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MALI

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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 Mali should continue to affirm the sanctity of life on the part of all human beings, including the unborn, and why it should resist calls to liberalize access to abortion due to the fact that there is no international human right to abortion. It also deals with the issue of high levels of maternal mortality and morbidity in Mali, as well as the need for the government of Mali to protect Christians and other religious minorities from persecution.

(a) Abortion

3. Abortion is illegal in Mali under Article 170 of the Penal Code and no exceptions to this law are expressly stated, although reportedly general principles of criminal law allow for an abortion to be carried out where doing so is deemed necessary to save the life of the pregnant mother.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 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*

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

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 Mali 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. Mali 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.
15. Mali must also focus on helping women get through pregnancy and childbirth safely, rather than helping women end their pregnancies. Given the maternal health crisis

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.

in Mali, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(b) Maternal Health

16. Mali's maternal mortality ratio (MMR) in 2015 was 587 maternal deaths per 100,000 live births, down from 1010 per 100,000 in 1990.⁴ 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 Mali is a human rights crisis.

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 2006 around 70% of pregnant girls aged 15-19 in Mali received some level of prenatal care during their pregnancies, in 2015 it was estimated by UNICEF that only 48% of women overall had one prenatal care visit, and only 38% received 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 30% of the estimated need was met in 2012, and no data was available on the proportion of births in which skilled birth attendants were involved, especially in rural areas where the number of births more than doubled those in urban areas.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 Mali'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.

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

⁶ UNFPA, The State of the World's Midwifery 2014, 134, https://www.unfpa.org/sites/default/files/pub-pdf/EN_SoWMy2014_complete.pdf.

21. In line with paragraph 8.25 of the ICPD, Mali 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.
22. A report by the WHO has revealed that proliferation of community-based mutual health organisations (MHOs) has the effect of significantly raising the standard of health-care provision in Mali, including that MHO members are twice as likely to make four or more prenatal visits. Further investment in this regard with the aim of universal coverage is only the first step in ensuring that Mali's extremely high MMR be reduced to the greatest extent possible.⁷

(c) Religious Freedom

23. The vast majority of the population of Mali adheres to Islam, with a small minority of Christians and animists. The state is officially secular, however, and provides for freedom of religion, a right which it generally respects. As a result of the Northern Mali conflict beginning in 2012, however, Islamists groups, including al-Qaeda in the Islamic Maghreb, occupied the northern portion of the country and began strictly enforcing *sharia*. Though a joint French and Canadian military intervention in 2013 put an end to the occupation and direct enforcement, insurgencies continue in spite of a ceasefire signed in 2015.
24. Open Doors has reported that, as a result of Islamic radicalism and violence, Christians have been on the receiving end of religious repression and persecution, most notably in August 2015 when 13 people were killed in a hotel in the town of Sevare by Islamist gunmen. A Swiss missionary, Beatrice Stockly, was abducted in 2015 by al-Qaeda from her residence in Timbuktu, having been kidnapped previously in 2012, and a Columbian nurse and nun, Gloria Cecilia Narvaez Argoti, was also kidnapped near the Burkina Faso border in February 2017.⁸
25. Such acts violate the right to freedom from torture or cruel, inhuman, or degrading treatment under Article 7 of the International Covenant on Civil and Political Rights, the right to liberty, security of person, and freedom from arbitrary detention under Article 9 of the same, and the right to freedom of religion or belief under Article 18.

(d) Recommendations

26. In light of the aforementioned, ADF International suggests the following recommendations be made to Mali:
 - 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;

⁷ World Health Organization, Franco, L.M. et al, 2008 "Effects of mutual health organizations on use of priority health-care services in urban and rural Mali: a case-control study," <http://www.who.int/bulletin/volumes/86/11/08-051045.pdf>.

⁸ Open Doors USA, World Watch List: Mali, available at: <https://www.opendoorsusa.org/christian-persecution/world-watch-list/mali/>, last accessed 27 June 2017.

- 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;
- 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; and
- f. Protect and promote the rights of all persons in Mali to freedom from torture or cruel, inhuman, or degrading treatment, freedom from arbitrary detention, and freedom of religious or belief, and eliminate all persecution and repression perpetrated by terrorist and extremist organisations which seek to violate those rights with impunity.



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