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HAITI

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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 Haiti should resist calls to legalize abortion, and how international law does not justify a so-called right to abortion. The report also details how Haiti must improve maternal health. Finally, it urges the government to take measures to strengthen the institution of the family.

(a) Abortion

3. Despite being illegal, abortion is commonly practiced in Haiti. Although it is difficult to estimate the exact number of abortions that take place annually, the complications and deaths resulting from abortions reveal both the prevalence of and need to eliminate the practice of abortion in Haiti.
4. According to a 2012 study performed by the Haitian government, 40 percent of women who have abortions experience complications, many of which are severe or even fatal.¹ The Haiti Ministry of Public Health speculates that abortions may cause up to 30 percent of maternal deaths on the island.² At an emergency maternity hospital in Delmas, women suffering from post-abortion complications account for nearly 12 percent of the 560 pregnancy-related monthly admissions.³ At a small rural clinic in Petite Rivière in the Artibonite Valley, more than 20 women are admitted every month for problems arising from abortions.⁴
5. First-trimester abortions in Haiti are most commonly performed by means of Cytotec, a form of the anti-ulcer medicine misoprostol.⁵ Cytotec is readily available at pharmacies throughout Haiti without a prescription and can lead to hemorrhaging and infection.⁶ A 2009 study performed by a Haitian physicians group found that 41 percent of women surveyed had used this drug.⁷
6. Women seeking abortions after the first trimester often obtain curettage or injections of Pitocin (also known as oxytocin), a hormone-based medicine that causes uterine contractions. Pitocin, like Cytotec, is also readily available in Haitian pharmacies.⁸

¹ Ayiti Kale Je, *A Look at Abortion in Haiti*, Squarespace (12 December 2013), <http://haitigrassrootswatch.squarespace.com/haiti-grassroots-watch-engli/2013/12/11/a-look-at-abortion-in-haiti.html>.

² Ayiti Kale Je, *A Look at Abortion in Haiti*, Truthout (15 December 2013), <http://www.truth-out.org/opinion/item/20644-a-look-at-abortion-in-haiti>; cf. *Tell Me More: Abortion in Haiti: Dangerous and Illegal*, NPR (5 December 2013), <http://www.npr.org/templates/story/story.php?storyId=248990602>.

³ Jacqueline Charles, *Unsafe abortions: Haiti's abortion crisis*, Miami Herald (23 November 2013), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article1957812.html#storylink=cpy>.

⁴ *Id.*

⁵ Kale Je, Truthout, *supra* note 2.

⁶ *Tell Me More*, *supra* note 2.

⁷ Kale Je, Squarespace, *supra* note 1.

⁸ *Id.*

Another common method of abortion in Haiti is offered by traditional healers, or “leaf doctors,” and entails consuming dangerous mixtures of alcohol, pills, and plants.⁹

7. According to sociologist Danièle Magloire, for many young people, “abortion has become a method of birth control.”¹⁰ Moreover, it is thought that many Haitian women who have abortions are forced to do so by men, as men are commonly understood in Haitian society to control every aspect of women’s sexual lives.¹¹

Abortion is illegal in Haiti

8. Article 262 of the Haitian Penal Code outlaws abortion. According to the code, both healthcare professionals who perform abortions and women who obtain abortions can be imprisoned.¹² Healthcare professionals who perform abortions can also be sentenced to hard labor.¹³ These laws are enforced only with great irregularity, but the majority of Haitian people are opposed to legalizing abortion.¹⁴
9. Some legal experts argue that the penal code allows for abortion in order to protect the life of the mother, but others deny that this exception is legally recognized.¹⁵
10. Some NGOs and “health experts” claim that Haiti’s abortion laws are to blame for the prevalence of complications arising from abortions.¹⁶ However, abortion is always dangerous, and the inexpensive means sure to be favored in an impoverished country such as Haiti are especially dangerous. Legalization of abortion would likely only lead to a rise in post-abortion complications.
11. Haiti must not bow to pressure to legalize abortion. Haiti’s laws are currently in accord with international law, which also protects the right to life of the unborn.

