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**ZAMBIA**

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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 Zambia should reaffirm the sanctity of life on the part of all human beings, including the unborn, and why it should resist calls to liberalize access to abortion, due to the fact that there is no international human right to abortion and because increased access to abortion would exacerbate the already high levels of maternal death in Zambia.

### (a) Abortion and Maternal Mortality

3. Zambia’s abortion laws are relatively liberal in the African context, as the procedure has been regulated since 1972 by a law permitting access to “safe abortion” in cases where the pregnancy constitutes a risk to the life of the pregnant woman, and the Ministry for Health has provided guidelines further delineating when this is to be considered the case.<sup>1</sup>
4. Abortion advocates, however, complain that women do not have practical access to such abortions in Zambia, due to procedural barriers such as needing the approval of three doctors, as well as ignorance about the law, and therefore turn to “unsafe providers” or do not seek out adequate care after an abortion, and that this has a dire effect on maternal health and mortality.<sup>2</sup>
5. Legalizing abortion, however, does not make it safe. The medical infrastructure in many parts of Zambia is poor, with an inadequate number of trained health professionals and unsanitary, poorly equipped public health facilities.<sup>3</sup>
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 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.
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 that a “sentence of death shall not be imposed for crimes

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<sup>1</sup> Lusaka Times, *Zambian law provides for safe abortion – health minister*, 2012, <https://www.lusakatimes.com/2012/07/05/zambian-law-safe-abortionhealth-minister/>.

<sup>2</sup> Guttmacher Institute, *Unsafe abortion in Zambia*, 2009, [https://www.guttmacher.org/sites/default/files/report\\_pdf/ib-unsafe-abortion-zambia.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/ib-unsafe-abortion-zambia.pdf).

<sup>3</sup> See, e.g., Flavia Nassaka, *No healthcare for the poor*, INDEP., 2015, <http://www.independent.co.ug/features/features/10548-no-healthcare-for-the-poor>.

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 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.”<sup>4</sup> 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.”<sup>5</sup>
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 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 of, and protection for, unborn life.
11. The maternal mortality ratio in Zambia was 224 maternal deaths per 100,000 live births in 2015, down from 577 per 100,000 in 1990.<sup>6</sup> This is lower than such rates in Ghana, even though Ghana has even more relaxed abortion laws. High rates of maternal mortality, therefore, have less to do with the legality of abortion per se, but are rather due largely to an inability to access obstetric care, lack of information, and lack of health workers, especially in the case of women living in poverty and in rural areas.
12. Data collected by UNICEF in 2016 indicates that the vast majority of Zambian women receive at least one prenatal check-up during pregnancy, but only 56% receive the minimum of four recommended by the WHO.<sup>7</sup> Moreover, according to data collected by UNFPA in 2012, around two-thirds of all rural births do not occur in the presence of a skilled birth attendant.<sup>8</sup>

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<sup>4</sup> A/C.3/SR.819, para. 17 & para. 33; In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a “supplementary means of interpretation.”

<sup>5</sup> Commission on Human Rights, 5<sup>th</sup> Session (1949), 6<sup>th</sup> Session (1950), 8<sup>th</sup> Session (1952), A/2929, Chapter VI, Article 10.

<sup>6</sup> World Bank, Maternal mortality ratio (modeled estimate, per 100,000 live births), 2015, <http://data.worldbank.org/indicator/SH.STA.MMRT>.

<sup>7</sup> UNICEF, Maternal Health: Antenatal Care – Current Status + Progress, 2017, <https://data.unicef.org/topic/maternal-health/antenatal-care/>.

<sup>8</sup> UNFPA, The State of the World’s Midwifery 2014, 194, [http://zimbabwe.unfpa.org/sites/default/files/pub-pdf/EN\\_SoWMy2014\\_complete\\_0.pdf](http://zimbabwe.unfpa.org/sites/default/files/pub-pdf/EN_SoWMy2014_complete_0.pdf).

13. A study published in 1998 revealed that 35% of maternal deaths were experienced by illiterate adolescents who relied on untrained traditional birth attendants. 53% of maternal deaths were caused by sepsis and 22% by haemorrhage.<sup>9</sup>
14. Other studies have shown that maternal deaths from haemorrhaging occur at a significantly higher rate among deliveries in villages as opposed to those that take place at health facilities. Infections also account for a significant portion of maternal deaths, which could be ameliorated by utilizing more careful attention to clean delivery, according to the WHO. Another study conducted in the Southern Province district of Kalomo found that emergency obstetric care was simply unavailable, due to lack of operating theatres and blood banks, as well as lack of access to care due to distance in other regions.<sup>10</sup>
15. Poor medical infrastructure 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 mean more women will suffer from abortion complications. Almost all maternal deaths are preventable,<sup>11</sup> particularly when skilled birth attendants are present to manage complications and the necessary medication is available.
16. In line with paragraph 8.25 of the ICPD, Zambia must 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.

#### **(b) Recommendations**

17. In light of the aforementioned, ADF International suggests the following recommendations be made to Zambia:
  - a. Affirm that there is no international human right to abortion and that the right to life applies from conception until natural death, and as such that the unborn child has the right to protection of his or her life at all points;
  - b. Recognize that the legalization of abortion does not make pregnancy and childbirth any safer in a country with high levels of maternal mortality;
  - c. Resist calls to further liberalize abortion, and instead implement laws aimed at protecting the right to life of the unborn;
  - d. Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health, with a focus on safely getting mothers and babies through pregnancy and childbirth,

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<sup>9</sup> Nkata M., Maternal Deaths in Zambia, *Afr Health*, 1998 Nov; 21(1):2.

<sup>10</sup> Population Reference Bureau, *Diverse Factors Linked to Maternal Deaths in Zambia*, 2003, <http://www.prb.org/Publications/Articles/2003/DiverseFactorsLinkedtoMaternalDeathsInZambia.aspx>.

<sup>11</sup> World Health Organization, Fact Sheet No. 348, Maternal mortality, <http://www.who.int/mediacentre/factsheets/fs348/en/>.

with special focus on improving health-care access for women from poor and/or rural backgrounds.