

**women behind**  
**B A R S**

**CHILE'S ABORTION LAWS**

**A HUMAN RIGHTS ANALYSIS**

[CHAPTERS IV, V, ANNEX 1, 2 AND ENDNOTES](#)

*Marcela, 66 years old, is an abortion provider who has been in jail three different times.*



*“I took a three-year nursing course — not first aid, nursing — and there I had to do training rotations at the police stations and at Emergency Room Four... At the police station I had, I was assigned specifically to gynecology, and that was one of the first things I learned, seeing the women in really bad shape, with many problems, a lot of problems. We talked, I would go over and chat, since I was doing my training I wasn't really working. I came up and chatted with them about the problems they had, why they had had an abortion, then, well, I never thought it would be a job, just to help a little, you know ... Because they come to me so overwhelmed, the woman that is married but it's impossible to have another child because she is working, or because her husband is ill. Or the girl who is single, and she can't because she is studying, because her life would be ruined, although it shouldn't be that way because a child is a blessing from God. But seeing it from the point of view of the problems there are and that there were in those years, and now, now its worse, we have gone back a*

*whole bunch of years. . . . The first time I did it was for a cousin, who, I'm not ashamed to say, was a prostitute, and she was very unhappy because she had three children already, and it's a hard life, that world of prostitution. . . . So she was the first one, I helped her, let's say, and then I went on, you know, then it was a neighbor's. And one day they say, no, you have to charge something, at least a little. . . . I didn't take it like that either, I always think that we [meaning the poor] cannot say anybody is not in need you know, so I charged only what I needed. Sometimes I didn't get anything, usually, sometimes I got some earrings or some little ring as a pledge, and they never came back, so it was like a present, and in those hard times we had [meaning the dictatorship], I started charging, but not too much either."*

***Excerpted from an interview with Marcela conducted by Patricia Olea, January 1998.***

## CHAPTER IV: SOCIAL AND ECONOMIC CHARACTERISTICS OF WOMEN PROSECUTED FOR ABORTION AND OF ABORTION PROVIDERS

This chapter summarizes the social and economic data on the women prosecuted for abortion as well as on the abortion providers. In Chapter III, only the individuals actually prosecuted for abortion were discussed, whereas in this chapter all women who had abortions are included, even those women who were not prosecuted because they were minors or “victims” of abortions.

### A. AGE OF THE WOMEN WHO HAD ABORTIONS

Sixty-one percent of the women in this study were between 18 and 29 years old. Women aged 30 to 41 comprised 26% of the sample, while those older than 42 were only 2% (see Table 26). Studies conducted in the 1960s and the first half of the 1970s indicated that women who had abortions were usually young, between 25 and 29, married or cohabiting, with one to three children, and that they had had previous abortions associated with contraceptive failure.<sup>115</sup>

Minors (those younger than 18) represented 8% of all women in this study who had abortions. None of them were prosecuted, because they lack the legal capacity to be criminal defendants. However, in spite of being minors, they were placed at the disposal of the court, except in those cases where they were victims of an abortion without their consent.

These facts seem to indicate that the statistical curve of women who have abortions is changing — more younger women are resorting to abortion. Considering that, as Chapter II describes, there is inadequate access to contraceptive methods in Chile, the government should be regarded as responsible for unwanted pregnancies among young women.

**Table 26: Percentage Distribution of Cases by Age and City**

	Santiago	Valparaíso	Arica	Temuco	Total
<b>Age</b>					
less than 14	1%	6%	---	---	2%
15-17	3%	3%	28%	6%	6%
18-20	15%	20%	6%	18%	15%
21-23	18%	13%	6%	35%	18%
24-26	13%	23%	11%	6%	14%
27-29	16%	10%	17%	6%	14%
30-32	10%	---	11%	---	7%
33-35	5%	10%	6%	6%	6%
36-38	11%	6%	6%	6%	9%
39-41	4%	6%	---	6%	4%
42-44	1%	---	---	---	1%
45-47	1%	---	6%	---	2%
Not Known	1%	3%	6%	12%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%*</b>

\*Percentages are approximate and may not add up to 100%.

## B. MARITAL STATUS

Chilean law recognizes three kinds of “marital status”: married, single, and widowed. Unlike most Latin American countries, it does not recognize *uniones de hecho* (domestic partnerships), separation (where a couple is legally married but does not live as a couple anymore), or divorce. Chile may possibly enter the next millennium as the only country in the world without a divorce law.<sup>116</sup> Those who are legally married and later have their marriage legally annulled are considered legally single. Annulments are sometimes granted through a formal loophole, such as the supposed incompetence of an official at the Civil Registrar’s Office. That is, a sympathetic judge can annul a marriage because the couple and a handful of witnesses say the couple never lived at the address written on the marriage license.<sup>117</sup> This report thus includes categories not recognized by Chilean law: single and cohabiting, widowed and cohabiting, and separated and cohabiting.

A majority of the people prosecuted for abortion were single, followed closely by married people. These statistics, as explained above, do not properly account for women who are cohabiting. As Table 27 shows, women in a stable relationship (married, single and cohabiting, separated and cohabiting, and widowed and cohabiting) collectively represented 43% of all women who had abortions. Forty-nine percent of the women in the sample were either single, widowed, or separated; 44% of the sample were single women.

