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ARGENTINA

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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.
2. This submission illustrates the status of homeschooling in Argentina and the unjustified restrictions, both in law and practice, on the right of parents to choose the appropriate kind of education for their children. Furthermore, it expresses concern over the threat posed by Argentina's recently adopted abortion law to the freedom of conscience of medical professionals.

(a) Homeschooling

3. Article 14 of the 1994 Argentinian Constitution enshrines the right of all inhabitants of the country 'to teach and learn', in accordance with the relevant laws.¹
4. In keeping with the Constitution, Article 6 of the National Education Law of 2006 establishes the State as the guarantor of 'the exercise of the constitutional right to teach and learn'.² It also provides that fathers, mothers and legal guardians be recognized as the 'natural and primary agents of education', and recognizes their right to choose an educational institution that corresponds to their philosophical, ethical or religious convictions.³
5. However, the National Education Law also provides that it is the duty of parents to ensure attendance of their children to 'school establishments for the fulfilment of mandatory schooling'.⁴ This latter provision creates a tension between, on the one hand, the right of parents to teach and determine the education of their children, as enshrined by the Constitution and in relevant international human rights law instruments, and the requirement for compulsory education to take place within school establishments, on the other.
6. This tension has not dissuaded families from choosing to provide education for their children outside of the traditional educational system. It is estimated that between five to fifteen thousand families in Argentina have opted for diverse homeschooling models for their children.^{5,6}
7. The lack of an explicit legal recognition of the practice of homeschooling and the apparent contradiction within national legislation creates a situation of legal uncertainty for families, ultimately subjecting educational choice to the determinations of local government officials and courts. It is worth noting that in only 2 out of the 23 Argentinian provinces students are permitted to take educational equivalency exams to certify their

¹ Constitution of the Argentinian Nation (1994), art. 14.

² Law N. 26.206 (2006), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/123542/texact.htm>, art. 6.

³ Id., art. 128.

⁴ Id., art. 129.

⁵ S. Bermúdez 'Homeschooling: when the family sets the course of the education for their children' (2 June 2021) Infobae, <https://www.infobae.com/educacion/2021/06/02/homeschooling-cuando-la-familia-marca-el-rumbo-de-la-educacion-de-los-hijos/>.

⁶ J. Moreira 'Homeschooling: the budding and questioned educational trend that grew during the pandemic' (15 february 2022) La Nacion, <https://www.lanacion.com.ar/sociedad/homeschooling-la-incipiente-y-cuestionada-tendencia-educativa-que-crecio-con-la-pandemia-nid15022022/>.

studies and have them legally recognized. The lack of such provisions in all other provinces has resulted in serious barriers in obtaining the certification of alternate educational programs.⁷

8. Regrettably, homeschooling parents have seen their right to choose the kind of education they desire for their children challenged in court. In 2019 in Argentina's Salta Province, the state court of appeal opposed the homeschooling efforts of a mother and compelled her to integrate her child into the formal educational system. The court relied on the notion that the lack of explicit authorization by national legislation ought to be interpreted as a denial of the possibility to make this decision.⁸ This effectively violated her constitutional right to educate her child. The court also exhibited blatant prejudices against homeschooling by suggesting that such an approach would not 'guarantee the socialization of the child with his peers, nor the contents and learning paradigms necessary' and that established schooling is the only valid means 'of facilitating the inclusion of young people in the labor market and constitutes a leveling tool that promotes equality'. Thus, the court disregarded parental rights and superimposed its prejudices and policy preferences over respect for freedom of education.⁹

Parental Rights and Freedom of Education in International Human Rights Law

9. The Constitution of Argentina explicitly recognizes ratified human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), as having equivalent hierarchical status as the Constitution.¹⁰
10. Article 13(3) of the ICESCR contains explicit guarantees for 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.'¹¹

⁷ S. Bermúdez 'Homeschooling: when the family sets the course of the education for their children' (2 June 2021) Infobae, <https://www.infobae.com/educacion/2021/06/02/homeschooling-cuando-la-familia-marca-el-rumbo-de-la-educacion-de-los-hijos/>.

⁸ Salta Court of Appeals, 'C., A. R. vs. P., N. B. POR PIEZAS PERTENECIENTES' File N° Inc.-557539/1/18 of the Court of 1st Instance on Civil Matters of Persons and Family (May 2019) https://sinescuela.org/argentina:c._a._r._vs._p._n._b._por_piezas_pertenecientes_sala_ii_de_la_camara_de_apelaciones_en_lo_civil_y_comercial_de_salta.

⁹ Id.

¹⁰ Constitution of the Argentinian Nation (1994), art. 75(22).

