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PARAGUAY

Submission by:

Rubén Navarro and Sofía Martínez
ADF International
28, Ch. du Petit Saconnex
1209 Geneva, Switzerland

Web: www.adfinternational.org
Email: smartinez@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 Fundamental Rights Agency of the European Union, the Organization for Security and Co-operation in Europe, and the Organization of American States.
2. The report will focus on the right to life and the right to family life under international law, and Paraguay’s efforts in promoting and defending these rights.

(a) Right to Life

Background

3. Article 4 of the 1992 Constitution of Paraguay protects the right to life from the moment of conception, stating, “The right to life is inherent to the human person. Its protection is guaranteed, in general, from conception. [A]ll persons will be protected by the State in their physical and mental integrity.”
4. This article tracks article 4(1) of the American Convention of Human Rights (ACHR), to which Paraguay is a signatory, and which reads, “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”
5. 95 percent of the people of Paraguay are opposed to the legalization of abortion in all or most cases.¹

Pressure to change abortion law

6. Despite Paraguay’s clear obligation to protect the right to life of the unborn – in keeping with its own Constitution and the American Convention of Human Rights – it has repeatedly come under pressure from pro-abortion groups² and from the United Nations³ to liberalize its abortion laws.
7. The most recent pressure follows the tragic case of a 10-year-old girl who became pregnant as a result of rape. Referring to abortion as a “life-saving treatment”, UN

¹ PEW FORUM, RELIGION IN LATIN AMERICA 73 (2014), *available at* <http://www.pewforum.org/files/2014/11/Religion-in-Latin-America-11-12-PM-full-PDF.pdf>.

² *See, e.g.*, Amnesty Int’l, Paraguay: Raped 10-year-old must be allowed an abortion, 29 Apr. 2015, <https://www.amnesty.org/en/latest/news/2015/04/paraguay-raped-10-year-old-must-be-allowed-an-abortion/>.

³ *See, e.g.*, U.N. Office of the High Commissioner for Human Rights, Human rights: Paraguay has failed to protect a 10-year old girl child who became pregnant after being raped, say UN experts, 11 May 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15944&LangID=E#sthash.3spEVI5a.4wnMWEDU.dpuf>.

“experts” claimed that “the State has failed to take measures to protect the health as well as the physical and mental integrity and even the life of the 10-year old girl.”⁴

8. The Government of Paraguay criticized the comments of the UN “experts,”⁵ which were said to include numerous factual errors, and confirmed that abortion is not lawful unless the life of the mother is in danger.⁶ A spokeswoman for the Ministry of Health confirmed that the pregnancy in question does not threaten the life of the girl, and in order to protect the right to life of the unborn child the pregnancy will continue.⁷ According to the government press release, the girl is being adequately cared for both physically and mentally at the Red Cross Hospital *Reina Sofía*.⁸ The UN “experts” ignored the grave concern that Paraguay has for the girl’s life.
9. Paraguay must ensure that the girl’s right to education, as provided in article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), is not violated. Young mothers have the right to continue their education through their pregnancies and after the birth of their children, which means the State should facilitate the creation of arrangements that allow them to go to school.
10. Paraguay must also prosecute and bring to justice the perpetrator of the sexual violence against the girl. The Government must investigate and act immediately in the event of reports of sexual violence.

Right to life in international law

11. A so-called international “right to abortion” – implied by the UN “experts” in their statement on Paraguay – is incompatible with various provisions of international human rights treaties, in particular provisions on the right to life. On the contrary, Paraguay’s protection of the unborn finds support in international law.
12. 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.

⁴ See *id.*

⁵ See Press Release, Ministry of Foreign Relations, Paraguay, 13 May 2015, <http://www.mre.gov.py/v2/Noticia/2773/comunicado-de-prensa>.

⁶ *Niña embarazada: Ministro de Salud no está a favor del aborto*, ULTIMAHORA.COM, 1 May 2015, <http://www.ultimahora.com/nina-embarazada-ministro-salud-no-esta-favor-del-aborto-n892740.html>.

⁷ *Embarazo de niña de 10 años es 'viable', insisten*, ABC COLOR, 12 May 2015, <http://www.abc.com.py/nacionales/embarazo-de-nina-de-10-anos-es-viable--segun-ministerio-paraguayo-1365876.html>.

⁸ See Press Release, *supra* note 5.

13. As the *travaux préparatoires*⁹ 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 should not be carried out on pregnant women was to *save the life of an innocent unborn child*.”¹⁰ 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*.”¹¹
14. 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*.”
15. 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.

