

## **Status of Human Rights in Argentina for the 42<sup>nd</sup> Session of the Universal Periodic Review**

### **Introduction**

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting human rights around the world. The ECLJ holds Special Consultative status before the United Nations Economic and Social Council. This report discusses the status of human rights in the Argentine Republic (Argentina) for the 42nd session of the Universal Periodic Review (UPR).

### **Background**

2. Argentina is a country located in South America with an estimated population of 46 million people.<sup>1</sup> The population is predominately Christian with approximately 62% identifying as Roman Catholic, 15% as Evangelical, and 18% as none.<sup>2</sup>

3. Argentina's previous review was held on November 6, 2017.<sup>3</sup> As a result of the review, Argentina received 189 recommendations, 175 of which Argentina supported.<sup>4</sup> One recommendation made by Iceland and noted by Argentina was that the government "[d]ecriminalize abortion in all circumstances and ensure that women and girls can access safe and legal abortion."<sup>5</sup> There were several recommendations on the issue of human trafficking, including a recommendation made by the United Kingdom and supported by Argentina that the government "[t]ake all necessary practical measures to tackle forced labour, modern slavery and human trafficking in line with the 2014 Protocol to the Forced Labour Convention, 1930 (No. 29)."<sup>6</sup> There were no recommendations made regarding freedom of religion.

### **Legal Framework**

4. Article 75 of the Constitution enumerates special protections for women, and for children, including preborn children.

#### **Article 75 sec. 23.**

To legislate and promote proactive measures that guarantee *true equality of opportunity and treatment, and the full enjoyment and exercise of the rights recognized by this Constitution* and by current international treaties on human rights, in particular with respect to **children**, women, the elderly and people with disabilities.

To enact a special and integral social security system that protects needy children, *from gestation through the end of elementary schooling, and that protects the mother during pregnancy and nursing.*<sup>7</sup>

5. The Constitution recognizes that preborn children are children. As such, its guarantee of rights to children should include preborn children – at all stages. However, on January 14, 2021, President Alberto Fernández signed into law the Access to the Voluntary Termination of Pregnancy Law No. 27,610, which allows the abortion of preborn children.<sup>8</sup> Article 4 of this law states the following:

**Article 4. Voluntary Termination of Pregnancy.**

Women and people with other gender identities able to become pregnant have the right to decide on and gain access to the termination of their pregnancy up to and including the FOURTEENTH (14<sup>th</sup>) week of pregnancy.

The pregnant person has the right to decide on and to gain access to the termination of their pregnancy outside the term set forth above only in the following cases:

a. In the event that the pregnancy occurred as a result of rape, the pregnancy may be terminated at the request of the pregnant person, who must submit the pertinent affidavit to the intervening health care workers.

In the case of girls under THIRTEEN (13) years of age, the abovementioned affidavit shall not be required.

b. In the event that the life or the comprehensive health of the pregnant person were at risk.<sup>9</sup>

6. This law does provide some protection for conscientious objectors, but this protection is incomplete as it still requires health care workers who object to participating in abortions to “[r]efer that patient for care by another professional in good faith, in a timely manner, and without delay.”<sup>10</sup> Moreover, “[h]ealth care workers shall not be allowed to refuse to perform terminations of pregnancies if the life or the health of a pregnant person is at risk and such person requires immediate and urgent medical care.”<sup>11</sup> And if health care workers refuse – according to the dictates of their faith or moral beliefs – to provide a referral for abortion, they can be subject not only to disciplinary or administrative penalties, but to “*criminal and civil penalties*.”<sup>12</sup>

7. Argentina is a party to the International Convention on Civil Political Rights (ICCPR) and is responsible for upholding the principles enshrined in it.<sup>13</sup> Under Article 6 of the ICCPR, “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>14</sup> Argentina also has a responsibility to uphold pro-life principles enshrined in other international agreements such as the UN Charter, Universal Declaration of Human Rights (UDHR) and the 1994 Cairo Conference on Population and Development.

