



ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

SUBMISSION TO THE OFFICE OF THE HIGH
COMMISSIONER FOR HUMAN RIGHTS

**Response to the Questionnaire of the UN Working Group on discrimination
against women and girls**

31 August 2020, Geneva, Switzerland

Submission by:

ADF International
Rue Pré-de-la-Bichette 1
1202 Geneva, Switzerland

Web: www.ADFinternational.org
Email: UN@ADFinternational.org

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. With reference to the questionnaire on women’s and girls’ “sexual and reproductive health and rights” (SRHR) in situations of crisis (herein, the “questionnaire”), ADF International wishes to recall that the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council requires mandate-holders to exercise their functions in full adherence with internationally recognized human rights standards, with a view to ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization. Considering that so-called “sexual and reproductive health rights” have no basis in existing international law, and that their acceptance is widely and consistently contested among UN Member States, the theme envisaged by the Working Group on discrimination against women and girls for its next annual report to the Human Rights Council casts serious doubts as to the Working Group’s impartial and objective discharge of its mandate.
3. Among other queries, the questionnaire solicits insights with regard to specific ways in which international human rights mechanisms can support States in their efforts to address situations of crisis. Per Article 2(7) of its Charter, the UN shall not “intervene in matters which are essentially within the domestic jurisdiction of any state”.¹ In accordance with this core principle of international law, the position of ADF International is that humanitarian and other situations of crisis do not in any way constitute a ground for international institutions and their mechanisms to advance non-consensual agendas or “false rights”. Rather, they should ensure that such crises are not manipulated by any actors to pressure governments to change their laws on issues that pertain to a country’s sovereign national jurisdiction. Countries experiencing humanitarian crises require urgent and focused assistance geared toward the fulfilment of the core human rights in jeopardy. The UN must prioritize this assistance, and avoid interference with the domestic affairs of States. The same applies for humanitarian organizations and other States offering assistance.
4. Accordingly, this contribution challenges the notion that emergency situations require that States lift their legal protections for the right to life of the unborn, and submits that demanding the liberalization of abortion laws as a conditionality clause for receiving humanitarian and other forms of assistance violates international law and national sovereignty. Simply ignoring or bypassing national laws to introduce abortion services where illegal is also a gross infringement of States’ rights.

¹ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UNC), art 2

5. Furthermore, this submission analyzes the increased vulnerability of women and girls in crisis settings, particularly in the context of COVID-19. It highlights the negative consequences of the improper allocation of relief funds for the promotion of abortion in violation of national laws in countries affected by humanitarian crises, and the harmful impact on the human rights of women and girls living in crisis settings. In particular, it assesses the negative effects of defining the “Minimum Initial Service Package of Reproductive Health in Crises” as a benchmark for the standard of care in humanitarian aid provisions. In this respect, ADF International submits that the rights of women and girls to authentic health care, including maternal and reproductive health, are violated when funds are misdirected to abortion services.
6. Finally, this contribution raises serious concerns with regard to the promotion of medically unsupervised abortion as part of the coronavirus pandemic response, and affirms that situations of emergency should not be instrumentalized to adopt policies that undermine, rather than fulfill, women’s health needs, safety, and well-being.

No human right to abortion

7. International law obligations are created between sovereign States, not by third actors seeking to create new “rights” based on non-consensual agendas. With regard to instruments of international law, there is no recognition whatsoever of a right to abortion. Conversely, the meaning and scope of the right to life as set out in relevant international human rights instruments are plainly construed as recognizing the unborn child as a rights-holder. As one example, Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR) protects the right to life of unborn children whose mothers have been sentenced to death.² As the *travaux préparatoires*³ of the ICCPR make clear, the intended understanding of this provision is that “the death sentence should not be carried out on pregnant women ... *to save the life of an innocent unborn child*”.⁴ Similar concerns over the protection of unborn life are also found in one of the treaties of international humanitarian law, namely the Geneva Convention relative to the Protection of Civilian Persons in Time of War, according to which “the wounded and sick, as well as the infirm, and *expectant mothers*, shall be the object of particular protection and respect”.⁵
8. States’ consistent objection to SRHR promotion points to a rejection of a “human right to abortion” in customary [international law as well](#). The International Conference on Population and Development Programme of Action (ICPD) is one of the clearest examples with regard to international custom of the fact that abortion is neither a human right nor a matter of international jurisdiction. Paragraph 8.25 makes clear that abortion laws are to be determined at the level of national legislatures, and are thus the sovereign prerogative of each State.⁶ All references to abortion in the ICPD are in the context of where the practice is legal. The ICPD expressly states that it itself

² International Covenant on Civil Political Rights (adopted December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 4(2)

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 § 118. Report of the Third Committee to the 12th Session of the General Assembly, 5th December 1957.

