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**ANTIGUA AND BARBUDA**

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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 Fundamental Rights Agency of the European Union, the Organization for Security and Co-operation in Europe, and the Organization of American States.
2. This report highlights the crucial importance of prosecuting providers of illegal abortion and resisting calls to liberalize the law on abortion in Antigua and Barbuda (hereinafter Antigua) that protects the life of the unborn, in addition to the grave need to address the problems of violence against women and child abuse in the country.

### (a) The Right to Life

#### *Background*

3. Abortion is illegal under the Offences Against the Person Act of 1873, with an exception for the life of the mother on the grounds of necessity.<sup>1</sup> Data are unknown regarding the actual number of abortions illegally performed in Antigua; however, abortion is prevalent and not often prosecuted.<sup>2</sup> Illegal procedures are often performed by doctors under the guise of false diagnoses.<sup>3</sup> According to Antiguan Law a woman who obtains an illegal abortion can be sentenced to ten years in prison and the provider to two years in prison.<sup>4</sup>

#### *Right to life in international law*

4. 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. On the contrary, Antigua’s protection of the unborn finds support in international 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.*” 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*<sup>5</sup> 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

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<sup>1</sup> Laws of Antigua, The Offences Against the Person Act, Chap. 300, Part IX, 56-58, *available at* <http://www.laws.gov.ag/acts/chapters/cap-300.pdf>.

<sup>2</sup> Pheterson, Gail, Azize, Yamila, “Abortion within and around the law in the Caribbean,” PRHSJ, Vol. 27, N. 1, 2008, p. 96, *available at* [http://www.researchgate.net/publication/5402692\\_Abortion\\_within\\_and\\_around\\_the\\_law\\_in\\_the\\_Caribbean](http://www.researchgate.net/publication/5402692_Abortion_within_and_around_the_law_in_the_Caribbean).

<sup>2</sup> *Id.*, p.97.

<sup>3</sup> *Id.*, p.97.

<sup>4</sup> The Offences Against the Person Act, *op.cit.*

<sup>5</sup> In accordance with Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a “supplementary means of interpretation.”

should not be carried out on pregnant women was to *save the life of an innocent unborn child.*<sup>6</sup> 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.*”<sup>7</sup>

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.*”
8. 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.

### *The problem of illegal abortion*

9. An “institutionalized tolerance” of abortion has resulted from the lack of enforcement of Antigua’s law.<sup>8</sup> Doctors, and some pro-abortion NGOs, are satisfied with the current legal situation,<sup>9</sup> which demonstrates disregard for rule of law in the country. The Government is aware that private doctors provide illegal abortions,<sup>10</sup> and has an obligation to combat this problem. It is crucial that the Government undertake urgent efforts to accurately record abortion data with the goal of prosecuting providers of illegal abortions.
10. Abortion activists have vociferously called for the legalization of abortion in Antigua. They claim that eliminating restrictions would decrease the abortion rate and improve maternal health. However, as of 2013, Antigua has achieved a maternal mortality rate of zero.<sup>11</sup> The Government is to be commended for this significant success—safeguarding the lives of Antigua’s mothers is of utmost importance. The case of Antigua corroborates recent findings from a major study published in the *British Medical Journal* this year, which concluded that “less permissive” abortion laws result in “consistently lower maternal mortality rates.”<sup>12</sup> Although the study explains these differences in terms of other independent factors rather than in terms of abortion legislation itself, it nevertheless concludes, “No statistically independent effect was observed for abortion legislation, constitutional amendment or other covariates.”<sup>13</sup> Because abortion legislation has no effect on maternal mortality, abortion need not be legalized to protect women’s health.

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<sup>6</sup> A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

<sup>7</sup> A/2929, Chapter VI, §10. Report of the Secretary-General to the 10<sup>th</sup> Session of the General Assembly, 1 July 1955.

<sup>8</sup> Pheterson, Gail, Azize, Yamila, 2006, p. 95.

<sup>9</sup> Pheterson, Gail, Azize, Yamila, 2008, p. 98.

<sup>10</sup> Antigua and Barbuda National Review of the Beijing Platform for Action +20, 2013, p.20, *available at* [http://www.unwomen.org/~media/headquarters/attachments/sections/csw/59/national\\_reviews/antigua\\_and\\_barbuda\\_review\\_beijing20.ashx](http://www.unwomen.org/~media/headquarters/attachments/sections/csw/59/national_reviews/antigua_and_barbuda_review_beijing20.ashx).

