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Submission by:

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

Web: [www.adfinternational.org](http://www.adfinternational.org)  
Email: [rnavarro@adfinternational.org](mailto: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 Colombia should affirm the sanctity of life on the part of all human beings, including the unborn, and why it should resist calls to liberalize access to abortion due to the fact that there is no international human right to abortion. It also deals with the issue of high levels of maternal mortality and morbidity in Colombia, as well as the need to protect and promote religious freedom in the country for all, especially in light of legal developments in the area of marriage and family.

### (a) Abortion

3. Prior to 2006, Articles 343-345 of the Penal Code prohibited abortion on all grounds without exception, though general principles of criminal law allowed an abortion to be performed if it was deemed necessary to save the life of the pregnant woman.<sup>1</sup>
4. Since 2006, however, as a result of a court ruling contrary to the will of the Colombian people, abortion has been legal in Colombia on the basis of a threat to the life or health of the mother, the existence of a fatal fetal deformity, and pregnancy caused by rape, non-consensual artificial insemination, or incest.
5. Groups promoting more liberalized access to abortion worldwide, however, would like to see such access be made available on demand, and claim that it is not just a matter of improving maternal health and reducing maternal mortality and morbidity, but rather is an issue of fundamental human rights, of which abortion is supposedly one. This is despite the fact that the prevailing social values in Colombia are strongly in opposition to abortion, with the Pew Research Center reporting in 2014 that 73% of Colombians believe that abortion should be illegal.<sup>2</sup>

#### *The right to life in international law*

6. 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. Article 6(1) of the ICCPR states, “Every human being has the inherent right to life.” The

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<sup>1</sup> United Nations Department of Economic and Social Affairs, “Colombia Abortion Policy,” last accessed 5<sup>th</sup> October 2017, available at: <http://www.un.org/esa/population/publications/abortion/doc/colomb1.doc>.

<sup>2</sup> Pew Research Center, “Religion in Latin America – Chapter 5: Social Attitudes,” 13<sup>th</sup> November 2014, available at: <http://www.pewforum.org/2014/11/13/chapter-5-social-attitudes>.

ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn.

7. 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.
8. 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*."<sup>3</sup> 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*."<sup>4</sup>
9. 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*."
10. 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*

11. The medical infrastructure in Colombia is not of the same standard as that in developed countries, and despite relatively good health-care coverage in highly-populated urban centres, there is a profound rural/urban divide when it comes to access to health-care.
12. 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

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<sup>3</sup> 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."

<sup>4</sup> Commission on Human Rights, 5<sup>th</sup> Session (1949), 6<sup>th</sup> Session (1950), 8<sup>th</sup> Session (1952), A/2929, Chapter VI, Article 10.

workers, especially in the case of women living in poverty and in rural areas. 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.

#### *Reducing recourse to abortion*

14. Colombia must focus on introducing measures to reduce recourse to abortion, instead of focusing on legalizing it, in line with paragraph 8.25 of the Programme of Action of the International Conference on Population and Development. Measures to reduce abortion include improving access to education, which empowers women and leads to social and economic development, as well as facilitating healthy decision-making.
15. Colombia must also focus on helping women get through pregnancy and childbirth safely, rather than helping women end their pregnancies. Given high rates of maternal mortality and morbidity in the country, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

#### **(b) Maternal Health**

16. Colombia's maternal mortality ratio (MMR) in 2015 was 64 maternal deaths per 100,000 live births, down from 118 per 100,000 in 1990. This is significantly higher than the 22 deaths per 100,000 live births in Chile, a country in which abortion is completely prohibited under the law, and only slightly below the Latin American regional average of 67 deaths per 100,000 live births.<sup>5</sup>
17. 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 Colombia is a pressing and urgent human rights concern.

#### *Necessary maternal health interventions*

18. Almost all maternal deaths are preventable, particularly when skilled birth attendants are present to manage complications and the necessary drugs are available, such as oxytocin (to prevent haemorrhage) and magnesium sulphate (to treat pre-eclampsia). Problems in many countries with high levels of maternal mortality and morbidity often include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.
19. The World Health Organization (WHO) recommends a minimum of four prenatal visits with trained health workers, in order to prevent, detect, and treat any health problems. It has been estimated that while 97% of pregnant women in Colombia received some level of prenatal care during their pregnancies in 2010, almost a fifth

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<sup>5</sup> World Bank, "Maternal mortality ratio (modeled estimate, per 100,000 live births)," 2015, available at: <https://data.worldbank.org/indicator/SH.STA.MMRT>.

of women living in rural areas did not receive the four visits recommended at minimum by the WHO.<sup>6</sup>

20. These issues must be remedied, but frequent calls to increase legal abortion access as a necessary precondition to solving them are misguided. Legalizing abortion also does not guarantee that pregnancy and childbirth will become safer when the real problems with Colombia's health-care system do not involve lack of access to abortion. Providing more access to abortion will mean more women will suffer from abortion complications.
21. In line with paragraph 8.25 of the ICPD, Colombia 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) Freedom of Expression, Conscience, and Religion**

