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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 focuses on the right to life of the unborn, the right to education under international law, and the right to freedom of thought, conscience, and religion, and South Africa's efforts in promoting and defending these rights.

(a) Right to Life

Background

3. The Constitution of the Republic of South Africa of 1996 (the Constitution) guarantees the right to life in Article 11: 'Everyone has the right to life.' Article 10 of the Constitution further ensures human dignity: 'Everyone has inherent dignity and the right to have their dignity respected and protected.' The rights protected in Articles 10 and 11 are non-derogable rights. In the body of the Constitution there is no clarification as to whether the right to life of the unborn is covered by Articles 10 and 11 of the Constitution.
4. However, the Constitution includes provisions that may be understood as denying the right to life of the unborn. Article 12(2) of the Constitution states:

Everyone has the right to bodily and psychological integrity, which includes the right

 - a. to make decisions concerning reproduction;
 - b. to security in and control over their body...
5. Both points, decision-making over one's reproduction and control over one's body, are commonly used to advocate for abortion and to deny the right to life of the unborn.
6. South Africa legalized abortion with the Choice on Termination of Pregnancy Act 1996 (the 1996 Act).¹ In accordance with Article 2 of the 1996 Act:
 2. (1) A pregnancy may be terminated-
 - (a) upon request of a woman during the first 12 weeks of the gestation period of her pregnancy;
 - (b) from the 13th up to and including the 20th week of the gestation period if a medical practitioner, after consultation with the pregnant woman, is of the opinion that-
 - (i) the continued pregnancy would pose a risk of injury to the woman's physical or mental health; or
 - (ii) there exists a substantial risk that the fetus would suffer from a severe physical or mental abnormality; or
 - (iii) the pregnancy resulted from rape or incest; or
 - (iv) the continued pregnancy would significantly affect the social or economic circumstances of the woman; or

¹ No. 1891. 22 November 1996.

(c) after the 20th week of the gestation period if a medical practitioner, after consultation with another medical practitioner or a registered midwife, is of the opinion that the continued pregnancy-

(i) would endanger the woman's life;

(ii) would result in a severe malformation of the fetus; or

(iii) would pose a risk of injury to the fetus.

(2) The termination of a pregnancy may only be carried out by a medical practitioner, except for a pregnancy referred to in subsection (1)(a), which may also be carried out by a registered midwife who has completed the prescribed training course.

7. In 2014, there were 89,126 reported abortions, and the abortion ratio, the number of abortions per 1,000 live births, was 73.8.² Despite the fact that abortion in South Africa is legal and the provisions are very liberal, the illegal practice of abortion is widespread.³ One of the recent and most glaring examples was the abortion of fully developed twins. On 25 November 2015, the bodies of two aborted girls in the 8th to 9th month of pregnancy were found by members of the community in a plastic bag in Mahikeng.⁴
8. In 2015, the maternal mortality rate in South Africa was very high at 138 deaths per 100,000 live births, decreasing from 154 in 2011.⁵ This is despite the fact that abortion law is very liberal in South Africa. Teenage pregnancy rates remain high at 47 per 1,000 women between the ages of 15 and 19 years.⁶

Right to Life in International Law

9. South Africa ratified the International Covenant on Civil and Political Rights (ICCPR) on 10 March 1999 and the Convention on the Right of the Child (CRC) on 16 June 1995.
10. Article 6(1) of the ICCPR states, 'Every human being has the inherent right to life.' Furthermore, Article 6(5) of the ICCPR states, '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.*' The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. As the *travaux préparatoires*⁷ of the ICCPR explicitly state, '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.*'⁸ Similarly, the Secretary General report of 1955 notes that the intention of the

² Historical abortion statistics, South Africa, available at: <http://www.johnstonsarchive.net/policy/abortion/ab-southafrica.html>.

³ Illegal abortion thrive in South Africa, available at: <https://www.enca.com/south-africa-life/illegal-abortion-thrive-south-africa>.

⁴ The bodies of twin girls aborted at 8-9 months found in South Africa, available at: <http://www.nationalrighttolifenews.org/news/2016/01/the-bodies-of-twin-girls-aborted-at-8-9-months-found-in-south-africa/#.Vuwi6Y32bh0>.

⁵ The World Bank, Maternal mortality ratio, available at: <http://data.worldbank.org/indicator/SH.STA.MMRT>.

⁶ The World Bank, Adolescent fertility rates, available at: <http://data.worldbank.org/indicator/SP.ADO.TFRT>.

⁷ In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a "supplementary means of interpretation."

⁸ Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957. A/3764 § 18.

paragraph 'was inspired by humanitarian considerations and by *consideration for the interests of the unborn child*[.]'⁹

11. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the CRC. The preamble states, '[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth*.' 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.
12. Providing access to abortion means that more women suffer from abortion-related complications. There are numerous maternal risks associated with abortion. A major study published in the *British Medical Journal* in 2015 concluded that States with 'less permissive' abortion laws 'exhibited consistently lower maternal mortality rates.'¹⁰ Although the study explains these differences in terms of other independent factors rather than in terms of abortion legislation itself, it nevertheless concludes, 'No statistically independent effect was observed for abortion legislation, constitutional amendment or other covariates.'¹¹ Because abortion legislation has no effect on maternal mortality, abortion need not be legalized to protect women's health. Abortion is further associated with a high risk of haemorrhaging, developing sepsis, and developing injuries to internal organs, including intrauterine perforations.¹² Moreover, abortion can never be safe because it takes the life of the unborn child and harms the mother through the loss of her child. It has also been reported that women who have had abortions are more vulnerable to self-destructive tendencies, depression, and other unhealthy behaviour aggravated by the abortion experience.¹³
13. Therefore, South Africa must focus on protecting the right to life of the unborn and on helping women get through pregnancy and childbirth safely, rather than on ending pregnancies. South Africa must protect women, girls and children and therefore take steps to repeal the 1996 Act. In order to reduce maternal mortality and teen pregnancy, South Africa also should provide women with access to knowledge-based education about their bodies, healthy behaviours and responsible decision-making. South Africa should redirect resources to improve maternal health and medical infrastructure to solve the problem of high maternal mortality rates. South Africa must also take steps to abolish the illegal practice of abortion, and to investigate and prosecute the perpetrators.

⁹ Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955. A/2929, Chapter VI, §10.

¹⁰ Elard Koch, Monique Chireau, and Fernando Pliego et. al., *Abortion Legislation, Maternal Healthcare, Fertility, Female Literacy, Sanitation, Violence Against Women and Maternal Deaths: A Natural Experiment in 32 Mexican States*, *BMJ OPEN* 2015;5 e006013, doi:10.1136/bmjopen-2014-006013, p. 1.

¹¹ *Ibid*.

¹² Gunnell Lindell and Folke Flam, *Management of Uterine Perforations in Connection with Legal Abortions*, *ACTA OBSTET GYNECOL SCAND.* (1995) May 74(5):373-5, available at <http://onlinelibrary.wiley.com/doi/10.3109/00016349509024431>.

¹³ David C. Reardon, Philip G. Ney, Fritz Scheuren, Jesse R Cogle, Priscilla K Coleman, Thomas W. Strahan, *Deaths Associated with Pregnancy Outcome: A Record Linkage Study of Low Income Women*, *SOUTHERN MEDICAL JOURNAL*, (2002) August, 95(8):834-841.

(b) Right to Education

Background

14. Home education is legal in South Africa by virtue of the National Education Policy Act 1996 (the Education Act).¹⁴ Despite the fact that homeschooling is legal and well regulated, there have been numerous cases where the State limited parents' right to choose education for their children. In one of the cases, the children were removed from the parents and placed in the care of the grandparents because the children did not attend school but were homeschooled.¹⁵ Furthermore, the government policy in relation to homeschooling is undergoing changes. In February 2014, a draft policy for homeschooling was issued that limited parental rights to decide on their children's education.¹⁶ Subsequently, it was reported that homeschooling in South Africa would undergo changes that would align it with the formal system of education.¹⁷

International Law

15. The right of parents to choose education for their children and to educate their children in accordance with their convictions is protected under international law. Article 26(3) of the Universal Declaration of Human Rights states, 'Parents have a prior right to choose the kind of education that shall be given to their children.'
16. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights is equally explicit in guaranteeing the right to alternative forms of education. It reads:

The States Parties [...] undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
17. Article 18(4) of the ICCPR provides that States must 'undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions.'
18. Article 18(1) of the Convention on the Rights of the Child states, 'Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child.' Article 14(2) requires States to 'respect the rights and duties of the parents [...] to provide direction to the child in the exercise of his or her right [to freedom of religion] in a manner consistent with the evolving capacities of the child.'

¹⁴ No. 1411, 23 November 1999.

¹⁵ HSLDA, South African Family ripped apart, available at: <http://www.hslda.org/hs/international/SouthAfrica/201508100.asp>.

¹⁶ HSLDA, Western Cape Attacks Homeschoolers, available at: <http://www.hslda.org/hs/international/SouthAfrica/201408072.asp>.

¹⁷ HSLDA, All on the Same Grid: Home Education in South Africa to be micromanaged by the State, available at: <http://www.hslda.org/hs/international/SouthAfrica/201408070.asp>.

19. The right of parents to have their children educated in accordance to their conscience is further protected by the right to freedom of thought, conscience, and religion.

Freedom of Thought, Conscience and Religion in International Law

20. The right to freedom of thought, conscience, and religion is protected in Article 18 of the ICCPR. Also, the Human Rights Committee confirmed in its General Comment No.22:

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.¹⁸

21. South Africa must ensure that the people are not prevented from professing and practising their faith freely, as guaranteed under international law. Such limitation of religious freedom would further violate Articles 2 and 26 of the ICCPR, namely, the guarantee of equal rights and freedom from discrimination on the basis of religion, and Article 27, guaranteeing the rights of religious minorities to profess and practise their faith.
22. South Africa must make sure that the parental right to choose education for their children is protected and reinforced, in accordance with the international law standards.

(c) Recommendations

23. In view of the above, ADF International recommends the following:
 - Take steps to recognize and follow national and international obligations to protect the right to life from conception to natural death;
 - Work to end abortion in accordance with international obligations to protect the life of the unborn;
 - Introduce additional safeguards on abortion services, e.g., mandatory counselling and waiting periods prior to undergoing abortion;
 - At a minimum, maintain the requirements for obtaining an abortion;
 - Ensure that all cases of illegal abortion are investigated and prosecuted;
 - Ensure that parents' right to choose education for their children is duly protected, in accordance with international law;
 - Ensure the right to freedom of thought, conscience, and religion of all people, in accordance with international law standards.

¹⁸ Human Rights Committee, General Comment No.22, 1.