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ANTIGUA AND BARBUDA

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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 report explains why Antigua and Barbuda should resist calls to liberalize access to abortion, and instead continue to protect the right to life of all persons, including the unborn. It also calls on Antigua and Barbuda to safeguard parental rights in the implementation of school-based sex education programs.

(a) Right to Life

3. The Constitution of Antigua and Barbuda acknowledges in its preamble 'the dignity and worth of the human person.'¹ In its Article 3, the Constitution regards life as a fundamental right and freedom of the individual. Accordingly, Article 4 further specifies that 'No person shall be deprived of his life intentionally.'²
4. Under Antigua and Barbuda's criminal code, the Offences Against the Person Act, it is a felony for a pregnant woman, or anyone aiding her, to attempt an abortion through any means.³ It is also a misdemeanour for anyone to supply or procure medication or instruments intended for unlawful use in performing an abortion.⁴
5. The Infant Life (Preservation) Act of 1937 provides punishment for the conduct of 'child destruction.'⁵ So long as the child was 'capable of being born alive,' any wilful act by anyone that 'causes [the] child to die before it has an existence independent of its mother' is a felony punishable by up to life imprisonment, unless it was committed to save the life of the mother.⁶ If the woman was at least 28 weeks pregnant, this is considered *prima facie* proof that the child was 'capable of being born alive.'⁷ These provisions are evidence of the high degree of protection afforded by the laws of Antigua and Barbuda to the right to life of the unborn.
6. There have been strong international pressures on Antigua and Barbuda to liberalize abortion access. Among others, the Committee on the Elimination of Discrimination against Women (CEDAW) recommended that Antigua and Barbuda decriminalize, and

¹Constitution of Antigua and Barbuda, Preamble.

²Ibid. art. 3, 4.

³ Offences Against the Person Act . <laws.gov.ag/wp-content/uploads/2018/08/cap-300.pdf>, sec. 56-57.

⁴ Ibid. sec. 57.

⁵ Infant Life (Preservation) Act, *World Health Organization* (8 December 1937) <<https://abortion-policies.srhr.org/documents/countries/01-Antigua-The-Infant-Life-Preservation-Act-1937.pdf>>,secs. 1-3.

⁶ Ibid. sec. 2.

⁷ Ibid.

radically liberalize, its abortion laws in its 2019 review of the country's status of implementation of the Convention.⁸ The delegation of Antigua and Barbuda replied, without elaboration, that they have a 'ministerial committee...set up to close gaps and support individuals exercising their sexual and reproductive rights' and that decriminalization was 'before the Attorney General for further action.'⁹ These pressures, however, are not supported by international law.

The right to life in international law

7. The right to life is addressed inter alia in the International Covenant on Civil and Political Rights (ICCPR), which Antigua and Barbuda acceded to on 3 July 2019, and in the Convention on the Rights of the Child (CRC), ratified on 5 October 1993.
8. 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.'¹⁰
9. 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.
10. 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.'¹¹ 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*.'¹²
11. The protection of unborn life is also found through an ordinary reading of the preamble of the CRC. The preamble states that 'the child, by reason of his physical and mental

⁸ OHCHR 'Committee on the Elimination of Discrimination against Women reviews report of Antigua and Barbuda' (20 February 2019) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24186&LangID=E>>. CEDAW, 'Concluding observations on the combined fourth to seventh periodic reports of Antigua and Barbuda' (14 March 2019) CEDAW/C/ATG/CO/4-7.

⁹ Ibid.

¹⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art. 6.

¹¹ UN General Assembly, A/C.3/SR.819 ¶17, 33; In accordance with Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a 'supplementary means of interpretation'.

