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UGANDA

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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 Uganda should resist calls to legalize abortion, and how international law does not justify a so-called right to abortion. The report also details how Uganda must improve maternal health. Finally, it urges the government to ensure that Christians, especially people who convert to Christianity from Islam, are protected.

(a) Abortion

3. A study conducted in 2003 estimates that 297,000 women and girls undergo induced abortions each year in Uganda,¹ many of which lead to serious complications, including death. However, the estimate is highly uncertain as it is based on “indirect estimation techniques” and, given the pro-abortion affiliations of the authors, such as the Guttmacher Institute, it is likely overestimated.
4. The Ugandan people are strongly opposed to abortion. 76% of Christians and 75% of Muslims in Uganda think it is morally wrong to have an abortion; only 12% of Christians and 15% of Muslims think having an abortion is morally acceptable.²
5. Ugandan law also strongly disfavors abortion. The Constitution states in Article 22(2), “No person has the right to terminate the life of an unborn child except as may be authorised by law.”
6. The penal code states in section 141 that it is a felony for anyone to attempt to procure an abortion and in section 142 that it is a felony for a pregnant woman to procure a miscarriage. It is also a felony to supply drugs to procure an abortion, according to section 143. Killing an “unborn child,” that is, “prevent[ing] the child from being born alive,” is a felony, detailed in section 212. However, section 224 states that performing “a surgical operation [. . .] upon an unborn child for the preservation of the mother’s life” absolves someone from criminal responsibility, if “perform[ed] in good faith and with reasonable care and skill.” Although not clear, it is understood as an exception for the life of the mother.
7. Uganda ratified the Maputo Protocol, but specifically reserved on article 14(2)(c), the provision recognizing a right to abortion “in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.” Uganda reserved, “The State is not bound by this clause unless permitted by domestic legislation expressly providing for abortion. The Republic of Uganda makes this ratification on the understanding that the above clause [] of the present Protocol shall not apply to the Republic of Uganda.”

¹ Susheela Singh et al., *The incidence of induced abortion in Uganda*, 31 INT’L FAM. PLAN. PERSP. 183, 188 (2005), available at <http://www.guttmacher.org/pubs/journals/3118305.pdf>.

² PEW FORUM ON RELIGION & PUBLIC LIFE, TOLERANCE AND TENSION: ISLAM AND CHRISTIANITY IN SUB-SAHARAN AFRICA 275 (2010), available at <http://www.pewforum.org/files/2010/04/sub-saharan-africa-full-report.pdf>.

8. The presumption in Ugandan law is that abortion is illegal, and this both reflects and is supported by the views and values of the Ugandan people.
9. Nevertheless, some NGOs and “health experts” argue that Uganda’s abortion law is broader, or have called for further legalization. Many say that international law justifies or even requires it.
10. Uganda has the sovereign authority to retain laws that protect human life, and must not bow to pressure imposed by false claims that its international obligations require abortion legalization. International law, in fact, protects the right to life of the unborn.

The right to life in international law

11. 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.
12. 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. 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, “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’s distinct identity from the mother and protecting the unborn’s right to life.
13. As the *travaux préparatoires*³ 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.*”⁴ Similarly, the Secretary General report of 1955 notes that the intention of the paragraph “was inspired by humanitarian considerations and by *consideration for the interests of the unborn child.*”⁵
14. 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, “[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.*”
15. 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, “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 of, and protection for, unborn life.

³ In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a “supplementary means of interpretation.”

⁴ A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

⁵ A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955.

Legalizing abortion does not make it safe

16. Legalizing abortion does not guarantee that it becomes safe. A report by the Guttmacher Institute states, “Changing the law [. . .] is no guarantee that unsafe abortion will cease to exist.”⁶ The medical infrastructure in Uganda is poor, with an inadequate number of trained health professionals and unsanitary, poorly equipped public health facilities.⁷ Women who receive abortions will still face poor conditions, the same ones 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.
17. 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

18. Uganda 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.
19. In order to reduce abortions and to improve maternal health, women must have access to information that emphasizes knowledge-based education about their bodies and facilitates full informed consent, healthy behaviours, and responsible decision-making.
20. Uganda 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 Uganda, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(b) Maternal health

21. Uganda has one of the highest maternal mortality ratios (MMR) in the world at 343 deaths per 100,000 live births.⁸ The lifetime risk of maternal death, or the probability that a 15-year-old woman will die from a maternal cause at some point in her life, is 1 in 47.⁹ 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 Uganda is a human rights crisis.

Necessary maternal health interventions

22. Almost all maternal deaths are preventable,¹⁰ particularly when skilled birth attendants are present to manage complications and the necessary drugs are

⁶ See Susan A. Cohen, *Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide*, GUTTMACHER POL’Y REV. (2009), available at <http://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html>.

⁷ See, e.g., Flavia Nassaka, *No healthcare for the poor*, INDEP., 24 Aug. 2015, available at <http://www.independent.co.ug/features/features/10548-no-healthcare-for-the-poor>.

⁸ WHO ET AL., TRENDS IN MATERNAL MORTALITY 1990-2015 Appendix 7, available at http://www.unfpa.org/sites/default/files/pub-pdf/Trends_in_Maternal_Mortality_1990-2015_eng.pdf.

⁹ *Id.*

¹⁰ World Health Organization, Fact Sheet No. 348, Maternal mortality, <http://www.who.int/mediacentre/factsheets/fs348/en/>.

available, such as oxytocin (to prevent hemorrhage) and magnesium sulfate (to treat pre-eclampsia).

