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ARGENTINA

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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 Cooperation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Argentina should continue to respect the right to life of all human beings, including the unborn, why it should resist calls to liberalize access to abortion, due to the fact that there is no international human right to abortion and that it will exacerbate currently high rates of maternal mortality, as well as commit to protecting religious freedom.

(a) Abortion and Maternal Health

3. Abortion in Argentina is strictly limited in law, and although the Constitution is silent on the issue of abortion per se, it has granted constitutional status to the American Convention on Human Rights, which recognizes in Article 4 a right to life “in general, from the moment of conception.”¹
4. Articles 85 to 88 of the Penal Code criminally proscribe abortion and other forms of fetal homicide except in cases where an abortion is deemed medically necessary to save the life of the mother or in cases where the pregnant woman was raped. Some NGOs and “health experts” have claimed, however, that further legalization is necessary, under the false claim that international law requires it.
5. A so-called international “right to abortion” is incompatible with various provisions of international human rights treaties, particularly provisions on the right to life. Article 6(1) of the ICCPR states that “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.
6. 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.

¹ American Convention on Human Rights, 1969, <http://www.cidh.org/Basicos/English/Basic3.American%20Convention.htm>.

7. 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.”² 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.”³ The Preamble to the Convention on the Rights of the Child also requires special safeguards and legal protection to be provided to children “before as well as after birth.”
8. The maternal mortality ratio in Argentina was 52 maternal deaths per 100,000 live births in 2015, which is far higher than countries in the developed world, despite Argentina’s status as a middle- to high-income country, as well as its relatively low birth rate, high coverage of prenatal care, and high percentage of institutional deliveries.⁴ Different provinces have wildly different rates of maternal mortality, as Buenos Aires has only 14 deaths per 100,000 live births, while the province of Formosa has a rate of 166 deaths per 100,000 live births.
9. The WHO places the blame for this on “structural failures in the health-care system, quality of care, and particularly the ability to manage obstetric emergencies and access health services,” with abortion complications making up almost a third of all reported maternal deaths.⁵ These issues must be remedied, but frequent calls to increase legal abortion access as a necessary precondition are misguided.
10. Poor medical infrastructure means that 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.
11. Almost all maternal deaths are preventable,⁶ particularly when skilled birth attendants are present to manage complications and the necessary medication is available, such as oxytocin (to prevent haemorrhage) and magnesium sulphate (to treat pre-eclampsia). Problems include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.

² 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.”

³ Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI, Article 10.

⁴ World Bank, Maternal mortality ratio (modelled estimate, per 100,000 live births), 2015, <http://data.worldbank.org/indicator/SH.STA.MMRT>; World Health Organization, A comprehensive assessment of maternal deaths in Argentina: translating multicentre collaborative research into action, 2007, <http://www.who.int/bulletin/volumes/85/8/06-032334/en/>.

⁵ World Health Organization, A comprehensive assessment of maternal deaths in Argentina: translating multicentre collaborative research into action, 2007, <http://www.who.int/bulletin/volumes/85/8/06-032334/en/>.

⁶ World Health Organization, Fact Sheet No. 348, Maternal mortality, <http://www.who.int/mediacentre/factsheets/fs348/en/>

12. In line with paragraph 8.25 of the ICPD, Argentina 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.

(b) Religious Freedom

13. The Constitution of Argentina provides for freedom of religion, although it also states that the national government “sustains the apostolic Roman Catholic faith” and provides it with some privileges that other faith communities do not have, such as tax-exempt subsidies, autonomy for parochial schools, and priority in issuing of licenses for radio frequencies.⁷
14. The legalization in 2010 of same-sex marriage in Argentina, however, has the potential to raise some issues of concern with respect to religious freedom in light of those experienced in other parts of the world.
15. Concerns exist with respect to the erosion of other fundamental freedoms and rights as a result of redefining marriage and the family. In other jurisdictions in which same-sex marriage has been legalized or in which future legalization is all but inevitable, so-called “hate speech” laws have been utilized against the faithful and the clergy of religious denominations for speaking on the issues of homosexuality and/or the definition of marriage according to traditional religious teaching.⁸
16. Even if one disagrees with these sentiments or acts, the rights to freedom of opinion and expression under Article 19 of the ICCPR should not be unnecessarily infringed for the sake of sparing hurt feelings where actual incitement to violence or gross mistreatment does not occur.
17. Similarly, people of faith who personally run businesses serving the public, and who have no objection to serving any individual per se, have been fined, subjected to re-education orders, and in some cases forced to shut down as a result of not being able to creatively participate in same-sex marriage advocacy or a same-sex wedding in good conscience due to their sincere and deeply-held religious or moral beliefs regarding the nature of marriage.⁹