¹² Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI Art 10.

immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.¹³

12. Article 1 of the CRC defines a child as 'every human being below the age of eighteen years.'¹⁴ 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.'¹⁵ 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

13. According to the World Health Organization, as of 2017, Antigua and Barbuda recorded 42 deaths per 100,000 live births.¹⁶ Compared to the regional average, this maternal mortality rate bears witness to the quality of maternal healthcare in the country. The Ministry of Health encourages care as soon as the pregnancy begins. There is a community nursing model, where nurses go to homes in both Antigua and Barbuda and encourage attending pre-natal doctor visits at one of the 26 community clinics free of charge. Furthermore, no migrant is excluded from these services.¹⁷ This notwithstanding, Antigua and Barbuda continues to be under pressure to loosen its abortion restrictions under the guise of fulfilling 'sexual and reproductive rights.'
14. Almost all maternal deaths, wherever they occur, 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). These issues must be remedied, but frequent calls to increase legal abortion access as a necessary precondition to solving them are misguided.
15. Providing access to abortion does in no way guarantee that pregnancy and childbirth will become safer, and its liberalization will mean more women will suffer from abortion-related complications. Indeed, women who receive abortions will still face the same conditions faced by women who give birth and deal with similar health issues, 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.

¹³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), preamble.

¹⁴ Ibid, Art 1.

¹⁵ Ibid, Art 6.

¹⁶ WHO, UNICEF, World Bank Group and the United Nations Population Division, 'Trends in Maternal Mortality: 2000-2017' (2019) WHO <<https://data.worldbank.org/indicator/SH.STA.MMRT?locations=AG>>

¹⁷ UNAIDS, 'The pros and cons of being small' (27 September 2019) <https://www.unaids.org/en/resources/presscentre/featurestories/2019/september/20190927_caribbean>.

16. Antigua and Barbuda 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.
17. Antigua and Barbuda must focus on helping women get through pregnancy and childbirth safely, rather than helping women end their pregnancies. Resources must focus on further improving conditions where necessary and providing greater access to health-care for pregnant women, women undergoing childbirth, and postpartum women.

(b) Rights of the Child and Parental Rights

18. Antigua and Barbuda's adolescent birth rate is relatively high: in 2018, there were 42 adolescent births (from girls aged 15-19 years) per 1,000.¹⁸ There has been a slow, but consistent decline over the past 30 years.¹⁹ To address this issue, the government of Antigua and Barbuda has, among other things, focused on combating sexual violence, including by ensuring that schools have a clear procedure for reporting offenses and by supporting initiatives to spread awareness of sexual offences.²⁰
19. Antigua and Barbuda's current sex education curriculum is based on the National Policy on Health and Family Life Education created in 2010. At the high school level, its focus has been on family planning through abstinence and use of contraception. There are also initiatives undertaken by non-governmental organizations aimed at providing information and counselling for teenage mothers.
20. Pressures to introduce comprehensive sexuality education (CSE) programs have recently arisen in Antigua and Barbuda. As of February 2021, the UN Population Fund (UNFPA) – through funding from the European Union-sponsored 'Spotlight Initiative' – has been advocating the sweeping implementation of policies for and investments in CSE programs across the Caribbean, including in out-of-school settings.
21. Earlier in October 2020, the World Health Organization, in cooperation with the Pan American Health Organization (PAHO), instituted an annual program called the 'Caribbean Adolescent Pregnancy Prevention Week' in order to 'draw attention to this important topic and help put an end to adolescent pregnancy' in the Caribbean.²¹ One of the PAHO's recommendations (along with UNFPA and UNICEF) to help resolve the issue

¹⁸ United Nations Population Division, 'Adolescent fertility rate', The World Bank <<https://data.worldbank.org/indicator/SP.ADO.TFRT?locations=AG>>.

¹⁹ Ibid.

²⁰ OHCHR, 'Committee on the Elimination of Discrimination against Women reviews report of Antigua and Barbuda' (20 February 2019) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24186&LangID=E>>.

