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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 focuses on the right to life of the unborn and Ecuador's efforts in promoting and defending this right.

(a) Right to Life

Background

3. The right to life of the unborn is expressly protected under the Constitution of 2008 of the Republic of Ecuador. Article 45 guarantees:

> Children and adolescents shall enjoy the rights that are common to all human beings, in addition to those that are specific to their age. The State shall recognize and guarantee life, including care and protection from the time of conception.

4. Abortion is criminalized in Sections 441-447 of the Penal Code, except in cases where there is a threat to the life or health of the pregnant woman, or the pregnancy was the result of rape.

5. The maternal mortality ratio in Ecuador was high at 64 deaths per 100,000 live births in 2015, having decreased from 74 in 2011.[1] The teenage pregnancy rate in Ecuador continues to be high at 76 births per 1,000 women aged 15 to 19 years.[2]

6. In 2015, Ecuador came under pressure from treaty-monitoring bodies, including the Committee on the Elimination of Discrimination against Women, to decriminalize abortion.[3]

7. In February 2016, Ecuador (and other South American countries) came under even more pressure to liberalize its abortion law, this time from the OHCHR.[4] On 5 February 2015, the High Commissioner for Human Rights expressed his concern:

> In Zika-affected countries that have restrictive laws governing women's reproductive rights, the situation facing women and girls is particularly stark on a number of levels. In situations where sexual violence is rampant, and sexual and reproductive health services are criminalized, or simply unavailable, efforts to halt this crisis will not be enhanced by placing the focus on advising women and girls not to become pregnant.

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[1] The World Bank, Maternal Mortality Ratio, available at: http://data.worldbank.org/indicator/SH.STA.MMRT.
[2] The World Bank, Adolescent Fertility Rate, available at: http://data.worldbank.org/indicator/SP.ADO.TFRT.
[3] Concluding observations on the combined eighth and ninth periodic reports of Ecuador, CEDAW/C/ECU/8-9, 33.
[4] High Commissioner of Human Rights, Upholding women's human rights essential to Zika response – Zeid, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17014&LangID=E

Right to Life in International Law

8. Article 6(1) of the ICCPR states, 'Every human being has the inherent right to life.' Furthermore, Article 6(5) of the ICCPR 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*.' The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. As the *travaux préparatoires*[5] 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*.'[6] 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*[.]'[7]

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, '[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*.' 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.

10. Providing access to abortion means that more women suffer from abortion-related complications. There are numerous maternal risks associated with abortion. A major study published in the *British Medical Journal* in 2015 concluded that States with 'less permissive' abortion laws 'exhibited consistently lower maternal mortality rates.'[8] Although the study explains these differences in terms of other independent factors rather than in terms of abortion legislation itself, it nevertheless concludes, 'No statistically independent effect was observed for abortion legislation, constitutional amendment or other covariates.'[9] Because abortion legislation has no effect on maternal mortality, abortion need not be legalized to protect women's health. Abortion is further associated with a high risk of haemorrhaging, developing sepsis, and developing injuries to internal organs, including intrauterine perforations.[10] Moreover, abortion can never be safe because it takes the life of the unborn child and harms the mother through the loss of her child. It has also been reported that women who have had abortions are more vulnerable to self-destructive tendencies, depression, and other unhealthy behaviour aggravated by the abortion experience.[11]

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[5] In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a "supplementary means of interpretation."

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

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

[8] Elard Koch, Monique Chireau, and Fernando Pliego et. al., *Abortion Legislation, Maternal Healthcare, Fertility, Female Literacy, Sanitation, Violence Against Women and Maternal Deaths: A Natural Experiment in 32 Mexican States*, BMJ OPEN 2015:5 e006013, doi:10.1136/bmjopen-2014-006013, p. 1.

[9] Ibid.

[10] Gunnel Lindell and Folke Flam, *Management of Uterine Perforations in Connection with Legal Abortions,* ACTA OBSTET GYNECOL SCAND. (1995) May 74(5):373-5, available at http://onlinelibrary.wiley.com/doi/10.3109/00016349509024431.

[11] David C. Reardon, Philip G. Ney, Fritz Scheuren, Jesse R Cougle, Priscilla K Coleman, Thomas W. Strahan, *Deaths Associated with Pregnancy Outcome: A Record Linkage Study of Low Income Women*, SOUTHERN MEDICAL JOURNAL, (2002) August, 95(8):834-841.

11. Therefore, Ecuador must continue to protect the right to life of the unborn and help women get through pregnancy and childbirth safely, rather than end pregnancies. Ecuador also should provide women with access to knowledge-based education about their bodies, healthy behaviours and responsible decision-making. Ecuador should redirect resources to improve maternal health and medical infrastructure to solve the problem of high maternal mortality rates.

