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Submission by:

ADF International
Chemin du Petit-Saconnex 28
1209 Geneva, Switzerland

Web: www.adfinternational.org
Email: rnavarro@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 Guatemala must resist calls to further legalize abortion, and why it must implement life-affirming policies aimed at combatting and eliminating maternal mortality and morbidity to the greatest extent possible.

(a) Abortion

3. Before 1973, abortion was illegal in Guatemala without exception. After that, the Penal Code was altered in order to allow abortion in cases in which the life of a pregnant woman is endangered, and required abortions to be performed by a physician and approved by a second doctor.

4. Article 3 of Chapter 1 in Title II of the Constitution states that the right to life accrues to an individual from the moment of conception, and that the State must guarantee and protect life in accordance with this on the same terms as any other protection of the integrity and security of person.

5. The social and political presumption in Guatemala is that abortion is and should remain illegal, but some NGOs and "health experts" have claimed that further legalization is necessary under the false claim that international law requires it.[1]

The right to life in international law

6. A so-called international "right to abortion," however, is incompatible with various provisions of international human rights treaties, particularly provisions on the right to life.

7. 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.

8. 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 a "sentence of death shall not be imposed for crimes committed by

[1] Pew Research Center, Religion in Latin America – Chapter 5: Social Attitudes, http://www.pewforum.org/2014/11/13/chapter-5-social-attitudes/.

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.

9. The *travaux préparatoire*s 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]

10. 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 that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

11. 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 that "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 and protection of unborn life.

Legalizing abortion does not make it safe

12. The medical infrastructure in Guatemala is poor by global standards, with an inadequate number of trained health professionals and unsanitary, poorly-equipped health facilities. Women who receive abortions will still face the same poor conditions 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.

13. High rates of maternal mortality have less to do with the legality of abortion per se than with an inability to access obstetric care, lack of information, and lack of health workers, especially in the case of women living in poverty and in rural areas.

14. 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.

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[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.

(b) Maternal Health

15. The maternal mortality ratio in Guatemala was 88 maternal deaths per 100,000 live births in 2015, down from 205 per 100,000 in 1990.[4] 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 Guatemala must be seen as an urgent human rights priority.

16. Such high rates of maternal mortality are largely due to an inability to access obstetric care, lack of information, and lack of health workers, especially in the case of women living in poverty, in rural areas, and in Indigenous communities.

17. The percentage of births attended by doctors or nurses in Guatemala has been steadily rising over the years, but Indigenous women have historically had very low levels of births attended by skilled health professionals, with only 17% in 1998-1999. Women with more conventionally Western lifestyles had 55% of births attended by doctors or nurses in 1998-1999, which is still very low by global standards.[5]

18. More than half of Guatemalan maternal deaths have been reported as being due to excessive bleeding, and others are caused by infection, pregnancy-induced hypertension, and illegally-induced abortions.[6]

19. Where there have been improvements in maternal mortality (alongside perinatal and neonatal mortality) in recent years, they have correlated with higher numbers of hospital births and skilled health-care and higher levels of access to proper nutrition and medication.[7]

20. These issues must be remedied, but frequent calls to legalize access to abortion as a necessary precondition are misguided. Providing more access to abortion will mean that more women will suffer from abortion complications.

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[4] World Bank, Maternal mortality ratio (modeled estimate, per 100,000 live births), 2015, http://data.worldbank.org/indicator/SH.STA.MMRT.

[5] Encuesta Nacional de Salud Materno Infantil 1987, 1995, 1998-1999, cited in Population Reference Bureau, Maternal Mortality in Guatemala: A Preventable Tragedy, 2003, http://www.prb.org/Publications/Articles/2003/MaternalMortalityinGuatemalaAPreventableTragedy.aspx.

[6] MSPAS, Línea basal de mortalidad materna para el año 2000, cited in Population Reference Bureau, Maternal Mortality in Guatemala: A Preventable Tragedy, 2003, http://www.prb.org/Publications/Articles/2003/MaternalMortalityinGuatemalaAPreventableTragedy.aspx.

[7] Reproductive Health Journal, Trends in perinatal deaths from 2010 to 2013 in the Guatemalan Western Highlands, 2015, http://reproductive-health-journal.biomedcentral.com/articles/10.1186/1742-4755-12-S2-S14.

21. Almost all maternal deaths are preventable,[8] 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.

22. In line with paragraph 8.25 of the ICPD, Guatemala 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.

(c) Recommendations

23. Given the international pressure on Guatemala to liberalize its abortion laws, as well as the unavailability of good health care for all women, ADF International recommends the following:

    a. Recognize that the liberalization of abortion laws is not required under international, and that international law in fact requires protecting the right to life of unborn children;

    b. Recognize that the legalization of abortion in a country with higher than average levels of maternal mortality and morbidity and problems with access to proper health care will not make pregnancy and childbirth any safer, and protect the women of Guatemala by resisting pressure to legalize it;

    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 and/or rural backgrounds.

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