

women behind B A R S



CHILE'S ABORTION LAWS A HUMAN RIGHTS ANALYSIS

INTRODUCTION THROUGH CHAPTER II

THE CENTER FOR REPRODUCTIVE LAW AND POLICY
THE OPEN FORUM ON REPRODUCTIVE HEALTH AND RIGHTS

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PREFACE

This publication examines Chilean society, raising doubts about the humanity of its development, and challenges Chile's public policies. It is a book that lays bare incontrovertible facts, facts that have remained hidden under the dust of court records and the blanket of prevailing hypocrisy. National and international discourses on equality, gender, and poverty are confronted by these facts, which reveal the dramatic gender and class inequality in our country. But in the void left by need, rights and their protection are nothing but a mere abstraction.

The investigators place us face to face with 159 low-income women, with little formal education and in low-paying jobs, who were punished for making the same choice that 150,000 Chilean women make every year: the decision to terminate their pregnancy. By penalizing abortion, the Chilean legal system fails 400 women each day. They are punished because as poor women, neither their formal education, their work environment, their personal relationships nor the power structure allow them access to preventive measures or other health services.

This punishment is superimposed over the daily deprivation that society has given them as their due for as long as they can remember. They most likely regard such inequality of opportunity as "natural." They—especially those who are not part of the world of paid labor—are on the other side of a window that is less and less transparent, rendering them invisible, erasing them, casting them aside and leaving them excluded from the other world, an injustice more closely tied to the institutionalized systems of control and punishment day by day. When one is condemned to contribute little or nothing to society, the effort to exercise one's rights becomes endless and futile.

This report is also a testimony to solidarity among women, to those who seek to understand and give shelter to other women, giving them the chance to be visible, to be seen as human beings. Exposed in this report are the paradoxes that Chilean society at the end of the century needs to resolve.

It is possible to be responsible in regard to both population dynamics and the possibility of offering a dignified life and rights to those who are born. Without question, the women featured in this report knew nothing of population dynamics; but surely they did know of affection and disaf-

fection, of the immediate risks of their decision to have an abortion and the future risks for those who are born into the lack of opportunities, lack of rights, lack of love, and lack of hope that characterizes their lives.

Is it responsible and fair to expect a woman to give birth on command, when she is unable to offer the prospect of a future to the newly born, because the necessary social conditions are lacking? The answer is evident in a country where only 44% of births are planned, and which has the highest abortion rate in Latin America. The answer is all the more evident when we see that during every year covered in this research, anonymous and powerless women have been sacrificial lambs to the inner contradictions of one of the more regressive and useless pieces of legislation in the world today.

When public health services include as a primary objective the improvement of the quality of health services, does it make sense that it is their employees who present almost all of the reports to the police for abortion complications? The figures are irrefutable, as is the gender and class inequality that they reveal.

It would be necessary to investigate further what it is that institutions whose objective is to promote and ensure everyone's well-being are seeking to punish, to discern what can invert the role of health services to the point where they judge and condemn the suffering women who went to them to save their own lives. Maybe in the metaphorical world of those who report them to the police, women's sexuality is linked to filth and abomination. Perhaps in their cultural codes the divorce between sexuality and parenthood is impermissible only where women are concerned. In all likelihood, they have learned to accept gender inequalities as normal.

In spite of the fact that almost two-thirds of the women prosecuted in the four cities studied did not have access to defense counsel, and in spite of the scandalous violation of rights that this implies, there is no institutional shame. No one in society or in the judicial system has apologized to these women. These incidents are of no interest to the mass media. These women were left defenseless, forgotten, submerged in their class and gender imprisonment. In spite of the rhetoric of equality, their rights as citizens were not valued.

The Open Forum on Reproductive Health and Rights and the Center for

Reproductive Law and Policy have together succeeded in bringing women prosecuted for abortion to this side of the window, revealing the injustices to which they have been subjected and opening the debate from another angle. In this way, the investigators, with their conscientious construction of facts, are making a decisive contribution to the argument.

Will the social, political, and cultural conditions that impede or limit women's exercise of their sexual and reproductive rights ever be modified? Will ideological guardianship ever cease, and will the diversity that exists in our country be accepted? Will women continue to be criminalized in spite of international consensus? Will the country continue to turn away, trying to excuse silences and omissions under the pretext that legislating on abortion carries too high a political cost? Will poor women continue to be taken to prison when they seek medical attention in public health establishments after risking their lives to obtain an abortion?

We hope that this book's invitation to an inclusive and open debate contributes to cultural and political changes that will humanize our country and make it a truly modern one.

Dr. María Isabel Matamala Vivaldi, Deputy Coordinator, Latin American and Caribbean Women's Health Network

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EXECUTIVE SUMMARY

Court records of women prosecuted for obtaining or inducing their own abortion and of women and men arrested for abortion-related offenses reveal that Chilean law violates the human rights of these individuals. Moreover, the actions of Chile's public employees in implementing these laws constitute a violation of the human rights of women who terminate their pregnancies and those who assist them to do so. In Chile, abortion is not permissible in any circumstance, not even to save the life of the pregnant woman. This restrictive law violates women's reproductive rights, including their right to health, their right to liberty and security, as well as potentially their right to life. In addition to the rights violated by the prohibition itself, the methods by which women are reported to the police, and the criminal process they, abortion providers, and "accomplices" undergo violate numerous other human rights, such as the right to due process, the right to privacy, and the right of a criminal defendant to be afforded an attorney. This study sheds light on these numerous violations and makes recommendations to Chile as well as to the international community to take action to end these grave violations of human rights.

Using information contained in court records, this study documents and profiles women, abortion providers, and other "accomplices" who were prosecuted for abortion in four cities in Chile during two periods, 1983-84 and 1990-91. The former period was during the military dictatorship; the latter took place during the period of Chile's transition to a democratically elected government. In addition to examining the criminal laws employed to prosecute these individuals, the investigation includes a breakdown by city and gender of those prosecuted under the abortion laws. Furthermore, this study examines the legal framework of Chile's abortion laws, as well as the criminal procedure that is involved in these prosecutions. Also included is a socioeconomic profile of the women and the providers included in the study.

HUMAN RIGHTS IMPLICATIONS OF THE STUDY

The Instigation of Prosecutions

Most of the criminal prosecutions of women who had obtained abortions were commenced following reports to the police by the public hospitals where they sought treatment for abortion-related complications. In this study, public hospitals accounted for 92% of the institutions that report-

ed women to the police for abortions and 80% of the total number of reports to the police. Notably, none of the prosecutions was instigated by private hospitals or clinics. As a result of the denunciations of women by public health facilities, a disproportionate number of low-income women are prosecuted for obtaining abortions. This violates the right to nondiscrimination based on a person's economic status provided for in the Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

Much of the information provided by the women to the hospital staff was recorded in their medical records. Medical personnel who suspected that a woman had undergone an abortion often informed the police. The criteria used to determine whether to report these women was unclear and seemingly arbitrary. In all cases, the women who were reported had low incomes. Some women were placed under arrest when they were at the hospital, while others were interrogated there. In the cases where women were transferred directly from the hospital to the courts, their poor health condition was often recorded in the judicial records examined in this study. Other women were reported through "hospital procedures." The procedures used by the doctors, nurses, and midwives who reported women who had obtained abortions to the police are more reminiscent of police interrogation methods than of the professionalism of health care workers who should have been focused on the care of injured women. These health care providers forced many women to "confess" that they had obtained abortions by threatening to withhold medical care if they did not. Sometimes an oral confession was obtained. But, prior to receiving medical attention, at least one female patient was made to sign a written "confession" dictated by the doctor to the midwife or nurse assisting him.