Zika Virus Epidemic

12. The Zika virus is a mosquito-borne virus that was first discovered in 1947 in Uganda.[12] The Zika virus causes symptoms of fever, arthralgia, and rash.[13] It can be transmitted through mosquito bites, through mother to child transmission[14] or through sexual intercourse.[15]

13. After Africa, the virus spread to Yap, Federated States of Micronesia and French Polynesia before reaching South America in early 2015. It was estimated that in 2015 over 1.6 million people became infected in Brazil alone with 863 fatalities.[16]

14. The first cases of Zika virus in Ecuador were reported on 15 January 2016. Ecuador introduced the following measures:

> intensifying surveillance activities, implementing vector control measures, educating the public about the risks associated with Zika virus and encouraging them to take every precaution against mosquito bites.[17]

15. Because the number of children born with microcephaly in Brazil has risen around the time of the Zika virus epidemic in 2015, a conclusion has been made that there must be a causal link between the Zika virus and the occurrence of microcephaly. This has also placed pressure on Ecuador to relax its abortion law.

16. The WHO Director-General stated on 1 February 2016:

> In assessing the level of threat, the 18 experts and advisers looked in particular at the strong association, in time and place, between infection with the Zika virus and a rise in detected cases of congenital malformations and neurological complications. The experts agreed that a causal relationship between Zika infection during pregnancy and microcephaly is strongly suspected, though not yet scientifically proven.

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[12] Tom Solomon, Matthew Baylis, and David Brown, *Zika virus and neurological disease- approach to the unknown*, available at: http://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099(16)00125-0.pdf.
[13] Ibid.
[14] Centre for Disease Control and Prevention, Zika Virus, available at: http://www.cdc.gov/zika/transmission/.
[15] This was confirmed only in two cases. see: WHO, Zika virus, available at: http://www.who.int/mediacentre/factsheets/zika/en/.
[16] Lia Giraldo da Silva Augusto et al, *Aedes aegypti control in Brazil*, The Lancet, Vol.387, 12 March 2016.
[17] WHO, Zika virus infection – Guyana, Barbados and Ecuador, available at: http://www.who.int/csr/don/20-january-2016-zika-guyana-barbados-ecuador/en/.

17. Some studies suggest that the Zika virus has been detected in amniotic fluid and placental and foetal tissue[18] in babies diagnosed with malformations of the nervous system.[19] However, the presence of the Zika virus in the amniotic fluid does not mean that the child would suffer from any neurological conditions.[20]

18. It is tragic that the response to the Zika virus epidemic has been to suggest that the abortion law should be liberalized. First, liberalization of the law does nothing to prevent the spread of the virus. Abortion cannot eliminate Zika. Second, liberalization does nothing to treat people who have been infected with Zika. Third, this will cause, and has caused already, many pregnant women infected with Zika to undergo abortions without any confirmation that their unborn children are negatively affected. One study suggests that the risk of microcephaly for infection in the first trimester is around 1%.[21] The recommendation of the High Commissioner for Human Rights opens the door to abuse and places women's health at risk; therefore, recommendations to relax the abortion law in response to the Zika virus are misguided.

19. One of the proposed methods of detecting Zika virus-related disorders, amniocentesis, is reported to be an inadequate method, leading to unnecessary amniocenteses and associated risks of miscarriage.[22] This is because 'the virus is only shed in the amniotic fluid once the foetal kidneys produce sufficient urine die, (after 18-21 weeks' gestation) and once sufficient time has elapsed for the virus to breach the placental barrier (at the earliest 6-8 weeks after the infection).'[23]

20. The only effective intervention for the Zika virus epidemic is mosquito control[24], including breeding site destruction and bite prevention. This is the only preventive intervention able to address all potential risks posed by Zika virus, including flu-like symptoms, Guillain-Barre syndrome, and microcephaly. Improvements in urban infrastructure, environmental sanitation, and stable supply of potable water are needed. The development of reliable vaccinations and the provision of safe and effective treatment for the virus, including treatment for pregnant women, are also critical.

(b) Recommendations

21. In view of the above, ADF International recommends the following:

- Take steps to recognize and follow national and international obligations to protect the right to life from conception to natural death;

[18] Schuler-Faccini L, Ribeiro EM, Feitosa IM, et al., *Possible association between Zika virus infection and microcephaly—Brazil*, 2015. MMWR Morb Mortal Wkly Rep 2016; 65: 59–62.
[19] (n 16)
[20] Manon Vouga, Didier Musso, Tim Van Mieghem, *CDC guidelines for pregnant women during the Zika virus outbreak*, available at: www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(16)00383-4.pdf.
[21] Laura C Rodrigues, *Microcephaly and Zika virus infection,* available at: http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)00742-X/fulltext.
[22] Ibid.
[23] Ibid.
[24] (n 16)

- Work to end abortion in accordance with international obligations to protect the life of the unborn;
- Introduce additional safeguards on abortion services, e.g., mandatory counselling and waiting periods prior to undergoing abortion;
- At a minimum, maintain the requirements for obtaining an abortion;
- Focus on preventing the Zika virus from spreading.

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