**Table 27: Marital Status of Women Who Had Abortions by Year in all Cities**

Status	1983		1984		1990		1991		Total	Total
	#	%	#	%	#	%	#	%	#	%
Single	16	53	35	41	13	48	6	35	70	44
Cohabiting and Single	7	23	9	11	3	11	1	6	20	13
Married	5	17	23	27	4	15	8	47	40	25
Cohabiting and Separated	---	---	3	4	1	4	1	6	5	3
Separated	1	3	3	4	3	11	---	---	7	4
Cohabiting and Widowed	1	3	1	1	---	---	1	6	3	2
Widowed	---	---	1	1	---	---	---	---	1	1
Not Known	---	---	10	12	3	11	---	---	13	8
Total	30	100	85	100	27	100	17	100	159	100

### C. EDUCATIONAL LEVEL

In Chile, primary education is mandatory, and it includes eight years of school, from age 6 to 13 or 14. Public school is supposed to be free, but contrary to this principle, schools require payments for a series of expenses, such as matriculation fees, Parent's Center contributions, and the cost of mandatory school uniforms.

This report includes a category that shows whether or not a person is illiterate. This category, denominated "reads and writes," is used by courts to establish whether the defendant should receive copies of her file or whether it should be read to her. This report also distinguishes between complete and incomplete primary and secondary school education. This report does not include a category for technical or professional education, since no one included in this study had such an education, or if they had it, it was not in the court records.

Of women who had abortions in the four cities, without taking account of age, Table 28 shows two very high rates of 21%, corresponding to women who did not complete their primary education, and to those who could only "read and write." Second place is held by those women who had a few years of secondary education but did not finish (19% of the total). Only 9% of the women had finished 12 years of education. Seven percent were illiterate.

**Table 28: Education Level in all the Cases Reviewed**

Level of Education	1983		1984		1990		1991		Total	
	#	%	#	%	#	%	#	%	#	%
Illiterate	2	7%	7	8%	2	7%	1	6%	12	7%
Incomplete Primary	1	3%	23	27%	5	19%	4	24%	33	21%
Complete Primary	3	10%	3	3%	1	4%	2	12%	9	6%
Incomplete Secondary	7	23%	13	15%	6	22%	4	24%	30	19%
Complete Secondary	4	13%	4	5%	4	15%	2	12%	14	9%
Reads and Writes	10	33%	16	19%	4	15%	3	18%	33	21%
Not Known	3	10%	19	23%	5	19%	1	6%	28	18%
<b>Total</b>	<b>30</b>	<b>100%</b>	<b>85</b>	<b>100%</b>	<b>27</b>	<b>100%</b>	<b>17</b>	<b>100%</b>	<b>159</b>	<b>100%</b>

The total percentage of women whose educational level was between some years of primary education to incomplete secondary was 55%. This figure does not include the “reads and writes” category, which added to the previous figure gives a total of 76%. Temuco had the lowest percentage of educated women: 18% of the women were illiterate, and 66% had between one year of primary education and complete secondary school education. Although no woman with college or technical education was found among the court records, some might be found in the “reads and writes” category, since some of them had occupations that could require some kind of post-high school education. For example, there was a woman who was listed in court records as having “completed midlevel studies,” another who was a secretary, and a third who said her education was “technical-social,” leaving unclear her precise level of education.

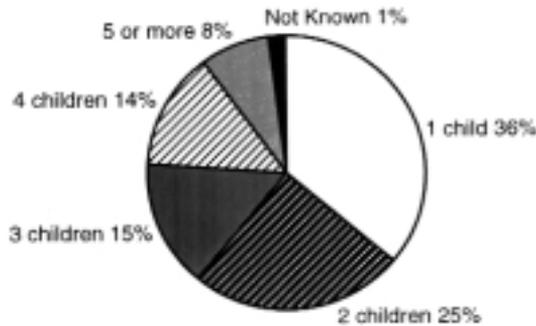
It is possible to conclude from the above data that women prosecuted for abortion in Chile as a group have little formal education. The majority has either elementary education or incomplete secondary school education, indicating a poor sector of the population.

**D. NUMBER OF CHILDREN**

The number of children women already have is an important variable insofar as abortion is closely related to unwanted pregnancy. When women already have the number of children they want, unplanned pregnancies might result in abortion, especially when the woman’s economic conditions are unfavorable. A 1991 study indicated that from a group of 2,300 pregnant women, 28.5% of the women did not want the pregnancy and 38.4% had mixed feelings about being pregnant.<sup>118</sup> It is estimated that, in Chile, 44% of all pregnancies are unwanted.<sup>119</sup>

In the cases reviewed, the results from different cities show that the highest percentages of abortion were found among women who already had one or two children. Of women who had children, the total percentage of both categories was 61%. Including the percentage of women who have three children, the total of all three categories is 76%. It is interesting to note that in one of the studies mentioned above, the relationship between pregnancy and previous births shows that the desire to have children drops significantly from the fourth pregnancy on.<sup>120</sup>

**Chart 29: Number of Children per Woman in All Cities**



There is also a relationship between education and number of children: women with less education have on average more children than more educated women. The relationship between education and number of children in the cases reviewed is an example of this. Table 30 shows the distribution of children among women according to their education. Although the education of 36% of the women could not be determined exactly (the categories “reads and writes” and “not known” each represent 18% of the total), it is possible to conclude that 43% of the women with children were illiterate or had only incomplete or complete primary education. In addition, the 22 illiterate women comprised 55% of the women with four or more children.

**Table 30: Number of Children and Level of Education in All Cities**

Education	1 Child		2 Children		3 Children		4 Children		5 or more		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
Illiterate	1	1%	---	---	---	---	3	3%	4	4%	8	8%
Incomplete Primary	11	11%	5	5%	6	6%	3	3%	2	2%	27	28%
Complete Primary	2	2%	4	4%	1	1%	---	---	---	---	7	7%
Incomplete Secondary	7	7%	2	2%	3	3%	2	2%	---	---	14	15%
Complete Secondary	4	4%	2	2%	---	---	---	---	---	---	6	6%
Reads and Writes	7	7%	4	4%	3	3%	3	3%	---	---	17	18%
Not Known	3	3%	7	7%	2	2%	3	3%	2	2%	17	18%
<b>TOTAL</b>	<b>35</b>	<b>36%</b>	<b>24</b>	<b>25%</b>	<b>15</b>	<b>16%</b>	<b>14</b>	<b>15%</b>	<b>8</b>	<b>8%</b>	<b>96</b>	<b>100%</b>

\*The percentages are approximate and may not add up to 100%.