8. Article 140 of the Penal Code of Argentina establishes the crime and punishment for slavery and servitude:

**Article 140.**

Those who reduce a person to slavery or servitude, under any modality, and whoever receives them in such condition to keep them there, will be punished with seclusion or prison from four (4) to fifteen (15) years. The same penalty shall be incurred by the person forcing a person to perform forced labor or services or to contract a servile marriage.<sup>15</sup>

9. In 2012, Argentina enacted Law No. 26,842 for the purposes of combatting human trafficking and providing aid to the victims.<sup>16</sup> This legislation created the following protocols aimed at combatting human trafficking:

- an executive committee for the struggle against human trafficking;
- a federal council for the struggle against trafficking and the exploitation of persons and for protection of and aid to its victims;
- a synchronized system of reports of human trafficking and the exploitation of persons.<sup>17</sup>

10. Furthermore, under Article 8 of the ICCPR, “[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude.<sup>18</sup>

### **Abortion in Argentina**

11. On January 14, 2021, Argentina overturned its long-standing protections for life by legalizing abortion on demand until the 14th week of pregnancy, which is now more liberal than 84% of other countries. Furthermore, the law allows for abortion beyond the 14th week in cases of rape or when it poses a danger to the health of the mother. In the first year following the legalization of abortion, “[d]istribution of the drug misoprostol, which chemically provokes abortions, rose from 9,000 in 2019 to more than 43,000 in 2021, and “there were more than 32,000 abortions conducted in public hospitals and clinics” across Argentina.<sup>19</sup> However, the number of actual abortions is likely higher than this number because the government does not track the number of abortions each year, these statistics

come only from public hospitals and count hospitalizations for incomplete miscarriages, legal abortions, and health issues arising from abortions in unsafe conditions. Outpatient abortions—medical abortions and manual vacuum aspiration (VMA) with no hospitalization even if legal—and those performed in private facilities are not reflected in national statistics.<sup>20</sup>

12. Abortion is a procedure that fosters insensitivity to, and disdain for, the life in the womb. Indeed, such a killing is the embodiment of disregard for human life. Any justification of abortion (aside from the extremely rare life vs. life situations where a mother is at risk of dying from continuing the pregnancy) fundamentally rests on the proposition that some members of the human race do not have even the most basic of human rights, the right to life.

13. The fact that there is no international right to abortion can be seen when looking at each country’s abortion legislation. Currently, a majority of the world has strict limitations when it comes to taking the life of a preborn baby. Out of the 193 member states of the U.N., an overwhelming majority (112) of them have strict limits on abortion: twenty countries prohibit abortion altogether; forty-two countries only permit abortion where the mother’s life is at risk;

and fifty only allow abortion to preserve the health of the mother. Even in the sixty-two countries that have varying gestational limits for on-demand abortions, the majority of these (53) have a gestational limit of twelve weeks or less, while some allow only up to fourteen weeks, or somewhere in-between. Only eleven countries allow abortion throughout pregnancy for social and economic grounds, including for rape, incest, or fetal impairment. Only two countries broadly allow pre-viability abortion. And finally, there are only six extreme outliers among the nations, including China and North Korea, which do not have a law indicating any gestational limit on abortion, though their regulatory mechanisms vary.<sup>21</sup>

14. While abortion laws and regulations vary across nations, what most countries do agree on is that the state has an interest, not only in protecting women and girls, but also in protecting the lives of all their citizens – including the unborn.<sup>22</sup> This interest is enshrined in national and international documents alike, as well as in the legislation of individual countries.