Several women in this study reported that they had been abused by health providers in the hospitals. One woman explained that she "confessed" to having obtained an abortion after being badly treated by the attending physician. Another woman had been admitted to the hospital because she was experiencing symptoms that signaled a possible miscarriage. After the symptoms subsided, she requested an immediate release from the hospital because she had three small children at home who required her care. The doctor released her but warned her not to return. Later at home, the woman suffered a miscarriage and had to return to the hospital. The doctor subsequently reported her to the police. The treatment

of these women by the health providers at these public hospitals not only violates these women's right to health and their reproductive rights, but it also violates their right to doctor-patient confidentiality.

Approximately 13% of the reports to the police were filed by individuals that were neither hospital nor police employees. These individuals were most likely to be family members (45%) or the women's partners (35%). The men who reported their partners to the police were often motivated by revenge, usually because the woman had separated from the man and the relationship had not ended on good terms. Often, these men turned to the police without any regard for the consequences of their actions; frequently, they had participated in either the decision to obtain an abortion or in the abortion procedure itself.

Women's Access to Legal Representation

This study reveals that a significant number of the women prosecuted for undergoing abortions were not afforded legal representation. On average, only 38% of the women were represented by an attorney, while 60% of the women were not represented by an attorney at any stage of the prosecution. This lack of representation violates the right of a criminal defendant to legal counsel under both national and international laws.

Some women experienced other human rights violations once in custody. Two women in this study testified in court that they were mistreated by the police. One woman testified that she was made to undress and then a woman, presumably a police officer, examined her and told her that it would be best if she told the truth because in any case, she was still pregnant, and that if she did not talk, her parents would go to jail. The other woman who was mistreated by the police had been admitted to the maternity ward of the hospital with symptoms of a miscarriage. She told her attorney that in the Division of Sexual Crimes she was badly treated and was pressured to testify as to "what she had done to herself." It turned out that she had suffered a prolapsed uterus that might have caused her miscarriage.

Punishment and Pretrial Custody

It is relatively common in Chile that a person suspected of a crime remains in custody for a period of time before trial. The results of this study seem to indicate that pretrial custody is used to "punish" the accused even though she or he has not yet been convicted. Fifty-seven

percent of the women who underwent abortions, 87% of providers and “principal-participants,” and 87% of accomplices spent time in prison. It is particularly problematic for a judge to order a woman who obtained an abortion or an “accomplice” to be held in prison prior to trial on the basis that he or she is a flight risk or could be “dangerous” to others. Those accused of being “accomplices” to an abortion spent an average of 20.5 days in pretrial custody, the women who obtained abortions spent an average of 31.3 days in pretrial custody, those accused of being “principals” in the crime (the person who induced the woman to obtain an abortion) spent an average of 68.5 days in pretrial custody, and the providers spent an average of 84.1 days in pretrial custody. The procedure followed in the prosecution of these individuals violates both their right to due process as well as their right to be presumed innocent.

Judges may sometimes view the situation of the women who obtain abortions with more compassion due to the often dire situations that led these women to seek an abortion. However, the actions of the providers are viewed differently. Providers are generally perceived as performing abortions for profit, when, in actuality, many of the providers in this study were often women who performed the abortions free of charge as a service to low-income women without resources to obtain a safer abortion but who were desperate to end an unwanted pregnancy.

PROFILE OF THE WOMEN WHO HAD ABORTIONS

Of the women included in this study who were prosecuted for having an abortion, 61% were between the ages of 18 and 29. Women between the ages of 30 and 41 represented 26% of those profiled; five of the women (8%) were under 18-years-old. Not all of the women included in this study were prosecuted. Five women under the age of 18 were not prosecuted, and four other women testified that they underwent abortions without giving their consent.

Approximately 49% of the women who obtained abortions did not have a partner. This figure includes women who were separated from their spouses (4%), widows (1%), and single women (44%). However, 43% of the women did have a partner. The educational level of the women in this study was harder to document given the fact that most court records simply noted whether the woman prosecuted was literate. In general, the conclusion can be drawn that the majority of the women prosecuted

for abortion tended not to have a high level of education. Approximately 7% of the women were illiterate, and 21% of the women had not completed primary school. An additional 21% could “read and write.” About 19% had attended some years of high school, but did not graduate. The study was only able to confirm that 9% of the women had finished high school.

Most of the women profiled in this study, approximately 60%, had either one or two children at the time of their abortion. Women with three children represented about 16% of those prosecuted. About 47% of the women who had abortions worked, while 41% were not wage earners (mostly housewives [29%] and students [12%]). Of the women who worked, 22% were domestic workers.

PROFILE OF ABORTION PROVIDERS

Overall, this study reveals that the abortion providers who were prosecuted tended to be other women (79%), who were often as low-income as the women seeking abortions. When the providers were men, they tended to use bolder methods, involving medical instruments, for example, and they usually had some training in the health field.

CONCLUSION

The findings of this investigation demonstrate that the restrictive abortion laws in Chile violate numerous human rights protected by national laws as well as by regional and international human rights instruments. Among those rights violated are the right to health; the right to life, liberty, and security; the right to be free of discrimination based on gender and socioeconomic status; the right to reproductive health and family planning; the right to privacy; the right to legal representation; the right to due process; and the right to be presumed innocent. Women with few economic resources and little education are typically the victims of unsafe procedures. Whatever their reasons for making the difficult decision not to bear a child, it is these women who are typically subjected to criminal prosecution and, often, imprisonment.

FOREWORD

Interview with Carmen

June 5, 1996

Carmen was born in a small town in the southern region of the country, the fifth of six children in a peasant family. At 12 she began to work as a maid in a private home. Carmen worked in various homes in Santiago and in other cities as well.

I stayed four to six months in each house. I didn't last too long even when I had good bosses, and if they were bad, I didn't last longer than two weeks.

At 16 she had a boyfriend, the neighbor of her older sister.

We didn't see each other much, because I was always going from one place to the next ... and then ... I got pregnant ... by accident. I was 17, going on 18. It was a good relationship. When I knew I was pregnant, we had broken up already, but he came back when he found out I was pregnant. But after five months of pregnancy we broke up for good. He was just a kid....

At first, Carmen's boyfriend denied he was the baby's father. Later on he accepted it, although he never legally recognized the child as his. After the child's birth, Carmen went back to Santiago, where she worked shifts in a factory.

