institute pointed out that the requirement for three doctors to approve the procedure (only one in emergency cases) was difficult to meet in a country with fewer than two physicians for every 10,000 people. They recommended that "training in safe abortion services" should be "a formal component of medical curricula" while acknowledging that the procedure is highly stigmatized.⁸
6. In a country with a shortage of physicians, especially in rural areas, where maternal mortality remains high, and where public healthcare "remains incredibly underfunded,"⁹ to prioritize women's health, including maternal health, requires strengthening health systems, building clinics and hospitals and ensuring they are well-resourced, and recruiting and training healthcare providers at all levels. Such a strategy would be in line with Zambia's efforts to achieve its Sustainable Development Goals targets, in keeping with its human rights obligations, and consistent with its affirmation of the Geneva Consensus Declaration. All women, including mothers giving birth and those injured by abortion, will benefit from more robust healthcare systems with more providers and expanded services. In contrast, centering abortion in medical training risks driving away potential providers who object to abortion as a matter of conscience.

PROTECTING HUMAN LIFE

7. Abortion remains highly controversial in Zambia, and while the 1972 law was based on the laws of the United Kingdom, since Zambia achieved its independence, the influence of religious groups on political issues has increased. A proposed bill of rights to be added to the constitution included the statement that "the right to life begins at conception." While the referendum failed due to low turnout, the issue remains a contentious one.¹⁰
8. In its previous UPR sessions, Zambia has received only one recommendation directly relating to abortion: in Zambia's third UPR, it was recommended by Kenya: "Do not further liberalize abortion and instead implement laws aimed at protecting the right to life of the unborn, recognizing that life starts at conception, and further, affirm that there is no international right to abortion." This recommendation was marked as "supported" by Zambia.
9. For Zambia to affirm the right to life from conception in its constitution would be entirely consistent with its human rights obligations as set out in the binding human rights treaties

ratified by Zambia as well as other international agreements. The 1994 International Conference on Population and Development (ICPD), as quoted in the GCD, states that “any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.”¹¹ The standard set at the ICPD has been repeatedly reaffirmed by international consensus, including at the adoption of the Sustainable Development Goals. No global human rights treaty ratified by Zambia asserts a human right to abortion, or could reasonably be interpreted as including such a right.¹² Furthermore, to the extent that Zambia’s current law on abortion derives from its colonial past, for Zambia to pass laws enhancing protections for the unborn would be consistent with the principle of self-determination as well as national sovereignty.

10. The degree to which complications from abortion result in maternal deaths in Zambia is difficult to precisely measure, as it is reported that many induced abortions that take place in Zambia occur illegally, despite the relatively liberal law. Some have estimated that up to 30% of maternal deaths are the result of “unsafe” and illegal abortion,¹³ although such estimates are difficult to verify. As mentioned previously, increased access to trained medical workers, and to emergency obstetric care in particular, would likely save the lives of many Zambian women from all causes of maternal death, including abortion complications. It is also in keeping with Zambia’s commitments outlined in the GCD to promote optimal health without including abortion, as well as the ICPD agreement that “governments should take appropriate steps to help women to avoid abortion.”¹⁴ Enhanced efforts must be taken to identify the root causes of abortion and ensure the needs of women and their families are met when faced with crisis pregnancies. Meanwhile, Zambia should continue to address the problem of illegal abortions, as it did in 2012 when it banned the organization Marie Stopes International (now MSI Reproductive Choices) for performing hundreds of illegal abortions.¹⁵

SUPPORT FOR THE FAMILY

11. The GCD reaffirms the obligations of States in regard to the family enshrined in international law, including the definition of the family as “the natural and fundamental group unit of society” and recognition that it is “entitled to protection by society and the State.” Signatories to the GCD further committed to “support the role of the family as foundational to society and as a source of health, support, and care.”¹⁶ In its Constitution, Zambia resolves “to ensure that our values relating to family, morality, patriotism and justice are maintained and all functions of the State are performed in our common interest.”¹⁷
12. In Zambian law, there is no recognition of same-sex relationships, and homosexual behavior between both men and women is illegal. In Zambia’s previous Universal Periodic Reviews, it has received recommendations to repeal the laws criminalizing homosexual activity from several countries, and all of these have been marked as “noted” rather than “supported.” This consistent position of Zambia reflects the fact that these issues are not subjects on which global consensus exists; nor are they included as rights in any binding international legal instrument to which Zambia is a party. As summarized in the Family Articles, a project of the coalition Civil Society for the Family, the right to

found a family is based on the union of a man and a woman, and “Relations between individuals of the same sex and other social and legal arrangements that are neither equivalent nor analogous to the family are not entitled to the protections singularly reserved for the family in international law and policy.”¹⁸