23. Uganda must focus on providing prenatal care. 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.¹¹ According to the 2011 Demographic and Health Survey, only 48 percent of women in Uganda had at least four prenatal visits, and only 21 percent had their first visit in the first trimester, as recommended.¹²
24. The WHO states, “Most obstetric complications could be prevented or managed if women had access to skilled birth attendant – doctor, nurse, midwife – during childbirth.”¹³ Skilled birth attendants (SBAs) are trained to recognize and manage complications, and to refer women to higher levels of care if necessary. According to UNFPA, only 27 percent of the need for SBAs in Uganda is met.¹⁴ Only 58 percent of births are attended by an SBA, including only 53 percent of births in rural areas.¹⁵ The population of Uganda is expected to increase from 36.3 million in 2012 to 63.4 million in 2030.¹⁶ It must prepare to respond to an estimated 3.4 million pregnancies per year by 2030, 82 percent of which will be in rural settings.¹⁷
25. Women must also receive postnatal care. Only 33 percent of women received postnatal care within two days of delivery.¹⁸ 64 percent did not receive any postpartum checkup, including 78 percent of mothers with no education and 73 percent of mothers in the lowest wealth quintile.
26. Uganda must recognize the barriers to adequate health care during pregnancy, childbirth, and the postnatal period, including poverty, distance, lack of information, inadequate services, and cultural practices. 65 percent of women in Uganda reported that there was at least one barrier, such as needing permission to go for treatment, not wanting to go alone, and in particular getting money for treatment and distance to a health facility, in getting care for a health concern.¹⁹

(c) Religious freedom

27. Uganda generally has a high level of religious freedom, with 85 percent of the population Christian and 12 percent Muslim. Article 29 of the Ugandan Constitution guarantees “freedom of thought, conscience and belief” and “freedom to practise any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation.”
28. However, there are reports that some Christians, especially converts from Islam and especially in Eastern Uganda, are being attacked and even killed. In December

¹¹ World Health Organization, Antenatal care, http://www.who.int/gho/maternal_health/reproductive_health/antenatal_care_text/en/.

¹² UGANDA DEMOGRAPHIC AND HEALTH SURVEY 2011 107 (2012) [hereinafter UGANDA DHS], available at <http://dhsprogram.com/pubs/pdf/FR264/FR264.pdf>.

¹³ World Health Organization, Skilled attendants at birth, http://www.who.int/gho/maternal_health/skilled_care/skilled_birth_attendance_text/en/.

¹⁴ UNFPA, THE STATE OF THE WORLD’S MIDWIFERY 2014 186 (2014), http://www.unfpa.org/sites/default/files/pub-pdf/EN_SoWMy2014_complete.pdf.

¹⁵ UGANDA DHS, *supra* note 12, at 112.

¹⁶ UNFPA, *supra* note 14, at 186.

¹⁷ *Id.*

¹⁸ UGANDA DHS, *supra* note 12, at 114.

¹⁹ *Id.* at 118-19.

2015, a Christian father of five was killed because of his evangelism.²⁰ In October 2015, the wife of a convert from Islam, a mother of eight children, was killed; her husband's brother was killed in September.²¹ In April 2014, two girls were beaten by their father after converting from Islam; one girl died.²² A similar event occurred in December 2014, with one sister dying.²³ The father was arrested but released on bail after saying she died in a motorcycle accident and bribing police.

29. In 2013, Uganda was number 47 on the Open Doors World Watch List of countries where it is most difficult to be a Christian, although the situation has improved and Uganda is no longer in the top 50 list.

30. In order to comply with article 18 of the International Covenant on Civil and Political Rights (ICCPR), the government of Uganda must guarantee that Christians are free to profess and practise their faith everywhere in the country. Uganda must ensure that perpetrators of crimes against Christians—that all perpetrators of crimes—are brought to justice.

(d) Recommendations

31. Given the push in Uganda for abortion and the unavailability of good health care for women, ADF International recommends the following:

- Recognize that the liberalization of abortion laws is not required by international law;
- Recognize that the legalization of abortion in a country with such a high maternal mortality ratio and poor health care system infrastructure will not make abortion safe, and protect the women of Uganda by resisting pressure to legalize it;
- Improve the health care system infrastructure, increase midwife training, and devote more resources to maternal health, with the focus on getting mothers and babies safely through pregnancy and childbirth.
- Protect Christians, especially converts from Islam, from violence and persecution through enforcement of religious freedom laws, police protection, and prosecution and punishment of perpetrators.

²⁰ *Suspected Hard-line Muslims in Eastern Uganda Kill Christian in Sword Attack*, MORNING STAR NEWS, 4 Dec. 2015, <http://morningstarnews.org/2015/12/suspected-hard-line-muslims-in-eastern-uganda-kill-christian-in-sword-attack/>.

²¹ *Bloodshed in Eastern Uganda as Christian Mother of Eight Is Slain*, MORNING STAR NEWS, 23 Oct. 2015, <http://morningstarnews.org/2015/10/bloodshed-in-eastern-uganda-continues-as-christian-mother-of-eight-is-slain/>.

²² *Muslim in Uganda Kills Daughter for Leaving Islam, Sister Says*, MORNING STAR NEWS, 19 Apr. 2014, <http://morningstarnews.org/2014/04/muslim-in-uganda-kills-daughter-for-leaving-islam-sister-says/>.

²³ *Imam in Uganda Allegedly Beats Daughter to Death for Converting to Christ*, MORNING STAR NEWS, 21 Jan. 2015, <http://morningstarnews.org/2015/01/imam-in-uganda-beats-daughter-to-death-for-converting-to-christ/>. See more reports at Uganda, MORNING STAR NEWS, <http://morningstarnews.org/region/sub-saharan-africa/uganda/>.