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SOUTH SUDAN

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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 focuses on the interventions South Sudan must implement to improve the maternal health situation. It also explains why South Sudan should resist calls to legalize abortion, and how international law does not justify a so-called right to abortion.

(a) Maternal health

3. South Sudan is the world's newest country, having achieved independence from Sudan in 2011. Since December 2013, South Sudan has been embroiled in a civil war that has displaced 1.9 million people, with 1.5 million internally displaced persons and 7 million subject to hunger and disease, when the population is only 8 million.[1] The health situation is at crisis levels, with poor maternal, infant, and child health.

4. South Sudan is estimated to have the highest maternal mortality ratio (MMR) in the world at 2,054 deaths per 100,000 live births.[2] 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 26.[3] 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 South Sudan is a human rights crisis.

5. At the centre of the current crisis is political conflict, which South Sudanese leaders must bring to an end, recognizing that peace is more important than political power. Until the conflict ends, the necessary health interventions are difficult to achieve, but improvements are still possible.

Necessary maternal health interventions

6. Almost all maternal deaths are preventable,[4] 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).

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[1] *South Sudan gripped by 'serious failure of leadership' as peace talks stall, warns top UN official,* UN NEWS CENTRE, 24 Feb. 2015, http://www.un.org/apps/news/story.asp?NewsID=50169#.VmCFYmSrR68.

[2] *Training Midwives to Care for the Mothers of South Sudan*, UNFPA, 19 May 2011, http://www.unfpa.org/news/training-midwives-care-mothers-south-sudan. Another estimate by UNFPA and others is 789. *See* WHO ET AL., TRENDS IN MATERNAL MORTALITY 1990-2015 Appendix 7, *available at* http://www.unfpa.org/sites/default/files/pub-pdf/Trends_in_Maternal_Mortality_1990-2015_eng.pdf.

[3] *Id.*

[4] World Health Organization, Fact Sheet No. 348, Maternal mortality, http://www.who.int/mediacentre/factsheets/fs348/en/.

7. The WHO states, “Most obstetric complications could be prevented or managed if women had access to skilled birth attendant – doctor, nurse, midwife – during childbirth.”[5] Skilled birth attendants are trained to recognize and manage complications, and to refer women to higher levels of care if necessary. However, in 2011 South Sudan only had around 10 professional midwives and fewer than 100 community midwives, with inconsistent training and low pay.[6]

8. The 2010 Sudan Household Health Survey found that 81 percent of women who gave birth in South Sudan in the two years prior to the survey gave birth at home and 11.5 percent gave birth in a health facility, with only 19 percent of births attended.[7]

9. South Sudan must also 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.[8] According to the Sudan Household Health Survey, only 17 percent of women in South Sudan who gave birth in the previous two years had at least one visit with a skilled provider.[9]

10. There are also several social and cultural factors that contribute to poor maternal health in South Sudan. The government must focus on guaranteeing every girl access to education and on ensuring that girls attend school through primary and secondary school.

11. Only 13.4 percent of women were literate in 2010.[10] Only 28.9 percent of children of primary school age were attending primary school in 2010, with only 25.4 percent of girls in school.[11] When women are illiterate and do not go to school, they are much likelier to get married and start childbearing early, threatening their health.

12. Early marriage is common in South Sudan. 7 percent of women aged 15-49 in 2010 had entered marriage before the age of 15 years.[12] 45 percent entered marriage before the age of 18 years.[13] Polygyny is also common, at 41 percent of all unions.[14]

13. Due to early marriage, early childbearing is common. 31 percent of women aged 15-19 years have had children, and 3 percent gave birth before age 15.[15] If girls stayed in school and delayed marriage, they would also delay childbearing, protecting their health and the health of their children.

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[5] World Health Organization, Skilled attendants at birth, http://www.who.int/gho/maternal_health/skilled_care/skilled_birth_attendance_text/en/.
[6] *Training Midwives to Care for the Mothers of South Sudan*, *supra* note 2.
[7] THE REPUBLIC OF SOUTH SUDAN: THE SUDAN HOUSEHOLD HEALTH SURVEY 2010 52 (2010) [hereinafter SHHS 2010], *available at* http://www.southsudanembassydc.org/PDFs/others/SHHS%20II%20Report%20Final.pdf.
[8] World Health Organization, Antenatal care, http://www.who.int/gho/maternal_health/reproductive_health/antenatal_care_text/en/.
[9] SHHS, *supra* note 7, at 50.
[10] *Id.* at 54.
[11] *Id.* at 55-56.
[12] *Id.* at 60.
[13] *Id.*
[14] *Id.* at 61.
[15] *Id.* at 47.