Women who completed secondary education tended to have one or two children, representing 6% of all women with children. Almost a third of the women with one child had not finished primary school education. Likewise, women with an incomplete secondary school education accounted for 20% of those who had one child. Within the same group of women with some high school education, 3% had three children, 2% had two children, and 2% had four. Also within this group of women with incomplete high school education, there was a higher percentage of women who had no children (13 out of 45, almost 29%). Next in frequency of women without children were those women with a complete high school education, totalling 16%.

## E. ECONOMIC ACTIVITY

The group of women who had abortions was composed mostly of working women (47%) and women who had no paid job (41%). This second group was composed of housewives (29%) and students (12%).

**Table 31: Economic Activity of the Women in All Cities by Year**

	1983		1984		1990		1991		TOTAL	
	#	%	#	%	#	%	#	%	#	%
<b>No Remunerated Labor</b>										
Housewife	7	23%	24	28%	8	30%	7	41%	46	29%
Student	5	17%	7	8%	4	15%	3	18%	19	12%
<b>SUB-TOTAL</b>	<b>12</b>	<b>40%</b>	<b>31</b>	<b>36%</b>	<b>12</b>	<b>45%</b>	<b>10</b>	<b>59%</b>	<b>65</b>	<b>41%</b>
<b>Remunerated Labor</b>										
Domestic Servant	5	17%	9	11%	3	11%	---	---	17	11%
Worker	2	7%	10	12%	2	7%	1	6%	15	9%
Seamstress	1	3%	5	6%	1	4%	1	6%	8	5%
Temp. Agricultural Worker	1	3%	3	4%	1	4%	2	12%	7	4%
Employee	3	10%	1	1%	1	4%	---	---	5	4%
Hairstresser	---	---	4	5%	1	4%	---	---	5	3%
Sales/Merchant	1	3%	3	4%	---	---	---	---	4	3%
Nanny	1	3%	2	2%	---	---	---	---	3	2%
Midwife	1	3%	---	---	1	4%	1	6%	3	2%
Waitress	---	---	1	1%	---	---	---	---	1	1%
Dancer	---	---	1	1%	---	---	---	---	1	1%
Prostitute	---	---	1	1%	---	---	---	---	1	1%
Occupation Unknown	---	---	2	2%	---	---	2	12%	4	3%
<b>SUB-TOTAL</b>	<b>15</b>	<b>50%</b>	<b>42</b>	<b>49%</b>	<b>10</b>	<b>37%</b>	<b>7</b>	<b>41%</b>	<b>74</b>	<b>47%</b>
Not Known	3	10%	12	14%	5	19%	---	---	20	13%
<b>TOTAL</b>	<b>30</b>	<b>100%</b>	<b>85</b>	<b>100%</b>	<b>27</b>	<b>100%</b>	<b>17</b>	<b>100%</b>	<b>159</b>	<b>100%</b>

\*The percentages are approximate and may not add up to 100%.

## F. SOCIAL AND ECONOMIC STATUS OF ABORTION PROVIDERS

One of the characteristics of abortion services for poor women was that the providers tended to live close to the women's home. Women often resolved their needs in universal and shared traditions transmitted from generation to generation. It is perhaps a logical consequence that most abortion providers were women: out of the 31 persons prosecuted as abortion providers, 79% were women.

While female abortion providers tended to be housewives, the males who provided abortions tended to have other paid jobs. Those female abortion providers who did work tended to do so in jobs similar to those of traditional midwives, such as nurses, health care practitioners, and other jobs involving caring for the sick. Women providers in these kinds of jobs comprised 45% of all women who were employed, and 26% of all women providers and principal-participants. Forty percent of male providers on the other hand were practitioners, nurses, or paramedics.

The rest worked as drivers, construction workers, merchants, and employees. Two of the employees were the women's partners, and were tried as principal-participants: one was a policeman (Santiago, 1983), the other an accountant (Arica, 1984), and the third one a photographer (Valparaiso, 1991).

In general, abortion providers were women as poor as those who asked them for help. Male providers, unlike the women, used more aggressive methods, including medical instruments, and they tended to have some level of education in health services.

**From an interview by the Open Forum on September 25, 1997, in the “Chin Chin” prison facility in Puerto Montt, Chile. On that date, there were 22 women imprisoned there for abortion-related offenses, who were accused of having abortions or providing abortions to other women.**



*Carmen is 20-years-old and a domestic worker. After she got pregnant by a married man, she was forced by him to have an abortion in very poor conditions. The man was worried that if she decided to have the baby he could be blackmailed in the future and this would cause him problems with his wife and children.*

## CHAPTER V: RECOMMENDATIONS

### A. AT THE NATIONAL LEVEL

1. The Chilean government should ensure that women do not risk their lives or their physical and mental health because of the prohibition on abortion in Chile. Chile should implement the following legal and policy changes in order to end the persecution of women prosecuted for abortion and to ensure the reproductive health of Chilean women:

- The separation between church and state should be respected. The state should assume its secular responsibility to take action on public health and social justice issues. It is recommended that it begin by allowing therapeutic abortion.
- The law that penalizes women for having abortions should be repealed.
- As long as abortion continues to be criminalized in Chile, we recommend that public health services should provide both counseling and medical treatment for women who have had abortions and those with incomplete abortions.
- The state should provide all the population of reproductive age with the full range of reproductive health services and information and education related to reproductive health, in order to prevent unwanted pregnancies.
- There is no specific population policy in Chile. Neither is there a clear government position on the relationship between population and development. Moreover, there is a lack of up to date information on fertility rates and the reproductive health of the population. The government should institute a national fertility and reproductive behavior survey. In addition, it should initiate a process that, with the active participation of the women's health movement, would eventually create an explicit population policy.
- Chile should fulfill its obligation to provide reports regarding its implementation of the international treaties it has ratified. This would show the contradiction between the reality of Chile's criminal laws and the development of international human rights

law, particularly in relation to the progress at various recent world conferences that dealt with women's reproductive rights.