NATIONAL SOVEREIGNTY

13. As stated in the GCD, with regard to the legal status of abortion and the protection of the unborn, it is a matter of longstanding consensus that “each nation has the sovereign right to implement programs and activities consistent with their laws and policies.” However, opposition to this sovereign right of countries has become increasingly commonplace in those parts of the United Nations system governed more by expert opinion or bureaucratic oversight than by the standard of negotiated consensus. There is no global mandate to pressure countries to liberalize their abortion laws or expand the categories for non-discrimination as a matter of international human rights law with regard to, for example, sexual orientation or gender identity, and to the extent that mandate-holders engage in such behavior, they do so *ultra vires*.
14. Nevertheless, the frequency of such pressure has only increased toward countries whose laws restrict abortion in order to protect the unborn, or which maintain a traditional view of marriage and the family, in line with the human rights obligations expressed in the binding treaties they have ratified. Such nonbinding opinions have been further elevated in many parts of the UN, although they have never been accepted nor adopted by consensus in the General Assembly.
15. The GCD, by anchoring its every assertion in a document adopted by consensus, reaffirms the centrality of the family, the rights of women and children and the fact that these rights are not upheld by abortion, and the importance of national sovereignty, especially in those places where global consensus does not exist.
16. Unlike other UN human rights mechanisms, the UPR provides a space for sovereign nations to speak to each other and provide encouragement to fulfill their human rights obligations. To the extent that this venue has been used to exert further pressure on countries to liberalize their abortion laws or redefine the family as a matter of national law and policy, it is important that global consensus on these matters be upheld and promoted in the UPR as well, particularly by those countries that have already taken a stand in this regard by signing the GCD.

CONCLUDING RECOMMENDATIONS

17. We encourage Zambia to continue protecting the natural family and marriage, formed by a husband and a wife, as the fundamental unit of society, as well as the unborn, as previously recommended by Kenya.
18. Zambia should continue to improve maternal and child health outcomes, including by increased investment in the training and provision of medical professionals, with special attention to those in rural and remote areas and for those in low-resource settings. In

accordance with Zambia's commitments in the Geneva Consensus Declaration, this does not require the inclusion of abortion.

19. Zambia should examine whether its legal standards on abortion are consistent with the opinions of the Zambian people and consider strengthening protections for unborn children in law and policy, including by continuing to restrict organizations that flout Zambian law by performing illegal abortions.
20. Zambia should continue to assert the fact that abortion is not a human right in the context of multilateral negotiations, as well as in the Universal Periodic Review, in accordance with the Geneva Consensus Declaration, and call on its fellow signatories to do likewise.

¹ Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family, 2020. Available at <https://undocs.org/en/A/75/626>

² United Nations International Conference on Population and Development. (1994). "Programme of Action of the International Conference on Population Development," Cairo.

³ United Nations Fourth World Conference on Women. (1995). "Beijing Declaration and Platform for Action" (Annex II, Paragraph 29). Beijing.

⁴ United Nations Population Fund: East and Southern Africa region. How Zambia has reduced maternal deaths by 300 per cent in 16 years. February 24, 2022. Available at <https://esaro.unfpa.org/en/news/how-zambia-has-reduced-maternal-deaths-300-cent-16-years>

⁵ United Nations Population Fund data for Zambia, accessed 2022. <https://www.unfpa.org/data/ZM>

⁶ UNAIDS, Country progress report – Zambia, Global AIDS Monitoring 2020. Available at https://www.unaids.org/sites/default/files/country/documents/ZMB_2020_countryreport.pdf

⁷ Republic of Zambia. The Termination of Pregnancy Act. Chapter 304 of the Laws of Zambia. October 13, 1972. Available at

<https://www.parliament.gov.zm/sites/default/files/documents/acts/Termination%20of%20Pregnancy%20Act.pdf>

⁸ Suggested citation: Likwa RN, Biddlecom AE and Ball H, Unsafe abortion in Zambia, In Brief, New York: Guttmacher Institute, 2009, No. 3. Available at: https://www.guttmacher.org/sites/default/files/report_pdf/ib-unsafe-abortion-zambia.pdf

⁹ Thorpe, Isabella. Improving Healthcare in Zambia. The Borgen Project. August 20, 2020. Available at: <https://borgenproject.org/tag/healthcare-in-zambia/>

¹⁰ Haaland, M.E.S., Haukanes, H., Zulu, J.M. et al. Shaping the abortion policy – competing discourses on the Zambian termination of pregnancy act. Int J Equity Health 18, 20 (2019).

<https://doi.org/10.1186/s12939-018-0908-8>, available at <https://equityhealth.biomedcentral.com/articles/10.1186/s12939-018-0908-8>

¹¹ United Nations International Conference on Population and Development, *ibid*.

¹² See the San Jose Articles, 2011, available at www.sanjosearticles.com

¹³ Owolabi OO, Cresswell JA, Vwalika B, et al. Incidence of abortion-related near-miss complications in Zambia: cross-sectional study in central, Copperbelt and Lusaka provinces. Contraception 2017;95:167-74. Available at <https://www.sciencedirect.com/science/article/pii/S0010782415301657>

¹⁴ United Nations International Conference on Population and Development, *ibid*.

¹⁵ The Times of Zambia. "Zambia: Govt 'Aborts' Marie Stopes." July 26, 2012. Available at <https://allafrica.com/stories/201207260525.html>

¹⁶ Geneva Consensus Declaration, *ibid*.

¹⁷ Republic of Zambia. Zambia's Constitution of 1991 with Amendments through 2016. Available at https://constituteproject.org/constitution/Zambia_2016.pdf

¹⁸ Civil Society for the Family. The Family Articles. Available at <https://civilsocietyforthefamily.org/>