The right to life in international law

12. 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.
13. 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. 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 as recognizing the unborn’s distinct identity from the mother and protecting the unborn’s right to life.
14. As the *travaux préparatoires*¹⁷ 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*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Agathe Logeart, *A Wretched Journey Into Haiti’s Clandestine Abortion Trade*, Worldcrunch (8 October 2014), <http://www.worldcrunch.com/world-affairs/a-wretched-journey-into-haiti-039-s-clandestine-abortion-trade/clandestine-abortions-illegal-mortality/c1s17171/>.

¹² *Code pénal* [Penal Code], art. 262. http://www.oas.org/juridico/mla/fr/hti/fr_hti_penal.html.

¹³ *Id.*

¹⁴ Charles, *supra* note 3.

¹⁵ *Id.*

¹⁶ *Tell Me More*, *supra* note 2.

¹⁷ In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a “supplementary means of interpretation.”

*innocent unborn child.*¹⁸ 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*[.]”¹⁹

15. 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.*”
16. 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.

Legalizing abortion does not make it safe

17. 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.”²⁰ The medical infrastructure in Haiti is poor, with an inadequate number of trained health professionals and unsanitary, poorly equipped public health facilities.²¹ 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 mean more women will suffer from abortion complications.
18. 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.

Reducing recourse to abortion

19. Haiti 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.
20. In order to reduce abortions and to improve maternal health, women must have access to information that emphasizes knowledge-based education about their bodies and facilitates full informed consent, healthy behaviors, and responsible decision-making.
21. Haiti must also focus on helping women get through pregnancy and childbirth safely, rather than on helping women end their pregnancies. Given the maternal health

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

¹⁹ A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955.

²⁰ 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>.

²¹ See, e.g., Flavia Nassaka, *No healthcare for the poor*, INDEP., 24 August 2015, available at <http://www.independent.co.ug/features/features/10548-no-healthcare-for-the-poor>.

crisis in Haiti, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(b) Maternal health

22. Haiti is currently the poorest country in the Western Hemisphere. As a result of the country's grave poverty, many women cannot afford prenatal care, which has led to a maternal health crisis.
23. Haiti has the highest maternal mortality ratio (MMR) in the Americas, at 359 deaths per 100,000 live births.²² The lifetime risk of maternal death is 1 in 83, making Haiti one of the most dangerous countries in the world to give birth.²³ Maternal death 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 Haiti is a human rights crisis.

Necessary maternal health interventions

24. Almost all maternal deaths are preventable,²⁴ 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).
25. Haiti must focus on providing 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.²⁵ According to the WHO, 67 percent of women in Haiti had at least four prenatal visits, but only 37 percent gave birth attended by a skilled health worker.²⁶
26. The WHO states, "Most obstetric complications could be prevented or managed if women had access to skilled birth attendant – doctor, nurse, midwife – during childbirth."²⁷ Skilled birth attendants (SBAs) are trained to recognize and manage complications, and to refer women to higher levels of care if necessary. According to UNFPA, only 10 percent of the need for SBAs in Haiti is met.²⁸ Only 39 percent of births are attended by an SBA,²⁹ and this number is much lower in rural areas.
27. Women must also receive postnatal care. Only about 30 percent of women receive postnatal care within two days of delivery.³⁰ 10 percent do not receive any

²² Weekly News Update on the Americas, *Haiti: women protest 1835 abortion law*, World War 4 Report (30 September 2014), <http://ww4report.com/node/13582>; World Health Organization, Maternal Mortality in 1990-2015: Haiti, http://www.who.int/gho/maternal_health/countries/hti.pdf?ua=1.