- The government should create a three-tiered commission, comprising representatives from the government, the United Nations, and civil society, in order to monitor Chile's progress in implementing the Cairo Conference commitments.
- The government's National Report on Population and Development drafted for the Cairo Conference does not fully cover the issue of abortion. It assumes the Chilean population never resorts to abortion as a method of family planning, and it does not give a conceptual framework to address the real dimensions of the problem posed by abortion or any way to resolve it. Therefore, research should be undertaken on the issue of abortion as a method of contraception, and on the difficulty women have accessing other contraceptive methods.

2. The state should ensure the right to privacy in the provision of health services. In order to do so it should carry out the following actions:

- Revise the Health Code provision that obligates or permits physicians to report women who seek their help after having had an abortion.
- Implement government policies ensuring that laws on patient confidentiality will be observed in public hospitals.

3. The state should ensure the right to defense counsel to all those who cannot afford an attorney. Moreover, those criminal procedures, such as preventive imprisonment, which violate the right to due process and the right to be presumed innocent also must be reviewed and revised.

#### B. AT THE INTERNATIONAL LEVEL:

##### *Recommendations for international donors*

- International and regional development agencies, as well as international donor agencies financing public health programs in Chile, should be party to the implementation of comprehensive family planning and pregnancy prevention programs in order to decrease the need for abortion.
- The aforementioned organizations should monitor health ser-

vices in general, and reproductive health services in particular, ensuring that they are offered without any form of discrimination. In order to protect women's health and lives, no one should be discriminated against regardless of the reason for seeking health care, including those women suffering from complications caused by clandestine abortions.

### *Role of the universal and regional human rights systems*

- The Human Rights Committee, the Committee on the Elimination of All Forms of Discrimination Against Women, as well as other bodies that monitor international human rights treaties ratified by Chile, should scrutinize Chilean legislation, particularly on abortion, to encourage the repeal of those laws that violate women's human rights.
- The organs of the Inter-American human rights system should likewise contribute to the repeal of restrictive and discriminatory abortion laws in Chile, as well as to the elimination of the prosecution and imprisonment of Chilean women for abortion. The role of these organs is to demand the protection of the rights guaranteed by regional treaties, particularly the American Convention on Human Rights and the Convention of Belém do Pará.
- In order to fulfill the Chilean government's commitments agreed to at the Cairo and Beijing Conferences, the bodies comprising the human rights systems, both international and regional, should demand the fulfillment of the civil, political, economic, and social rights of women. The human rights system should particularly demand the fulfillment of the rights that guarantee women's access to better sexual and reproductive health, and to the possibility of making informed choices regarding their reproductive lives free from discrimination, coercion, and violence.

# **ANNEX 1: METHODOLOGY USED IN THIS INVESTIGATION**

## **A. GATHERING DATA**

This stage of research consisted of reviewing the incoming case records for the Arica, Valparaíso, Temuco, and Santiago courts, in order to identify the abortion cases and their file numbers in the years covered. Then we requested access to court records. We gathered the relevant information from these records and entered it into a database, including the defendant's statement, the evidence gathered by the police, statements by doctors and midwives, medical records, medical files when they were part of the court records, the briefs presented by the defense, and the significant decisions of the court itself.

## **B. RECORDING DATA**

We collected the following information from the typical court file:

- Age, marital status, occupation, education, number of children, and procedure used for terminating the pregnancy.
- Circumstances surrounding the abortion.
- Time spent in preventive imprisonment.
- Access to and type of legal defense.
- Result of the criminal process.
- Date and manner in which the abortion was discovered and reported.
- Health consequences of the abortion, if any.
- Court and file number of the case.

This data was tabulated individually for each person. The information related to age, marital status, occupation, education, and number of children was analyzed separately for women who obtained abortions, abortion providers and third parties involved in the procedure, separating women who had abortions from abortion providers. The rest of the

information was analyzed thematically.

### C. DIFFICULTIES ENCOUNTERED IN THE RESEARCH

The main difficulties encountered during this investigation were:

- Excessive bureaucratic procedures to obtain the information, which slowed down the execution of the project.
- Difficulty in physically locating the relevant files, because of the inefficient filing system of court records in each city.
- Lack of infrastructure and of space in the Santiago courts, making access to public information difficult.
- Damaged incoming record books of cases and other documents because of their excessive use by the public. One appalling example of this was that three months of a particular year were missing from the books. The record books for incoming cases are particularly important, because that is where the record of each case is kept.

## ANNEX 2

**Table A: Time women who had abortions spent in preventive imprisonment in Santiago**

	1983	1984	1990	1991	TOTAL	
<b># of Days</b>						
No Time	2	38	1	2	43	48%
1 to 14	1	12	4	3	20	22%
15 to 30	6	4	--	--	10	11%
31 to 60	3	3	1	--	7	8%
61 to 90	--	1	2	--	3	3%
91 to 120	1	--	--	--	1	1%
121 to 150	--	--	--	--	--	--
151 to 180	--	--	--	--	--	--
181 to 210	--	--	--	--	--	--
More than 211	--	--	--	--	--	--
Not Known	1	5	--	--	6	7%
<b>Sub-total</b>	12	25	7	3	47	52%
<b>TOTAL</b>	14	63	8	5	90	100%*

\*The percentages are approximate and may not add up to 100%.