⁵ Article 16. Emphasis added.

⁶ Program of Action of the International Conference on Population and Development, Cairo, 5-13 September 1994 (1995) UN Doc. A/CONF.171/13/Rev.1 (ICPD), ¶ 8.25.

creates no new international human rights.⁷ It emphasizes the sovereign prerogatives of each State, both in the context of determining the legality of abortion, and more generally, as affirmed in its opening paragraph:

“The implementation of the recommendations contained in the Programme of Action is the sovereign right of each country, consistent with national laws and development priorities, with full respect for the various religious and ethical values and cultural backgrounds of its people, and in conformity with universally recognized international human rights”.⁸

9. Furthermore, States clarified in their reservation statements to the ICPD that “reproductive rights” and related terms do not mean abortion per their national interpretations.⁹ Similarly, the Beijing Declaration and Platform for Action did not deviate from the definitions agreed in the ICPD.¹⁰

No humanitarian exception for abortion

10. The questionnaire specifically queries the challenges and practices ensuring women’s and girls’ access to SRHR in situations of crisis, including, timely access to “safe abortion services, including surgical and non-surgical methods of termination of pregnancy and humane post-abortion care, regardless of the legal status of abortion”. The question as posed indicates a highly problematic disregard for state sovereignty, as it seeks to collect and mainstream supposedly “best practices” in relation to circumventing national laws to allow access to illegal services.
11. While the extraordinary threats and challenges posed by conflicts, natural or man-made disasters, famine and other catastrophes, as well as by outbreaks or other public health crises, may justify extraordinary measures suspending or limiting certain rights, they do not constitute a legitimate ground to override national and international protections for the right to life of the unborn. To the contrary, the obligation of States to protect the inherent right to life of all human beings, including the most vulnerable among them, is one from which no derogation is permitted, even in times of war or other public emergency.¹¹
12. In light of the aforementioned, ADF International submits that no human right to abortion exists in either treaty law or customary international law, and that there is no “humanitarian exception” that could warrant overriding States’ international obligations, including infringing on their national sovereignty.

Abortion promotion under the UN COVID-19 Global Humanitarian Response Plan

13. The UN’s Global Humanitarian Response Plan for COVID-19 (hereinafter, “GHRP”) awards priority assistance to countries facing humanitarian crises. It is rightly predicated on the fact that COVID-19 significantly compounds existing difficulties, requiring focused aid. The GHRP identifies countries in crisis with the hope of providing them with more “sources of assistance from development plans and

⁷ ICPD (n1), ¶ 1.15

⁸ ICPD (n1), ‘Principles’ p11.

⁹ Statements and Reservations on the Programme of Action, ICPD (n1) 143-146.

¹⁰ Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women (27 October 1995) UN Doc. A/CONF.177/20 and A/CONF.177/20/Add.1, para. 95.

¹¹ ICCPR, art 4

funding”.¹² It is wholly inappropriate, however, for the UN to promote abortion liberalization under the guise of COVID-19 assistance.

14. Indeed, the GHRP includes UNFPA’s Minimum Initial Service Package (hereinafter, “MISP”) as a primary vehicle for “reproductive health care”.¹³ Abortion is a central component of this type of aid.¹⁴ In the majority of countries designated to receive assistance by the GHRP abortion is illegal or heavily restricted. The implementation of the MISP thus constitutes an egregious violation of state sovereignty.
15. States that are experiencing humanitarian crises should not be forced to accept abortion services in violation of their international obligation to protect all human life as a condition for receiving much-needed aid. Where abortion is illegal or restricted, humanitarian interventions should in no way be manipulated to circumvent national laws or pressure governments. Unfortunately, there is ample evidence that UN entities such as the United Nations Populations Fund (UNFPA) and the World Health Organization (WHO) frequently violate national sovereignty in this regard, most notably through recent COVID-19 relief efforts.