15. For instance, the Universal Declaration of Human Rights (UDHR) states that “recognition of the inherent dignity and of the equal and inalienable rights of *all* members of the human family is the foundation of freedom, justice and peace in the world,” and that “[e]veryone has the right to life . . . .”<sup>23</sup> Again, Article 6 of the ICCPR likewise states that “[e]very human being has the inherent right to life. This right shall be protected by law.”<sup>24</sup> And the preamble of the United Nations Charter states that “the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person . . . .”<sup>25</sup> It is important to note that, while virtually all international treaties contain provisions for the protection and promotion of the right to life, not one contains a “right to abortion.” Furthermore, since the 1994 Cairo Conference on Population and Development, U.N. Member States have had an affirmative commitment to “reduce the recourse to abortion”<sup>26</sup> and to “take appropriate steps to help women avoid abortion, *which in no case should be promoted as a method of family planning.*”<sup>27</sup>

16. Abortion is one of the gravest of all offenses against human life and justice because it entails the deliberate killing of an innocent human being. Argentina must protect life at all stages. Any justification of abortion (aside from the extremely rare life vs. life situations where a mother is at risk of dying from continuing the pregnancy) fundamentally rests on the proposition that some members of the human race do not have even the most basic of human rights, i.e., the right to life. That proposition is incompatible with international law, as discussed above. Moreover, the value of human life is not dependent upon the nature in which it begins, and the life of a preborn baby conceived by rape or incest is no less valuable and deserving of life than any other. Furthermore, babies born with disabilities, such as Down syndrome, are no less deserving of life than otherwise completely healthy babies. In fact, babies born with Down syndrome are capable of living long and otherwise healthy lives.<sup>28</sup> Additionally, the tests used to detect these abnormalities are not consistently reliable.<sup>29</sup> As prenatal screenings are becoming more common, companies are trying to screen for more and more diseases and abnormalities. For example, studies found that a prenatal screening for Prader-Willi syndrome, a genetic multisystem disorder, returned an incorrect positive result 90% of the time.<sup>30</sup>

17. Furthermore, abortion can also cause physical harm to the mother, beyond the harm (i.e., death) to the preborn child. This can result directly from the procedure itself (e.g., perforation of the uterus, laceration of the cervix), from the deprivation of the health benefits of continuing pregnancy (e.g., eliminating the protective effect of a full-term pregnancy against breast

cancer),<sup>31</sup> or by masking other dangerous symptoms (e.g., a woman with an infection or an ectopic pregnancy may believe her symptoms are merely normal after-effects of abortion, leading her to delay seeking medical help).<sup>32</sup> Remarkably, although completely partisan and lacking in legal authority, the World Health Organization’s newly published 2022 “Abortion care guideline,”<sup>33</sup> also acknowledges the complications of abortion.

18. In the case of some women, such as María del Valle González López, a 23 year old woman, chemical abortions can cause the death of the woman. Ms. López was an abortion activist in her community.<sup>34</sup> She went to solicit an abortion at the Arturo Illia Hospital, and was presumably given Misoprostol.<sup>35</sup> Several days after visiting the hospital, she felt pain in her abdomen and was referred to the main health center in the Eastern Zone of Mendoza where they detected a general infection.<sup>36</sup> Ultimately, it was too late for the hospital to intervene, and Ms. López passed away from the infection caused by abortion complications.<sup>37</sup>

19. In addition, post-abortive women experience a host of negative side-effects, including:

- Depression
- Guilt/Remorse
- Self-hatred/anger at self/self-loathing/feelings of worthlessness/unworthy of love
- Shame
- Addiction, alcohol or drug abuse
- Regret
- Self-destructive behaviors including promiscuity, self-punishment, and poor choices
- Low self-esteem
- Anxiety/fear
- Suicidal/suicidal thoughts/wanting to die/self-harm/dangerous risks/suicidal attempts<sup>38</sup>

All of these factors contribute to the negative and even devastating effects that abortion has on women and girls.

