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PLURINATIONAL STATE OF BOLIVIA

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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. 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 of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Bolivia should continue to respect the right to life of all people, 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 examines the levels of maternal mortality and underscores the need to improve access to healthcare. The report also recommends that Bolivia takes adequate steps to ensure that the right to freedom of religion and belief is fully respected and protected within its borders.

a) Right to life

3. Article 15 of Bolivia's Constitution establishes that '[e]very person has the right to life.' Articles 58 and 59 provide the right to physical development for 'every person of minor age'.¹ In addition, it is worth noting that Bolivia's Code of Children and Adolescents addresses the right of the unborn: Articles 5 and 8 grant every child, 'from conception,' the right to life.²
4. The Penal Code of Bolivia has weakened these protections for the unborn. The Code provides criminal punishments for those who perform abortions, but allows exceptions when the mother's life or health is endangered and following rape or incest.³
5. In 2014, the Bolivian Constitutional Court solidified the right of the unborn by holding that the State acted constitutionally in choosing to penalize abortion practice. The Court also rejected the existence of any right to obtain an abortion: "'our Political Constitution does not contain a supposed right to abortion nor can [abortion] be recognized as a reproductive health method.'"⁴ At the same time, the ruling weakened protections for the unborn by striking down a judicial authorization requirement. The

¹ Plurinational State of Bolivia Constitution of 2009, Oxford University Press, available at: https://www.constituteproject.org/constitution/Bolivia_2009.pdf. Article 60 details 'the duty of the State... to guarantee the priority of the best interests of the child..., which includes the preeminence of his or her rights'.

² Bolivia's Code of Children and Adolescents, Law No 548, updated 17th July 2014, available at: <http://www.derechoteca.com/gacetabolivia/ley-no-548-del-codigo-nina-nino-y-adolescente-vigente-y-actualizado/>. The Code defines the child from conception to age 12 and adolescents from age 12-18. The right to life is from Article 8's incorporation of Bolivia's constitutional protections. See also ADF International, "Bolivia Abortion Demand," 5th February 2014, available at: <https://adfinternational.org/legal/bolivia-abortion-demand/>.

³ Penal Code of Bolivia, Article 266 (detailing the exceptions: sexual assault of the mother (not followed by marriage); incest; direct threat to the mother's health or life and no other means could be used to prevent the threat).

⁴ Ligia De Jesús Castaldi, *Oxford Human Rights Hub*, "Abolition of Social Grounds for Abortion in Bolivia," 7th March 2018, available at: <http://ohrh.law.ox.ac.uk/abolition-of-social-grounds-for-abortion-in-bolivia>.

woman's report to authorities at the facility would be sufficient for the practitioner to perform the abortion.

6. In December 2017, the Legislative Assembly passed a new Criminal Code and added broad exceptions to the ban on abortion. Article 157 included: a) age; b) foetal disabilities incompatible with life; c) IVF error; d) preventing present or future risk to the integral health of the pregnant woman; e) student status; and f) duties of care to another child or elder.⁵ In order to claim an exception, the woman would simply fill out a form with her reason. No medical, police, or judicial report would be needed, making the Code difficult to enforce.⁶
7. Religious groups and civil society organizations organized protests against the relevant Criminal Code provision, arguing that it undermined the protections afforded to the unborn by the Constitution. Because of the public backlash, the President requested that the Assembly abolish the Code, which they did on 24 January 2018.⁷
8. Pressures still exist to liberalize abortion. The 'Bolivian Health Minister... favored the [Code] because, she said, "clandestine" abortions "are not safe"'. Other advocates are pushing for abortion-on-demand.⁸ This is not new: in March of 2013, a congresswoman challenged the abortion provisions in the original Criminal Code before the Constitutional Tribunal of Bolivia.⁹ Although the Tribunal eventually affirmed the Code's constitutionality, pressures from pro-abortion activists to relax the law on abortion have continued to increase. However, such calls are not supported in international law, which in fact recognizes the right to life of the unborn.
9. Bolivia ratified the International Covenant on Civil and Political Rights (ICCPR) on 12 August 1982 and the Convention on the Rights of the Child (CRC) on 26 June 1990.
10. Article 6(1) of the ICCPR states, 'Every human being has the inherent right to life.' Furthermore, Article 6(5) of the ICCPR 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.' The ICCPR's prohibition on the death penalty for pregnant women implicitly recognizes the right to life of the unborn. As the *travaux préparatoires*¹⁰ 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

⁵ *Ibid.* The social grounds were limited to eight weeks gestation. Poverty was also promoted as another exception.