After that, Carmen had two other boyfriends. She got pregnant again.

I don't even know how it happened. We had been going out for a year. But we went out just for fun, not for the future, just for fun.... We liked each other.

Although at various times she had used contraceptives, such as oral contraceptives and injections she got in the pharmacy without any orientation or information, this time she didn't apply what she knew about contraception.

I knew I could get pregnant but I took the risk. Sometimes you don't think of the consequences.... I didn't know what to do. I didn't want anybody to find out. I knew I was pregnant and right away I told myself I can't do this, because with the child it was already too difficult. I was helping my sister, I was helping her

pay the rent. We lived alone, but after my first child was born we both had to worry about him, and unfortunately they told me the child was epileptic. I closed up.

Carmen thought of having an abortion.

I went over to the woman and I told her I knew she did these things. And that I was pregnant and needed her help. And she told me everything I had to bring and where to buy it. I bought the things and took them to her: a surgeon's probe, cotton, alcohol... When I went back to her, she put the probe in and told me to take something for the infection. But the probe came out in the afternoon...

Carmen had a difficult afternoon and night.

In the morning when I got up I felt sick, I had a strong contraction, and I went to the bathroom, and everything came out really quickly. I had so many feelings inside, I didn't know what to do. I didn't tell anybody. The only thing I remember is I started to work and I felt well physically, I didn't have a fever or anything.

The toilet was clogged and she called the plumber, who showed up after two days.

The plumber came, unclogged the toilet, and everything was there. He even called me and I didn't say anything and kept on as if nothing had happened. Then the boss came and I told her what the plumber had found, but I didn't say who had done it. She thought of her daughter's friends, also of a girl I had brought over, but never thought of me.

Carmen's boss immediately called the police, after interrogating all the women in the house except for Carmen: "I don't know if she had a feeling it had been me or if she trusted me." She also called her brother, who was a lawyer and a politician, and he came over quickly.

The police came and also a very rude woman. I told the police I hadn't done anything, because I had thrown away the probe and everything. They told me to say I hadn't noticed anything. I said I had been pregnant but that I hadn't done it to myself. I denied it until ... I talked with Don Sergio... When the boss's brother came, he told them to leave us alone, and he talked with me, and

I told him what had happened.

She was taken to the Police Station, where she told them the facts. She didn't know the exact address of the place where she had had the probe inserted, but she knew how to get there. They took her there and they told her to knock on the door with the pretext of paying what she owed for the procedure. She did so and the woman who had performed the abortion was also arrested, causing a great commotion in the neighborhood. "They came out from everywhere, insulting me and supporting her." Carmen was later taken to the Emergency Room, and from there she was sent to Salvador Hospital. She was hospitalized there and the lining of her uterus was scraped even though there were no signs of infection. She was in custody all the time. Carmen felt the auxiliary personnel at the hospital tried to extend her stay there, to keep her from having to spend too long in jail.

The policeman was there day and night. Yes, day and night, standing there by the door all day and all night.

Carmen was in jail for three months. When she was taken to court with other prisoners, she was separated from them, because there was concern about retaliation from the woman who had performed the abortion, who was also in the same prison.

When they called me at first, I got in the car and the other women all jumped on me so the guards took me out and put me in the back, because the other one said she knew people inside, so they took me and put me in the back.

A lawyer from the Legal Aid Corporation was in charge of her case.

... because in the beginning it was Don Sergio, but since he is against abortion and is a public figure, how could he defend me?... So at the end it was someone from the corporation, but I think he didn't do anything, Don Sergio did more making phone calls. The lawyer — I don't think he did anything, because he never called me to say, Hey, listen, this is going like this. Really he never said anything, because what I knew was what my boss would have someone tell me, but he never said: Your case is going this way. I knew everything through my boss.

One day she got a message from her boss, telling her she would be out of

jail the next Monday. Her boss was waiting for her in court, after paying the bail.

When I got out of there, I thought it was all a lie, like I was still locked in. For the next three days I was still feeling locked in.

She decided to travel to her mother's house.

After I got there they didn't ask me anything. I don't know if it was for better or worse. No one said anything. Not my mother or my brother. No one ever said anything. I really don't know if I would have wanted them to ask me or not.

Carmen's experience changed her relationship with her boss.

Suddenly she'll start in on it, she'll ask about it, then she'll do the same thing... And when I ask permission to go out for the weekend, she gives me permission and says remember not to get pregnant or not to go to bed with somebody. So sometimes we clash and I wish I could leave.... I'm grateful, and I will always be grateful, but I'm not going to thank her every day for what she did for me. Always when people do something for you they want you to stay with them. So she wants me to stay with her forever and never to say anything that bothers her, because of what she did.

Excerpted from an interview conducted by Gloria Salazar

INTRODUCTION

The Chilean abortion law is one of the most restrictive in the world. It prohibits the procedure without exception, even in order to save the life of the pregnant woman. Among Latin American countries, Chile shares this distinction with El Salvador.

It is estimated that in the first five years of the 1990s there were approximately 44 million abortions worldwide. Close to 4 million occurred in Latin America.¹ In contrast with North America, Europe, and some Asian countries, in Latin America, because abortion is illegal, there are no reliable statistics. In 1990, there were around 160,000 abortions in Chile, while in Mexico there were 533,000 in the same year, and in Brazil in 1991 there were 1,433,000 abortions. In the beginning of the 1990s, there were 5.5 abortions for every 10 births in Chile, while in Brazil there were 4.4 for every 10 and in Mexico 2.1 abortions for every 10 births.² The per capita number of abortions in Chile remains one of the highest in the continent, and constitutes one of the main causes of maternal mortality in that country.³

In Latin America beginning in the 1970s, both public policy and couples began to agree with the goal of having smaller families than in previous decades.⁴ The average size of the family in the region has decreased almost 50%, from close to six children per woman in the 1960s to a little more than three today.⁵

Directly related to this drop is the fact that contraceptive prevalence has increased considerably in most Latin American countries as a result of the implementation of family planning policies. At present in Latin America, the responsibility for family planning falls primarily on women. The most popular contraceptives are the pill, intrauterine devices, and female sterilization. Traditional contraceptive methods such as abstinence during periods of greatest fertility are also present in the region.⁶ In Chile, among women of reproductive age (between 15 and 44 years of age), 56% use contraceptive methods to avoid unwanted pregnancies, while in Colombia, Peru, Mexico, and Bolivia the numbers vary between 34% and 44%.⁷

Nevertheless, a great portion of women do not have their family planning needs met. Social and cultural circumstances, such as inaccessibility and poor quality of services, lack of economic resources, fear of secondary

effects, and the almost nonexistent use of condoms by men, among other reasons, hinder women's ability to access contraceptive methods. In addition, contraceptives are not 100% effective, and some women, for various reasons, do not use them correctly. Huge numbers of women cannot or do not use contraceptives, resulting in a high level of unwanted pregnancies and abortions.

