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NEW ZEALAND

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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 New Zealand must revise its laws and policies concerning the sanctity of life, especially with respect to abortion and physician-assisted suicide.

a) Abortion

Current legal framework

3. The Contraception, Sterilisation and Abortion Act of 1977, together with the Crimes Act of 1961, constitute the legal framework for abortion in New Zealand. Under such legislation, an abortion may be carried out up to the 20th week of pregnancy, with the approval of two ‘certifying consultants’—usually medical practitioners—who are required to guarantee that one or both of the following legal requirements are met:
 - (a) the continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the woman or girl; or
 - (b) there is a substantial risk that the child would be seriously handicapped, or the pregnancy is the result of any form of incest, or the pregnant woman is "severely subnormal" as defined by the Crimes Act.
4. The above-described legal framework poses serious human rights challenges. Although the Contraception, Sterilisation and Abortion Act 1977 refers to the need ‘to provide for the circumstances and procedures under which abortions may be authorized after having full regard to the rights of the unborn child’, its provisions are in clear violation of the right to life as enshrined in many international legal instruments, among which the 1966 International Covenant on Civil and Political Rights. The threat posed by this piece of legislation to the right to life of the unborn child is also exacerbated by its misleading reference to relevant international human rights law.
5. 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.*” Under the ICCPR, all other adult women may be subject to the death penalty,

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

6. As the travaux préparatoires of the ICCPR state¹ '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*². 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*[".]"
7. 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*." 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.
8. 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 therefore recognition of, and protection for, unborn life.
9. Furthermore, the possibility, provided for by the above legislation, to carry out an abortion because of foetal abnormality, clearly gives rise to discrimination based on the mere fact that the unborn child is carrier of a medical illness³.

Possible further decriminalization of abortion in NZ

10. The current legal debate regarding abortion in New Zealand focuses on the possibility of repealing Section 187A of the Crimes Act 1961, which classifies every abortion not permitted by the law as a criminal offence. Such decriminalization would have significantly adverse human rights implications.
11. If decriminalization is understood as the first step towards deregulation of abortion in New Zealand, this would necessarily mean putting under further threat the guarantee of the right to life of the unborn as well as women's health. Firstly, abortion is not a contraceptive (as it in no way prevents pregnancy) but rather a medical treatment that terminates the life of an innocent human being, as current literature on the scientific development of

¹ In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a "supplementary means of interpretation."

² A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

³ See on this point: Convention on the Rights of persons with disabilities; Article 1, ICERD, Article 1, CEDAW and Article 2, Convention on the Rights of Persons with Disabilities.

unborn life also clearly shows⁴. So far, this interpretation of abortion has also been acknowledged by New Zealand's legislation, which clearly states that 'abortion means a medical or surgical procedure carried out or to be carried out for the purpose of procuring: (a) the destruction or death of an embryo or fetus after implantation; or (b) the premature expulsion or removal of an embryo or fetus after implantation, otherwise than for the purpose of inducing the birth of a fetus believed to be viable or removing a fetus that has died'). Secondly, as clearly shown by an empirical study conducted in New Zealand⁵, abortion is a procedure that strongly adversely affects women's health, both in the short and long term. Therefore, the liberalization of abortion laws fails to recognize such impact on women and, ultimately, to protect their mental and physical well-being.

b) End of Life Issues

12. There is no legal framework concerning end of life decisions currently in place in New Zealand. However, a parliamentary debate regarding the legalization of physician-assisted suicide and euthanasia has recently started with the introduction of the so-called 'End of Life Choice Bill'. This bill passed its first reading on 13 December 2017, with 76 votes in favor and 44 opposed, and will be further discussed in March 2019.
13. This bill violates the right to life of every human being as enshrined by international human rights law.
14. Article 6(1) of the ICCPR states, 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'
15. Furthermore, Article 6(2) of the ICCPR sets out the conditions for applying the only exception to the general rule:

Article 6(2): In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide.

⁴ The latest research led by Oxford University has highlighted that, for instance, the heart starts beating 16-days after conception. See on this point: Tyser, R., Miranda, A. MA., et. Al., 2016. Calcium handling precedes cardiac differentiation to initiate the first heartbeat, <http://dx.doi.org/10.7554/eLife.17113>. Also further recent research has shown that the sensitivity to pain starts before the end of first-trimester of pregnancy. See on this point: Human Development. [online] Available Belle, M., Godefroy, D., Couly, D., et al., 2017. Tridimensional visualization and Analysis of Early at: <http://dx.doi.org/10.1016/j.cell.2017.03.008>.

16. New Zealand should affirm the right to life as the supreme right requiring protection until natural death and therefore not considering the adoption of an “end of life” law.
17. The country should focus on providing patients with quality medical care and treatment, not ending their lives, including by ensuring that patients have access to high-quality, comprehensive palliative care to control pain and other symptoms, and to provide psychological, social, and spiritual assistance.

Recommendations:

18. In light of the aforementioned, ADF International suggests that the following recommendations be made to New Zealand:
 - 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. Refrain from further liberalizing abortion, and instead implement laws aimed at protecting the right to life of the unborn;
 - c. Recognize that the State has a duty and obligation to protect and defend the right to life under international law, acknowledging that there is no right to death under international law and that such practices violate the right to life;
 - d. Withdraw or reject the “End of Life Choice Bill” currently before the New Zealand House of Representative that would legalize physician-assisted suicide and euthanasia.



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