Abortion Promotion in the Context of the COVID-19 Pandemic

Abortion as “Humanitarian Assistance”

16. It is clear that the ongoing coronavirus pandemic is exacerbating humanitarian crises around the world. Conflict-torn Yemen, a country on the brink of state-wide starvation and a collapsing healthcare system, not only faces disease outbreaks like dengue, cholera, and malaria, but also vulnerable Yemenis are now undergoing the deadly impact of coronavirus.¹⁵ As the UN faces a severe funding shortfall, threatening essential life-saving services in Yemen,¹⁶ the emphasis of UNFPA on raising funds to reopen its “reproductive health service” outfits is particularly dismaying.¹⁷ Of course, women in Yemen require urgent attention to their health needs, including reproductive and maternal health; however, given UNFPA’s all too often myopic focus on abortion promotion, there is significant concern that abortion, which is illegal in Yemen, is being prioritized over essential humanitarian assistance.
17. Furthermore, the GHRP, of which Yemen is a designated beneficiary,¹⁸ promotes abortion by way of the “Minimum Initial Service Package,” (MISP) which is potentially used to perform abortions in Yemen. Although the argument is made that the MISP is intended for dealing only with complications arising from a miscarriage where abortion

¹² UN Office of the Coordination of Humanitarian Affairs, ‘Global Humanitarian Response Plan Covid-19’ (July 2020) <https://www.unocha.org/sites/unocha/files/GHRP-COVID19_July_update.pdf>.

¹³ Ibid.

¹⁴ Elyssa Koren, ‘The United Nations is Using Coronavirus Funding to Promote Abortion’ Newsweek (8 May 2020) <<https://www.newsweek.com/united-nations-using-coronavirus-funding-promote-abortion-opinion-1502710>>.

¹⁵ Vivian Yee, ‘Yemen Aid Falls Short, Threatening Food and Health Programs’, New York Times (2 June 2020) <<https://www.nytimes.com/2020/06/02/world/middleeast/yemen-saudi-united-nations-aid.html>>.

¹⁶ UNFPA Yemen, ‘A Matter of Life and Death for Yemen’s Women and Girls As Funding Dries Up’ (UNFPA, 29 May 2020) <<https://www.unfpa.org/news/matter-life-and-death-yemens-women-and-girls-funding-dries>> accessed 26 August 2020

¹⁷ Statement of Dr. Natalia Kanem, Executive Director of UNFPA, at the High-level Pledging Event for the Humanitarian Crisis of Yemen <<https://www.unfpa.org/press/high-level-pledging-event-humanitarian-crisis-yemen>>.

¹⁸ GRHP <https://www.unocha.org/sites/unocha/files/GHRP-COVID19_July_update.pdf>.

is illegal, the kits include an IPAS manual with instructions as to how to perform an abortion, indicative of their intended purpose.¹⁹

18. In light of the catastrophic situation in Yemen, every dollar of humanitarian assistance should be narrowly focused on saving as many lives as possible through the provision of food, water, and essential health care at this time. Any funds misdirected to abortion promotion not only violate the sovereign prerogative of the country to protect unborn life, but also squander urgently needed resources. The failure of the international community to adequately respond to the needs of the Yemeni people is a tragic violation of their human rights.
19. Ecuador provides another striking example of COVID-19 complications. Before the pandemic, the country received almost 1.2 million refugees fleeing from Venezuela.²⁰ Of those, an estimated 221,000 refugees have remained and more are choosing to stay. Ecuador has struggled to respond to the needs of refugees as it faces complex political and social tensions.²¹ Many Venezuelan refugees living in Ecuador lack access to public health services, education, housing, and work.²²
20. The COVID-19 pandemic has overwhelmed Ecuador's healthcare resources. The UN presented the government with 8 million US dollars of coronavirus relief aid with the provision that Ecuador implement "safe legal abortion," in addition to the MISP kits.²³ Abortion is illegal in Ecuador with the exception of a threat to the mother's life. A coalition of pro-life organizations have called on the President of Ecuador to reject "humanitarian blackmail" from the UN, citing that pressure to legalize abortion goes against article 45 of the country's constitution, which guarantees the right to life from conception.²⁴ It is unjustifiable that the UN seek to violate Ecuador's national laws and culture in this way, especially in the name of urgently needed humanitarian assistance.
21. Despite the UN's recent denial that it is promoting abortion as part of the GHRP,²⁵ the case of Ecuador reveals incontrovertibly that the UN is using humanitarian assistance to promote abortion where the practice is illegal. The emphasis on "reproductive health services" as defined by UNFPA in Yemen is also worrying. Both of these countries have legitimate, massive humanitarian needs that are not being met as a result of this problematic focus. While a pressing need exists to meet women's healthcare and family planning needs, abortion in no way advances maternal health—

¹⁹ Inter-Agency Working Group on Reproductive Health in Crises, 'Field Manual on Reproductive Health in Humanitarian Settings', (2018) <<https://iawg.wpengine.com/wp-content/uploads/2019/07/IAFM-English.pdf>>.

