



Chile: Reproductive Rights at Risk

On May 2015, the Center provided supplementary information on Chile, scheduled for review by the Committee on Economic, Social and Cultural Rights (ESCR Committee) on its 55th Session. The submission highlights how the total criminalization of abortion and restricted access to emergency contraception in Chile constitute human rights violations under the International Covenant on Economic, Social and Cultural (ICESCR).

Sexual violence in Chile.

In 2011, the United Nations Office on Drugs and Crime (UNODC) reported 3,590 cases of sexual violence-related offences, one of the highest rate registered between 2006 and 2012.¹ In 2013, the National Prosecutor of Chile, Sabas Chahuán, reported 24,000 cases of sexual—related violence.² Of these cases, 74% of them were children under the age of 18.³ In 2014, the University of Chile conducted a quantitative research to study the prevalence of harassment and sexual violence among college students in Chile. From 484 women that participated in the study, 26% of women reported being victims of harassment and 31% reported being victims of sexual violence since age 14.⁴ Only 2% of the victims reported these incidents to the authorities.⁵

Restrictive access to emergency contraception in Chile.

The harm suffered by victims of sexual violence in Chile is exponentially exacerbated by Chilean's restrictive reproductive laws and policies. Emergency contraception is the most effective contraceptive method in preventing pregnancy in cases of rape or sexual abuse.⁶ In 2008, in spite of the high rates of sexual abuse in Chile, the Constitutional Court prohibited the sale, distribution, and use of emergency contraception in all public health institutions.⁷ In response to this situation, in 2010, the Chilean Congress approved Law 20.418 on "Information, Guidance and Assistance on Fertility Regulation", allowing the use, sale and distribution of emergency contraception.⁸ The contradiction between the Constitutional Court decision and the most recent law created numerous barriers to access emergency contraception in Chile.⁹

Chile's total criminalization of abortion.

Chile's Penal Code criminalizes abortion in all circumstances,¹⁰ but was understood to include a life exception.¹¹ This provision removed the exception for the life of a pregnant woman and re-established the criminalization of abortion in all circumstances. Criminalizing abortion does not reduce the demand for the procedure, but instead provides legal obstacles which reduce the safety of obtaining an abortion.¹² According to the Chilean's National Institute of Statistics, maternal mortality rate was 22.1% by 2012, one of the highest rates per 100,000 newborns registered since 2008.¹³

Chile is currently taking positive steps toward improving access to abortion through Bill N° 9895-11 introduced to the legislature by the executive branch of the government in January 2015, and currently being discussed.¹⁴ Decriminalizing abortion in certain circumstances would represent a significant step in the right direction toward allowing women the right to choose whether or when to bear a child. However, Chilean public opinion suggests that decision maker's supports abortion in cases where women's life is at risk, in cases of fetal abnormality incompatible with life outside the womb, but not in cases of sexual violence.¹⁵ In 2012, the Chilean Senate rejected

three bills that would have eased the absolute ban on abortions.¹⁶ A concluding observation for Chile, now more than ever, is crucial to draw attention to the importance of this matter for the protection of the right to health.

Chile's Total Criminalization on Abortion Constitutes a Violation of the Right to Non-Regression, the Right to Non-Discrimination, the Right to *Substantive* Equality and the Right to Health under ICESCR.

Right to Non-Regression (Art. 5(2)).

Restricting women's access to reproductive rights to which women previously had access amounts to retrogressive measures in violation of the right to health.¹⁷ Article 5(2) of ICESCR states that "[n]o restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent."¹⁸ States may not go backwards by reducing their social, economic and cultural rights, except in cases where they are forced to do so by a demonstrable lack of resources.¹⁹ Current retrogressive measures re-instating the complete ban on women's access to abortion diminish women's access to their reproductive health and rights and violate Article 5(2) under ICESCR.²⁰

Right to Non-Discrimination (Article 2(2)) and *Substantive* Equality (Article 3).

