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TOGO

Submission by:

Meghan Fischer
ADF International
28, Ch. du Petit Saconnex
1209 Geneva, Switzerland

Web: www.adfinternational.org
Email: mfischer@adfinternational.org

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 Togo should not have legalized abortion, and how international law does not justify a so-called right to abortion. The report also details how Togo must improve maternal health.

(a) Abortion

3. In late 2006, Togo legalized abortion in the case of rape or incest, as well as "if there is a strong risk that the unborn child will [be] affected by a particularly serious medical condition."[1] The abortion must be prescribed by a doctor.

4. Allegedly, the people of Togo were not consulted before legislators voted to change the law.[2]

5. Togo should not have succumbed to pressure to legalize abortion under the false claim that its international obligations require abortion legalization. Instead, international law protects the right to life of the unborn.

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. 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*." This clause must be understood as recognizing the unborn's distinct identity from the mother and protecting the unborn's right to life.

8. As the *travaux préparatoires*[3] of the ICCPR explicitly 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*."[4] Similarly, the Secretary General report of 1955 notes that

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[1] *Togo: Abortion Legalized in Rape and Incest*, N.Y. TIMES, 29 Dec. 2006, http://www.nytimes.com/2006/12/29/world/africa/29briefs-ABORTIONLEGA_BRF.html.

[2] *See, e.g.*, Agenzia Fides, Following approval of law on Reproductive Health which envisages abortion in some cases, Catholic bishops reaffirm that every human life must be respected, http://www.fides.org/en/news/pdf/9318.

[3] In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a "supplementary means of interpretation."

[4] A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

the intention of the paragraph "was inspired by humanitarian considerations and by *consideration for the interests of the unborn child*[.]"[5]

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, "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.

Legalizing abortion does not make it safe

11. Legalizing abortion does not guarantee that it becomes safe. A report by the Guttmacher Institute states, "Changing the law [. . .] is no guarantee that unsafe abortion will cease to exist."[6] The medical infrastructure in Togo is poor, with an inadequate number of trained health professionals and unsanitary, poorly equipped public health facilities.[7] 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.

12. 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

13. Togo 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.

14. In order to reduce abortions and to improve maternal health, women must have access to information that emphasizes knowledge-based education about their bodies and facilitates full informed consent, healthy behaviours, and responsible decision-making.

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

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[5] A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955.

[6] *See* Susan A. Cohen, *Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide*, GUTTMACHER POL'Y REV. (2009), *available at* http://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html.

[7] *See, e.g.,* Flavia Nassaka, *No healthcare for the poor*, INDEP., 24 Aug. 2015, *available at* http://www.independent.co.ug/features/features/10548-no-healthcare-for-the-poor.

(b) Maternal health

16. Togo has one of the highest maternal mortality ratios (MMR) in the world at 368 deaths per 100,000 live births.[8] The lifetime risk of maternal death, or the probability that a 15-year-old woman will die from a maternal cause at some point in her life, is 1 in 58.[9] 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 Togo is a human rights crisis.

Necessary maternal health interventions

17. Almost all maternal deaths are preventable,[10] particularly when skilled birth attendants are present to manage complications and the necessary drugs are available, such as oxytocin (to prevent hemorrhage) and magnesium sulfate (to treat pre-eclampsia).

18. Togo must focus on providing prenatal care. 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.[11] According to the 2013-2014 Demographic and Health Survey, only 57.2 percent of women in Togo had at least four prenatal visits, and only 27.7 percent had their first visit in the first trimester, as recommended.[12]

19. The WHO states, "Most obstetric complications could be prevented or managed if women had access to skilled birth attendant – doctor, nurse, midwife – during childbirth."[13] Skilled birth attendants (SBAs) are trained to recognize and manage complications, and to refer women to higher levels of care if necessary. According to UNFPA, only 45 percent of the need for SBAs in Togo is met.[14] Only 59 percent of births are attended by a trained health provider.[15] The population of Togo is expected to increase from 6.6 million in 2012 to 10 million in 2030.[16] It must prepare to respond to an estimated 400,000 pregnancies per year by 2030, 68 percent of which will be in rural settings.[17]

20. Women must also receive postnatal care. 20.9 percent of women under 20 years of age, 18.6 percent of women aged 20-34 years, and percent of women aged 35-49 years received no postnatal care.[18]

21. Togo must recognize the barriers to adequate health care during pregnancy, childbirth, and the postnatal period, including poverty, distance, lack of information,

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[8] WHO ET AL., TRENDS IN MATERNAL MORTALITY 1990-2015 Annex 7, *available at* http://www.unfpa.org/sites/default/files/pub-pdf/Trends_in_Maternal_Mortality_1990-2015_eng.pdf.
[9] *Id.*
[10] World Health Organization, Fact Sheet No. 348, Maternal mortality, http://www.who.int/mediacentre/factsheets/fs348/en/.
[11] World Health Organization, Antenatal care, http://www.who.int/gho/maternal_health/reproductive_health/antenatal_care_text/en/.
[12] TOGO ENQUÊTE DÉMOGRAPHIQUE ET DE SANTÉ 2013-2014 107 (2015) [hereinafter TOGO DHS], *available at* http://dhsprogram.com/pubs/pdf/FR301/FR301.pdf.
[13] World Health Organization, Skilled attendants at birth, http://www.who.int/gho/maternal_health/skilled_care/skilled_birth_attendance_text/en/.
[14] UNFPA, THE STATE OF THE WORLD'S MIDWIFERY 2014 182 (2014), http://www.unfpa.org/sites/default/files/pub-pdf/EN_SoWMy2014_complete.pdf.
[15] TOGO DHS, *supra* note 12, at 112.
[16] UNFPA, *supra* note 14, at 182.
[17] *Id.*
[18] TOGO DHS, *supra* note 12, at 115.

inadequate services, and cultural practices. 65.7 percent of women in Togo reported that there was at least one barrier, such as needing permission to go for treatment, not wanting to go alone, distance to a health facility, and in particular getting money for treatment, in getting care for a health concern.[19]

(c) Recommendations

22. Given the push in Togo for legalized abortion and the unavailability of good health care for women, ADF International recommends the following:

    - Recognize that the liberalization of abortion laws is not required by international law;
    - Recognize that the legalization of abortion in a country with such a high maternal mortality ratio and poor health care system infrastructure will not make abortion safe, and protect the women of Togo by making abortion illegal again;
    - Improve the health care system infrastructure, increase midwife training, and devote more resources to maternal health, with the focus on getting mothers and babies safely through pregnancy and childbirth.

[19] *Id.* at 118-19.