From a human rights perspective, the lack of access to family planning methods, and its most obvious consequence, unwanted pregnancies terminated by abortions, shows that sexual freedom and reproductive rights are still not fully protected or guaranteed for Chilean women. Furthermore, the fact that in Chile and in various countries in the region abortion is a crime, places a large group of women at risk of resorting to dangerous abortion procedures. This violates the most fundamental of human rights, the right to life and physical and psychological integrity.

A. OBJECTIVES OF THIS REPORT

This report is the result of a collaborative effort between the Open Forum on Reproductive Health and Rights in Chile and the Center for Reproductive Law and Policy in New York. It is the second part of a research effort of which the first part, *Women Prosecuted for Abortion*,⁸ was previously published in Spanish. That report dealt with the social and economic profile of women who were prosecuted and imprisoned for abortion in Santiago. In this second part, the research was decentralized to include data from cities as diverse as Arica, Valparaiso, Temuco, and Santiago. In this second phase of the research, in contrast with the first part, court records for abortion, rather than legal aid files, in the years selected for the research, were analyzed, whatever the form of defense. Moreover, the report identifies human rights violations based on Chilean laws and international treaties ratified by the Chilean government. This report also shows the socioeconomic profile of the actors involved in the termination of the pregnancy, as well as that of the women who obtained the abortions.

The first chapter of this report analyzes the way in which various restrictive abortion laws and the judicial process itself violate various human rights. The second chapter focuses on abortion as a public health problem, establishing the relationship between population policies and health programs and their impact on women's mortality rates and on the frequency of abortion in Chile. The third and fourth chapters present the

status of abortion in Chile, starting with an analysis of the current legal framework and reviewing each step in the criminal process and the socioeconomic variables that the cases demonstrate. The last chapter contains recommendations.

B. METHODOLOGY

This report is limited by the restrictions inherent in researching a hidden and criminalized reality. Both quantitative and qualitative forms of research were used. The quantitative aspect was of particular importance, since it was the basis for examining those included in the study and the construction of the profile of them. Qualitative techniques were used to delve more deeply into the stories of these women, into their choices, the circumstances that surrounded the termination of their pregnancy, the way in which it was done, the experience of the criminal process and jail, and in general, the consequences of having been subjected to a criminal process.

The research consisted of two stages: the first considered 132 court cases between 1977 and 1995 in the Metropolitan Region of Santiago, the results of which, as previously stated, were published in 1996. The second stage consisted of the analysis of a discontinuous period of four years: two in the 1980s and two at the beginning of the 1990s: that is, the years, 1983, 1984, 1990, and 1991. The reason for selecting the first two years was the high rates of penalization of abortion observed in that period, when Chilean society was characterized by strong political repression accompanied by economic crisis, high unemployment, and social instability. The latter two years — the first two years of the democratic government — were chosen as control years for comparative purposes. The 1990s have seen important political changes in Chilean society. In the context of the transition to democracy, police repression has declined and both political stability and stable economic growth has increased.

Three of the most important cities in Chile apart from the metropolitan region of Santiago (which was considered in the previous study) were chosen for this study: the cities of Arica, Valparaiso, and Temuco. This research included all the cases tried before courts in these three cities during the designated years. For Santiago, however, different parameters were established. The Metropolitan Region has two courts of appeals: Santiago and Pedro Aguirre Cerda, together including a total of 41 courts

with criminal jurisdiction. In recent years, four new criminal courts were created in the jurisdictional territory of the Santiago Court of Appeals. The criminal courts that correspond to the Santiago Court of Appeals were chosen because they have a judicial archive of court records that is better organized and more functional for this kind of research than that of the Pedro Aguirre Cerda Court of Appeals, and because the Santiago Court of Appeals covers a much larger territory. In 1991, this court had 26 criminal courts under its jurisdiction, while the Pedro Aguirre Cerda Court of Appeals covered a smaller territory and had only 11 criminal courts under its jurisdiction. Within the 26 courts under the jurisdiction of the Santiago Court of Appeals, those courts were chosen that, according to the National Institute of Statistics, had had the highest quantity of abortion cases: the Fourth, Ninth, Tenth, Eighth, Nineteenth, Twenty-fourth, Twenty-fifth, and Twenty-sixth Criminal Courts. The territory covered by these courts includes the following regional areas of the city: Santiago, Central Station, Navia Hill, Pudahuel, Lo Prado, Quinta Normal, Renca, Quilicura, Lampa Colina, and La Florida.

Regarding the organization of the judicial system in the other cities, in 1991, Arica had four criminal courts that had jurisdiction in Arica, the adjacent territories, towns, and the eastern highland valleys. In Valparaiso, there were seven criminal courts, whose jurisdiction included the city of Viña del Mar. Temuco had four courts for the city and nearby rural localities.

The sample reflected in this study comprises 159 cases of women who had abortions in Santiago, Valparaiso, Arica, and Temuco, corresponding to the cases registered in the years 1983, 1984, 1990, and 1991, as set out in Table 1. Another 39 people included in the study were tried as coprincipals or providers, 8 as participants, and 15 as accomplices (Table 5). For a detailed explanation of the collection and recording of data, as well as of the difficulties encountered in this research, see Annex I.

Table 1: Sample of Cases by Year and City

	Santiago	Valparaíso	Arica	Temuco	Total
1983	15	5	4	6	30
1984	64	9	10	2	85
1990	9	8	3	7	27
1991	5	9	1	2	17
Total	93	31	18	17	159

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.



Adelina, 38-years-old, is head of her household and works on a fish farm, where her job is to feed salmon from a raft in the ocean near Puerto Montt, a rural sector of the coast. She has three children whom she supports, and she got pregnant without planning to. Since her life was already extremely hard without adding other expenses, she made the difficult decision to induce her own abortion by drinking a potion of herbs that some friends had recommended. But to make sure it worked, she doubled the dosage, which resulted in an intense hemorrhage and other complications, almost killing her .

CHAPTER I: ABORTION AND HUMAN RIGHTS

The punitive and restrictive abortion laws and policies in Chile are a violation of women's human rights when examined in light of the norms contained in numerous international human rights treaties. Moreover, they are not a solution to the public health problem of abortion, which principally affects the poorest and most vulnerable women of the population.

Abortion in Chile is absolutely illegal. There are no legal exceptions to this rule, not even when abortion is the only way to save the woman's life. Some legal systems where abortion is illegal in all other circumstances recognize the defense of "necessity," an exception that patients and medical personnel can interpose when at trial. In order to interpose this defense, the accused must prove that continuing with the pregnancy presented an imminent risk to the patient's life, and that an abortion was the only way to save it. It is highly improbable that this defense would be successful in a Chilean court, since the law expressly prohibits abortion in all circumstances, and, as will be explained in Chapter III, the intention of the legislature was to eliminate all defenses that could be invoked to undercut this prohibition.

Because of this absolute prohibition on abortion, women whose lives are endangered by their pregnancy or by carrying the pregnancy to term cannot have a legal therapeutic abortion. Furthermore, many women who have suffered sexual violence or who are forced by their circumstances to terminate an unwanted pregnancy have to turn to clandestine abortions, with great risk to their health and sometimes to their life.

