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UGANDA

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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 Organization of American States, the European Commission and Parliament, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Uganda should resist calls to legalize access to abortion and reaffirm that every human being has an inherent right to life. The report also details how Uganda must take steps to improve its maternal health infrastructure. Finally, it urges the government to ensure that Christians, especially people who convert to Christianity from Islam, are protected.

(a) Right to Life

3. The Ugandan Constitution states in Article 22(2), "No person has the right to terminate the life of an unborn child except as may be authorized by law."¹
4. The Penal Code states in section 141 that it is a felony for anyone to attempt to procure an abortion and in section 142 that it is a felony for a pregnant woman to procure a miscarriage. It is also a felony to supply drugs to procure an abortion, according to section 143.² Killing an "unborn child," that is, "prevent[ing] the child from being born alive," is a felony, detailed in section 212.³ However, section 224 states that performing "a surgical operation [. . .] upon an unborn child for the preservation of the mother's life" absolves someone from criminal responsibility, if "perform[ed] in good faith and with reasonable care and skill."⁴ Although not clear, it is understood that an exception is made when the mother's life is threatened.
5. Uganda ratified the Maputo Protocol in 2010, but intentionally reserved on article 14(2)(c), the provision recognizing a right to abortion "in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus." Uganda reserved, "The State is not bound by this clause unless permitted by domestic legislation expressly providing for abortion. The Republic of Uganda makes this ratification on the understanding that the above clause of the present Protocol shall not apply to the Republic of Uganda."⁵

¹ Constitution of Uganda 1995, art. 22.

² Uganda Penal Code Act 1950, art. 141-143.

³ *Id.*, art. 212.

⁴ *Id.*, art. 224.

⁵ L. Asuagbor 'Status of Implementation of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa' (18 March 2016) CSW 60th Meeting, 3.

6. Ugandan laws on abortion reflects and is supported by the views and values of the Ugandan people. 76 percent of Christians and 75 percent of Muslims in Uganda believe it is morally wrong to have an abortion.⁶
7. Uganda must not give into pressure imposed by false claims that its international obligations require the liberalization of abortion. Rather, it should ensure the continued protection of the right to life for all, including the unborn.

The right to life in international law

8. 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 ICCPR states, “Every human being has the inherent right to life.”⁷
9. The ICCPR’s prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. 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.”⁸ 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.
10. The *travaux préparatoires* 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.”⁹ 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.”¹⁰
11. The protection of unborn life is also found through an ordinary reading of the preamble of the 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.”
12. 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.

⁶ PEW FORUM, ‘ON RELIGION & PUBLIC LIFE, TOLERANCE AND TENSION: ISLAM AND CHRISTIANITY IN SUB-SAHARAN AFRICA 275’ (2010) <<http://www.pewforum.org/files/2010/04/sub-saharan-africafull-report.pdf>>.

⁷ International Covenant on Civil and Political Rights, Article 6 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁸ *Id.*

⁹ A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

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

Legalizing abortion does not make it safe

13. Legalizing abortion does not guarantee that it becomes safe. A report by the Guttmacher Institute states, “Changing the law [. . .] is no guarantee that unsafe abortion will cease to exist.”¹¹ The medical infrastructure in Uganda is weak, with an inadequate number of trained health professionals and unsanitary, poorly equipped public health facilities.¹² 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. Thus, providing access to abortion will result in more women suffering from abortion complications.
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.
15. Instead, Uganda must focus on helping women get through pregnancy and childbirth safely, rather than helping women terminate their pregnancies. Given the maternal health crisis in Uganda, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(b) Maternal health

16. Maternal mortality has improved in the past two decades but still poses a serious problem in Uganda. From 2000 to 2020, the maternal mortality ratio (MMR) decreased from 578¹³ deaths per 100,000 live births to 336.¹⁴ The lifetime risk of maternal death, or the probability that a fifteen-year-old woman will die from a maternal cause at some point in her life, is 1 in 49.¹⁵
17. Almost all maternal deaths are preventable,¹⁶ particularly when skilled birth attendants are present to manage complications and the necessary drugs are available, such as oxytocin (to prevent hemorrhage) and magnesium sulfate (to treat pre-eclampsia).
18. Uganda must prioritize improving prenatal care. 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.¹⁷ According to the 2016 Demographic and Health Survey, only 60 percent of women in Uganda had at least

¹¹ See Susan A. Cohen, *Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide*, GUTTMACHER POL’Y REV. (2009), available at <http://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html>.

