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DJIBOUTI

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

(a) Abortion

3. Under the 1994 Penal Code, abortion is generally illegal, and a person who performs or attempts to perform one may be imprisoned for up to two years and pay a 500,000 Djibouti franc fine, with the possible term rising to five years' imprisonment and the fine going up to 2,000,000 Djibouti francs if they do so regularly. A woman who consents to undergo an abortion is liable to six months' imprisonment and a fine of 100,000 Djibouti francs.[1]

4. The Code nevertheless provides for the legal termination of pregnancy by a physician "for therapeutic purposes," though it is unclear whether this is intended to include only pregnancies where the life of the mother is at risk, or if it also includes the preservation of physical and/or mental health as well.[2]

5. Groups promoting more liberalized access to abortion throughout Africa, 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.

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[1] United Nations Department of Economic and Social Affairs, "Djibouti Abortion Policy," last accessed 5th October 2017, available at: https://www.un.org/esa/population/publications/abortion/doc/djibou1.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 Djibouti, like much of sub-Saharan Africa, 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.

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[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.

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.

Reducing recourse to abortion

15. Djibouti 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. Djibouti 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 Djibouti, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(b) Maternal Health

17. Djibouti's maternal mortality ratio (MMR) in 2015 was 229 maternal deaths per 100,000 live births, down from 517 per 100,000 in 1990.[5] 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 Djibouti 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 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. 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 2012 around 88% of pregnant women in Djibouti received some level of prenatal care during their pregnancies (though this is down from 92% in 2006), it was estimated by UNICEF that only 23% received the minimum of four visits recommended by the WHO, up from an incredible low of 7% in 2002.[6]

20. UNFPA also documented that with regard to availability of midwives, nurses, clinical officers and medical assistants, physicians, and OB/GYNs, only 44% of the

[5] World Bank, "Maternal mortality ratio (modeled estimate, per 100,000 live births)," 2015, available at: https://data.worldbank.org/indicator/SH.STA.MMRT.
[6] UNICEF, "Maternal Health, Antenatal Care, Current Status + Progress," last accessed 5th October 2017, available at: https://data.unicef.org/topic/maternal-health/antenatal-care.

estimated need was met in 2012, and no reliable data was available regarding the number of births during which a skilled birth attendant was present.[7]

21. 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 Djibouti's health-care system do not involve lack of access to abortion. Providing more access to abortion will mean more women will suffer from abortion complications.

22. In line with paragraph 8.25 of the ICPD, Djibouti 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) Religious Freedom

23. Djibouti is a majority Muslim country, with a small Christian population of around 6%. Islam is constitutionally enshrined as the state religion, though the constitution also requires the guarantee of equality before the law regardless of religious affiliation.

24. Despite this overall atmosphere of religious tolerance, however, there have been reports of societal discrimination on the basis of faith. Open Doors has stated that Djibouti's strongly Islamic culture has the effect of making Christians, especially converts from Islam, feel constricted and uneasy, and that refusal of jobs and community resources has occurred on religious grounds.[8]

25. There is a threat of radicalisation of some Muslim communities in the country, which the government is seeking to avoid through a commitment to moderate Islam, but which has also motivated the presidential administration to politically repress undesirable elements for the sake of maintaining internal stability and keeping satisfied the international community's desire for an ostensibly stable Djibouti.[9]

26. The fear latent in this is that dictatorial paranoia may give way to anti-government and anti-Western sentiments of increasingly radicalized communities, and that Christians, as perceived allies of "the West," may be blamed and become subject to retribution.

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[7] UNFPA, "The State of the World's Midwifery 2014," last accessed 5th October 2017, available at: https://www.unfpa.org/sites/default/files/pub-pdf/EN_SoWMy2014_complete.pdf, 90.

[8] Open Doors USA, "World Watch List: Djibouti," last accessed 5th October 2017, available at: https://www.opendoorsusa.org/christian-persecution/world-watch-list/djibouti.

[9] Janelle P, *Open Doors USA*, "Djibouti: a hotspot for radicalization," 21st July 2016, available at: https://www.opendoorsusa.org/take-action/pray/djibouti-a-hotspot-for-radicalization.

(d) Recommendations

27. In light of the aforementioned, ADF International suggests the following recommendations be made to Djibouti:

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, 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. Ensure that the right to freedom of religion or belief is guaranteed and protected within Djibouti, and that Christians and other religious minorities are treated equally and with respect to all of their human rights and fundamental freedoms by both society and the State; and

g. Refrain from aggravating anti-government sentiments through limiting of political and social freedoms, in order that radicalisation will not occur and Christians and other religious minorities will not be scapegoated and suffer as a result.

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