Legal restrictions on abortion violate a broad range of women's human rights by denying women the ability to make autonomous decisions about their reproductive capacities.²¹ As part of the immediate obligations Chile has as a State Party to the ICESCR which are not subject to progressive realization, includes the obligation to guarantee that relevant rights will be exercised without discrimination.²² In order to protect women's right to health on a basis of substantive equality, it becomes necessary that Chile adopts legislative measures that respects women's reproductive health and rights. Failure to guarantee women's reproductive rights to abortion results in violation of Article 2(2) and Article 3 under ICESCR.

Right to Health (Art. 12 (1)).

Complete criminalization leaves women with two bleak choices: to obtain unsafe abortions²³ or to incur health risks by carrying their unwanted pregnancies to term.²⁴ Criminalizing abortion without exemption is a *per se* violation of the right to health. Beyond extinguishing a woman's right to choose whether or when to have children, criminalizing the termination of pregnancy significantly increases the risk of maternal morbidity and mortality.²⁵ Since women have no choice but to pursue clandestine, unsafe abortions, women do not "have access to safe, effective . . . and acceptable methods of family planning of their choice"²⁶ as is required under ICESCR.²⁷ Chilean's restrictive legislation that criminalizes abortion under all circumstances results in violation of Article 12(1) under ICESCR.

RECOMMENDATIONS

Despite modest improvements in recent years, Chilean women continue to suffer from serious violations to their reproductive rights. We respectfully requested the ESCR Committee to consider addressing the following recommendations to the Chilean government during the 55th Session:

- a. To revise its laws imposing a total abortion ban to allow for exceptions when: (a) pregnancy endangers a woman's life or health; (b) **pregnancy is the result of rape** or artificial insemination without the woman's consent; and (c) congenital fetal anomaly incompatible with life outside the womb.