(b) Abortion

14. Abortion is illegal in South Sudan, except to preserve a mother's life.[16]

15. Marie Stopes International, an abortion provider around the world, has at least two family planning clinics in South Sudan, in Juba and Torit, which provide "short-term and long-term family planning methods and general medical services."[17] It also partners with the UN to deliver family planning supplies by airplane to remote parts of the country.[18] Reports in South Sudan say that Marie Stopes also performs abortions there.[19]

16. Chemical abortions have been provided in South Sudan for at least 15 years, according to one source on the ground.[20] Women receive pills from clinics, health centers, and pharmacies to undergo abortions. There are also reports of widespread abortion in camps for internally displaced persons.[21] Forced abortion also occurs.[22]

17. A USAID report repeatedly emphasizes the need for misoprostol in South Sudan.[23] While misoprostol is used for postpartum hemorrhaging, it also has "widespread informal use" to induce abortion.[24] A Marie Stopes video shows a woman getting misoprostol over the counter from a pharmacist.[25]

18. Complications from abortion are one of the primary reasons women are admitted to gynecological units.[26]

19. Some NGOs and "health experts" have called for the legalization of abortion in South Sudan, and many say that international law justifies or even requires it.

20. South Sudan must ensure that women do not resort to abortion. South Sudan also must not bow to pressure imposed by false claims that its international obligations require abortion legalization. Instead, international law recognizes the right to life of the unborn.

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[16] Women on Waves, South Sudan, https://www.womenonwaves.org/en/page/5209/south-sudan.
[17] *Family planning services resume in conflict-torn South Sudan*, Marie Stopes Int'l, 16 Jan. 2014, https://mariestopes.org/news/family-planning-services-resume-conflict-torn-south-sudan.
[18] MARIE STOPES INT'L, GLOBAL IMPACT REPORT 2013 11 (2014), https://mariestopes.org/sites/default/files/Marie_Stopes_International_Global_Impact_Report_2013.pdf.
[19] *See* PaanLuel Wël, *Marie Stopes International—South Sudan Abortion Clinic in Juba*, 27 Jan. 2012, http://paanluelwel.com/2012/01/27/marie-stopes-international-south-sudan-abortion-clinic-in-juba/.
[20] Pete Baklinski, *African priest begs help to end 15 years of illegal chemical abortions ravaging his nation* (video), LIFESITENEWS, 9 Sept. 2014, https://www.lifesitenews.com/news/african-priest-begs-help-to-end-15-years-of-illegal-chemical-abortions-rava.
[21] *See Concern of widespread abortion in 'protection' camps in South Sudan,* RADIO TAMAZUJ, 1 Sept. 2014, https://radiotamazuj.org/en/article/concern-widespread-abortion-%E2%80%98protection%E2%80%99-camps-south-sudan.
[22] *Protect the women and girls of South Sudan*, 8 Mar. 2014, http://reliefweb.int/report/south-sudan/protect-women-and-girls-south-sudan.
[23] USAID, SOUTH SUDAN REPRODUCTIVE HEALTH COMMODITY QUANTIFICATION, 2014-2016 (2014), xi-xii, 17-18, http://deliver.jsi.com/dlvr_content/resources/allpubs/countryreports/SS_RHCommQuan.pdf.
[24] http://www.who.int/bulletin/volumes/92/3/14-136333.pdf?ua=1.
[25] *See* Marie Stopes Int'l, Marie Stopes South Sudan video, https://vimeo.com/96246594.
[26] Monica Adhiambo Onyango, *Women's Experiences with Abortion Complications in the Post War Context of South Sudan*, Table B8, 190; Table B9, 191, http://dlib.bc.edu/islandora/object/bc-ir:102049.

The right to life in international law

21. 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.

22. 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.

23. As the *travaux préparatoires*[27] 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*."[28] Similarly, the Secretary General report of 1955 notes that the intention of the paragraph "was inspired by humanitarian considerations and by *consideration for the interests of the unborn child*[.]"[29]

24. 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*."

25. 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

26. 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."[30] The medical infrastructure in South Sudan is poor, with an inadequate number of trained health professionals and unsanitary, poorly equipped health facilities. Women who receive abortions will still face poor conditions, the same ones faced by women who give birth and deal with similar

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

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

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

[30] *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.

complications, such as bleeding and infection. Providing more access to abortion will mean more women will suffer from abortion complications.

27. 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

28. South Sudan 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.

29. 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.

30. South Sudan 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 South Sudan, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

(c) Recommendations

31. Given the unavailability of good health care for women and the occurrence of abortion in South Sudan, ADF International recommends the following:

- Take steps to recognize and honour national and international obligations to protect the right to life from conception to natural death;
- 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 South Sudan by resisting pressure to legalize it;
- 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;
- Ensure that all girls go to school from primary through secondary school.