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URUGUAY

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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 Uruguay must take urgent steps to protect freedom of conscience, expression, and religion, as well as the rights of parents to raise and educate their children in accordance with their moral and religious convictions.

(a) Parental Rights and the Right to Education

3. Article 18(4) of the International Covenant on Civil and Political Rights recognizes "the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions." Article 26(3) of the Universal Declaration of Human Rights also states that "parents have a prior right to choose the kind of education that shall be given to their children."

4. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights is equally explicit in guaranteeing the right to alternative forms of education, reading:

> The States Parties [...] 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.

5. Article 12 of the American Convention on Human Rights, further recognizes these rights: "Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions."[1]

[1] American Convention on Human Rights, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm (Last visited June 28, 2018).

6. Furthermore, Article 41 of the Constitution of Uruguay guarantees the right of parents to educate their children,[2] while Article 68 recognizes a parent's right to select the teachers or schools that will educate his or her child.[3]

7. Despite these robust guarantees, Uruguay's 2008 General Education Law (Law No. 18437) jeopardizes these same rights by forcing parents to send their children to educational institutions, leaving no room for home schooling or other alternative educational practices that may be in line with the parents' religious or moral convictions.[4] Article 7 of Law No. 18437 states that education is compulsory starting from the age of four or five, continuing through secondary education and mandates that fathers, mothers, and legal guardians of boys, girls, and adolescents, have the obligation to enrol their children in an educational centre and monitor their attendance and learning.[5]

8. The above-mentioned law appears to provide no exception from this obligation for parents who wish to educate their children according to their conscience and according to what they believe will best meet the individual needs of their children. Families that decide to homeschool or who otherwise adopt alternative forms of education are likely to face legal sanctions, including even the loss of custody, as indicated by comments made by officials with the National Public Education Administration (ANEP).[6] This contravenes *inter alia* with Article 68 (3) of the Constitution, which establishes the freedom of parents to choose "teachers or schools".

(b) Freedom of Expression and Religious Freedom

9. There is much debate going on in Uruguay over the meaning of "secularism" or "the separation of church and state", and the relevant implications for the right to freedom of expression and freedom of religion.

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[2] Constitution of the Republic of Uruguay, Article 41: "El cuidado y educación de los hijos para que éstos alcancen su plena capacidad corporal, intelectual y social, es un deber y un derecho de los padres" https://www.impo.com.uy/bases/constitucion/1967-1967/41.

[3] Article 68 of the Constitution states: "La ley reglamentará la intervención del Estado al solo objeto de
mantener la higiene, la moralidad, la seguridad y el orden públicos.Todo padre o tutor tiene derecho a elegir, para la enseñanza de sus hijos o pupilos, los maestros o instituciones que desee." Available at: https://www.impo.com.uy/bases/constitucion/1967-1967. (Last visited June 17, 2018).

[4] Homeschool Legal Defense Fund, *Uruguay*, available at: https://hslda.org/content/hs/international/Uruguay/default.asp (last accessed June 28, 2018).

[5] General Education Law, No. 18437, Article 7: "(De la obligatoriedad). Es obligatoria la educación inicial para los niños y niñas de cuatro y cinco años de edad, la educación primaria y la educación media básica y superior. A tales efectos, se asegurará la extensión del tiempo pedagógico y la actividad curricular a los alumnos de educación primaria y media básica. Los padres, madres, o responsables legales de niños, niñas y adolescentes, tienen la obligación de inscribirlos en un centro de enseñanza y observar su asistencia y aprendizaje." Text available at: http://www.impo.com.uy/bases/leyes/18437-2008. (Last visited June 29, 2018).

[6] *Quieren educar a sus hijos en casa; Anep les dice que pueden perder patria potestad* ("They want to homeschool their kids; ANEP tells them they could lose custody"), Magdalena Cabrera, El Observador.com, February 27, 2014. Available at https://www.elobservador.com.uy/quieren-educar-sus-hijos-casa-anep-les-dice-que-pueden-perder-patria-potestad-n272763. (Last visited June 29, 2018).

10. In July 2017, the director of a secondary school in Salto was suspended with her salary cut in half pending the outcome of an internal investigation, after she allowed a discussion on the issue of abortion and contraception to take place during a sexual education workshop for high school students on school premises. The workshop presenters provided various materials to the students, including unborn baby models and a leaflet about foetal development. The materials included pictures of a developing foetus as well as an artistic image portraying the Virgin Mary holding three infants, each of a different race.[7] It was reported that the director had not been informed beforehand about these materials.

