



ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

UNIVERSAL PERIODIC REVIEW – THIRD CYCLE

**Submission to the 36th Session of the Human Rights
Council's Universal Periodic Review Working Group**

**October 2019
Geneva, Switzerland**

PANAMA

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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people 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 Organization of American States, the European Commission and Parliament, and is a participant in the FRA Fundamental Rights Platform.
2. This submission reports on the implementation of school-based sex education programs in Panama and recommends that parental rights be safeguarded in this respect. Furthermore, it explains why the State must affirm the right to life of all human beings, including the unborn, and resist calls to further liberalize access to abortion as a solution to the country’s maternal mortality and morbidity rates.

(a) Rights of the Child

3. The adolescent fertility rate within Panama is estimated at 66.5 births per 1,000 girls 15–19 years old for 2010–2015, compared to 46 births per 1,000 girls in the same age group worldwide. In practice, this was reported in 2016 to amount to a rate of thirty-two teenagers becoming pregnant each day.¹ As a result, the Panamanian authorities have faced pressures from various international stakeholders to resolve the problem by inter alia scaling-up school-based comprehensive sexuality education (CSE) programs in the country.² In response, Bill No. 61 was presented to the National Assembly in 2016 with the aspirations of implementing CSE, with five programs designed initially as a collaborative effort between the Ministry of Education (Meduca) and the United Nations Populations Fund (UNFPA).³ The bill was met with great controversy amongst Panamanian society due to concerns that the drafts exposed children to inappropriate content. In July 2016, 100,000 peaceful demonstrators marched through the streets of the capital in display of their opposition.⁴
4. Civil society actors such as the Panama Alliance for Life and Family based their concerns on the tendency of CSE programs to desensitize children to sexuality, particularly its emotional and spiritual aspects; to question religious, social and cultural norms and traditions that impact sexual behaviour in society; and to promote children’s early sexual debut and independence.⁵

¹ Aleida Samaniego C., ‘32 teenagers get pregnant a day in Panama’ *La Prensa* (7 July 2016) <https://www.prensa.com/sociedad/Guias-sexualidad-generan-debate_0_4522797843.html>.

² See, for example: International Women’s Health Coalition, Marie Stopes International, International Planned Parenthood Federation (IPPF), Simavi and Water Aid, “A shared agenda: Exploring links between water, sanitation, hygiene, and sexual and reproductive health and rights in sustainable development” (Report, May 2019) <<https://washmatters.wateraid.org/sites/g/files/jkxooof256/files/a-shared-agenda-exploring-links-between-water-sanitation-hygiene-and-sexual-and-reproductive-health-and-rights-in-sustainable-development.pdf>>.

³ Aleida Samaniego C., ‘32 teenagers get pregnant a day in Panama’ *La Prensa* (7 July 2016).

⁴ Marianna Orlandi, ‘100,000 Panamanians March Against UN-Style Sex Ed’ *C-Fam Center for Family & Human Rights* (28 July 2016) <https://c-fam.org/friday_fax/100000-panamanians-march-un-style-sex-ed/>.

⁵ Rosalia Simmons, ‘Sex education, without consensus’ *La Prensa* (8 July 2016) <https://www.prensa.com/sociedad/Pugna-educacion-sexual_0_4523547747.html>.

5. Moreover, CSE curricula fail to provide evidence-based information to children concerning the serious health risks and long-term implications associated with early sexual activity. The consequences of premature sexual activity have a disproportionate impact on young girls because their bodies are not developmentally prepared for pregnancy, in addition to the fact that they are more susceptible to HIV and other STIs due to biological factors.
6. Having heard these concerns, Panama's Ministry for Education agreed to redraft the pending programs with the input of a broad range of stakeholders, including civil society organizations and parents' associations. Five new drafts of the educational programs have thus been produced, tailored specifically to the needs of children and adolescents growing up in Panamanian culture, and to the protection of the prior right of parents to choose the kind of education that should be given to their children.
7. As the government looks ahead to the consideration of the implementation of this educational strategy, it is of paramount importance that the outcome of the consultation process leading to the elaboration of these programs is fully taken into account.

Parental Rights in International Law

8. Article 26(3) of the Universal Declaration of Human Rights states that "parents have a prior right to choose the kind of education that shall be given to their children."
9. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights is equally explicit in guaranteeing the rights of parents with respect to the education of their children:

"The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions."
10. Article 18(4) of the ICCPR on the right to freedom of religion or belief likewise states that States must "undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions."
11. Parental rights in this area are further safeguarded within the Convention on the Rights of the Child. Article 18(1) of the Convention on the Rights of the Child states that "parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child." Article 14(2) requires States to "respect the rights and duties of the parents [...] to provide direction to the child in the exercise of his or her right [to freedom of religion] in a manner consistent with the evolving capacities of the child."

(b) Right to Life

12. As part of the drive to reduce teen pregnancy and improve the rate of maternal mortality, Panama has also faced pressure to fully decriminalize access to abortion.

