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TUVALU

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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 Tuvalu 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 Tuvalu, as well as the need to protect and promote religious freedom in the country for all, including religious minorities.

(a) Abortion

3. The law regarding abortion in Tuvalu under sections 150 to 152 of the *Penal Code 1865* is modelled on the English *Offences against the Person Act 1861*, and provides that any person who administers any noxious thing or other means intended to procure the miscarriage of a woman is liable to ten years’ imprisonment. A pregnant woman who undertakes or consents to this may be imprisoned for life, and a person who knowingly supplies the means of procuring an abortion may be imprisoned for five years.¹
4. Section 227 of the Code, however, provides that a person acting in good faith and with reasonable care and skill will not be held criminally liable for performing a surgical operation upon an unborn child for the sake of preserving the pregnant woman’s life when necessary. Section 214 of the Code also provides that a person shall not be guilty of wilfully causing a child to die in the womb if the act causing such to occur was performed in good faith in order to preserve the mother’s life.²
5. Groups promoting more liberalized access to abortion worldwide, however, would like to see such access be made available on demand, and claim that it is not just a matter of improving maternal health and reducing maternal mortality and morbidity, but rather is an issue of fundamental human rights, of which abortion is supposedly one.

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.

¹ United Nations Department of Economic and Social Affairs, “Tuvalu Abortion Policy,” last accessed 5th October 2017, available at: <https://www.un.org/esa/population/publications/abortion/doc/tuvalu.doc>.

² Ibid.

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 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*.”³ 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*.”⁴
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. The medical infrastructure in many developing countries is poor, with an inadequate number of trained health professionals and unsanitary, poorly-equipped health facilities. 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 rural areas. Further,

³ 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.”

⁴ Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI, Article 10.

abortion can never be safe because it takes the life of the unborn child, and harms the mother through the loss of her child.

14. Precise data on the health-care system, rates of maternal mortality and morbidity, and unmet need for medical personnel in Tuvalu is unavailable. Nevertheless, there is only one hospital in the entire country, the Princess Margaret Hospital in Funafuti. Tuvalu is made up of 9 islands and they are all located relatively remotely from each other, making the hospital difficult to access for those not resident in the capital.
15. The total health budget in 2010 was AU\$4,696,042. Given that there are around 11,000 residents in the country, this amounts to less than \$500 allocated to each individual for their health-care. Satellite clinics on the outer islands are generally staffed only with a nurse and a midwife.
16. 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 it has been estimated that in 2007 97% of pregnant women in Tuvalu received some level of prenatal care during their pregnancies, it was estimated by UNICEF that almost a third of them did not have the minimum of four visits recommended by the WHO.⁵

Reducing recourse to abortion

17. Tuvalu 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.
18. Almost all maternal deaths, wherever they occur, 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 often include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.
19. 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, and providing more access to abortion will mean more women will suffer from abortion complications.
20. Tuvalu must focus on helping women get through pregnancy and childbirth safely, rather than helping women end their pregnancies. Resources must focus on

⁵ UNICEF, "Maternal Health, Antenatal Care, Current Status + Progress," last accessed 5th October 2017, available at: <https://data.unicef.org/topic/maternal-health/antenatal-care>.

improving conditions where necessary and providing greater access to health-care for pregnant women, women undergoing childbirth, and postpartum women.

(c) Recommendations

21. In light of the aforementioned, ADF International suggests the following recommendations be made to Tuvalu:
 - 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 liberalize abortion, and instead implement laws aimed at protecting the right to life of the unborn;
 - c. Recognize that the legalization of abortion will not make pregnancy and childbirth any safer, especially where serious problems and limitations exist in the health-care sector;
 - d. Improve health-care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health; and
 - e. Focus on safely getting mothers and babies through pregnancy and childbirth, with special attention paid to improving health-care access for women in poverty and those women living on the outer islands.



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