¹² See, e.g., Flavia Nassaka, *No healthcare for the poor*, INDEP., 24 Aug. 2015, available at <http://www.independent.co.ug/features/features/10548-no-healthcare-for-the-poor>.

¹³ WHO ET AL., *MATERNAL MORTALITY RATIO (MODELED ESTIMATE, PER 100,000 LIVE BIRTHS) – UGANDA 2000-2017* available at <https://data.worldbank.org/indicator/SH.STA.MMRT?locations=UG>.

¹⁴ Geoffrey Babughirana et al., *Maternal and newborn healthcare practices: assessment of the uptake of lifesaving services in Hoima District, Uganda*, 20 BMC PREGNANCY CHILDBIRTH 686, (2020), available at <https://bmcpregnancychildbirth.biomedcentral.com/track/pdf/10.1186/s12884-020-03385-x.pdf>.

¹⁵ WHO ET AL., *TRENDS IN MATERNAL MORTALITY 2000-2017* Appendix 5, available at https://www.unfpa.org/sites/default/files/pub-pdf/Maternal_mortality_report.pdf.

¹⁶ World Health Organization, *Fact Sheet, Maternal mortality*, <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality>.

¹⁷ World Health Organization, *Antenatal care*, http://www.who.int/gho/maternal_health/reproductive_health/antenatal_care_text/en/.

four prenatal visits, and only 29 percent had their first visit in the first trimester, as recommended.¹⁸

19. Women must also receive adequate postnatal care. Only 54 percent of women received postnatal care within two days of delivery. 43 percent did not receive a postpartum checkup, including 45 percent of mothers with no education and 48 percent of mothers in the lowest wealth quintile.¹⁹
20. Uganda should also address the barriers to adequate health care during pregnancy, childbirth, and the postnatal period, including poverty, distance, lack of information, inadequate services, and cultural practices. 59 percent of women in Uganda reported that there was at least one barrier, such as needing permission to go for treatment, not wanting to go alone, and in particular receiving money for treatment and distance to a health facility, in getting care for a health concern.²⁰

(c) Freedom of religion or belief

21. The vast majority of the population is religious, as 86 percent of the population is Christian and 12 percent is Muslim.²¹
22. Freedom of religion or belief is generally respected in Uganda. Article 29 of the Ugandan Constitution guarantees “freedom of thought, conscience and belief” and “freedom to practice any religion and manifest such practice which shall include the right to belong to and participate of any religious body or organisation.”²²
23. However, reports suggest that Christians face rising threats in Uganda, especially those who have converted from Islam. Many Christian converts have reportedly been attacked and even killed over the past years.
24. In January 2018, a wife and her twin newborn babies were attacked and killed by the husband for refusing to convert to Islam.²³ In May 2018, a Christian man who had converted from Islam was found dead, after villagers had mutilated his corpse.²⁴
25. In June 2020, religious extremists beat and drowned a twenty-five-year-old pastor and a twenty-two-year-old church member.²⁵ In August 2020, a twenty-year-old Christian

¹⁸ UGANDA DEMOGRAPHIC AND HEALTH SURVEY 2016 150 (2018) [hereinafter UGANDA DHS], available at <https://dhsprogram.com/pubs/pdf/FR333/FR333.pdf>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ PEW RESEARCH CENTER, Religious Demography: Affiliation Uganda, http://www.globalreligiousfutures.org/countries/uganda/#/?affiliations_religion_id=0&affiliations_year=2020®ion_name=All%20Countries&restrictions_year=2016.

²² CONSTITUTION OF THE REPUBLIC OF UGANDA, *supra* note 3.