²³ Countdown to 2015, Haiti, http://www.countdown2015mnch.org/documents/2013Report/Haiti_Accountability_profile_2013.pdf; *Free obstetric care in Haiti*, World Health Organization (2012), http://www.who.int/features/2012/haiti_obstetric_care/en/.

²⁴ World Health Organization, Fact Sheet No. 348, Maternal mortality, <http://www.who.int/mediacentre/factsheets/fs348/en/>.

²⁵ World Health Organization, Antenatal care, http://www.who.int/gho/maternal_health/reproductive_health/antenatal_care_text/en/.

²⁶ World Health Organization, Haiti: WHO Statistical Profile, <http://www.who.int/gho/countries/hti.pdf?ua=1>.

²⁷ World Health Organization, Skilled attendants at birth, http://www.who.int/gho/maternal_health/skilled_care/skilled_birth_attendance_text/en/.

²⁸ UNFPA, THE STATE OF THE WORLD'S MIDWIFERY 2014 186 (2014), http://www.unfpa.org/sites/default/files/pub-pdf/EN_SoWMy2014_complete.pdf.

²⁹ Maternal Mortality in 1990-2015, *supra* note 22.

³⁰ World Health Organization, Haiti: Maternal and Perinatal Health Profile, http://www.who.int/maternal_child_adolescent/epidemiology/profiles/maternal/hti.pdf?ua=1.

postpartum checkup.³¹

28. Haiti must recognize the barriers to adequate health care during pregnancy, childbirth, and the postnatal period, including poverty, distance, lack of information, inadequate services, and cultural practices. Almost 80 percent of women in Haiti reported that there was at least one barrier, with the vast majority characterizing the barrier as a lack of money for treatment.³²

(c) Marriage and the Family

29. There is a severe breakdown of marriage and the family in Haiti. Over 80 percent of unions are common-law, called *plasaj*,³³ and up to 70 percent of children are considered born out of wedlock.³⁴ Additionally, polygamy is commonly accepted among males, and many men have simultaneous *plasaj* relationships.³⁵

30. In 2014, the Haitian government passed the *Loi sur la paternité, la maternité et la filiation*, designed to change the fact that children born out of wedlock were denied naming and inheritance rights.³⁶ While this law may help children born in *plasaj* relationships and other arrangements, normalizing such family structures may only further the breakdown of traditional marriage and the institution of the family. Such a breakdown will almost certainly be bad for children and for economic and social development generally, given the clear role that the traditional family has been demonstrated to play in bringing about national economic and social health.

(d) Recommendations

31. Given the push in Haiti for abortion and the unavailability of good health care for women, ADF International recommends the following:

- Recognize that the liberalization of abortion laws is not required by international law;
- Recognize that the legalization of abortion in a country with such a high MMR and poor health care system infrastructure will not make abortion safe, and protect the women of Haiti by resisting pressure to legalize it;
- Improve the health care system infrastructure, increase midwife training, and devote more resources to maternal health, with the focus on getting mothers and babies safely through pregnancy and childbirth.
- Strengthen the institution of the family, promoting traditional marriage and reducing the practice of polygamy in order both to protect women and children and to build family capital for economic and social development.

³¹ *Id.*

³² *Id.*

³³ *Cultural Competency and Haitian Immigrants: Family Roles and Organization*, Salisbury University (last visited 21 January 2016), http://www.salisbury.edu/nursing/haitiancultcomp/family_roles_and_organ.htm.

³⁴ *Haiti: All Eyes on the New Paternity Act*, Futures Group (22 September 2014), http://futuresgroup.com/newsroom/news/haiti_all_eyes_on_the_new_paternity_act#sthash.TpJkqLho.dpuf.

³⁵ *Cultural Competency and Haitian Immigrants: References*, Salisbury University (last visited 21 January 2016), <http://www.salisbury.edu/nursing/haitiancultcomp/references.htm>.

³⁶ *Haiti: All Eyes on the New Paternity Act*, *supra* note 34.