⁶ *Ibid.* Most Bolivian women seeking an abortion would therefore qualify for an exception. Regarding conscientious objections, there would be none for 'urgent' cases, nor for institutions- objections would be 'limited to individual medical personnel "directly involved in the accomplishment" of the procedure, and must be stated in advance'. Sean Murphy, *Protection of Conscience Project News and Blog*, "Bolivia enacts new abortion law with limited conscience clause," 30th September 2017, available at: <http://consciencelaws.org/blog/?p=7491>.

⁷ *Ibid.* In six weeks, people participated in 300,000 marches and sent 157,000 protest letters. Those protesting the Code argued it also violated the General Law for Persons with Disabilities, the Penal Code of Families, and the Code of Children and Adolescents. Deborah M. Piroch, *Human Life International*, "Battling Abortion in Bolivia," 10th October 2017, available at: <https://www.hli.org/2017/10/abortion-battle-waged-bolivia/>.

⁸ Fr. Mark Hodges, *LifeSite*, "Bolivia legalizes abortion-on-demand for teenage girls," 8th December 2017, available at: <https://www.lifesitenews.com/news/bolivia-legalizes-abortion-on-demand-for-teenage-girls>.

⁹ ADF International, 5th February 2014.

¹⁰ In accordance with Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a 'supplementary means of interpretation'.

be carried out on pregnant women was to save the life of an innocent unborn child.¹¹ Similarly, the Secretary General report of 1955 notes that the intention of the paragraph 'was inspired by humanitarian considerations... for the interests of the unborn child'.¹²

11. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the 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." 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.
12. There are numerous maternal risks associated with abortion. A major study published in the British Medical Journal in 2015 concluded that States with 'less permissive' abortion laws 'exhibited consistently lower maternal mortality rates'.¹³ Although the study explains 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.'¹⁴ Because abortion legislation has no effect on maternal mortality, abortion need not be legalized to protect women's health. Abortion is further associated with a high risk of hemorrhaging, developing sepsis, and developing injuries to internal organs, including intrauterine perforations.¹⁵ Providing access to abortion, therefore, means that more women suffer from abortion-related complications. Moreover, abortion can never be safe because it takes the life of the unborn child and harms the mother through the loss of her child.
13. Bolivia must live up to its international obligations by protecting the right to life of the unborn and helping women get through pregnancy and childbirth safely, rather than ending pregnancies. Bolivia should provide women with information about healthy behaviors and responsible decision-making, and redirect resources to improve maternal health and medical infrastructure to guarantee better conditions for pregnant women.

b) Maternal Health

14. According to the World Health Organization (WHO), Bolivia's maternal mortality rate (MMR) in 2015 was 206 per 100,000 live births, down from 425 in 1990, but a very high number compared with other South American countries, despite similar abortion

¹¹ Report of the Third Committee to the 12th Session of the General Assembly, 5th December 1957. A/3764 § 18.

¹² Report of the Secretary-General to the 10th Session of the General Assembly, 1st July 1955. A/2929, Chapter VI, §10.

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 natural experiment in 32 Mexican states, *BMJ OPEN* 2015;5:e006013, doi:10.1136/bmjopen-2014-006013, 1.

¹⁴ Ibid.