²⁰ Sarah Miller and Daphne Panayotatos, 'A Fragile Welcome: Ecuador's Response to the Influx of Venezuelan Refugees and Migrants' (Refugee International, 7 June 2019). <<https://www.refugeesinternational.org/reports/2019/6/17/a-fragile-welcome>> accessed 26 August 2020

²¹ Ibid.

²² Ibid.

²³ UN Office for the Coordination of Humanitarian Affairs, 'Humanitarian Response Plan Covid-19: Ecuador' (30 April 2020) <<https://reliefweb.int/report/ecuador/plan-de-respuesta-humanitaria-covid-19-ecuador-equipo-humanitario-de-pa-s-abril-2020>>.

²⁴ ACI Prensa, 'Más de 30 movimientos provida acusan a la ONU de "chantaje" proaborto a Ecuador' (16 May 2020) <<https://www.aciprensa.com/noticias/mas-de-30-movimientos-provida-acusan-a-la-onu-de-chantaje-pro-aborto-contra-ecuador-58497>>.

²⁵ Michelle Nichols, 'U.N. rejects U.S. claim it is using coronavirus to promote abortion' Reuters (21 May 2020) <<https://www.reuters.com/article/us-health-coronavirus-usa-abortion/un-rejects-us-claim-it-is-using-coronavirus-to-promote-abortion-idUSKBN22X2IC>>.

a critical right for all women, which is particularly threatened in humanitarian crisis situations. Although UNFPA states that making motherhood safe is a human rights imperative at the core of its mandate,²⁶ its promotion of abortion (through MISAP and other mechanisms) is inherently opposed to the goal of safe maternity.

22. All women and girls in humanitarian settings are entitled to essential healthcare. It is imperative that funds be directed toward truly necessary services, instead of illegal provisions. Whenever funds are misappropriated in this way, they diminish available resources for legitimate healthcare, and thus further imperil vulnerable populations.

Worrying Trends in Abortion Access

23. In response to the coronavirus pandemic, the WHO issued an “operational guidance for the COVID-19 context” calling for an increased reliance on self-managed abortion and limited interaction with providers.²⁷ Likewise, in its guidance on “COVID-19 and Human Rights,” the Office of the High Commissioner for Human Rights promotes the provision of medical abortions outside the formal health-care system as a “promising practice” to guarantee women’s health in the context of the coronavirus pandemic.²⁸ The dangerous implications of this advice for all women, aggravated in the context of humanitarian settings, render it highly medically negligent. A woman could potentially face life-threatening risks of a self-induced abortion alone without access to appropriate care, support and medical expertise, defeating the entire objective of preventing maternal mortality, and more generally promoting women’s and girls’ right to health.²⁹
24. Women and girls around the world should be afforded more than MISAP vacuum extractors and dangerous abortifacient medication. Abortion can never be a solution for safe pregnancy and childbirth, and rather than improving their standard of health, the relaxation of standards of care under the guise of human rights protection further exacerbates the vulnerability of women and girls to life-threatening risks, including violence, exploitation and other forms of coercion. The benchmark for women’s and girls’ reproductive and maternal health should be the provision of the best possible family planning, quality health services, psychosocial support, shelters for violence survivors, and other essential services. Women should have options that afford them authentic care, including a healthy pregnancy, a safe delivery, and the ability to care for their child.

²⁶ UNFPA, United Nations Population Fund <<https://www.unfpa.org/maternal-health>> accessed 26 August 2020.

²⁷ Christina Francis and Elyssa Koren, ‘Covid-Endangered Women In Poor Countries Need Better Medicine, Not Risky Abortion Drugs’ The Federalist (17 July 2020) <<https://thefederalist.com/2020/07/17/covid-endangered-women-in-poor-countries-need-better-medicine-not-risky-abortion-drugs/>>.

²⁸ UN Office of the High Commissioner for Human Rights, ‘Covid-19 and Human Rights’ (19 April 2020) https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf>.

²⁹ Francis and Koren, ‘Covid-Endangered Women In Poor Countries Need Better Medicine, Not Risky Abortion Drugs’



VIENNA

HEADQUARTERS

BRUSSELS

GENEVA

STRASBOURG

LONDON

NEW YORK

WASHINGTON, DC



ADF INTERNATIONAL

© 2020

ADFIinternational.org

 facebook.com/ADFIinternational

 [@ADFIintl](https://twitter.com/ADFIintl)