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**ESTONIA**

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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 Fundamental Rights Agency of the European Union, the Organization for Security and Co-operation in Europe, and the Organization of American States.
2. This report focuses on the inherent right to life of the unborn, and the international legal justifications for protecting this right.

### (a) Background

3. Abortion was legalized in the Soviet Union in 1955, and since then has been widely available in Estonia. Estonia declared formal independence from the Soviet Union in August 1991. The Ministry of Social Affairs issued decrees in 1992 and 1993 that outlined the status of legal abortions post-independence. In 1998, the Parliament adopted the “Termination of Pregnancy and Sterilization Act,” which sets forth the criteria for legal abortions.<sup>1</sup> Estonia was admitted to the European Union in 2004.
4. Per the Act, abortion is available on-demand for any purpose up to the 11<sup>th</sup> week of pregnancy. After this point, it is permitted up to the 21<sup>st</sup> week for women below 15 years of age or above 45 years, for the health of the mother, if the child has a serious physical or mental defect, or if the mother has an illness or other problem that could harm the child. A consultation with a physician and a counseling session are required prior to the abortion. Adolescents (under 18 years of age) need written parental consent to apply for an abortion.
5. Over 30% of pregnancies currently end in Abortion. In 2014, there were 6,901 total abortions in Estonia, and of this number, 5,154 were legal. There were 23.5 abortions per 1,000 women aged 15-49 (17.5 of these were legal). There were 50.9 abortions per 100 live births (42.6 of these were legal). In 2005, the total number of abortions was 11,835, and there were 82.5 abortions per 100 live births.<sup>2</sup> Abortion rates have steadily declined in the last decade, although they remain high.

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<sup>1</sup> “Termination of Pregnancy and Sterilisation Act,” available at: <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/505032015003/consolide>

<sup>2</sup> *Abortion, years, 22 May 2015*, Statistics Estonia, available at: <http://www.stat.ee/34285>

## **(b) Responding to the Abortion Debate in Estonia**

6. Despite the high level of abortion accessibility in Estonia, pro-abortion groups have called for the lifting of the parental, physician and counseling requirements (introduced in 2009) to further increase access to abortion. The International Planned Parenthood Federation has noted the efforts of the Estonian Sexual Health Association and the Estonian Gynaecologist's Society and Ministry of Social Affairs to remove these restrictions.<sup>3</sup>
7. In February 2014, the Ministry of Social Affairs released a letter, signed by the Undersecretary of Health, Ivi Normet, which juxtaposed the rights of the pregnant woman with those of the unborn child.<sup>4</sup> According to the letter, the right to abortion in Estonia is based on the woman's right to self-realisation. The right to self-realisation is protected under Article 19 of the Estonian Constitution. In the letter, however, Ms. Normet, speaking on behalf of the Ministry, acknowledges that this same article means that the "unborn child, as a human life, is the carrier of the right to life." The letter goes on to state that regardless of this "intractable moral conflict," abortion is guaranteed in Estonia as a part of the right to health (Article 28 of the Constitution).
8. The Ministry's acknowledgement of the "confrontation" between the rights of the mother and those of the child that necessarily results from abortion is nevertheless significant in that it points to the urgent need for a more comprehensive approach to maternal and child healthcare in Estonia.
9. A reformed approach to healthcare would take into account the best interest of both mother and child. If, as Ms. Normet's letter suggests, the Estonian Ministry of Social Affairs recognizes the unborn child as a human life, it necessarily follows that it must attribute human rights to this life. A developed, medically advanced country such as Estonia possesses the requisite resources and infrastructure to ensure that both mother and child are able to go safely through pregnancy and childbirth. As a highly developed country, the Government of Estonia is responsible for ensuring that mothers are able to actualize their right to health, at the same time that the life of the unborn is safeguarded and nurtured.

