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MALAWI

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people 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 Malawi should reaffirm that every human being, including the unborn, has the inherent right to life and therefore resist calls to liberalize access to abortion. It also deals with the issue of high levels of maternal mortality and morbidity in the country.

(a) Right to Life

3. Malawi’s Penal Code, in its Articles 149-151, 231, and 243, prohibits abortion except where it is performed to preserve a mother’s life, if the performance of the operation is reasonable.
4. In July 2015, Malawi’s Special Law Commission on the Review of the Law on Abortion released a draft bill, known “Termination of Pregnancy” bill. In May 2017 an updated version of the bill, expanding access to abortion in cases of rape, incest, and pregnancies impacting a woman’s mental and physical health, was presented to Malawi’s parliament. Pro-abortion organizations and activists are advocating for its swift approval, arguing that expanded access to abortion is required as a matter of international human rights law and in order to reduce the high levels of maternal mortality in the Malawi.
5. Notably, controversy has recently arisen regarding the undue interference of pro-abortion NGOs, including Ipas and Marie Stopes International (MSI), in independent research carried out on abortion policy in Malawi. Researchers from the London School of Hygiene and Tropical Medicine, commissioned by the UK’s Department for International Development (DFID) to evaluate maternal healthcare programs, have complained that their research methods and the publication of their findings were obstructed by such stakeholders seeking to shape national policy environments.¹ The NGOs in question objected that the findings of the independent research could be “weaponized” by their political opponents, and in addition to demanding changes to tone and content, retroactively withdrew their consent to be named in the final reports, leading to blockages in the reviewal process.² As a result, much of this critical research on maternal healthcare policy remains unpublished and unavailable to the public. Investments into global health must be well-informed by

¹ Katerini T. Storeng et. Al., ‘Behind the scenes: International NGOs’ influence on reproductive health policy in Malawi and South Sudan’ (2019) 14 *Global Public Health* 4, 555-569; Katerini T. Storeng and Jennifer Palmer, ‘When ethics and politics collide in donor-funded global health research’ (2019) 394 *The Lancet* 184-186.

² Storeng and Palmer, *Supra* note 1, 184.

independent academic evaluation, and not hindered by those seeking to profit from the legalization of abortion procedures.

The right to life under International Law

6. 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. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) states that '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, '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 to recognize 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.' Similarly, other early UN texts note that the intention of the paragraph "was inspired by humanitarian considerations and by consideration of the interests of the unborn child."
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."
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, "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.

(b) Maternal Health

11. It should be noted that the maternal mortality rate in Malawi has dropped significantly from 957 maternal deaths per 100,000 live births in 1990 to 634 in 2015.³

³ WHO, UNICEF, UNFPA, World Bank Group, and United Nations Population Division Maternal Mortality Estimation Inter-Agency Group; Maternal Mortality in 1990-2015, Malawi; https://www.who.int/gho/maternal_health/countries/mwi.pdf?ua=1

12. Malawi has had success reducing the maternal mortality rate in places like Nkhoma Hospital in rural Lilongwe. There the maternal mortality rates fell from 1518 to 109 per 100,000 live births between 2008 and 2015 by improving obstetric care for mothers while continuing to safeguard legal protections on the life, safety and health of children before and after birth..⁴

Necessary maternal health interventions

13. 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 hemorrhage) 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.
14. The World Health Organization (WHO) recommends a minimum of eight prenatal visits with trained health workers, in order to prevent, detect, and treat any health problems.⁵ Although it has been estimated that in 2006 close to 95% of pregnant girls aged 15-49 in Malawi received some level of prenatal care during their pregnancies, it was estimated by UNICEF that only 51% of all women made the minimum of four visits as recommended by the WHO at that time.⁶
15. United Nations Population Fund (UNFPA) documents that with regard to availability of midwives, auxiliary midwives, nurses, general physicians and OB/GYNs, only 20% of the estimated need was met in 2012 in Malawi. This is due, in large part, to 82% of the population living in rural areas.⁷
16. The same report also notes that around one quarter of all women do not receive the services of a skilled birth attendant at the time of delivery.⁸ This correlates with the fact that pre-eclampsia, severe bleeding and infection are recorded among the top causes of maternal mortality.⁹
17. These issues must be remedied, but calls to increase legal abortion access as a necessary precondition to solving them are misguided. Legalizing abortion in

⁴ Mwagomba B, Bates M.J., Ter Haar R, Masamba M, Kayuni S, Chirwa I, The proposed legislation on termination of pregnancy does not protect women or children in Malawi and is not fit for the intended purpose, Special Section on Malawi Termination of Pregnancy Bill, *Malawi Medical Journal* 29 (1): March 2017.

⁵ World Health Organisation, 'WHO recommendation on antenatal care contact schedules' (WHO Reproductive Health Library, November 2016) < <https://extranet.who.int/rhl/topics/improving-health-system-performance/who-recommendation-antenatal-care-contact-schedules>>

⁶ World Health Organization, Global Health Observatory country views – Malawi statistics summary (2002 – present), <http://apps.who.int/gho/data/node.country.country-MWI?lang=en>; UNICEF, Maternal and Newborn Health Coverage, Antenatal Care Coverage, <https://data.unicef.org/topic/maternal-health/antenatal-care/>

⁷ UNFPA et al., "The State of the World's Midwifery: A Universal Pathway, A Woman's Right to Health" (2014) 132-133, available at https://www.unfpa.org/sites/default/files/pubpdf/EN_SoWMy2014_complete.pdf

⁸ UNFPA et al., Supra note 3.

⁹ UNFPA et al., Supra note 3, at iv.

no way helps make pregnancy and childbirth safer. The focus must remain on improving problems with the country's health-care system.

18. Poor medical infrastructure and the majority of Malawi's population living in rural areas means that 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 thus mean more women will suffer from abortion complications.
19. In line with paragraph 8.25 of the International Conference on Population and Development (ICPD), Malawi must instead 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. 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.
20. Malawi must also focus on helping women get through pregnancy and childbirth safely, rather than helping women end their pregnancies. Given the dire maternal health situation in Malawi, resources must be invested in improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(c) Recommendations

21. In light of the aforementioned, ADF International suggests the following recommendations be made to Malawi:
 - a. Protect the right to life from conception until natural death, and as such, affirm 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 problems with access to proper health care does not make pregnancy and childbirth any safer; and
 - d. Take further measures to improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health; and
 - e. Advance efforts to safely get mothers and babies through pregnancy and childbirth, with special attention paid to improving health-care access for women from poor and/or rural backgrounds.



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