Legalizing abortion does not make it safe

16. In the abovementioned case, the authorities determined that an abortion was not necessary to save the life of the mother. More broadly, legalizing abortion can mean exposing more women to harm, and does not solve the problem of abortion-induced death. Legalizing abortion does not guarantee that it becomes safe. A report by the Guttmacher Institute states, “Changing the law [...] is no guarantee that unsafe abortion will cease to exist.”¹² Indeed, providing more access to abortion will mean more women will suffer from abortion complications. 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.
17. Moreover, the most recent evidence controverts the idea that a total prohibition on abortion undermines maternal health. A major study published in the *British Medical Journal* this year concluded that States with “less permissive” abortion laws “exhibited consistently lower maternal mortality rates.”¹³ Although the study explains

⁹ In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a “supplementary means of interpretation.”

¹⁰ A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957.

¹¹ A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955.

¹² See Susan A. Cohen, *Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide*, GUTTMACHER POL’Y REV. (2009), available at <http://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html>.

¹³ Elard Koch, Monique Chireau, and Fernando Pliego et. al., *Abortion Legislation, Maternal Healthcare, Fertility, Female Literacy, Sanitation, Violence Against Women and Maternal Deaths: A*

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.”¹⁴ Because abortion legislation has no effect on maternal mortality, abortion need not be legalized to protect women’s health.

18. Chile is a model for improving maternal health without providing access to abortion. Following the total prohibition on abortion in 1989, Chile experienced a steep 69.2 percent decline in the number of maternal deaths.¹⁵ Chile came to have the lowest maternal mortality ratio in Latin America and second-lowest in the Western Hemisphere after Canada. A fifty-year analysis of maternity data from Chile reveals two essential facts. First, restricting access to abortion services does not necessarily negatively impact maternal mortality. In fact, maternal mortality decreased after abortion was prohibited in Chile, highlighting a related point that improvements in maternal health can occur when abortion is illegal. In Chile, the decline in maternal mortality occurred because compulsory and free education increased women’s educational attainment, and health programs focused on improving mother and child nutrition and access to health care facilities and skilled birth attendants. Second, the data make clear that women’s educational levels are strongly correlated with maternal mortality rates. Education modulates effects of other variables, such as access to health care resources. The more educated a woman is, the greater her ability to access the health care resources available to her and thus go safely through pregnancy and childbirth.
19. Therefore, Paraguay must continue to focus on helping women get through pregnancy and childbirth safely, rather than helping women end their pregnancies.

(b) Marriage and Family

20. Articles 49 to 61 of the Constitution of Paraguay recognize that the family – based on the stable union of a man and a woman – is the foundation of society. For example, article 52 states that the marital union of a man and a woman “is one of the fundamental components in the formation of the family.”
21. A strong family is the bedrock of flourishing societies. A family formed by a mother and a father, as husband and wife, supports the development of children and helps them achieve their full potential. It is within the family where children first learn love, interaction with others, and social responsibility.

Natural Experiment in 32 Mexican States, BMJ OPEN 2015:5 e006013, doi:10.1136/bmjopen-2014-006013, p. 1.

¹⁴ *Id.*

¹⁵ Koch et al., *Women’s Education Level, Maternal Health Facilities, Abortion Legislation and Maternal Deaths: A Natural Experiment in Chile from 1957 to 2007*, PLOS ONE 5 (2012), available at <http://www.plosone.org/article/fetchObject.action?uri=info:doi/10.1371/journal.pone.0036613&representation=PDF>.

22. The people of Paraguay recognize the importance of family headed by a man and a woman, as 80 percent of the population supports marriage as an institution of one man and one woman.¹⁶
23. Paraguay's recognition of the family as "the foundation of society" is grounded in international law. Article 16(3) of the Universal Declaration of Human Rights (UDHR) recognizes, "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Article 10(1) of the ICESCR affirms this and goes even further in its call for protection: "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children."
24. Paraguay's recognition that marriage is an institution of one man and one woman also finds support in international law. UDHR article 16(1) recognizes that "men and women [. . .] have the right to marry and found a family." ICESCR article 23(2) recognizes the "right of men and women of marriageable age to marry and to found a family." ACHR article 17 echoes this language, guaranteeing the "right of men and women of marriageable age to marry and to raise a family."
25. These provisions on marriage are the only instances in which these human rights documents guarantee rights specifically to the two sexes, men and women, indicating an understanding that marriage involves two people of the opposite sex.

(c) Recommendations

26. In view of the above, ADF International recommends the following:
 - Ensure that the 10-year-old girl and her child be provided with excellent health care throughout pregnancy, childbirth, and the postpartum period, as well as ensuring that she is able to continue her education during her pregnancy and after her child is born;
 - Continue to honour the national and international obligations to protect the right to life from conception to natural death;
 - Continue to recognize and protect the family as the natural and fundamental group unit of society; and
 - Continue to protect marriage as the union of one man and one woman.

¹⁶ PEW FORUM, *supra* note 1, at 69.