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CAPE VERDE

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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 Cape Verde should affirm the sanctity of life on the part of all human beings, including the unborn, and why it should resist calls to further liberalize access to abortion, due to the fact that there is no international human right to abortion and it will not aid in improving maternal health, as well as refrain from promoting abortion internationally.

(a) Abortion

3. Cape Verde is unusual among African nations in that it allows abortion on demand up to 12 weeks' gestation, and after that point if the pregnancy is judged to pose a risk of death or of serious and permanent injury to physical or mental health, if the unborn child is likely to inherit or contract a serious illness, or if the unborn child will suffer from serious physical or mental defects.[1]

4. Cape Verde is also one of eight countries which committed in February 2017 to raise money for abortion-oriented NGOs as a result of the reinstatement of the Mexico City policy by the United States under President Donald Trump. The rationale given for this is that abortion is a fundamental human and "reproductive right," and that a policy which forbids its promotion internationally will be to the detriment of maternal health.

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, "Cape Verde Abortion Policy," last accessed 5th October 2017, available at: http://www.un.org/esa/population/publications/abortion/doc/capeve1.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 Cape Verde, though better than much of Africa, is nevertheless significantly below global standards, with an inadequate number of trained health professionals and lack of access to health-care, especially in cases of medical emergencies on more remote islands.

12. Women who receive abortions 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.

13. Higher than average 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 or remote areas.

14. 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.

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[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.

Reducing recourse to abortion

15. Cape Verde 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.

16. Cape Verde 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 Cape Verde, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(b) Maternal Health

17. Cape Verde's maternal mortality ratio (MMR) in 2015 was 42 maternal deaths per 100,000 live births, down from 256 per 100,000 in 1990. Despite having a relatively low MMR compared to other African nations, it is high relative to developed nations, including those which prohibit abortion on most grounds, such as Ireland, Malta, and Poland. Moreover, its liberal abortion regime was already in place even when its MMR was far higher in 1990.[4]

18. 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 Cape Verde is a pressing and urgent human rights concern.

Necessary maternal health interventions

19. 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 often include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.

20. 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 was estimated in 2005 that 98% of pregnant women in Cape Verde received some level of prenatal care during their pregnancies, it was estimated by UNICEF that more than a quarter did not receive the minimum of four visits recommended by the WHO, with that number rising to a third when assessing only women living in rural areas.[5]

[4] World Bank, "Maternal mortality ratio (modeled estimate, per 100,000 live births)," 2015, available at: https://data.worldbank.org/indicator/SH.STA.MMRT.
[5] UNICEF, "Maternal Health, Antenatal Care, Current Status + Progress," last accessed 5th October 2017, available at: https://data.unicef.org/topic/maternal-health/antenatal-care.

21. 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 Cape Verde's health-care system do not involve lack of access to abortion. This can especially be seen in the fact that the three other African nations which allow abortion on demand, Mozambique, South Africa, and Tunisia, all have significantly higher rates of maternal mortality than Cape Verde.[6] Providing even more access to abortion will mean more women will suffer from abortion complications.

22. In line with paragraph 8.25 of the ICPD, Cape Verde 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. It must cease its participation in providing funds to projects involving and organizations involved in the promotion or performance of abortion, as this is explicitly contrary to both the letter and the spirit of the ICPD.

(c) Recommendations

23. In light of the aforementioned, ADF International suggests the following recommendations be made to Cape Verde:

    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 higher than average 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. Refrain from providing funds to compensate for the United States' reinstatement of the Mexico City policy, as the promotion and provision of abortion in other developing countries will not help to end the maternal health crisis in them either.

[6] World Bank, "Maternal mortality ratio (modeled estimate, per 100,000 live births)," 2015, available at: https://data.worldbank.org/indicator/SH.STA.MMRT; Guttmacher Institute, "Abortion in Africa: Incidence and Trends," September 2017, available at: https://www.guttmacher.org/fact-sheet/facts-abortion-africa.

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