### **Human Trafficking in Argentina**

20. Argentina has made significant strides in combatting human trafficking. For example, in 2020, the Prosecutor’s Office for Human Trafficking and Exploitation (PROTEX) received 642 reports of sex trafficking.<sup>39</sup> This number was down from the previous years, as PROTEX received 844 reports of sex trafficking in 2019,<sup>40</sup> and 870 in 2018.<sup>41</sup> Altogether, in 2019, PROTEX received 1,740 human trafficking reports.<sup>42</sup> Despite its progress in combatting human trafficking, there is still work to be done as Argentina often lacks the resources needed to properly and effectively investigate these cases. Even though people working in the Public Prosecutor’s Office are committed to combatting human trafficking, the issue remains that there are “few human resources . . . there is a lack of investment in the area. . . This . . . depends on political decisions. The budget is allocated to another area. Human trafficking is not in sight.”<sup>43</sup>

21. In Argentina, “[t]he most common form of human trafficking . . . is women and girls forced into the sex trade.”<sup>44</sup> Many of the women and girls are

tricked into sexual slavery, . . . They are lured with false offers of work and then find themselves trapped into the vicious web of sexual slavery. A girl from Misiones [an Argentine province], for example, answered an ad in the newspaper for a nanny in Buenos Aires. They paid for her ticket and when she arrived she discovered that it wasn't a home but a brothel. She was held as a slave in the middle of Buenos Aires along with her daughter. They threatened to harm her if she tried to escape.<sup>45</sup>

22. In mid-July, 2020, the Argentine National Gendarmerie uncovered a human trafficking ring and rescued seven women who were being sexually exploited.<sup>46</sup>

23. On July 7, 2020, authorities arrested a Paraguayan couple who was operating an illegal brothel in Buenos Aires.<sup>47</sup> The brothel had “rooms for rent” where people would pay for sex.<sup>48</sup>

24. In October 2019, “Mexican authorities arrested Raul Martins . . . following an extradition request from a judge in Argentina, where prosecutors said he faced human trafficking, racketeering and money laundering charges.”<sup>49</sup> Martins, a former spy, was “accused of running a criminal organization that sexually exploited women” in ten brothels throughout Buenos Aires for over three decades.<sup>50</sup> Prosecutors also investigated potential involvement of public officials who either paid for sex at these brothels or turned a blind eye knowing that these crimes were occurring.<sup>51</sup>

25. However, women and girls are not the only victims of sex trafficking. In 2018, for example, police arrested “a referee for his suspected involvement in a child prostitution ring with players for a soccer club’s youth team.”<sup>52</sup> According to one of the victims, the players on the boys youth team were recruited into prostitution and engaged in “sexual relations with men in exchange for money.”<sup>53</sup>

## Recommendations

26. We ask that Argentina reform its abortion laws in order to protect life at all stages, a position which Argentina had previously held for nearly a century. Argentina must reinstate protections for the preborn with no exception based on how the baby’s life began. A baby whose life began because of rape is no less deserving of life and no less valuable. Further, Argentina should reform its laws to provide better protection for healthcare workers who have conscientious objections to abortion, including objections to referring for abortion.

27. While we applaud the progress that Argentina is making in combatting human trafficking, it is critical that the government provide adequate resources for prosecutors to properly and effectively investigate all cases of sex trafficking and exploitation and provide rehabilitation services for the victims.

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<sup>1</sup> *Argentina*, WORLD FACTBOOK (Apr. 11, 2022), <https://www.cia.gov/the-world-factbook/countries/argentina/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Universal Periodic Review – Argentina*, UNHRC, <https://www.ohchr.org/en/hr-bodies/upr/ar-index>.

<sup>4</sup> *Matrix of Recommendations – Argentina*, UNRC, <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session28/AR/MatriceRecommendationsArgentina.docx>.

<sup>5</sup> *Id.* at A/HRC/37/5/Add.1 – Para. 107.