**Table B: Time women who had abortions spent in preventive imprisonment in Valparaiso**

	1983	1984	1990	1991	TOTAL	
<b># of Days</b>						
No Time	2	1	2	3	8	30%
1 to 14	2	3	3	6	14	52%
15 to 30	1	1	--	--	2	7%
31 to 60	--	--	--	--	--	--
61 to 90	--	--	--	--	--	--
91 to 120	--	--	--	--	--	--
121 to 150	--	--	--	--	--	--
151 to 180	--	--	--	--	--	--
181 to 210	--	--	--	--	--	--
More than 211	--	--	--	--	--	--
Not Known	--	2	1	--	3	11%
<b>Sub-total</b>	3	6	4	6	19	70%
<b>TOTAL</b>	5	7	6	9	27	100%*

\* The percentages are approximate and may not add up to 100%.

**Table C: Time women who had abortions spent in preventive imprisonment in Arica**

	1983	1984	1990	1991	TOTAL	
<b># of Days</b>						
No Time	2	6	--	1	9	56%
1 to 14	1	--	3	--	4	25%
15 to 30	--	--	--	--	--	--
31 to 60	--	2	--	--	2	13%
61 to 90	--	1	--	--	1	6%
91 to 120	--	--	--	--	--	--
121 to 150	--	--	--	--	--	--
151 to 180	--	--	--	--	--	--
181 to 210	--	--	--	--	--	--
More than 211	--	--	--	--	--	--
Not Known	--	--	--	--	--	--
<b>Sub-total</b>	1	3	3	--	7	44%
<b>TOTAL</b>	3	9	3	1	16	100%*

\* The percentages are approximate and may not add up to 100%.

**Table D: Time women who had abortions spent in preventive imprisonment in Temuco**

	1983	1984	1990	1991	TOTAL	
<b># of Days</b>						
No Time	2	--	--	2	4	24%
1 to 14	1	1	1	--	3	18%
15 to 30	--	--	--	--	--	--
31 to 60	1	--	--	--	1	6%
61 to 90	--	--	1	--	1	6%
91 to 120	--	--	--	--	--	--
121 to 150	--	1	--	--	1	6%
151 to 180	1	--	--	--	1	6%
181 to 210	--	--	--	--	--	--
More than 211	--	--	1	--	1	6%
Not Known	1	--	4	--	5	29%
<b>Sub-total</b>	4	2	7	--	13	76%
<b>TOTAL</b>	6	2	7	2	17	100%

\* The percentages are approximate and may not add up to 100%.

## ENDNOTES

- 1 The Alan Guttmacher Institute, *Aborto clandestino: Una realidad latinoamericana* [*Clandestine Abortion: A Latin American Reality*], p. 5, 1994.
- 2 *Ibid.*, p. 24.
- 3 U.N., Department of Economic and Social Development, *Abortion Policies: A Global Review*, Vol. I, 1992 (40% of maternal mortality in Chile is a consequence of abortion).
- 4 *Ibid.*, p. 7.
- 5 *Ibid.*
- 6 *Ibid.*, p. 8-9.
- 7 *Ibid.*, p. 9.
- 8 Lidia Casas Becerra, *Mujeres procesadas por Aborto* [*Women Prosecuted for Abortion*], Open Forum for Reproductive Health and Rights, in collaboration with the Center for Reproductive Law and Policy, Santiago, 1996.
- 9 Universal Declaration, Article 2.
- 10 Covenant on Civil and Political Rights, Article 2.1.
- 11 Covenant on Economic and Social Rights, Article 2.2.
- 12 The Convention on the Elimination of All Forms of Discrimination Against Women [Women's Convention] (website visited March 20 1998) <  
<http://www.un.org/dpcsd/daw/conven.htm>  
>.
- 13 Teheran Proclamation Article 15, Final Act of the International Human Rights Conference, Teheran, Iran, Mayo 12, 1968, Res. IX, U.N. Doc A/CONF. 33/41 (1968), in U.N. Department of Public Information, *The United Nations and the Advancement of Women 1945-1995*, pp. 167-169, U.N. Doc. DPI/1679 (1995).
- 14 Teheran Proclamation, Article 16.
- 15 The Vienna Declaration and Program for Action provides: "The human rights of women and girls are an inalienable, integral, and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, and cultural life, at the national, regional, and international levels, and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community." Vienna Declaration and Program for Action, section I, paragraph 18.
- 16 Cairo Programme of Action, paragraph 7.2.

- 17 *Ibid.*
- 18 *Ibid.*, paragraph 8.25
- 19 *Ibid.*
- 20 Beijing Platform, paragraph 106(k).
- 21 Cecilia Medina Quiroga, "El Derecho Internacional De Los Derechos Humanos y el Ordenamiento Jurídico Chileno" ["International Law on Human Rights and the Chilean Legal System"] in *Constitución, Tratados y Derechos Esenciales* [*Constitution, Treaties and Essential Rights*] p. 36 (1994). Article 32, No. 17 of the Constitution gives the President the special power to "negotiate; conclude, sign and ratify the treaties he deems to be in the country's interest ...." Article 50.1 of the Constitution adds that before ratifying a treaty, the president must submit the treaty to Congress for approval. The provision provides: "The following are exclusive functions of Congress: (1) To approve or reject the international treaties that the President of the Republic presents for approval prior to ratification. The approval of a treaty must follow the same procedure as the approval of a law."
- 22 *Ibid.*, pp. 37-38
- 23 *Ibid.* quoting S. Benadava, "Las relaciones entre Derecho Internacional y Derecho Interno ante los Tribunales Chilenos" ["The Relationships Between International Law and Domestic Law Before the Chilean Courts"], in León S. (coordinator), *Nuevos Enfoques del Derecho Internacional* [*New Points of View in International Law*], Editorial Jurídica de Chile, Santiago, 1992, p. 35.
- 24 *Ibid.*, p. 38.
- 25 *Ibid.* quoting the 1980 Chilean Constitution article 82, No. 2.
- 26 *Ibid.*, p. 38.
- 27 Universal Declaration, Article 3.
- 28 Covenant on Civil and Political Rights, Articles 6.1 y 9.1.
- 29 Convention of Belém do Pará, Article 1, 2(b) y 4.
- 30 American Human Rights Convention, Article 1.
- 31 Chilean Republic, 1980 Political Constitution, Editorial Jurídica de Chile, Santiago, 1992, Article 19(1) (hereinafter "Chilean Constitution"). It is important to underscore that this same article says, "The law protects the lives of the unborn." *Ibid.* Together with laws that prohibit abortion in