11. Soon after the workshop, a legislator filed a complaint with the Secondary Education Council (Consejo de Educación Secundaria), part of ANEP, alleging that the director violated Uruguay's secularism laws[8] by allowing the workshop to take place at the school and distributing the above-described materials therein. According to various reports, the politician denounced not only the leaflet but containing said materials but also the religious content of the presentation. Any punishment against the school director would legitimize a narrow, anti-religious interpretation of secularism that punishes dissenting views on issues of public interest. Such a narrow interpretation of the separation of church and state in the educational setting would also likely violate the plain language of Article 17 of Law No. 18437, which expressly safeguards the plurality of opinions and guarantees the rational and democratic exchange of knowledge and belief.[9] While it is reported that the director has been reassigned to another position and her salary restored, the Council decision on the complaint is still pending.[10]

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[7] "*Segundaria investiga jornada 'contra el aborto' en liceo de Salto*," June 30, 2017, available at http://www.montevideo.com.uy/Noticias/Secundaria-investiga-jornada-contra-el-aborto-en-liceo-de-Salto-uc347638. (Last visited June 129, 2018).

[8] The principle of secular education was first established in Uruguayan law in 1909. See *La laicidad en el Uruguay*, by Enrique Gonzalez de Toro and Julio Herrera Oneto y Viana, La Republica, April 10, 2017, available at http://republica.com.uy/la-laicidad-uruguay/ (Last visited July 27, 2018). The principle of secular education was later recodified in the 2008 Law No. 18437. Article 15 of Law No. 18437 provides, "La educación estatal se regirá por los principios de gratuidad, de laicidad y de igualdad de oportunidades, además de los principios y fines establecidos en los títulos anteriores."). The text of the law may be accessed here: https://legislativo.parlamento.gub.uy/temporales/leytemp2969406.htm (last visited July 28, 2018).

In addition, Article 5 of the Constitution establishes the general principle of separation of church and state operating in Uruguay. Article 5 reads in part, "Todos los cultos religiosos son libres en el Uruguay. El Estado no sostiene religión alguna." The Constitution can be found online here: https://parlamento.gub.uy/documentosyleyes/constitucion. (Last visited July 27, 2018).

[9] Law No. 18437, Article 17 states: "El principio de laicidad asegurará el tratamiento integral y crítico de todos los temas en el ámbito de la educación pública, mediante el libre acceso a las fuentes de información y conocimiento que posibilite una toma de posición consciente de quien se educa. Se garantizará la pluralidad de opiniones y la confrontación racional y democrática de saberes y creencias."

[10] "*Directora acusada de violar la laicidad por permitir charla sobre aborto analiza recurrir al TCA," El Observador*, April 9, 2018, available at: https://www.elobservador.com.uy/directora-acusada-violar-la-laicidad-permitir-charla-aborto-analiza-recurrir-al-tca-n1213078. (Last visited June 29, 2018).

12. Amidst such debate, serious concerns have been fuelled by a recent controversy over the placement of a religious statue in Montevideo[11]. When Catholics petitioned the Government to be allowed to erect a statue of the Virgin Mary, an important figure in Catholicism, on a public street in the capital city, the Government refused on the grounds that allowing the statute on public property would allegedly favour a particular religion, thus violating the principle of separation between church and state. In particular, it was argued that the erection of such a statue would have transformed a public space into a religious area. However, statues of other religious figures and other religious or philosophical notable personalities have already been erected in the same area. The denial of such request appears to constitute unfair treatment and discrimination against Catholics on the basis of their religion.

(c) Recommendations

13. In light of the aforementioned, ADF International suggests the following recommendations be made to Uruguay:

    a. Fully respect the choices of parents concerning the education of their children, in accordance with the relevant provisions of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child;

    b. Respect the rights guaranteed under international law of parents to raise and educate their children in accordance with their moral and religious convictions, and repeal all laws which threaten to arbitrarily and unjustly deprive individuals of their parental rights on ideological grounds;

    c. Recognize that the State has no legitimate authority under international law to mandatorily prescribe conventional education for all children, that individuals have the right to seek alternative forms of education, and that the prohibition of home education is a violation of international human rights law;

    d. Reject a narrow interpretation of “secularism” that restricts freedom of expression in such a way that speech is silenced and which threatens the free exercise of religion.

[11] “*The Virgen divide Montevideo*,” by Magdalena Martínez, El Pais, May 11, 2017, https://elpais.com/internacional/2017/05/11/america/1494467799_323371.html. (Last visited June 29, 2018); “*Uruguay: rechazaron un monumento a la virgen María en la ramba*,” by Nelson Ferndandéz, La Nacion, May 11, 2017, https://www.lanacion.com.ar/2023084-uruguay-rechazaron-un-monumento-a-la-virgen-maria-en-la-rambla. (Last visited June 29, 2018).

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