⁷ U.S. Department of State, International Religious Freedom Report for 2015: Argentina, <https://www.state.gov/j/drl/rls/irf/2002/14029.htm>.

⁸ ADF Legal, Approval of Same-Sex "Marriage" Leads to Censorship of Speech, 2013, <http://www.adflegal.org/detailspages/blog-details/allianceedge/2013/01/15/approval-of-same-sex-marriage-leads-to-censorship-of-speech>; ABC News Australia, Anti-discrimination complaint 'an attempt to silence' the Church over same-sex marriage, Hobart Archbishop says, 2015, <http://www.abc.net.au/news/2015-09-28/anti-discrimination-complaint-an-attempt-to-silence-the-church/6810276>; Catholic Herald, Spanish cardinal reported over 'hate crime,' 2016, <http://www.catholicherald.co.uk/news/2016/06/07/spanish-cardinal-reported-over-hate-crime/>.

⁹ ADF Legal, Jack Phillips, <http://www.adflegal.org/detailspages/client-stories-details/jack-phillips>; ADF Legal, Jon and Elaine Huguenin, <http://www.adflegal.org/detailspages/case-details/elaine-photography-v.-willock>; ADF Legal, Baronelle Stutzman, <http://www.adflegal.org/detailspages/case-details/state-of-washington-v.-arlene-s-flowers-inc.-and-barronelle-stutzman>; ADF Legal, 3 Common

18. These are violations of the right to freedom of thought, conscience, and religion under Article 18 of the ICCPR, and all countries that have redefined marriage or are seeking to do so must take this into account when it comes to fulfilling their obligations to protect these rights. For this reason, Argentina must ensure that it has strong legislative protections for freedom of conscience, in order that nobody has to creatively participate or be involved in events relating to or the promotion of same-sex marriage.

(c) Recommendations

19. Given the pressure on the Argentinian government to liberalise its abortion laws, as well as the unavailability of good health care for all women, and the damage done to the State's obligation to protect the family by way of legalising same-sex marriage and adoption, ADF International recommends the following:

- a. Recognize that the liberalization of abortion laws is not required under international law, and that international law in fact requires the protection of the right to life of unborn children;
- b. Recognize that the legalization of abortion does not make pregnancy and childbirth any safer, especially in a country that already has higher levels of maternal mortality and morbidity, and resist pressure to further legalize abortion;
- c. Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health, with a focus on safely getting mothers and babies through pregnancy and childbirth, with special focus on ameliorating these issues for women from poor, rural, or Indigenous backgrounds;
- d. Ensure that the rights to freedom of opinion, expression, thought, conscience, and religion under Articles 18 and 19 of the ICCPR are guaranteed and protected with respect to all citizens, especially with regard to issues such as marriage and the family, and that neither anti-discrimination legislation nor so-called "hate speech" laws infringe on these.

Myths Used Against Christian Bakers like Aaron and Melissa Klein and Jack Phillips, 2016, <http://www.adflegal.org/detailspages/blog-details/allianceedge/2016/04/07/3-common-myths-used-against-christian-bakers-like-aaron-and-melissa-klein-and-jack-phillips>; ADF Legal, Brush & Nib Studio, <http://www.adflegal.org/detailspages/case-details/brush-nib-studio-v.-city-of-phoenix>; Belfast Telegraph, Forcing Ashers bakery to make pro-gay marriage cake could amount to cruelty, appeal hears, 2016, <http://www.belfasttelegraph.co.uk/news/northern-ireland/forcing-ashers-bakery-to-make-pro-gay-marriage-cake-could-amount-to-cruelty-appeal-hears-34709014.html>.