In this chapter the evolution of the protection of reproductive rights is briefly explained. In addition, the chapter describes the reasons that the absolute prohibition on abortion in Chile, as well as the criminal cases that result from this prohibition, constitutes a violation not only of health-related human rights, but also of other human rights, such as the right to be free from discrimination based on socioeconomic status, the right to life, liberty, and security, the right to be free from discrimination based on sex, the right to reproductive health and family planning, the right to privacy, the right to legal representation, the right to due process, and the right to be presumed innocent.

A. THE EVOLUTION OF REPRODUCTIVE RIGHTS AS HUMAN RIGHTS

The dynamic nature of human rights has allowed different sectors of society to work toward ensuring that their needs are incorporated within the international system for the protection of human rights. This dynamism has also allowed for the enrichment of the definition of human rights, allowing for an expansion of the framework of human rights protection to cover situations that particularly affect women, or that affect women differently. In this way, reproductive rights have been incorporated into the definition of human rights.

The elimination of all forms of discrimination against women has been an important basis for the expansion of international human rights to encompass the protection of reproductive rights. Discrimination on the basis of gender is prohibited by the Universal Declaration of Human Rights,⁹ the International Covenant on Civil and Political Rights (“Covenant on Civil and Political Rights”),¹⁰ the International Covenant of Economic, Social, and Cultural Rights (“Covenant on Economic and Social Rights”),¹¹ and the American Convention on Human Rights. In 1979 the Convention on the Elimination of All Forms of Discrimination Against Women (“Women’s Convention”) set out a specific legal framework to protect women from discrimination. To date, this instrument has been ratified by more than 160 countries.¹²

These treaties contain the basis for the development of women’s reproductive rights. The rights set forth in these treaties, such as the right to life, liberty, and security, the right to privacy, to marry and to found a family, as well as the right to be free from torture or other cruel, inhuman, or degrading treatment, are basic to the analysis of the rights of Chilean women who decide to have an abortion.

On a regional level, the Interamerican Convention on the Prevention, Punishment, and Elimination of Violence Against Women (“Convention of Belém do Pará”) protects a fundamental reproductive right: freedom from sexual violence.

In addition to the international treaties intended to eliminate discrimination against women, the promotion of women’s human rights occupies an important place in the history of the world conferences convoked by the United Nations. In 1968 member states recognized the importance of

women's rights in the International Conference on Human Rights (the "Teheran Conference"). The final act of this conference included a section dedicated to measures to promote women's rights.¹³ This conference also recognized for the first time parents' right to "determine freely and responsibly the number and spacing of their children."¹⁴ Four years after the Teheran Conference, the General Assembly of the United Nations declared that 1975 would be the International Year for Women. The Assembly also convoked a world conference in Mexico with the goal of improving women's conditions, and declared the decade of 1976–1985 the United Nations Decade for Women. Two other world conferences were convoked during the decade for women: the World Conference of the United Nations Decade for Women: Equality, Development and Peace, held in Copenhagen in 1980, and the World Conference to Review and Appraise the Achievements of the U.N. Decade for Women: Equality, Development and Peace, which took place in Nairobi in 1985.

Among more recent conferences, the World Conference on Human Rights, held in Vienna in June, 1993, represented an important step in the way violations against women's and girls' right to equality were regarded from a human rights perspective.¹⁵ In 1994, the World Conference on Population and Development in Cairo (the "Cairo Conference") took place. The Programme of Action of the International Conference on Population and Development (the "Cairo Programme of Action") is the conference document that, more than any other previous document related to population and development issues, emphasizes women's human rights. The international consensus expressed in this document defines reproductive health as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes."¹⁶ It adds that "reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so." Men and women have the right to "obtain information" and have "access to safe, effective, affordable, and acceptable methods" of their choice for the regulation of fertility, as well as "the right of access to appropriate, adequate health care services that will enable women to go safely through pregnancy and childbirth."¹⁷

The Cairo Programme of Action recognizes a category of human rights known as "reproductive rights," which includes the fundamental rights of

all persons to freely and responsibly choose the number and spacing of their children, and to have access to the information, education, and the means to do so. The Cairo Programme of Action repeats the same prohibition on the use of abortion as a method of family planning as the 1984 Conference on Population in Mexico had previously done. However, it also urges member nations to consider the prevention of unwanted pregnancies a priority, so that the need to resort to abortion will be reduced through the provision of more and better-quality family planning services, and that women with unwanted pregnancies have access to trustworthy information and compassionate counseling, and that in those cases where an abortion has taken place, that it be immediately followed by counseling on family planning methods.¹⁸ The Cairo Programme of Action also provides that women must, in all cases, have access to quality health care services to treat the complications that might arise from abortion.¹⁹

The Fourth Conference on Women in Beijing in 1995 (the “Beijing Conference”) resulted in the approval of the Beijing Declaration and the Platform for Action of the Fourth World Conference on Women (the “Beijing Platform”), which confirms the reproductive rights established in the Cairo Programme of Action. The Beijing documents also advance the discussion on sexuality that began at the Cairo Conference, introducing for the first time the concept of sexual rights. In addition, the Beijing Platform urges governments to “consider reviewing laws containing punitive measures against women who have undergone illegal abortions.”²⁰

This review shows that although women’s health and reproductive rights have historically been a part of the concept of women’s human rights, it was between 1992 and 1996 that nations participating in various international conferences made a commitment to take these rights to a new level. The documents signed by governments in these conferences do not create binding legal obligations on the part of the signatories, but they are important nonetheless because they establish key concepts and act as political action documents, setting the direction of the development of human rights.

B. INTERNATIONAL HUMAN RIGHTS VIOLATED BY CHILE’S ABORTION LAWS AND IN THE CRIMINAL PROCESS

Governments in general, and the Chilean government in particular, are obligated to respect the human rights established in international treaties

that the country has ratified. Thus, people are protected not only by domestic law but also by the regional and universal human rights system. The obligations created by international law must be observed within the territory of each state as provided by that state's law. Since the 1980 constitutional reforms, article 5 of the Chilean Constitution has provided that:

The exercise of sovereignty is limited by respect for the essential rights that emanate from human nature. It is the duty of State organs to respect and promote the rights guaranteed by the Constitution, as well as by international human rights treaties that have been ratified by Chile and have entered into force.

In Chile, in order to ratify an international treaty, both the president and Congress must agree to do so.²¹ Even though the law clearly establishes the process for approving and ratifying an international treaty, there is no clear and unambiguous provision specifying the process for incorporating an international treaty into national law.²² In spite of the absence of such a provision, the recurrent practice in Chilean courts has been to accept international treaties as domestic law as long as the following three elements are present: the treaty has been approved by Congress; it has been promulgated by presidential decree; and the Official Digest has published both the text of the treaty and that of the presidential decree that promulgates it.²³

Although the law does not expressly provide for the legal status of a treaty, the legal status of international treaties in Chile is equivalent to that of a domestic law.²⁴ This can be inferred from the fact that the Constitutional Court is charged with deciding on constitutional issues that might be raised while a treaty is being considered by Congress.²⁵ Thus, treaties need not be submitted to an examination of their legality, since they are at least equivalent to other law.²⁶

Chile has ratified all international human rights treaties discussed in this report. Therefore, the analysis of the human rights violated by restrictive abortion laws and criminal procedure in Chile set out in this report includes both an examination of the applicable domestic and international legal norms.