²³ INTERNATIONAL CHRISTIAN CONCERN, *Wife and Kids Killed by Husband for Refusal to Convert*, 30 Jan. 2018, <https://www.persecution.org/2018/01/30/wife-and-kids-killed-by-husband-for-refusal-to-convert-reports-world-watch-monitor/>.

²⁴ INTERNATIONAL CHRISTIAN CONCERN, *Christian Convert's Body Mutilated by Family in Uganda*, 8 May 2021, <https://www.persecution.org/2018/05/08/christian-converts-body-mutilated-family-uganda/>.

²⁵ Tony Onyulo, *In Predominantly Christian Uganda, Some Still Fear Attacks*, CRUX, 20 Dec. 2020, <https://cruxnow.com/church-in-africa/2020/12/in-predominantly-christian-uganda-some-still-fear-attacks/>.

man was killed by his family members for leaving Islam.²⁶ In October 2020, a sixteen-year-old boy was attacked with a machete by Islamist extremists for refusing to convert to Islam.²⁷ In the same month, a well-known Christian radio preacher and pastor was beaten and strangled for expressing his beliefs in a radio broadcast.²⁸ In November 2020, a pastor and his twelve-year-old son were stopped and killed while driving home.²⁹ In May 2021, a Christian pastor and father of eleven was murdered for publicly sharing his faith.³⁰

26. Children are also victims of religious persecution in Uganda. In October 2019, a Christian family of four was killed after extremists set their home on fire, with two of the victims just six and nine-years-old.³¹ In November 2020, extremists killed a six-year-old-boy after his father refused to convert to Islam.³²

Freedom of religion or belief in international law

27. Uganda is a party to the International Covenant on Civil and Political Rights (ICCPR). Article 18 of the ICCPR states, “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice,” and that “freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” Furthermore, according to Article 26, states may not discriminate in the application of its laws, including on the basis of religion or political opinion.

28. Failure to protect people who are religious from interfaith tensions and social hostilities also represents a failure of the state in fulfilling its international human rights obligations. Likewise, political favoritism and policies disproportionately affecting certain religious communities amount to discrimination. The Ugandan government should reaffirm its commitment to guarantee that this right is fully enjoyed by everyone without fear of violence, harassment, or discrimination.

(d) Recommendations

29. In light of the foregoing, ADF International suggests the following recommendations be made to Uganda:

- a. Continue to protect the right to life from conception to natural end;

²⁶ MORNING STAR NEWS, *Christian Dies, Cousin in Critical Condition After Assault in Uganda*, 26 Aug. 2020, <https://morningstarnews.org/2020/08/christian-dies-cousin-in-critical-condition-after-assault-in-uganda/>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ MORNING STAR NEWS, *Pastor, Two Christian Boys Killed in Islamist Attacks in Uganda*, 26 Nov. 2020, <https://morningstarnews.org/2020/11/pastor-two-christian-boys-killed-in-islamist-attacks-in-uganda/>.

³⁰ MORNING STAR NEWS, *Pastor Slain After Leading Muslims to Christ at Religious Debate*, 12 May 2021, <https://morningstarnews.org/2021/05/pastor-slain-after-leading-muslims-to-christ-at-religious-debate/>.

³¹ MORNING STAR NEWS, *Christian in Uganda Loses Children, Mother and Stepfather to Islamist Attack, Sources Say*, 2 Oct. 2019, <https://morningstarnews.org/2019/10/christian-in-uganda-loses-children-mother-and-stepfather-to-islamist-attack-sources-say/>.

³² MORNING STAR NEWS, *supra* note 27.

- b. Resist calls to liberalize abortion, and instead implement laws and policies aimed at safely getting mothers and babies through pregnancy and childbirth;
- c. Improve health-care access for women from poor and/or rural backgrounds;
- d. Protect Christians and those belonging to other religious groups, especially recent converts, from violence and persecution through the enforcement of religious freedom laws, police protection, and prosecution and punishment of perpetrators;
- e. Ensure the full and equal enjoyment of the right to freedom of religion or belief of all persons without discrimination, including on the basis of political or economic status.



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