all cases, this provision of the Constitution can be read to mean that the State chooses to protect the right of "the unborn" over the life of the pregnant woman, thus violating the woman's right to life.

32 See paragraph 106(k) of the Beijing Platform (recommending that laws that penalize women for abortion be reviewed.)

33 Rebecca Cook, International Human Rights and Women's Reproductive Health, *24 Studies in Family Planning*, p. 73, 79 (1993).

34 Concluding Observations of the Human Rights Committee: Peru, 18/11/96.CCPR/C/79/Add.72. (concluding observations/comments), paragraph 15.

35 *Ibid.*, paragraph 22.

36 Stanley Henshaw, "How safe is therapeutic abortion?" in *Pregnancy Termination and Labor*, Parthenon, 1991.

37 WHO, Maternal Health and Safe Motherhood Program, *Abortion*, p. 12 (1994).

38 UNFPA, *The State of World Population*, p. 23 (1997).

39 Stephen Isaacs, J.D., "Aborto Clandestino vs. Aborto Regulado, En Algunos Países del Mundo" ("Clandestine Abortion vs. Regulated Abortion in Certain Countries of the World"), in *El Aborto en Chile: Elementos Para el Debate [Abortion in Chile: Elements for Debate]*, p. 36, Corporación de Salud y Políticas Sociales [Corporation for Health and Social Policy], 1996.

40 *Ibid.* citing Paxman, John et al., "The Clandestine Epidemic: The Practice of Unsafe Abortion in Six Latin American Countries," in *International Family Planning Perspectives*, July-August 1993, pp. 205-224, table 4.

41 The Alan Guttmacher Institute, *Aborto clandestino: Una realidad latinoamericana [Clandestine Abortion: A Latin American Reality]*, p. 24, 1994.

42 Stephen Isaacs, J.D., "Aborto Clandestino vs. Aborto Regulado, En Algunos Países del Mundo" ["Clandestine Abortion vs. Regulated Abortion in Certain Countries of the World"], *op. cit.*, p. 36.

43 *Ibid.* quoting Stanley Henshaw, "Induced Abortions: A World Review, 1990", *Family Planning Perspectives*, p. 78, table 2.

44 Covenant on Civil and Political Rights, Article 9. See also the American Convention on Human Rights, Article 4.

45 María Isabel Rosas Ballinas, *Aborto por Violación: Dilemas Éticos y Jurídicos [Abortion after Rape: Ethical and Legal Dilemmas]*, p. 50, DEMUS and the Population Council, 1997.

46 Cairo Programme of Action, paragraph 6.6.

47 See the section: The evolution of reproductive Rights as Human Rights.

48 Women's Convention, Article 2(g).

49 Rebecca J. Cook, "International Protection of Women's Reproductive Rights," in *24 International Law and Politics*, p. 698, 1992.

50 See the Women's Convention, art. 2; Covenant on Civil and Political Rights, art. 2; and the Covenant on Economic and Social Rights, art. 2.

51 Universal Declaration, Article 25(1).

52 Covenant on Economic and Social Rights, Article 12(1).

53 Chilean Constitution, Article 19(9).

54 Women's Convention, Article 12.1.

55 *Ibid.*, Article 14.2.

56 *Ibid.*, Article 16.1.

57 Cairo Programme of Action, ¶8.25; Beijing Platform, ¶106(k).

58 Rosas Ballinas, *Aborto por Violación: Dilemas Éticos y Jurídicos [Abortion after Rape: Ethical and Legal Dilemmas]*, *op. cit.*, p. 29-31.

59 No contraceptive method is 100% effective. For example, even when used properly, diaphragms have a failure rate of 6%, and condoms of 3%. Moreover, the use of these methods is usually not perfect, resulting in an even higher failure rate. *Institute of Medicine, Contraceptive Research and Development: Looking to the Future*, vol. I, table 3-1, 1996.

Furthermore, some studies have demonstrated that the effectiveness of temporary contraceptive methods also depends on the users' circumstances. Those women who know the correct use and the secondary effects of a contraceptive method have a better chance of using the method effectively. National Research Council and Institute of Medicine, *Developing New Contraceptives*, pp. 22-23, 1990.

60 Covenant on Civil and Political Rights, Article 17.1.

61 Chilean Constitution, Article 19.4.

62 See *Constitución, Tratados y Derechos Esenciales [Constitution, Treaties and Essential Rights]*, Cecilia Medina, ed., Corporación Nacional de Reparación y Reconciliación [National

Corporation for Reparation and Reconciliation], Santiago, 1993.

63 This kind of pretrial imprisonment is called “preventive imprisonment” because it is supposed to prevent the defendant from being a menace to society, or endangering the victim of the crime, or obstructing the judge’s investigation. Judges evaluate the level of “danger” posed by the defendant to determine whether to grant or deny release on bail. Judges consider the defendant’s personality, personal characteristics, and the nature of the crime. Therefore, persons with criminal records are usually held in preventive imprisonment, as are those suspected of committing certain crimes. Preventive imprisonment in the Chilean criminal justice system should be an exception, since it limits a protected right, the right to liberty.