B.1 THE RIGHT TO FREEDOM FROM DISCRIMINATION BASED ON SOCIAL AND ECONOMIC STATUS

In Chile the selective application of laws on abortion violates the internationally protected right to nondiscrimination for socioeconomic reasons. Article 2 of the Covenant on Economic and Social Rights provides that: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 2 of the Covenant on Civil and Political Rights has a similar provision. One of the fundamental principles of human rights law is that no human right guaranteed in international human rights instruments can be violated because of an individual’s economic status.

While well-off women have the economic means to pay for an abortion in a private clinic with expert doctors, poor women often have to undergo high-risk procedures at the hands of untrained persons. If these women suffer complications as a result of such procedures, they must seek medical help at public hospitals. These institutions frequently report them to the police. This situation in itself is a violation of the human rights of the victims of such procedures.

B.2 THE RIGHT TO LIFE, LIBERTY, AND SECURITY

The right to life, liberty, and security is protected by international human rights treaties as well as by the Chilean Constitution. The Universal Declaration states that “all individuals have the right to life, freedom, and personal security.”²⁷ This right is also enumerated in the Covenant on Civil and Political Rights,²⁸ the Convention of Belém do Pará²⁹ and the American Convention on Human Rights.³⁰ At the national level, “the [Chilean] Constitution protects the right to life and the physical and psychological integrity of all persons.”³¹

The right to life

The right to life is violated in cases of deaths from pregnancies or childbirth when the pregnancy resulted from the state’s failure to guarantee access to basic reproductive health services. Moreover, there is also a violation of the right to life when a law such as Chile’s abortion law does not allow women access to certain reproductive health services.³²

Article 6.1 of the Covenant on Civil and Political Rights establishes that “the right to life is inherent to the human person. This right is protected by law. No one may be arbitrarily deprived of life. “While this provision has traditionally been applied only to due process in cases of the applicability of the death penalty, the Human Rights Committee recently recommended that state parties to the Covenant more fully implement this article, adopting positive measures to ensure its protection.³³ Moreover, in its recommendations to Peru on November 6, 1996, the Human Rights Committee stated with respect to Peru’s abortion law: “The Committee is also concerned that abortion gives rise to a criminal penalty even if a woman is pregnant as a result of rape and that clandestine abortions are the main cause of maternal mortality. These provisions not only mean that women are subject to inhumane treatment but are possibly incompatible with articles 3, 6, and 7 of the Covenant.”³⁴ The Committee specifically recommends that Peru “take the necessary measures to ensure that women do not risk their life because of the existence of restrictive legal provisions on abortion.”³⁵

Article 19 of the Chilean Constitution assures all persons “the right to life and to physical and psychological integrity.” In Chile the absolute prohibition on abortion violates this right to life. Women whose life is threatened by pregnancy are prohibited from having an abortion that would save their life. Furthermore, low-income women who are forced by their social or economic circumstances to have an abortion must resort to unsanitary procedures that put their lives at risk.

The above argument is supported by statistics that reveal the danger of clandestine abortion. Specialized studies demonstrate that legal abortion has a mortality rate of less than one for every 100,000 procedures,³⁶ while clandestine abortion in Latin America is estimated to cause the death of 50 to 100 women for every 100,000 procedures.³⁷ It is estimated that 70,000 women every year die from clandestine and unsafe abortions worldwide.³⁸ These figures demonstrate that the fact that it is illegal for health services to provide abortions threatens women’s life and health.

The criminalization of abortion does not reduce its incidence but instead converts it into a clandestine procedure.³⁹ The proportion of pregnancies that result in abortions is larger in Latin America than in any other region of the world, in spite of the fact that abortion is illegal in all countries

except for Cuba, Guyana, and Barbados.⁴⁰ Of the six countries studied in a 1994 report (Brazil, Colombia, Chile, Mexico, Peru, and the Dominican Republic), Chile had the highest proportion of abortion.⁴¹ It is estimated that in Chile one of every three pregnancies ends in abortion,⁴² compared with 9% of pregnancies that end in abortion in The Netherlands, 17% in France, and 30% in the United States, countries where abortion is legal and accessible.⁴³

The right to liberty and security

According to international human rights laws, states cannot force women to conceive a child against their will. The Covenant on Civil and Political Rights, as well as the American Convention on Human Rights, establish that “every one has the right to liberty and security of person. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law...”⁴⁴ The decision to have a child should be “a voluntary and autonomous one, and a positive and enriching experience for the woman. To prevent this from occurring by forcing a woman to carry an undesired pregnancy to term and to deal with the consequences is to compromise her freedom, dignity, and right to decide, and to condemn her to a future she did not choose.”⁴⁵ As the Cairo Programme of Action affirms, states have “first and foremost” the “obligation” to “ensure that every child born is a wanted child.”⁴⁶ The state that prohibits abortion and fails to offer adequate access to contraceptive methods leaves women at risk of unwanted pregnancies, thus endangering their health and autonomy. Another example that compromises women’s autonomy and security is when women are harassed, subjected to ignominious trials, and put in jail for having an abortion, as were many of the women in this report.

B.3 THE RIGHT TO FREEDOM FROM DISCRIMINATION ON THE BASIS OF GENDER

The right to be free from discrimination on the basis of gender is one of the cornerstones of human rights under international law.⁴⁷ The Women’s Convention requires all states parties to “repeal all penal provisions which constitute discrimination against women.”⁴⁸

Abortion laws, as well as their discriminatory application against the poorest women, perpetuate a paternalistic control over women’s reproductive lives, and constitute a form of discrimination on the basis of gen-

der. The prosecution of women who have had abortions violates the rights of women who are pregnant against their will.⁴⁹ The Chilean state has committed itself to guaranteeing the rights protected by the Women's Convention, "by ... eliminating discrimination against women."⁵⁰ For example, women's right to health, protected by Article 12 of the Women's Convention and Article 12 of the Covenant on Economic and Social Rights, among other treaties, is violated when the law prohibits a medical procedure that is practiced exclusively on women. In fact, all the violations of rights discussed in this chapter can also be characterized as violations to the right of nondiscrimination on the basis of gender.

B.4 THE RIGHT TO HEALTH, REPRODUCTIVE HEALTH, AND FAMILY PLANNING

Both international human rights treaties and Chile's Constitution guarantee the rights to health, reproductive health, and family planning.

The right to health

The right to health is recognized in the Universal Declaration⁵¹ as well as in the Covenant on Economic and Social Rights, which provides that: "[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."⁵² Moreover, "the Chilean Constitution ensures to all persons the right to health. The state protects the free and equal access of all to protection and recuperation of one's health and to rehabilitative measures."⁵³ The Women's Convention, which will be discussed in the following section, also compels the states parties to protect women's right to health.