<sup>11</sup> *Id.*

<sup>12</sup> Elard Koch, Monique Chireau, and Fernando Pliego et. al., *Abortion Legislation, Maternal Healthcare, Fertility, Female Literacy, Sanitation, Violence Against Women and Maternal Deaths: A Natural Experiment in 32 Mexican States*, BMJ OPEN 2015:5 e006013, doi:10.1136/bmjopen-2014-006013, p. 1.

<sup>13</sup> *Id.*

11. In accordance with international law, the Antiguan government has the prerogative to maintain existing restrictions on access to abortion. The country has demonstrated its capacity to achieve an excellent maternal mortality ratio, and it should continue to focus its efforts on the health of mothers. It is imperative that the government take steps to reduce recourse to abortion in the country in line with paragraph 8.25 of the Programme of Action of the International Conference on Population and Development (ICPD).<sup>14</sup> Even when conducted by a licensed physician, as is often the case in Antigua, abortion can never be safe because it takes the life of the unborn child, and harms the mother through the loss of her child. The government has an obligation to halt illegal abortion by prosecuting providers. In addition, the government should emphasize prevention of unplanned pregnancy and resources for pregnant women, and focus its efforts on reducing the root causes that lead women to turn to abortion, namely poverty, domestic violence, premature sexual activity, and lack of education and employment. Measures to reduce abortion necessarily require improving access to education, which has the effect of empowering women and leading to social and economic development, and ultimately facilitates healthy decision-making.
12. The high adolescent birth rate (49.3 in 2012) is a significant issue of concern.<sup>15</sup> Premature sexual activity is a serious problem that leads to devastating health implications, and severely undermines the wellbeing of Antigua's youth. The consequences of premature sexual activity have a disproportionate impact on young girls because their bodies are not developmentally prepared for pregnancy, in addition to the fact that they are more susceptible to HIV and other STIs due to biological factors. Education on responsible sexual behaviour in conjunction with parents, in addition to community and religious leaders, is of vital importance. Teaching in the classroom about abstinence and fidelity is very important to inform young people about the risks associated with premature sexual activity and multiple concurrent partners, and to encourage healthy relationships.
13. In order to reduce abortions, 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. According to the Antiguan Ministry of Gender Affairs, Pap smears and other critical medical tests are not provided free of charge, making them difficult to access for poor women.<sup>16</sup> The Antigua Planned Parenthood Association (ABPPA), the primary provider of family planning counseling and services in Antigua, is part of the International Planned Parenthood Federation (IPPF)—the largest abortion provider in the world. IPPF lobbies both domestically and at the United Nations for increased access to abortion, and recently, the Executive Director of ABPPA has argued that abortion must be legalized in Antigua as a matter of women's rights.<sup>17</sup> As noted above, no such right can be found in international law. Even if it does not perform abortions in Antigua, Planned Parenthood's stance fundamentally conflicts with both the laws and pro-life values of the Antiguan population. As emphasized in the ICPD, every country has the prerogative to determine its own laws on abortion at the level of its national legislature.<sup>18</sup> Claims by NGOs

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<sup>14</sup> Programme of Action of the International Conference on Population and Development [hereinafter ICPD], 1994, paragraph 8.25, available at <http://www.un.org/popin/icpd/conference/offeng/poa.html>.

<sup>15</sup> WHO Organization, Adolescent fertility rate (births per 1,000 women ages 15-19), available at UN Data [http://data.un.org/Data.aspx?d=WDI&f=Indicator\\_Code%3ASP.ADO.TFRT](http://data.un.org/Data.aspx?d=WDI&f=Indicator_Code%3ASP.ADO.TFRT).

<sup>16</sup> Antigua and Barbuda National Review of the Beijing Platform for Action +20, 2013, p.20.

<sup>17</sup> Antigua Observer, "Legalise abortion advises Planned Parenthood Boss " (2014), available at <http://antiguaobserver.com/legalise-abortion-advises-planned-parenthood-boss/>.

<sup>18</sup> ICPD, paragraph 8.25.

that abortion on demand is required by international law are patently false and should not be heeded. Increased resources dedicated to women's health that respect Antigua's laws are of vital importance.

14. The Government has an obligation to prosecute providers of illegal abortions, and ultimately to reduce recourse to abortion. A focus on high quality maternal healthcare, not on increased access to abortion, is necessary to ensure respect for the rule of law and lasting health for women and children in Antigua.