64 The Covenant on Civil and Political Rights in its Article 9 (3) states: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”

65 American Convention on Human Rights, Article 8(2).

66 Article 19(7)(e) says: “Pretrial release from custody shall apply, unless the judge considers the individual’s detention or preventive imprisonment to be necessary for the investigation or for the victim’s or society’s safety.” Chile, *Criminal Procedure Code*, 13th edition, Editorial Jurídica de Chile, Santiago, 1995 (hereafter, “Criminal Procedure Code”).

67 See Articles 275 and 277, *Criminal Procedure Code*.

68 Humberto Nogueira, Emilio Pfeffer and Mario Verdugo, *Derecho Constitucional, Tomo I [Constitutional, Law Volume I]*, p. 203, Editorial Jurídica de Chile, Santiago, 1994. The *Consejo de Estado* is the highest administrative court in the country. Like most Latin American countries, Chile has a system of courts parallel to the civil and criminal courts called adminis-

trative courts. They are charged with matters where the state is the defendant. The *Consejo de Estado* functions both as a court of appeal for this system and as a consultative body for the government on constitutional matters.

69 Neville Blanc, Humberto Nogueira, Emilio Pfeffer and Mario Verdugo, *La Constitución Chilena, Tomo I [Chilean Constitution, Volume I]*, p. 126, Centro de Estudios y Asistencia Legislativa, Univesidad Católica de Valparaíso, [Center for Legal Aid and Studies, Catholic University of Valparaíso], 1992.

70 Nogueira. et al., 1994, op.cit., p 201

71 Josefina Hurtado, “Programas Estatales de Salud Dirigidos Hacia las Mujeres: Imágenes de Mujer y Lógicas de Acción” [“State Programs for Women: Images and Motivations for Action”] in *Sexualidad y Reproducción Hacia la Construcción de Derechos [Sexuality and Reproduction: Towards the Construction of Rights]*, p.27-28, CORSAPS, 1994.

72 Ibid.

73 Ibid.

74 Ibid.

75 *Yearbook of Hospital Expenses* 1983, 1984, 1990 and 1991, National Statistics Institute, published in various years.

76 Orellana, et al. quoted by George Acasadi, Gwendolyn Johnson-Acasadi and Michael Vlassoff, *La maternidad sin riesgos en América Latina y el Caribe: aspectos socio-culturales y demográficos de la salud materna, [Riskless Maternity in Latin America and the Caribbean: sociocultural and demographic aspects of maternal health]*, p. 28, translated by Paul Constance, Family Care International, New York, 1993.

77 Stanley Henshaw, “How safe is therapeutic abortion?” in *Pregnancy Termination and Labor*, Vol. 5, p. 39, 1991 (Proceedings of the XIIIth World Congress of Gynecology and Obstetrics, Singapore, Sept. 1991).

78 Molina Lopez, Orellana et. al. “Características del aborto en Chile” [“Characteristics of Abortion in Chile”], in *Cuadernos Médico Sociales [Social and Medical Notebooks]*, Vol. XIX, No. 1, p. 9, Santiago, 1978.

79 See Gloria Salazar, *Acción sobre el aborto inducido mediante el apoyo integral a la mujer post abortante [Action to Combat Induced Abortion through Comprehensive Support to Women Post-abortion]*, Instituto de la Mujer [Institute for

Women], Santiago, 1993.

80 Patricio Gayán, "Consecuencias médicas del aborto inducido en Chile" [Medical Consequences of Abortion in Chile], in *Aborto inducido en Chile [Induced Abortion in Chile]*, p. 49, ed. Mariano Requena, Sociedad Chilena de Salud Pública, Santiago, 1990.

81 Oladipo Oladipo, "Preventing and Managing Complications of Induced Abortion in Third World Countries," in *International Journal of Gynecology & Obstetrics, Women's Health in the Third World: The Impact of Unwanted Pregnancy*, Ireland, 1989, p. 26.

82 Ibid.

83 Mario Verdugo Marincovich, *Código Penal, Tomo III*, 2ª edición, Editorial Jurídica ConoSur Ediar, Santiago, 1986, p. 697 and following.

84 Open Forum on Reproductive Rights and Health, *Simposio Nacional: Leyes para la Salud y la Vida de las Mujeres. Hablemos de Aborto Terapéutico [National Symposium: Laws for Women's Health and Life: Let's Talk About Therapeutic Abortion]*, 1993.

85 Article 19 (1) says: "The Constitution ensures all persons: 1. The right to life...The law protects the life of the unborn."

86 See Criminal Code, art. 15.

87 See Criminal Code, art. 16.

88 See Criminal Code, art. 17.

89 Legal and sociological definitions are not necessarily the same. Thus, both women who have an abortion and abortion providers are considered principals when they concur in the abortion procedure. Likewise, accomplices and accessories to a crime can be so either in relation to the woman having an abortion or to the abortion provider. In this report, both types of definitions will be used depending upon the issue being underscored.

90 This information should be taken as indicating a trend, not as exact figures. Each court gives its figures directly to the National Statistics Institute (NSI), and they may be erroneous. In fact, errors occur because many courts do not distinguish between incoming cases and cases pending from previous years. Information on cases pending is collected by the NSI as a separate entry, and is not published, although the Ministry of Justice receives a copy. Thus, it was possible to determine that by the end of the 1980s the number

of pending cases was significant. The NSI started a new system in 1990, giving the courts time to close pending cases. Thus, that year's figures are not yet available.

91 The other entity empowered to bring those suspected of crimes before criminal justice authorities are the *Carabineros*, another policing body. The statistics kept by this institution do not distinguish between crimes, thus making it impossible to use their statistics on those detained.

92 Criminal Procedure Code, Article 81.

93 A complaint consists of reporting criminal behavior to a court, usually with the intention of taking a part in the trial, as distinct from just reporting the crime. The petition by the Attorney General's Office is a rare way of starting a criminal process.

