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**THE BAHAMAS**

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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 the Bahamas should continue to affirm 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. It also deals with the issue of high levels of maternal mortality and morbidity in the Bahamas, as well as the proliferation of potentially problematic sex education.

### (a) Abortion

3. Under sections 316, 330, and 334 of the *Penal Code 1924*, abortion is illegal, but any act performed in good faith and without negligence for the purposes of medically or surgically treating a pregnant woman is considered justifiable even where it causes the premature delivery or the death of the unborn child.<sup>1</sup>
4. The Code does not define what is included under this, but it has been interpreted quite liberally so as to allow abortion in cases of rape, incest, and preservation of health, including mental health.<sup>2</sup>
5. Some activists who advocate for liberalised abortion laws argue that abortion is necessary to respect and fulfil the human rights of women, as well as for the sake of improving maternal health and reducing maternal mortality and morbidity, and that the Bahamas should fully decriminalise abortion and make it available on demand.

#### *The right to life in international law*

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.
7. 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.
8. 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 the “sentence of death shall not be imposed for crimes

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<sup>1</sup> United Nations Department of Economic and Social Affairs, The Bahamas Abortion Policy, <http://www.un.org/esa/population/publications/abortion/doc/bahama1.doc>.

<sup>2</sup> Ibid.

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

9. 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>3</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>4</sup>
10. 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 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*.”
11. 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.

#### *Legalizing abortion does not make it safe*

12. Although medical infrastructure in the Bahamas is of a relatively high standard, it is still not of the same quality as more developed countries, and access to quality health-care services is less available in remote and poor areas. Women who receive abortions will still face the same poor conditions 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.
13. High rates of maternal mortality have less to do with the legality of abortion per se than with 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 remote or rural areas.
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.

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<sup>3</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>4</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.

### *Reducing recourse to abortion*

15. The Bahamas 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.
16. The Bahamas must also focus on helping women get through pregnancy and childbirth safely, rather than helping women end their pregnancies. Given the maternal health crisis in the Bahamas, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

### **(b) Maternal Health**

17. The Bahamas' maternal mortality ratio (MMR) in 2015 was 80 maternal deaths per 100,000 live births, up from 46 per 100,000 in 1990.<sup>5</sup> Every maternal death is a tragedy. It 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 the Bahamas is a pressing and urgent human rights concern.

### *Necessary maternal health interventions*

18. Almost all maternal deaths are preventable, particularly when skilled birth attendants are present to manage complications and the necessary drugs are available, such as oxytocin (to prevent haemorrhage) and magnesium sulphate (to treat pre-eclampsia). Problems in many countries with high rates of maternal mortality and morbidity include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.
19. 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. Although most women in the Bahamas receive some level of prenatal care during their pregnancies, it was estimated by UNICEF in 2012 that over 15% did not receive even the minimum of four visits recommended by the WHO.<sup>6</sup>
20. These issues must be remedied, but frequent calls to increase legal abortion access as a necessary precondition to solving them are misguided. Legalizing abortion also does not guarantee that pregnancy and childbirth will become safer when the real problems with the Bahamas' health-care system do not involve lack of access to

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<sup>5</sup> World Bank, Maternal mortality ratio (modeled estimate, per 100,000 live births), 2015, <http://data.worldbank.org/indicator/SH.STA.MMRT>.

<sup>6</sup> UNICEF, Maternal Health, Antenatal Care, Current Status + Progress, <https://data.unicef.org/topic/maternal-health/antenatal-care>.

abortion. Providing more access to abortion will mean more women will suffer from abortion complications.

21. In line with paragraph 8.25 of the ICPD, the Bahamas 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.

### **(c) Sex Education and Parental Rights**

22. Since 1997, family planning services have been made available in all government-run clinics as well as at clinics run by Planned Parenthood, and sex and family life education is mandatory in schools.<sup>7</sup>

#### *International law*

23. If the content of such programs does not comport with the religious values of the parents, they must be able to opt their children out from the program. This right to opt out is protected in international law.
24. Article 26(3) of the Universal Declaration of Human Rights states that “parents have a prior right to choose the kind of education that shall be given to their children.”
25. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights is equally explicit in guaranteeing the rights of parents with respect to the education of their children:

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State *and to ensure the religious and moral education of their children in conformity with their own convictions.*

26. Article 18(4) of the ICCPR on the right to freedom of religion or belief likewise states that States must “undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions.”
27. Article 18(1) of the Convention on the Rights of the Child states that “parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child.” Article 14(2) requires States to “respect the rights and duties of the parents [...] to provide direction to the child in the exercise of his or her right [to freedom of religion] in a manner consistent with the evolving capacities of the child.

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<sup>7</sup> United Nations Department of Economic and Social Affairs, The Bahamas Abortion Policy, <http://www.un.org/esa/population/publications/abortion/doc/bahama1.doc>.

28. According, the Bahamas must afford parents the right to opt their children out of sex education programs if it violates their religious beliefs for their children to participate in them.

*Impact of premature sexual activity*

29. Premature sexual activity is a serious problem that leads to devastating health implications, and severely undermines the wellbeing of youth. The consequences of premature sexual activity have a disproportionate impact on young girls because their bodies are not developmentally prepared for pregnancy, in addition to the fact that they are more susceptible to HIV and other STIs due to biological factors.
30. The Bahamas must ensure cooperation with parents and community and religious leaders, and must respect the religious values of the community. More than 90% of the population of the Bahamas are religious, most of whom are Christian.
31. Education on responsible sexual behaviour should focus on abstinence and fidelity and inform young people about the risks associated with premature sexual activity and multiple concurrent partners. It must also encourage healthy relationships and responsible decision-making.

**(d) Recommendations**

32. In light of the aforementioned, ADF International suggests the following recommendations be made to the Bahamas:
  - 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. Resist calls to further liberalise abortion, and instead implement laws aimed at protecting the right to life of the unborn;
  - c. Recognize that the full legalisation of abortion, in a country with high levels of maternal mortality and morbidity and with severe problems with access to proper health-care, will not make pregnancy and childbirth any safer;
  - d. Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health;
  - e. Focus on safely getting mothers and babies through pregnancy and childbirth, with special attention paid to improving health-care access for women from poor and/or rural backgrounds;
  - f. Review sex education programs to ensure that they are age-appropriate and support traditional family values in accordance with the values of the people of the Bahamas; and
  - g. Ensure that students and their parents are able to opt out of sex education programs which violate their religious or moral convictions.



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