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- ¹ United Nations Office on Drugs and Crime, RAPE AT THE NATIONAL LEVEL, NUMBER OF POLICE RECORDED OFFENCES IN CHILE: UNITED NATIONS OFFICE ON DRUGS AND CRIME, DATA (2015), <http://www.unodc.org/unodc/en/data-and-analysis/statistics/crime.html>.
- ² Javiera Matus, *ONU: Chile es tercero en el mundo en tasa de denuncias por abuso a menores*, LA TERCERA, 2014, <http://www.latercera.com/noticia/nacional/2014/05/680-579591-9-onu-chile-es-tercero-en-el-mundo-en-tasa-de-denuncias-por-abuso-a-menores.shtml>.
- ³ *Id.*
- ⁴ Jocelyn A. Lehrer, *Violencia Sexual y en el Cortejo en Estudiantes Universitarios Chilenos*, EDITOR. UNIV. (2014), <http://www.revistahumanum.org/blog/la-violencia-sexual-y-en-el-cortejo-en-personas-jovenes/>.
- ⁵ *Id.*
- ⁶ WHO | Emergency contraception, WHO, <http://www.who.int/mediacentre/factsheets/fs244/en/> (last visited Feb 17, 2015).
- ⁷ Tribunal Constitucional de Chile, 37 diputados en ejercicio contra el Ministerio de Salud (Apr. 18, 2008), <http://www.tribunalconstitucional.cl/index>
- ⁸ CHILE, LAW 20.428 (2010).
- ⁹ UNFPA, ACCESO Y DISTRIBUCIÓN DE LA ANTICONCEPCIÓN DE EMERGENCIA EN CHILE (2012), http://www.icmer.org/documentos/anticoncepcion_de_emergencia/acceso_distr_de_ae_chile_2012.pdf.
- ¹⁰ CHILE, CÓDIGO PENAL (1874). Arts. 342-45. The last-in-time principle mandates that laws that have come into effect later override prior, conflicting provisions with the more recent regulations.
- ¹¹ CHILE, CÓDIGO SANITARIO, DECRETO CON FUERZA DE LEY N° 725 (1967) MODIFIED BY LEY 18826 (1989). Art. 119; World Abortion Map, Chile, (2015), <http://www.worldabortionlaws.com/map/> (CRR Translation). During General Augusto Pinochet's military regime in 1989, the Health Code was amended by Article 119 of Law 18.826, which states that "[n]o act whose purpose is to provoke an abortion may be carried out."
- ¹² WORLD HEALTH ORGANIZATION, SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS, 68 & 95 (2ND ED.) (2012). ¶¶ 88.
- ¹³ INSTITUTO NACIONAL DE ESTADÍSTICA, COMPENDIO ESTADÍSTICO (2014), http://www.inec.cl/canales/menu/publicaciones/calendario_de_publicaciones/pdf/compendio_2014.pdf. ¶¶ 116
- ¹⁴ CHILE, PROYECTOS DE LEY, BOLETÍN N° 9895-11, 3 MARZO 2015, PUBLICACIÓN OFICIAL, <http://www.camara.cl/pdf.aspx?prmID=11004 &prmTIPO=TEXTOSesion>; see also Chile's President Bachelet proposes end to total abortion ban, BBC NEWS, <http://www.bbc.com/news/world-latin-america-31076838> (last visited Apr 17, 2015).
- ¹⁵ *Cfr.* Raped 11-year-old stirs abortion debate in Chile - CNN.com, CNN, <http://www.cnn.com/2013/07/11/world/americas/chile-abortion-debate/index.html> (last visited Apr 28, 2015).
- ¹⁶ 11-Year-Old's Pregnancy Sparks Abortion Debate in Chile, THE HUFFINGTON POST, http://social.huffingtonpost.com/2013/07/05/chile-abortion-debate_n_3551960.html (last visited Apr 28, 2015).
- ¹⁷ ESCR COMMITTEE, GENERAL COMMENT N° 14 E/C.12/2000/4 (2011). ¶¶ 43, 48.
- ¹⁸ INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, DEC. 16, 1966, S. TREATY DOC. NO. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3, (1966). Art. 5(2).
- ¹⁹ *Cfr.* AMNESTY INTERNATIONAL, BRINGING ESC RIGHTS HOME: APPLYING IRELAND'S ECONOMIC, SOCIAL AND CULTURAL RIGHTS OBLIGATIONS TO BUDGETARY POLICY (2014). ¶¶ 25.
- ²⁰ ICESCR, *supra* note 18. Art. 5(2); ESCR COMMITTEE, *supra* note 16. ¶¶ 43, 48.
- ²¹ ESCR COMMITTEE, GENERAL COMMENT NO. 20: NON-DISCRIMINATION IN ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ART. 2, PARA. 2, OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS), U.N. DOC. E/C.12/GC/20 (2009). ¶. 31; COMMITTEE ON THE RIGHTS OF THE CHILD, GENERAL COMMENT NO. 15: THE RIGHT OF THE CHILD TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF HEALTH (ART. 24), U.N. DOC. CRC/C/GC/15 (2013). ¶. 31; HUMAN RIGHTS COMMITTEE, GENERAL COMMENT NO. 28: EQUALITY OF RIGHTS BETWEEN MEN AND WOMEN (2000). ¶. 20; WORLD HEALTH ORGANIZATION, SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS, 68 & 95 (2ND ED.) (2012).
- ²² ICESCR, *supra* note 18. Art. 2(2).
- ²³ See. WORLD HEALTH ORGANIZATION, *supra* note 12.
- ²⁴ Willard Cates, Jr, David A. Grimes & Kenneth F. Schulz, *The Public Health Impact of Legal Abortion: 30 Years Later*, 35 PERSP SEX. REPROD HEALTH (2003), <http://www.guttmacher.org/pubs/journals/3502503.html>. (Stating that obtaining an abortion is safer than carrying a pregnancy to term).
- ²⁵ ESCR COMMITTEE, *supra* note 17. ¶¶ 14 n. 12, 11.
- ²⁶ *Id.* ¶ 12.
- ²⁷ *Id.* ¶ 14 n. 12, 11.