13. Under the Penal Code as enacted in 1982, abortion is illegal and carries a sentence of one-to-three years imprisonment, except for when conducted under circumstances of rape, incest, or to save the life or physical health of the mother.⁶
14. Pro-abortion advocates argue that the liberalization of abortion laws is necessary to respect and fulfil women's rights and to reduce the occurrence of teen pregnancy. However, such an approach is incompatible with international legal protections afforded to the right to life of all human beings, including unborn children and, furthermore, does not promote a healthy or sustainable solution to encouraging responsible sexual behavior and the avoidance of early sexual debut.

The right to life in international law

15. Panama ratified the International Covenant on Civil and Political Rights (ICCPR) in 1977, and the Convention on the Rights of the Child (CRC) in 1990. In 2007, it also ratified the Convention on the Rights of Persons with Disabilities (CRPD).
16. Article 6(1) of the ICCPR stipulates that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".⁷
17. The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. 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.
18. 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".⁸ 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*".⁹
19. 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
20. Article 1 of the CRC defines a child as "every human being below the age of eighteen years."¹¹ This provides an upper limit as to who is a child, but does not provide a lower

⁶ Act No. 18, Penal Code, 22 September 1982.

⁷ International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 6.

⁸ A/C.3/SR.819 ¶¶ 17, 33;; In accordance with the Article 32 of the Vienna Convention, the travaux préparatoires are considered to be a "supplementary means of interpretation."

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

¹⁰ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), preamble.

¹¹ CRC (n10) Art 1.

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.”¹² 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 any safer

21. Panama’s maternal mortality rate (MMR) in 2017 sat at 52 deaths in every 100,000 live births.¹³ Every maternal death is a tragedy, and it is imperative that measures are taken to reduce this number.
22. Recent studies reveal a significant need for greater investment in antenatal care (ANC) for women in poor communities in the Americas.¹⁴ Between 2014 and 2016, only 38% of pregnant women in Panama benefitted from as many as four visits from skilled antenatal health practitioners – the second lowest rate in Latin America, after Guatemala.¹⁵ By contrast, WHO published new recommendations in 2018 that promote a minimum of *eight* contacts with such practitioners in order to ensure good perinatal health and a positive pregnancy experience.¹⁶
23. Maternal morbidity in Panama is proven to be linked to economic inequality, with Panama’s gaps in antenatal and postnatal care between polarized income groups being among the worst recorded in the region.¹⁷ Access to care for rural women is inhibited by geographical barriers. Such issues could be tackled effectively by the establishment of mobile healthcare teams, as well as further investment into maternal health clinics within hard-to-reach communities and the provision of ultrasounds and other related services and commodities.¹⁸
24. On the contrary, providing greater access to abortion will mean more women will suffer from abortion complications. Indeed, women who receive abortions will still face the same conditions faced by women who give birth and deal with similar complications, such as bleeding and infection. Furthermore, abortion can never be safe because it takes the life of the unborn child, and harms the mother, both physically as well as mentally through the loss of her child.
25. In this vein, Panama must focus on introducing measures to improve conditions for perinatal care and reduce recourse to abortion, instead of further liberalising access to it, in line with paragraph 8.25 of the Program of Action of the International Conference on Population and Development. Measures to reduce recourse abortion include

¹² CRC (n10) Art 6.

¹³ WHO, UNICEF, World Bank Group and the United Nations Population Division, ‘Trends in Maternal Mortality: 2000-2017’ (WHO, 2019) <<https://data.worldbank.org/indicator/sh.sta.mmrt>>.

¹⁴ Emily Dansereau et al., ‘Coverage and timing of antenatal care among poor women in 6 Mesoamerican countries’ (2016) 16 *BMC Pregnancy and Childbirth* 234.

¹⁵ *Id.*

¹⁶ World Health Organisation (WHO) and United States Agency for International Development (USAID), ‘WHO Recommendations on Antenatal Care for a Positive Pregnancy Experience: Summary’ (January 2018).

¹⁷ Dansereau et al. (n14) 8, 11.

¹⁸ Susan K. Kolodin, ‘Family issues: Qualitative study on social networks during pregnancy and childbirth in Mesoamerica Chiapas-Mexico, Guatemala, Panama, Honduras and Nicaragua’ (Report, Banco Interamericano de Desarrollo 2015).

improving access to education, which empowers women and leads to social and economic development.

Recommendations:

26. In light of the foregoing, ADF International suggests the following recommendations be made to Panama:

- (a) Reject calls to further liberalize abortion, and instead reaffirm the legal duty of care and implement laws aimed at protecting the right to life of the unborn in all circumstances;
- (b) Improve the health-care system and specifically provide further measures on infrastructure and resources to maternal health, with a focus on health care for mothers and babies through pregnancy and childbirth;
- (c) Focus on safely getting women and babies through pregnancy and childbirth, with special attention paid to improving healthcare access for women from poor or rural backgrounds;
- (d) Ensure that parents are able to opt their children out of school-based sex education programs which violate their religious or moral convictions, in accordance with international human rights norms and standards.
- (e) Ensure that the responsibilities, rights, and duties of parents and legal guardians to provide appropriate direction and guidance to their children are respected by the State in accordance with relevant international human rights law, including the Convention on the Rights of the Child.



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