## **(b) Safeguarding Women and Children**

### *Background*

15. Pervasive violence is a serious concern in Antigua. Child abuse is a major issue.<sup>19</sup> More than 200 cases of domestic violence are reported annually (in a total population of approximately 91,000), although the "data is not a true reflection of domestic violence in the country".<sup>20</sup> Moreover, the insensitive attitudes of police were highlighted in the Government's 2013 Status of Women report to UN Women.<sup>21</sup> The country is a destination and transit country for trafficking of men, women, and children for the purposes of forced labor and prostitution.<sup>22</sup> Laws are in place, but not adequately enforced, which leads to the persistence of egregious human rights violations.
16. The institution of the family suffers greatly as a result of crime and violence in the country. Child abuse, domestic violence, pornography, prostitution and human trafficking contribute to the breakdown of the family unit, and tear at the fabric of society at its most fundamental level.

### *Combatting Violence and Crime*

17. Fighting crime in Antigua is of utmost importance for the development of the country. Development will remain stunted so long as the population lives in fear. All persons in Antigua are entitled to live free from violence, and the Government must do everything in its power to protect this most basic right. Measures must be taken to ensure the effective implementation of the Domestic Violence Act (1999)<sup>23</sup> and the Sexual Offences Act (1995),<sup>24</sup> and to send clear signals to perpetrators of violence that all crimes will be prosecuted. It is unfortunate that the Sexual Offences Act does not acknowledge marital rape, except for instances of separation.<sup>25</sup> A zero tolerance policy for child abuse and child pornography, in addition to scaled-up efforts to stop trafficking, are imperative.
18. The Directorate of Gender Affairs estimates that the number of rape survivors coming forward increased following the creation of the Sexual Offenses Unit in 2007.<sup>26</sup> This is a

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<sup>19</sup> US Department of State, Country Reports on Human Rights Practices for 2014, *available at* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236658>.

<sup>20</sup> Antigua and Barbuda National Review of the Beijing Platform for Action +20, 2013, p.20.

<sup>21</sup> *Id.* p.21.

<sup>22</sup> Freedom House, Report Freedom in the World 2012, *available at* <https://freedomhouse.org/report/freedom-world/2012/antigua-and-barbuda>.

<sup>23</sup> Laws of Antigua, Domestic Violence (Summary Proceedings) Act 1999, *available at* <http://laws.gov.ag/acts/1999/>.

<sup>24</sup> Laws of Antigua, Sexual Offences Act (1995), *available at* <http://www.laws.gov.ag/acts/1995/a1995-9.pdf>.

<sup>25</sup> *Id.* Part II, article 4.

<sup>26</sup> Country Reports on Human Rights Practices for 2014.

positive advancement, and the Government is to be commended for the programs and responses it has put in place to provide safe havens for women and children.<sup>27</sup> It is imperative that the Government continues to dedicate resources to these programs, in addition to increasing data collection efforts to capture an accurate picture of crime and violence in the country.

19. Educational initiatives, in conjunction with community and religious leaders, are needed to inform individuals and families about the importance of seeking protection in the face of violence and the options afforded to them. Instilling in children and adolescents an appreciation for the equality of men and women via educational programs is crucial. Empowering the family to be the starting point for true gender equality and appreciation for the equal rights of women and men is essential for a flourishing society.

### **(c) Marriage and Family**

20. Antigua protects and affirms the traditional family as marriage between a man and a woman, as defined in article 16 of the Universal Declaration of Human Rights and in accordance with the religious, cultural, and ethical convictions of its population. International law does not in any way require that Antigua amend its understanding of marriage as the union of a man and a woman. Every effort should be made to support stable marriages in accordance with the country's law, and to combat the multiple destructive forces that currently jeopardize the family unit in Antigua.

### **(d) Recommendations**

21. ADF International recommends the following:

- Recognize that the liberalization of abortion is not necessary to reduce recourse to abortion nor required by international law;
- Prosecute illegal abortions with the goal of completely eradicating this practice;
- Dedicate resources to advances in healthcare services, infrastructure, and education to improve maternal health;
- Increase efforts to ensure accurate and timely data collection on illegal abortion, domestic violence, and other crucial public safety issues;
- Combat crime and human rights violations in the country to improve the safety and wellbeing of the population, with a focus on women and children;
- Continue to affirm the definition of marriage as between a man and woman and support stable marriages in accordance with the country's law.

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<sup>27</sup> *Id.*