¹¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICESCR), art. 13.

11. Article 18(4) of the ICCPR similarly provides 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.’¹²
12. Parental rights in this area are further safeguarded in the CRC. Article 18 states that ‘parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child,’ whereas ‘State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities,’ not to assume those on their behalf.¹³
13. Writing on the issue of home education, the former special rapporteur on the right to education, Vernor Muñoz Villalobos, affirmed that:

‘Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children, as stipulated in article 13 of the International Covenant on Economic, Social and Cultural Rights. The promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school.’¹⁴

14. In 2021, former special rapporteur on the right to education Dr. Koumbou Boly Barry echoed this concerns by stressing that ‘measures such as [...] prohibiting homeschooling, without legitimate justification under international law, cannot be considered compatible with the cultural dimensions of the right to education.’¹⁵

(b) Freedom of Conscience

15. Article 14 of the Argentinian Constitution guarantees the right of everyone to live and act in accordance with their deeply held beliefs.¹⁶ Relatedly, Article 19 states that:

‘The private actions of men that in no way offend public order and morals, nor harm a third party, are reserved to God alone, and exempt from the authority of the magistrates. No inhabitant of the Nation shall be obliged to do what the law does not command, nor deprived of what the law does not prohibit.’¹⁷

16. Law No. 27.610, adopted in December of 2020, provides for abortion on demand up to fourteen weeks of gestation. The term limit does not apply in cases of rape and in case

¹² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 171 (ICCPR), art. 18.

¹³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art. 18.

¹⁴ V. Muñoz, ‘Addendum to the Report of the Special Rapporteur on the Right to Education, Mission to Germany’ (9 March 2007) UN Doc A/HRC/4/29/Add.3, 62.

¹⁵ K.B. Barry ‘Report of the Special Rapporteur on the right to education, Right to education: the cultural dimensions of the right to education, or the right to education as a cultural right.’ UN Docs A/HRC/47/32, 42.

¹⁶ Constitution of the Argentinian Nation (1994), art. 14.

¹⁷ *Id.*, art. 19.

of danger to the life or 'integral health of the gestating person.'¹⁸ The implementation of this law has compelled health professionals to participate in the provision of abortion services against their conscience, in clear violation of their human rights.

17. Article 10 of Law No. 27.610 recognizes a right to conscientious objection. However, this right is limited to medical professionals who 'intervene directly in the interruption of pregnancy', thereby excluding nurses, midwives or other practitioners indirectly involved in the practice. Moreover, the law provides an obligation to refer the patient in good faith to be treated by another professional without delay.¹⁹

Freedom of Conscience in International Human Rights Law

18. Article 18(1) of the ICCPR guarantees everyone's right to freedom of thought, conscience and religion.²⁰

19. With regard to the right to conscientious objection, the Human Rights Committee has noted that:

'The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.'²¹

20. Given that abortion entails the use of lethal means on an unborn child, it follows that this reasoning must also apply for medical professionals refusing to perform, or participate in performing, abortions on the ground of conscience.

21. The ambiguities present in the Argentinian abortion law open the door to an unjustified undermining of medical professionals' right to freedom of conscience. The requirement to refer women seeking an abortion to a non-objector constitutes an unacceptable double standard, incompatible with Argentina's human rights obligations.

(c) Recommendations

22. Considering the aforementioned, ADF International suggests the following recommendations be made to Argentina:

- a. Respect the right of parents to raise and educate their children in accordance with their moral and religious convictions, in accordance with international human rights law;
- b. Amend the National Education Law to ensure that the prior right of parents to choose the kind of education that shall be given to their children is fully respected, including the choice to educate them at home;

¹⁸ Law N. 27.610 on Access to the voluntary interruption of pregnancy (2021), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/345000-349999/346231/norma.htm>, art. 4.

¹⁹ *Id.*, art. 10.

²⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 171 (ICCPR), art. 18.

²¹ Human Rights Committee 'General Comment 22: Article 18' CCPR/C/21/Add.4, 11.

- c. Expand access to educational equivalency exams in all provinces to guarantee equal treatment for children undergoing alternative forms of education, including homeschooling;
- d. Ensure that the right to freedom of conscience is duly recognized and respected in accordance with Article 18 of the International Covenant on Civil and Political Rights;
- e. Ensure that medical professionals have a right to object to performing, assisting, or referring abortions or other procedures to which they object on the grounds of conscience, consistent with relevant human rights obligations;
- f. Amend Article 10 of Law No. 27.610 to remove restrictions on freedom of conscience, including the requirement for medical practitioners, nurses or midwives who are conscientious objectors to refer women seeking abortions.



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