²¹ Pan American Health Organization, 'No Child Mothers: Accelerating the reduction of adolescent pregnancies', (20 October 2020) <<https://www.paho.org/en/news/20-10-2020-inaugural-adolescent-pregnancy-prevention-week-caribbean-october-18-24-2020>>.

has been for the government to 'improve... restrictive abortion laws' and to provide CSE. These organizations argue that 'restricted access to [CSE is] ... directly related to adolescent pregnancies.' However, the evidence presented in their report indicates that teenage pregnancies in the Caribbean are due to other factors, such as rape, lack of secondary education, and child marriage.²²

22. Contrary to the claims of its proponents, evidence suggests that CSE yields negative effects on children, including higher levels of early sexual debut and risk-taking behaviours.²³ Instead of inspiring responsible sexual behaviour, CSE programs desensitize children to sexuality, particularly its emotional and spiritual aspects; question religious, social and cultural norms and traditions that impact sexual behaviour in society; and do not effectively discourage children's early sexual debut. 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. Furthermore, the incorporation of CSE in school curricula interferes with parents' right to educate their children in conformity with their moral and religious convictions, especially when provided mandatorily.²⁴
23. Instead of giving in to international pressures to implement standardized, ideology-driven programs, Antigua and Barbuda should ensure that sex education programs are developed in close consultation with parents, their representative organizations and other local stakeholders, to guarantee that they are tailored specifically to the needs of children and adolescents growing up in Antigua and Barbuda, and prioritize access to knowledge-based education about their bodies, healthy behaviours, and responsible decision-making.²⁵

Parental Rights in International Law

24. 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.'²⁶

²² Anastasia Moloney, 'Latin America teen pregnancy rate "unacceptably high": U.N.', *Thomson Reuters Foundation* (28 February 2018) <<https://www.reuters.com/article/us-latam-teen-pregnancy-health/latin-america-teen-pregnancy-rate-unacceptably-high-u-n-idUSKCN1GC2NA>>.

²³ Stan Weed, Irene Ericksen, 'Re-Examining the Evidence for Comprehensive Sex Education in Schools' (2018) Institute for Research & Evaluation <https://www.institute-research.com/CSEReport/CSEReport-Final_9-13-17.pdf>.

²⁴ Jokin de Irala, Alfonso Osorio, Carlos Beltramo, Silvia Carlos, Cristina López del Burgo 'The Politics of "Comprehensive Sexuality Education"' (11 April 2014) Center for Family and Human Rights <https://cfam.org/briefing_paper/the-politics-of-comprehensive-sexuality-education/>.

²⁵ OHCHR, 'Committee on the Elimination of Discrimination against Women reviews report of Antigua and Barbuda', (20 February 2019); See also CEDAW, 'Concluding observations on the combined fourth to seventh periodic reports of Antigua and Barbuda' (14 March 2019) CEDAW/C/ATG/CO/4-7.

²⁶ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), art. 26.

25. 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.’²⁷

26. 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.’²⁸
27. Parental rights in this area are further safeguarded within the CRC. Its Article 5 requires States to ‘respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance’ in the exercise by the child of his or her right.²⁹ Furthermore Article 18(1) of the CRC states that ‘parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child.’³⁰

(c) Recommendations

28. In light of the foregoing, ADF International suggests the following recommendations be made to Antigua and Barbuda:
- a) Reject calls to further liberalize abortion, and instead implement laws aimed at protecting the right to life of the unborn.
 - b) Continue to improve the health-care system with further measures on infrastructure and resources to maternal health, with a focus on getting mothers and babies safely through pregnancy and childbirth.
 - c) Ensure that sex education programs are geared towards delaying sexual debut and promoting responsible sexual behavior and healthy relationships.

²⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 13(3).

²⁸ ICCPR (n12), art. 18(4).

²⁹ CRC (n16), art. 5.

³⁰ *Ibid.*, art. 18(1).

- d) Ensure that parents are able to opt their children out of school-based sex education programs that violate their religious or moral convictions, in accordance with international human rights norms and standards.
- e) Respect the responsibilities, rights, and duties of parents and legal guardians to provide appropriate direction and guidance in the exercise by children of their rights, in accordance with the Convention on the Rights of the Child and other relevant international human rights instruments.



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