When the state does not permit abortion, and pregnancy results in health problems or even in death (whether from a clandestine abortion or from childbirth complications), women are denied the right to medical attention and health guaranteed by the Constitution and international treaties. Furthermore, the possibility of being arrested and prosecuted can deter women who have undergone clandestine abortions from seeking medical attention when complications occur.

The right to reproductive health and family planning

Three different provisions of the Women's Convention incorporate reproductive health and family planning as components of the right to health. Article 12 establishes that "the States Parties shall take all appropriate

measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”⁵⁴ The Convention also states that “States Parties shall take all appropriate measures to ... ensure [women in rural areas] ... the right ... (b) to have access to adequate health care facilities, including information, counseling, and services in family planning.”⁵⁵ With regard to family planning, the Convention establishes that “States Parties ... shall ensure, on a basis of equality of men and women ... (e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights....”⁵⁶

In establishing these rights for women, the Women’s Convention goes beyond the right to health, and compels states parties, including Chile, to offer adequate family planning services. The Cairo Programme of Action and the Beijing Platform consider abortion in dangerous conditions a grave public health problem that puts the lives of a large number of women at risk.⁵⁷ These documents also ask states to give “accurate” information and “comprehensive counseling” to all women who have unwanted pregnancies and, as stated by one commentator, to “ensure that women who have suffered complications following an abortion have timely access to health services, counseling, and post-abortion education in order to avoid finding themselves in the same situation again.”⁵⁸ The treatment of Chilean women who go to public hospitals for help reveals a very different reality. Of course, it is important to underscore that even if there were adequate family planning services, there still would be unwanted pregnancies.⁵⁹

B.5 THE RIGHT TO PRIVACY

The Covenant on Civil and Political Rights states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honour or reputation.”⁶⁰ The Chilean Constitution also ensures “respect and protection for one’s private and public life and the dignity of the person and his family....”⁶¹ More specifically, the Ethics Code of the Chilean Medical Association provides that confidentiality between doctor and patient is a right as well as a duty of the professional, even when the patient is not under his or her care.

As this report demonstrates (see the section on “Reporting of the Crime”), most of the cases where women were reported to the police for abortion occurred when a medical professional reported a woman to the police after she gave the professional information on her condition for the purpose of obtaining medical treatment. This behavior on the part of medical professionals violates the rights of these women to privacy and patient confidentiality.

B.6 THE RIGHT TO LEGAL ASSISTANCE

Article 14(3)(d) of the Covenant on Civil and Political Rights establishes the obligation of states to provide legal assistance to those who do not have the means to pay for it. The same principle is also found in Article 8 related to one’s rights at trial in the American Convention on Human Rights.⁶² Article 19 (3) of the 1980 Chilean Constitution establishes “the equal protection of the law in the exercise of one’s rights. Every person has the right to legal assistance in the manner established by law, and no authority or individual can impede, restrict, or undermine the lawful intervention of a person’s lawyer unless the law so requires.... The law shall provide for the means to ensure legal assistance and defense counsel to those who cannot obtain it for themselves.”

This report shows that many women prosecuted for abortion in Chile lack legal representation. (See the section below, “Right to Defense”). On average, only 38% of the accused women had access to defense counsel, and 60% had no legal assistance. When a lawyer participated in the defense, it was primarily in those cases where the accused was imprisoned. The defense is dispensed with voluntarily or by force for lack of resources when there is no detention. Although the petition to suspend imprisonment does not legally require the intervention of a lawyer, a lawyer is in fact necessary when a person, particularly a woman with no criminal record, is imprisoned before trial without legal justification. Adequate assistance from defense counsel is vital to securing release on bail or provisional release prior to trial. The lack of legal assistance provided to women prosecuted for abortion shows that within the context of abortion prosecutions, there are clear violations of international treaties to which Chile is a party, as well as of human rights protected by the Chilean Constitution.

B.7 THE RIGHT TO DUE PROCESS AND TO BE PRESUMED INNOCENT

In addition to violating the right to legal assistance, prosecutions of women who have abortions violate other rights as a result of their being subjected to preventive, or pretrial, imprisonment.⁶³ The Covenant on Civil and Political Rights provides that preventive imprisonment prior to trial should not be the general rule.⁶⁴ The American Convention on Human Rights holds that “[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law...”⁶⁵ Article 19(7)(e) of the Chilean Constitution provides that preventive imprisonment should be considered only when the judge finds it necessary under the Criminal Procedure Code.⁶⁶

In Chile, judicial practice demonstrates that preventive imprisonment is the rule rather than the exception. More specifically, as this report shows, preventive imprisonment is used frequently in abortion cases (see the section on “Preventive Imprisonment” below). Fifty-seven percent of women who had abortions spent time in prison. Close to 48% were in prison for less than 14 days, although a woman from Temuco spent almost seven months in prison in 1990. The fact that preventive imprisonment is the rule rather than the exception in Chilean criminal procedure is evident not only from empirical observation but also from judicial practice and the provisions of the Criminal Procedure Code.⁶⁷

As this chapter has shown, Chile, through its laws on abortion, its laws and practice related to criminal procedure, and the behavior of some officials, has violated and continues to violate numerous human rights of women who have obtained abortions and other persons involved in clandestine abortions.

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.



Cristina, 20-years-old and illiterate, got pregnant in the countryside, on one of the Cabuco Islands. When she realized she was pregnant, afraid of her family’s reaction and with no support from her boyfriend, she left for the city where she found work in a store. A friend offered to take her to a woman who did abortions very discretely. The woman charged her 30,000 pesos (approximately U.S. \$66), which Cristina raised only through great effort. She even borrowed money from her roommate. The method used was a surgical probe. She developed an infection, which gave her a high fever and badly frightened her. The woman who performed the abortion told her to go to the emergency health unit and say she had fallen off the roof of her house and onto a pile of wood. She managed to get to a hospital where they took care of her but they demanded to know who had performed the abortion. No matter how much they threatened her, Cristina remained silent — she remembered the woman had threatened to tell all to the police if her name was revealed. She was so frightened she said nothing and still keeps the woman’s name a secret. Her family knows nothing and her friend has been to see her a couple times. She has been in jail for 16 months.

CHAPTER II: HEALTH POLICY IN CHILE AND ABORTION AS A PUBLIC HEALTH PROBLEM

A. HEALTH POLICY IN CHILE

According to international human rights treaties and other international instruments, the state has certain areas of responsibility it cannot delegate, including health promotion and protection. Nevertheless, the neoliberal economic model that inspired the current Constitution has led to a significant deterioration of the state's capacity to improve on these areas. First, during the 1973–90 military regime, economic resources devoted to health were dramatically reduced. During the last seven years, in spite of the fact that this sector has increasingly become a priority, there seem to be few concrete improvements. The coverage, effectiveness, and quality of health services remains inadequate, and the public health sector focuses on a curative rather than preventive approach in the provision of health services.