¹⁵ Gunnel Lindell and Folke Flam, Management of Uterine Perforations in Connection with Legal Abortions, *ACTA OBSTET GYNECOL SCAND.* (1995) May 74(5):373-5, available at <http://onlinelibrary.wiley.com/doi/10.3109/00016349509024431>.

prohibitions.¹⁶ Maternal deaths are ‘concentrated among poor, rural indigenous women,’ whose nearby hospitals ‘often lack beds, doctors, and medicines.’ This leads to the high rates of mortality according to the WHO and the UN Population Fund (UNFPA).¹⁷

15. Bolivia began a midwife training program with the help of the UNFPA. This training program is in response to the fact that many poor and indigenous Bolivian women do not get pre-natal care, nor do they give birth at hospitals. Financial incentives from the government have not helped the MMR. Bolivia’s health ministry said that 42% of maternal deaths happened in home deliveries because there are no trained professionals there to help. However, since new midwife training programs have begun, the WHO said that the midwives are already saving lives.¹⁸
16. Calls to increase abortion access as a necessary precondition to reducing maternal mortality rates are misguided. Legalizing abortion does not make it safe. Poor medical infrastructure means that women who receive abortions will still face poor conditions, the same ones faced by women who give birth and deal with similar complications, such as bleeding and infection. Almost all maternal deaths are preventable, particularly when skilled birth attendants are present to manage complications.¹⁹
17. In line with paragraph 8.25 of the Program of Action of the International Conference on Population and Development (ICPD), Bolivia 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 their pregnancy. These include improving access to education, which empowers women and leads to social and economic development, as well as facilitating healthy decision-making.

c) Freedom of Religion or Belief

18. Bolivia is made up of 77% Catholic, 16% Protestant, and the rest from other religious groups. The indigenous population practices a mix of Catholic and spiritual traditions.²⁰

¹⁶ World Health Organization, Global Health Observatory data repository, Mortality and Global Health Estimates, Maternal Mortality, 2015, <http://data.worldbank.org/indicator/SH.STA.MMRT>. In urban areas, ‘people using at least basic sanitation services’ is at 64%, whereas Chile is at 100%. In rural areas, basic sanitation is at 27%. In 2012, women making four prenatal visits is only 75% and 63% for poorer areas. UNICEF, Maternal Health: Antenatal Care – Current Status + Progress, <https://data.unicef.org/topic/maternal-health/antenatal-care/>.

¹⁷ Paola Flores, *The Seattle Times*, “Bolivia’s midwives help reduce maternal mortality,” 2nd August 2017, available at: <https://www.seattletimes.com/nation-world/bolivias-midwives-help-reduce-maternal-mortality/>. See also Michele Bertelli, Felix Lill, and Javier Sauras, *Narratively*, “How One Bolivian Hospital Is Battling Maternal Mortality—By Reaching Back Thousands of Years,” 23rd June 2016, available at: <https://narratively.com/how-one-bolivian-hospital-is-battling-maternal-mortality-by-reaching-back-thousands-of-years/>. One hospital in the Andean Plateau is designed to feel like a traditional, indigenous midwife room, with the doctor and midwife working in traditional garb and language. The doctor learned the indigenous practice of giving birth on hands and knees, the way these women are comfortable. Since 2009, no woman has died during childbirth at this hospital.

¹⁸ Paola Flores, 2nd August 2017. In 2009, the Bolivian government offered pregnant women a \$247-a-year financial incentive to get prenatal care and give birth at hospitals, but to no effect.

¹⁹ World Health Organization, Fact Sheet Maternal Mortality, 16th February 2018, available at: <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality>.

²⁰ Sarah Eekhoff Zylstra, *Christianity Today*, “Bolivia Makes Evangelism a Crime,” 17th January 2018, available at: <https://www.christianitytoday.com/news/2018/january/bolivia-makes-evangelism-crime.html>. The indigenous tribes have been known to harass, exclude, torture, and expel converts to Christianity. Dennis Petri,