<sup>6</sup> *Id.*

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- <sup>7</sup> Constitution of Argentina art 7 sec. 23, [https://www.constituteproject.org/constitution/Argentina\\_1994.pdf?lang=en](https://www.constituteproject.org/constitution/Argentina_1994.pdf?lang=en) (emphasis added).
- <sup>8</sup> *Argentina: Senate Passes Bill Legalizing Abortion*, LIBRARY OF CONGRESS (Jan. 7, 2021), <https://www.loc.gov/item/global-legal-monitor/2021-01-07/argentina-senate-passes-bill-legalizing-abortion/>.
- <sup>9</sup> Access to the Voluntary Termination of Pregnancy Law No. 27,610 art. 4, <https://www.redaas.org.ar/archivos-recursos/521-Law%2027,610%20-%20Access%20to%20the%20Voluntary%20Termination%20of%20Pregnancy.pdf>.
- <sup>10</sup> Access to the Voluntary Termination of Pregnancy Law No. 27,610 art. 10(b), <https://www.redaas.org.ar/archivos-recursos/521-Law%2027,610%20-%20Access%20to%20the%20Voluntary%20Termination%20of%20Pregnancy.pdf>.
- <sup>11</sup> *Id.* at art. 10.
- <sup>12</sup> *Id.*
- <sup>13</sup> *Ratification Status for Argentina*, OHCHR, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=7&Lang=en).
- <sup>14</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 6 I.L.M. 368 (1976), 999 U.N.T.S. 171, art. 6 [hereinafter ICCPR].
- <sup>15</sup> Penal Code of the Argentine Nation art. 140, <https://observatoriolegislativocele.com/en/Criminal-Code-of-the-Argentine-Republic-Law-11179/>.
- <sup>16</sup> *Forced Labor in Argentina: Advances and Challenges*, INTERNATIONAL LABOUR ORGANIZATION, [https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-buenos\\_aires/documents/publication/wcms\\_656747.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-buenos_aires/documents/publication/wcms_656747.pdf).
- <sup>17</sup> *Id.*
- <sup>18</sup> ICCPR, *supra* note 14, at art. 8.
- <sup>19</sup> *A Year on from Argentine Abortion Law, Change is Slow*, FRANCE 24 (Jan. 12, 2022), <https://www.france24.com/en/live-news/20220112-a-year-on-from-argentine-abortion-law-change-is-slow>.
- <sup>20</sup> *A Case for Legal Abortion*, HUMAN RIGHTS WATCH (Aug. 31, 2020), <https://www.hrw.org/report/2020/08/31/case-legal-abortion/human-cost-barriers-sexual-and-reproductive-rights-argentina>.
- <sup>21</sup> *The World's Abortion Laws*, CTR. FOR REPROD. RTS. (Feb. 23, 2021), [https://reproductiverights.org/sites/default/files/WALM\\_2021update\\_V1.pdf](https://reproductiverights.org/sites/default/files/WALM_2021update_V1.pdf).
- <sup>22</sup> *Id.*
- <sup>23</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights, preamble, art. 3 (Dec. 10, 1948) (emphasis added).
- <sup>24</sup> ICCPR, *supra* note 14 (emphasis added).
- <sup>25</sup> U.N. Charter preamble.
- <sup>26</sup> Report of the International Conference on Population and Development, Cairo A/CONF/F.171/13/Rev.1 at 58 (5-13 Sept. 1994), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/231/26/IMG/N9523126.pdf?OpenElement>.
- <sup>27</sup> *Id.* at 46 (emphasis added).
- <sup>28</sup> *Data and Statistics on Down Syndrome*, CDC, <https://www.cdc.gov/ncbddd/birthdefects/downsyndrome/data.html> (last visited May 12, 2022).
- <sup>29</sup> *When They Warn of Rare Disorders, These Prenatal Tests Are Usually Wrong*, NEW YORK TIMES (Jan. 1, 2022), <https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>.
- <sup>30</sup> *Id.*
- <sup>31</sup> See Justin D. Heminger, *Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco*, 54 CATH. U.L. REV. 1273, 1288-89 & nn.119 & 121 (2005).
- <sup>32</sup> See generally *Physical Effects of Abortion: Fact Sheets, News, Articles, Links to Published Studies and More*, UNCHOICE, [www.theunchoice.com/physical.htm](http://www.theunchoice.com/physical.htm) (listing sequelae and referencing sources).
- <sup>33</sup> *Abortion Care Guideline*, WORLD HEALTH ORGANIZATION & HUMAN REPRODUCTION PROGRAMME 79 (Mar. 8, 2022), <https://www.who.int/publications/i/item/9789240039483>.
- <sup>34</sup> Roxana Badaloni, *Comoción Murió una dirigente radical tras un aborto legal en Mendoza: investigan si hubo mala praxis*, Clarín Sociedad (Dec. 04, 2021, 11:16 AM), [https://www.clarin.com/sociedad/murio-dirigente-radical-aborto-legal-mendoza-investigacion-mala-praxis\\_0\\_f9vfrvdwg.html](https://www.clarin.com/sociedad/murio-dirigente-radical-aborto-legal-mendoza-investigacion-mala-praxis_0_f9vfrvdwg.html).
- <sup>35</sup> *Id.*
- <sup>36</sup> *Id.*
- <sup>37</sup> *Id.*
- <sup>38</sup> Priscilla K. Coleman, Ph.D., et al., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their Experiences*, JOURNAL OF AMERICAN PHYSICIANS & SURGEONS, Vol. 22 No. 4, p. 115, 116-17 (2017),

