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GABON

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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 Cooperation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Gabon must resist calls to legalize abortion and why it must focus on life-affirming policies aimed at lowering its high levels of maternal mortality and morbidity.

(a) Abortion

3. Abortion is illegal in Gabon, though principles of criminal law allow for a doctor to perform lifesaving surgery on a pregnant woman even when this will have the likely or necessary effect of ending the life of her unborn child.
4. The social and political presumption in Gabon is that abortion is and should remain illegal, but some NGOs and "health experts" have claimed that further legalization is necessary under the false claim that international law requires it.

The right to life in international law

5. A so-called international "right to abortion," however, is incompatible with various provisions of international human rights treaties, particularly provisions on the right to life.
6. Article 6(1) of the ICCPR states that "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.
7. 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 a "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.
8. 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.*¹ 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.*”²

9. 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.*”
10. 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

11. The medical infrastructure in Gabon is poor by global standards, 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.
12. High rates of maternal mortality in sub-Saharan African countries 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.
13. 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

14. Gabon 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.

¹ 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.”

² Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI, Article 10.

15. Gabon 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 Gabon, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(b) Maternal Health

16. The maternal mortality ratio in Gabon was 291 maternal deaths per 100,000 live births in 2015, down from 422 in 1990.³ This is very high, but lower than in other African nations in which abortion laws are significantly more liberal, such as Ghana, whose 2015 maternal mortality ratio was 319 per 100,000, and comparable to others such as Zambia, in which there were 224 maternal deaths per 100,000 live births.
17. Nevertheless, every maternal death is a tragedy. It devastates the woman's family, in particular the woman's other children, and affects the entire community socially and economically. The high number of maternal deaths in Gabon is a human rights crisis.

Necessary maternal health interventions

18. Almost all maternal deaths are preventable,⁴ 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. 95% of pregnant women in Gabon in 2012 were reported to have made at least one prenatal visit, and 78% were reported to have made at least four visits in line with the recommendation of the WHO.⁵ Despite this relatively high level of coverage by West African standards, however, maternal death rates nevertheless remain extremely high.
20. These issues must be remedied, but frequent calls to increase access to legal abortion as a necessary precondition to solving this are misguided. Legalizing abortion also does not guarantee that pregnancy and childbirth will become safer when the real problems with Gabon'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.

³ World Bank, Maternal mortality ratio (modeled estimate, per 100,000 live births), 2015, <http://data.worldbank.org/indicator/SH.STA.MMRT>.

⁴ World Health Organization, Fact Sheet No. 348, Maternal mortality, <http://www.who.int/mediacentre/factsheets/fs348/en/>.

⁵ UNICEF, Maternal Health: Antenatal Care – Current Status + Progress, <https://data.unicef.org/topic/maternal-health/antenatal-care/>.

21. In line with paragraph 8.25 of the ICPD, Gabon 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

22. Given the international pressure on Gabon to liberalize its abortion laws, as well as the unavailability of good health care for all women, ADF International recommends the following:

- a. Recognize that the liberalization of abortion laws is not required under international law, and that international law in fact requires the protection of the right to life of unborn children;
- b. Recognize that the legalization of abortion in a country with higher than average levels of maternal mortality and morbidity and problems with access to proper health care will not lead to safer pregnancy and childbirth;
- c. Resist calls to legalize abortion, and implement laws and policies which respect and protect the right to life of the unborn;
- d. Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health, with a focus on safely getting mothers and babies through pregnancy and childbirth, with special focus on improving health-care access for women from poor and/or rural backgrounds.