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<sup>3</sup> *Abortion Legislation In Europe*, International Planned Parenthood Federation European Network, Updated January 2012, available at: [http://www.svss-uspda.ch/pdf/Abortion%20legislation\\_Europe2012.pdf](http://www.svss-uspda.ch/pdf/Abortion%20legislation_Europe2012.pdf)

<sup>4</sup> *Estonia admits the unborn's right to life, but rebuffs effort to defund abortion*, Lifesite News, 17 February 2014, <https://www.lifesitenews.com/news/estonia-admits-the-unborns-right-to-life-but-rebuffs-effort-to-defund-abort>

10. The Government of Estonia should be commended for maintaining a low maternal mortality rate (MMR); however, continued improvement is necessary, given that there is no task more urgent for a country than protecting human life. The preservation of existing limitations on access to abortion, and potential introduction of increased limitations, would not worsen the MMR as is often argued erroneously.
11. Estonia has high quality medical infrastructure, in addition to high levels of economic development and education. As a consequence, it is well positioned to put in place laws to limit recourse to abortion without any negative impact on the MMR. This would be in accordance with the Programme of Action of the International Conference on Population and Development (ICPD), which states that, "Governments should take appropriate steps to help women avoid abortion..."<sup>5</sup>
12. Reducing recourse to abortion with increased restrictions and a greater focus on maternal healthcare is likely to result in an improved MMR for Estonia. This is evidenced by the fact that some of the countries where it is safest to be pregnant and give birth have some of the strictest abortion laws. The data reveals that restricted access to abortion does not negatively impact maternal mortality. In fact, prohibiting abortion results in improvements in maternal health as resources are redirected to life-saving interventions and overall healthcare infrastructure.
13. The current focus on abortion availability in Estonia enables the Government to ignore continued advances in healthcare services. The Estonian Government itself has expressed concern about morbidity and mortality resulting from abortion, in addition to complications resulting from childbearing and childbirth.<sup>6</sup> A focus on improving the healthcare available to mother and child and ensuring access to life-saving healthcare services, not on increased access to abortion, is the solution to the problems of maternal death and illegal abortion.
14. Given its persistent high abortion rate, it is a critical time for Estonia to heed the recommendation of the ICPD and take steps to reduce recourse to abortion. As a result of the country's high degree of development, Estonia is well positioned to see much success from a plan to limit abortion and improve maternal and child healthcare.

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<sup>5</sup>Programme of Action of the International Conference on Population and Development, 18 October 1994, paragraph 7.24.

<sup>6</sup> *Estonia, Abortion Policy*, Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, available at: <http://www.un.org/esa/population/publications/abortion/profiles.htm>

### (c) International Law and the Protection of Unborn Life

15. Following independence, Estonia joined onto the basic treaties of the international human rights system. It is a signatory to the International Covenant for Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), both of which protect the right to life of the unborn. If the Estonian Government were to pursue a national plan to reduce recourse to abortion with the ultimate goal of protecting the rights of both mother and child, it would find much support in international law.
16. Article 6 (1) of the ICCPR states, “Every human being has the inherent right to life.” Consistent with its foundational importance to all other rights, the meaning of Article 6 must be construed broadly, erring on the side of protecting all human life, including the unborn.
17. Moreover, 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.” Under the ICCPR, all other adult women may be subject to the death penalty, therefore this clause must be understood as recognizing the unborn’s distinct identity from the mother and protecting the unborn’s right to life.
18. As the travaux préparatoires<sup>7</sup> of the ICCPR 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.”<sup>8</sup> 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[.]”<sup>9</sup>
19. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the CRC. According to the Vienna Convention, the

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<sup>7</sup> In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a “supplementary means of interpretation.”

<sup>8</sup> A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

<sup>9</sup> A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955.

preamble of a treaty provides necessary interpretive context.<sup>10</sup> It is therefore striking that the CRC explicitly recognizes the child before birth as a rights-bearing person entitled to special need and protection. 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.”

20. 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.

21. International law provides numerous justifications for the vital importance of protecting the right to life of the unborn. Estonia is in urgent need of a shift toward the acknowledgement of this fundamental right. Greater respect for human life would undoubtedly correlate with numerous positive advances for the country including improved maternal and child health.

#### **(d) Recommendations**

22. Although abortion rates have declined in recent years, ADF International recommends that Estonia pursue the following actions in order to reduce the country’s high abortion rate and ultimately eliminate recourse to abortion and protect the life of the unborn:

- At minimum, maintain the parental, physician and counseling requirements for obtaining an abortion;
- Maintain the provisions that allow healthcare providers to conscientiously object to the performance of an abortion;
- Dedicate resources to advances in healthcare services and infrastructure to improve both maternal and child health;
- Work to end abortion in accordance with international obligations to protect the life of the unborn.

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<sup>10</sup> Article 31(2) states, “The context [ . . . ] shall comprise [ . . . ] the text, including its preamble and annexes.”