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<https://www.jpands.org/vol22no4/coleman.pdf>.

<sup>39</sup> Informe Anual Línea 145: 2020, Procuraduría de Trata y Explotación de Personas

(PROTEX) 11, <https://www.mpf.gob.ar/protex/files/2021/10/Informe-Anual-L%C3%ADnea-145-2020.pdf>.

<sup>40</sup> *Argentina: Security Forces Rescue Human Trafficking Victims*, DIÁLOGO (Sep. 16, 2020), <https://dialogo-americas.com/articulos/argentina-security-forces-rescue-human-trafficking-victims/#.YkyLYy-B1QJ>.

<sup>41</sup> Denuncias Sobre Trata de Personas Recibidas en la Línea 145 en el Año 2018, Procuraduría de Trata y Explotación de Personas, [https://www.mpf.gob.ar/protex/files/2021/10/Informe\\_L%C3%ADnea\\_145\\_-\\_Protex-2018.pdf](https://www.mpf.gob.ar/protex/files/2021/10/Informe_L%C3%ADnea_145_-_Protex-2018.pdf).

<sup>42</sup> *Argentina: Security Forces Rescue Human Trafficking Victims*, *supra* note 40.

<sup>43</sup> María Julia Moreyra, *The Invisible – Fate of Female Survivors of Sex Trafficking in Argentina*, HUMAN RESEARCH CONSULTANCY (Dec. 2021), [https://humanity-consultancy.com/wp-content/uploads/2021/12/The-Invisible\\_HRC-Report.pdf](https://humanity-consultancy.com/wp-content/uploads/2021/12/The-Invisible_HRC-Report.pdf).

<sup>44</sup> Anastasia Moloney, *Denial then Defiance: Former Sex Slave in Argentina Fights for Justice*, REUTERS (Jan. 22, 2018), <https://www.reuters.com/article/us-argentina-humantrafficking/denial-then-defiance-former-sex-slave-in-argentina-fights-for-justice-idUSKBN1FB2BO>.

<sup>45</sup> Johanna Higgs, *Argentina Has a Problem: Sex Trafficking of Women and Girls*, PASS BLUE (Jan. 24, 2016), <https://www.passblue.com/2016/01/24/no-longer-hidden-sex-trafficking-of-women-gets-more-attention-in-argentina/>.

<sup>46</sup> *Id.*

<sup>47</sup> *Argentina: Security Forces Rescue Human Trafficking Victims*, *supra* note 40.

<sup>48</sup> *Id.*

<sup>49</sup> *Argentina Seeks to Extradite Ex-Spy on Sexual Exploitation Charges*, REUTERS (22 Oct. 22, 2019), <https://www.reuters.com/article/us-mexico-trafficking-argentina/argentina-seeks-to-extradite-ex-spy-on-sexual-exploitation-charges-idUSKBN1X22E3>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Argentine Police Arrest Referee on Prostitution Charges*, AP (Mar. 25, 2018),

<https://apnews.com/article/25e8bebaa2704a2389a8b4bb6563576a>.

<sup>53</sup> *Id.*