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BURUNDI

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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 Burundi should continue to affirm the sanctity of life on the part of all human beings, including the unborn, why it should resist calls to liberalize access to abortion due to the fact that there is no international human right to abortion, and how abortion will not help with the problem of its high levels of maternal mortality and morbidity. It also deals with the problems regarding religious freedom in the midst of recent political upheaval.

(a) Abortion

3. Abortion is prohibited in Burundi under sections 353-357 of its amended Penal Code “except to avert a risk that cannot otherwise be avoided and that threatens the life of the mother or may cause serious and permanent injury to her health.” An explanatory clause to the legislation indicates that although the government did not intend to liberalise access to abortion, it nevertheless sees it as wrong to “ignore certain social necessities, such as the situation of distress of the pregnant woman.” The approval of a second physician and the written consent of the pregnant mother are both required.¹
4. Organisations supporting the liberalisation of abortion laws argue that expanded access to abortion is required as a matter of international human rights law and in order to reduce high levels of maternal mortality in the country.

The right to life in international law

5. 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.
6. 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.
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 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

¹ United Nations Department of Economic and Social Affairs, Burundi Abortion Policy, <http://www.un.org/esa/population/publications/abortion/doc/burund1.doc>.

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*.”² 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*.”³
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 Burundi is in dire need of improvement, 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 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. Burundi 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

² 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.”

³ Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI, Article 10.

reduce abortion include improving access to education, which empowers women and leads to social and economic development, as well as facilitating healthy decision-making.

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

(b) Maternal Health

16. Burundi's maternal mortality ratio (MMR) in 2015 was 712 maternal deaths per 100,000 live births. This is down from 1220 per 100,000 in 1990 but is nevertheless one of the highest rates of maternal mortality in the world, coming behind only Central African Republic, Chad, Liberia, Nigeria, Sierra Leone, Somalia, and South Sudan.⁴ 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 Burundi is a human rights crisis that must urgently be addressed.

Necessary maternal health interventions

17. 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 include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.
18. 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. Although it has been estimated that in 2010 close to 98% of pregnant girls aged 15-19 in Burundi received some level of prenatal care during their pregnancies, it was estimated by UNICEF that barely a third of all women made the minimum of four visits recommended by the WHO.⁵
19. UNFPA also documented that with regard to availability of midwives, nurses, clinical officers and medical assistants, physicians, and OB/GYNs, only 74% of the estimated need was met in 2012, and that more than a third of rural births, which

⁴ World Bank, Maternal mortality ratio (modeled estimate, per 100,000 live births), 2015, <http://data.worldbank.org/indicator/SH.STA.MMRT>.

⁵ World Health Organization, Global Health Observatory country views – Burundi statistics summary (2002 – present), <http://apps.who.int/gho/data/node.country.country-BDI>; UNICEF, Maternal Health, Antenatal Care, Current Status + Progress, <https://data.unicef.org/topic/maternal-health/antenatal-care>.

make up the vast majority of all births in Burundi, took place without a skilled birth attendant being present or involved.⁶

20. 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 Burundi'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.
21. In line with paragraph 8.25 of the ICPD, Burundi 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

22. Christianity, and specifically Roman Catholicism, is the prevailing religion of Burundi, with over two-thirds of the population identifying as adherents. The Constitution provides for religious freedom and the government has not been known to violate this with any degree of consistency and impunity.
23. In 2015, however, religious communities came under pressure as a result of controversy surrounding Pierre Nkurunziza, the incumbent president, deciding to run for a third term in office, though the constitution appeared to indicate that he was term-limited.
24. As a result of Nkurunziza's nomination as his party's presidential candidate, protests erupted and quickly turned into civil unrest due to clashes with police, and an attempted coup led to the involvement of the military.
25. The Catholic Bishops of Burundi collectively stated that the Nkurunziza should not run for a third term, and argued that the constitution did not permit him to do so.⁷ In response to this, the president of the National Assembly, Pascal Nyabenda, claimed that the Church was playing a "purely political, not spiritual role" and that its clergy were "sponsors of terrorism," placing the blame on colonial missionaries centuries beforehand for Burundi's present problems and claiming that the Church must "change its attitudes" on the matter.⁸
26. Other sources have reported that Church-affiliated newspapers and radio broadcasters have been frequently suspended due to political clashes. Several other religious organisations have been banned when their doctrines conflict with

⁶ UNFPA, *The State of the World's Midwifery 2014*, 64, https://www.unfpa.org/sites/default/files/pub-pdf/EN_SoWMy2014_complete.pdf.

⁷ Vatican Radio, *Catholic Bishops of Burundi oppose President's third term bid*, 9th March 2015, http://en.radiovaticana.va/news/2015/03/09/catholic_bishops_of_burundi_say_no_to_presidents_third_term/1127998.

⁸ *Catholic Herald*, *Burundi official accuses Church of 'sponsoring terrorism' as crisis engulfs the country*, 7th April 2017, <http://www.catholicherald.co.uk/news/2016/04/07/burundi-official-accuses-church-of-sponsoring-terrorism-as-crisis-engulfs-the-country/>.

civil authorities. One example is that of the Seventh-Day Adventists, who observe the Sabbath on Saturday, a day on which the government requires all citizens to provide community service.⁹

27. These aforementioned issues all constitute violations of the rights to freedom of conscience and religion and the right to manifest one's religion or beliefs under Article 18 of the International Covenant on Civil and Political Rights. They also constitute violations on the right to freedom of expression, given that individuals in positions of authority in religious organisations or communities should not be intimidated or silenced by government officials for speaking up about perceived irregularities in the electoral process and potential constitutional abuses by elected officials.

(d) Recommendations

28. In light of the aforementioned, ADF International suggests the following recommendations be made to Burundi
 - 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; and
 - 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 the protection and promotion of freedom of religion, and eradicate any and all illegitimate limitations or restrictions on the freedom of expression of religious individuals or communities.

⁹ University of Pennsylvania, African Studies Center, Religion in Burundi, available at <http://www.africa.upenn.edu/NEH/breligion.htm>, accessed 17th June 2017.



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