94 Chilean Constitution, Article 19.

95 Criminal Code, Article 247(2).

96 Criminal Procedure Code, Article 201(2).

97 Criminal Procedure Code, Article 84(5).

98 Criminal Procedure Code, Article 494 (9).

99 Doctor Roberto Von Bennewitz holds that physicians are obligated by their triple status as citizen, health professional, and public officials. See Chilean Medical Professionals Association, "Panel: Therapeutic Abortion," *Working Notebooks No. 4*, Medical Work and Group Action, p.5. Santiago, 1989 [Colegio Médico de Chile, "Panel: Aborto Terapéutico," *Cuadernos de Trabajo N° 4*, Departamento Trabajo Médico y Acción Gremial], p. 5, Santiago, 1989. To read a forensic doctor's position similar to that of criminal law scholar Alfredo Etcheberry see: Hernán Silva, *Medicina Legal y Psiquiatría Forense, Tomo II [Forensic Medicine and Forensic Psychiatry, Volume II]*, p. 615 and following, Editorial Jurídica de Chile, Santiago, 1995.

100 Alfredo Etcheberry is a renowned criminal law scholar in Chile, and teaches at the Universidad de Chile.

101 Alfredo Etcheberry, *Derecho Penal, Tomo IV Parte Especial [Criminal Law part II, Volume IV, Special Section]* 2nd edition, p. 205, Editora Nacional Gabriela Mistral, Santiago, 1976.

102 Ibid.

103 Eduardo Novoa Monreal is a renowned criminal law scholar in Chile and an ex-president of the State Defense Council under President Salvador Allende.

104 The case of the medical files of the Chloe Clinic was appealed to the Supreme Court, which upheld the defense that the doctors were not obligated to and, in fact, were exempted from handing over the medical files of patients being prosecuted. See *Revista Fallos del Mes [Monthly Case Digest]*, No. 362, Jan. 1989.

105 The Chilean term is *pololo*, indicating a circumstantial amorous liaison.

106 One study shows that around 30% of criminal cases have public defenders providing the defense, mostly in those places where there are no Legal Aid Corporations. Correa y Jiménez, "Acceso de los Pobres a la Justicia" ["Access of the Poor to Justice"], in *Acceso de los Pobres a la Justicia [Access of the Poor to Justice]*, p. 136, ed. Franz Vanderschueren and Enrique Oviedo, Ediciones SUR, Santiago, 1995. These lawyers have no supervision and, in general, are young lawyers who have no more than two years of professional experience.

107 Cristán Riego, "El Proceso Penal Chileno y los Derechos Humanos, Vol. I" ["The Chilean Criminal Process and Human Rights, Vol. 1"], in *Aspectos Jurídicos, Cuaderno de Análisis Jurídico [Legal Aspects, Legal Analysis Journal]*, p. 78, Escuela de Derecho, Universidad Diego Portales, 1994.

108 If there are strong indications that a suspect under arrest participated in a crime, the judge may order a "processing decree," previously known as an "imprisonment decree." This decree is very important in the criminal process, because it starts the investigation and eventually could result in an indictment. A suspect can be detained up to five days for most crimes, without the need for a "processing decree." Once the "processing decree" is issued, and the suspect remains in prison, it is considered "preventive imprisonment." In this case the suspect may ask, with or without the assistance of an attorney, for release. For an analysis of the human rights violations that occur as a result of preventive imprisonment, see the chapter Abortion and Human Rights.

109 See, e.g., Cristian Riego, "La Prisión Preventiva" ["Preventive Imprisonment"], in *Cuaderno de Análisis Jurídico [Journal of Legal Analysis]*, Escuela de Derecho, Universidad Diego Portales, Santiago; María Angélica

Jiménez, "El Proceso Penal chileno y los Derechos Humanos, Vol. II" ["The Chilean Criminal Process and Human Rights, Vol. II"] in *Estudios Empíricos, Cuaderno de Análisis Jurídico [Empirical Studies, Legal Analysis Journal]*, Escuela de Derecho, Universidad Diego Portales, Santiago, 1994.

110 Criminal Code article 344 provides: "The woman who caused her own abortion or allowed another person to cause it will be punished with lesser imprisonment of the highest degree. If she did it to hide her dishonor, she will be punished with lesser imprisonment of medium degree."

111 See Criminal Procedure Code, Article 408(3).

112 The Institute of Forensic Medicine is an auxiliary of the judicial branch, and is empowered by the law to deal with all medical-forensic matters.

113 Criminal Procedure Code, Article 409 N° 1.

114 Criminal Procedure Code, Article 409 N° 5.

115 Molina, et. al., "Características del Aborto en Chile" ["Characteristics of Abortion in Chile"], op. cit., p. 17.

116 Gustavo González, "Chile: More Women but Less Time for Gender Debate," Interpress Service, Jan. 2, 1998; Howard LaFranchi, "Chile May Allow Divorce to Snip Those Ties that Bind," *The Christian Science Monitor*, p. 6, December 30, 1997.

117 Mariana Ayluin and Ignacio Walker, *Familia y Divorcio, Razones de una Posición [Family and Divorce: Reasons for an Opinion]*, p. 33 (1996).

118 Benjamín Viel and Cristián Pereda, "El Embarazo No Deseado," ["Unwanted Pregnancy"] in *Cuadernos Médico-Sociales [Journal of Medicine and Society]*, XXXII, 4, 1991, p. 33.

119 The Alan Guttmacher Institute, *Aborto clandestino: Una realidad latinoamericana [Clandestine Abortion: A Latin American Reality]*, op. cit., p. 25.

120 Viel and Pereda, "El Embarazo No Deseado" ["Unwanted Pregnancy"] op. cit., p. 35.