19. Article 4 of Bolivia’s Constitution guarantees the freedom of religion and spiritual beliefs.²¹ Bolivia was among the UN Member States that, on 10 December 1948, voted in favour of the adoption of the Universal Declaration of Human Rights, which states in its Article 18 that the right to freedom of religion or belief ‘includes [the] freedom to change his religion or belief,’ and to manifest that religion or belief in public or in private.
20. Registration requirements, which have been in place since 2013, place undue burdens on churches. In order for a church to legally exist, they must indeed provide 14 sections of information to the Ministry of Foreign Affairs (MFA), including personal information on members, financial information, and bylaws.²² The government is thus involved in every internal aspect of a church and directs how it is administered. If a church does not provide the information or if it acts contrary to morality or ‘good customs,’ the government can revoke the license. In 2017, the government tried to expedite the registration process, but religious leaders are still concerned over the coerciveness of these laws and of their ability to independently operate. In 2015, evangelical leaders challenged the registration law, but they were denied.²³
21. In December 2017, the new Criminal Code—repealed later in January 2018—also included provisions resulting in restrictions on religious freedom. Essentially, the Code ‘criminalized evangelism alongside terrorism’ or human trafficking.²⁴ ‘Article 88.11 [stated], “Whoever recruits, transports, deprives of freedom or hosts people with the aim of recruiting them to take part in armed conflicts or religious or worship organizations will be penalised 7 to 12 years of imprisonment.”’²⁵
22. Faith-based organizations opposed the changes.²⁶ Particularly upsetting was the crime’s placement in the Code ‘alongside recruitment for armed conflicts, organ extraction, forced labour and sexual exploitation’.²⁷ One Bolivian pastor feared

World Watch Monitor, “Organised crime is making life worse for Latin American Christians,” 8th February 2015, available at: <https://www.worldwatchmonitor.org/2015/02/organized-crime-is-making-life-worse-for-latin-america-christians/>.

²¹ Bolivians enjoy ‘freedom of belief, spirituality, religion, and cult, expressed individually or collectively, in public and in private’ according to Article 21 of the Bolivian Constitution.

²² Dennis Petri, *Observatory of Religious Freedom in Latin America*, “Bolivia: Will new legislation criminalize missionary activity?” 26th January 2018, available at: <https://www.worldwatchmonitor.org/wp-content/uploads/2018/01/Bolivia-Will-new-legislation-criminalize-missionary-activity.docx.pdf>.

²³ United States Department of State, Bureau of Democracy, Human Rights, and Labor, “International Religious Freedom Report for 2017: Bolivia,” 2017, available at:

<https://www.state.gov/documents/organization/281296.pdf>. The MFA bases ‘morality’ on the ethnic Aymara worldview. *Morning Star News*, “New Law in Bolivia Aims to Control Churches, Impose Beliefs, Protestant Leaders Say,” 28th August 2013, available at: <https://morningstarnews.org/2013/08/new-law-in-bolivia-controls-churches-imposes-indigenous-beliefs-protestant-leaders-say/>.

²⁴ Morgan Lee, *Christianity Today*, “Bolivia’s President Revokes Evangelism Restrictions,” 22nd January 2018, available at: <https://www.christianitytoday.com/news/2018/january/bolivia-evo-morales-revokes-evangelism-ban-criminal-code.html>.

²⁵ *Evangelical Focus*, “Evangelism could be banned in Bolivia,” 12th January 2018, available at: http://evangelicalfocus.com/world/3180/Evangelism_could_be_banned_in_Bolivia.

²⁶ See Stoyan Zaimov, *Christian Post Reporter*, “Evangelicals in Bolivia Protest New Law Criminalizing Evangelism With up to 12 Years in Prison,” 16th January 2018, available at: <https://www.christianpost.com/news/evangelicals-bolivia-protest-new-law-criminalizing-evangelism-12-years-prison-213972/>.

²⁷ *World Watch Monitor*, “Bolivian Christians can still evangelise...for now,” 26th January 2018, available at: <https://www.worldwatchmonitor.org/2018/01/28022/>.

repercussions: “Will they denounce us if we bring a group of people to a Christian camp? Will I no longer be able to preach the gospel on the streets?”²⁸ While the Code was repealed shortly after its entry into force, concerns that many would not be able to freely live out their faith still remain.

d) Recommendations

23. In light of the aforementioned, ADF International suggests the following recommendations be made to Bolivia:
- 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, 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. Improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health;
 - d. 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;
 - e. Guarantee freedom of religion and belief by abolishing the mandatory registration for religious groups;
 - f. Permit members of all religious groups to practice their beliefs freely and ensure the right to evangelize is not criminally punished.

²⁸ Sarah Zylstra, 17th January 2018.



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