22. A number of recent polls have indicated that a majority of Colombians support retaining the natural definition of marriage as the union of one man and one woman. In November 2012, an Ipsos Napoleón Franco poll revealed that 66% of the country was in favour of the male-female definition of marriage.<sup>7</sup> A Pew Research Center survey conducted between November 2013 and March 2014 also indicated that 64% of the country was opposed to redefining marriage.<sup>8</sup> A more recent Gallup poll put this figure at a slightly lower 57%, though still a substantial majority.<sup>9</sup>
23. Despite this broad opposition to redefining marriage, however, the Constitutional Court of Colombia ruled on 28<sup>th</sup> April 2016 that the natural definition of marriage was unconstitutional, thereby undemocratically imposing same-sex marriage on a country which did not want it. This does injury to Colombia's obligation under Article 23 of the International Covenant on Civil and Political Rights to protect the family as the natural and fundamental group unit of society, given that this duty is based on the reality of the procreative potential between men and women.
24. Concerns exist with respect to the erosion of other fundamental freedoms and rights as a result of redefining marriage and the family, especially given that laws have been passed in Colombia which prohibit so-called "discrimination" and "hate speech" on the grounds of sexual orientation and gender identity. 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

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<sup>6</sup> UNICEF, "Maternal Health, Antenatal Care, Current Status + Progress," last accessed 5<sup>th</sup> October 2017, available at: <https://data.unicef.org/topic/maternal-health/antenatal-care>.

<sup>7</sup> Semana, "Jóvenes rechazan legalización de drogas, aborto y matrimonio gay," 28<sup>th</sup> November 2012, available at: <https://www.semana.com/nacion/articulo/jovenes-rechazan-legalizacion-drogas-aborto-matrimonio-gay/268590-3>.

<sup>8</sup> Pew Research Center, "Religion in Latin America – Chapter 5: Social Attitudes," 13<sup>th</sup> November 2014, available at: <http://www.pewforum.org/2014/11/13/chapter-5-social-attitudes>.

<sup>9</sup> Gallup, "Gallup Poll: #113 Colombia Julio 2016," last accessed 5<sup>th</sup> October 2017, available at: <https://www.scribd.com/document/317657179/0388-16000010-GALLUP-POLL-113>.

issues of homosexuality and/or the definition of marriage according to traditional religious teaching.<sup>10</sup>

25. 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.
26. Similarly, in many other countries which have redefined marriage, 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.<sup>11</sup>
27. 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.
28. For this reason, Colombia 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 same-sex marriage or its promotion. Given that in 2014, 64% of Colombians were reported to be opposed to same-sex marriage, this

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<sup>10</sup> Erik W. Stanley, *ADF Legal*, "Approval of Same-Sex 'Marriage' Leads to Censorship of Speech," 15<sup>th</sup> January 2013, available at: <https://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," 28<sup>th</sup> September 2015, available at: <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,'" 7<sup>th</sup> June 2016, available at: <http://www.catholicherald.co.uk/news/2016/06/07/spanish-cardinal-reported-over-hate-crime>.

<sup>11</sup> Marissa Mayer, *ADF Legal*, "3 Common Myths Used Against Christian Bakers like Aaron and Melissa Klein and Jack Phillips," 7<sup>th</sup> April 2016, available at: <https://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>; Alan Erwin, *Belfast Telegraph*, "Forcing Ashers bakery to make pro-gay marriage cake could amount to cruelty, appeal hears," 12<sup>th</sup> May 2016, available at: <http://www.belfasttelegraph.co.uk/news/northern-ireland/forcing-ashers-bakery-to-make-progay-marriage-cake-could-amount-to-cruelty-appeal-hears-34709014.html>; ADF Legal, "Arlene's Flowers v. State of Washington | Arlene's Flowers v. Ingersoll," last accessed 5<sup>th</sup> October 2017, available at: <http://www.adflegal.org/detailspages/case-details/state-of-washington-v.-arlene-s-flowers-inc.-and-barronelle-stutzman>; ADF Legal, "Brush & Nib Studio v. City of Phoenix," last accessed 5<sup>th</sup> October 2017, available at: <https://www.adflegal.org/detailspages/case-details/brush-nib-studio-v.-city-of-phoenix>; ADF Legal, "Elane Photography v. Willock," last accessed 5<sup>th</sup> October 2017, available at: <https://www.adflegal.org/detailspages/case-details/elane-photography-v.-willock>; ADF Legal, "Masterpiece Cakeshop v. Colorado Civil Rights Commission," last accessed 5<sup>th</sup> October 2017, available at: <https://www.adflegal.org/detailspages/case-details/masterpiece-cakeshop-v.-craig>.

should be of concern to citizens who may in the foreseeable future have their right to freedom of conscience and religion violated in the same manner.<sup>12</sup>

**(d) Recommendations**

29. In light of the aforementioned, ADF International suggests the following recommendations be made to Colombia:
- a. Affirm that there is no international human right to abortion and that the right to life applies from conception until natural death, and as such that the unborn child has the right to protection of his or her life at all points;
  - b. Resist calls to further liberalize abortion, and instead implement laws aimed at protecting the right to life of the unborn;
  - c. Recognize that the legalization of abortion, in a country with high levels of maternal mortality and morbidity and with severe problems with access to proper health-care, will not make pregnancy and childbirth any safer;
  - d. Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health;
  - e. Focus on safely getting mothers and babies through pregnancy and childbirth, with special attention paid to improving health-care access for women from poor and/or rural backgrounds; and
  - f. Ensure that the redefinition of marriage by the Constitutional Court does not lead to the marginalisation of individuals and communities who sincerely disagree, and that anti-discrimination and hate speech laws are not deployed in order to unjustifiably prohibit or silence dissent on this matter by any individual.

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<sup>12</sup> Pew Research Center, "Religion in Latin America – Chapter 5: Social Attitudes," 13<sup>th</sup> November 2014, available at: <http://www.pewforum.org/2014/11/13/chapter-5-social-attitudes>.



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