The language used in the Constitution reflects the ideological differences between the 1980 Constitution and international treaties that protect the right to health. One of the initial drafts of the constitutional provision on the right to health provided that this right should be guaranteed. The final version specifies that the Constitution “protects free and equal access...” to health services. This modification originated in the Consejo de Estado.⁶⁸ Moreover, the courts have concluded that citizens cannot present a request for protection (*recurso de protección*) alleging a state violation of this principle when a private insurance company refuses to pay medical expenses. The courts have held that these cases do not violate the right to health but the right to property, which originates in the contractual relationship, a right that includes incorporating such property interests into the assets of the plaintiff.⁶⁹ The protection of the right to health set forth in the Chilean Constitution is only a declaration of principles. It does not ensure the right of everyone to live a dignified life, especially not the poor.⁷⁰ As a result women are left unprotected, their human and constitutional rights to physical and psychological integrity are violated. The cases included in this report demonstrate the lack of protection given to women in matters related to their health.

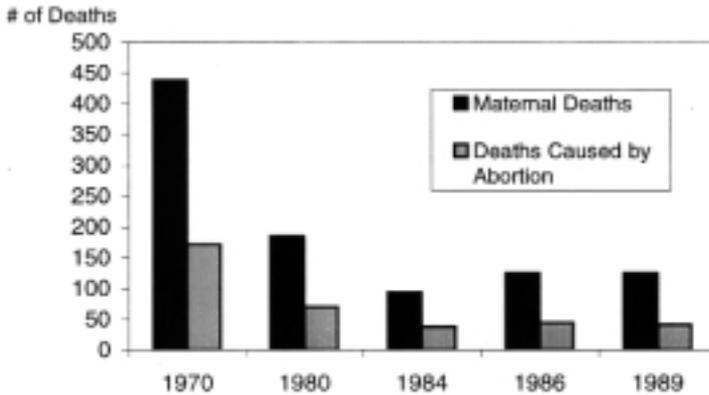
At the policy level, the Maternal and Perinatal Health Program is the

Ministry of Health's principal reproductive health program both in terms of scope and coverage.⁷¹ The primary activities of this program are related to pregnancy, childbirth, and nursing.⁷² Other services include responsible parenthood, defined as the services provided to women or couples of reproductive age (15 – 49) who wish to control fertility; consultations related to sexually transmitted infections; and hospitalization for abortion.⁷³ This last service is defined as the medical services provided to a woman from the moment she enters an obstetrics and gynecology unit following an abortion procedure or miscarriage.⁷⁴

B. ABORTION IN CHILE: A PUBLIC HEALTH PROBLEM

Public health statistics show that the number of women hospitalized for abortion complications has remained more or less constant. Between 1983 and 1984 there were 42,000 cases, while between 1990 and 1991 the figure increased to 44,000.⁷⁵ Seventy-five percent of such cases are induced abortions, as opposed to miscarriages. Health authorities and others estimate that only 25% of the women who have abortions suffer complications. Nevertheless, in spite of a slow decline in numbers beginning in 1964 to the present, (see Bar Graph 2), abortion is still the leading cause of maternal mortality in Chile. Close to a third of maternal deaths are estimated to be directly related to abortion; furthermore, it is believed that this figure is lower than the actual figure. A 1984 study based on death certificates determined with certainty that out of 59 maternal deaths following abortions, four corresponded to spontaneous abortions (miscarriages) and 24 to induced abortions. The rest could not be determined with exactitude, although the study concluded that they were deaths from induced abortions, based on the characteristics, circumstances, and complications of the cases.⁷⁶

Bar Graph 2: Number of Maternal Mortalities



Source: APROFA Bulletin, Year XVIII, 1992, and APROFA Records 1991, 1991

Obstetric expenditures in 1991 represented between 25% and 30% of all health service expenditures. In some hospitals in the Santiago metropolitan region, however, this figure reached almost 52%.

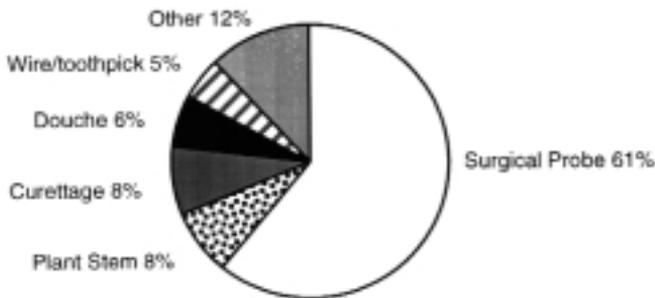
Abortion, when performed under adequate medical conditions, is unlikely to have any negative impact on women's health.⁷⁷ During the 1970s and 1980s, there was a decrease in the maternal mortality and morbidity rates of the procedure in those countries where abortion was legalized. However, because of abortion's illegal status, the tens of thousands of abortions practiced every year in Chile must be practiced clandestinely. This fact, together with the poverty of most women who seek abortions, constitutes an invitation to unqualified people to perform unsanitary and unsafe abortions. Frequently the pregnant woman induces her own abortion, using ancient and well-known techniques such as the insertion of wires, sticks, and/or toothpicks into the vagina. In other cases, women seek help from third parties who have had experience in these procedures.

Abortion procedures used by pregnant women or by a midwife with no training, and where sanitary conditions are lacking, can cause multiple complications that range from slight to severe. The damage can include "chronic inflammation, sterility, menstrual alterations, pregnancy and childbirth complications in future births, and possible rupture of internal scars from previous perforations caused by abortions."⁷⁸ Some experts believe that there is also psychological trauma resulting from abortion, although others disagree, arguing there is only a sort of post-abortion

relief.⁷⁹ Another grave complication of abortion is sterility caused by perforation of the genital organs or by a widespread genital infection. Among the women in this study, seven (4.5%) had their reproductive organs removed, in most cases a total hysterectomy. Sometimes other complications were accompanied by peritonitis. Two of the women suffered a tear in their intestine which resulted in a colonectomy, one of them in Santiago (1991) and the other in Arica (1983). A study done at Salvador Hospital in Santiago showed that out of 84 patients with secondary infertility, at least 6% had had at least one induced abortion. Eleven of the 21 hysterectomies performed in that hospital's gynecological unit, more than 50%, were the consequence of an abortion.⁸⁰

The methods used to induce abortion by the women studied were high-risk methods (see Chart 3). The surgeon's probe was the most-used method (61%). Depending on the midwife's skill, this is a sterile probe whose application may be accompanied by injectable antibiotics. It was more commonly used in Santiago. In Santiago, 8% of the pregnancies were interrupted by curettage (scraping the uterus), in most cases by a paramedic using medical instruments. The introduction of sticks and plant stems at home represented 8% of induced abortions, followed by vaginal douches. The introduction of toothpicks and wires in the vagina is an extremely high-risk practice because they might perforate the walls of the uterus.

Chart 3: Types of Abortion Procedures for All Cities



There is also evidence of the use of injectable drugs intended to provoke dilation or contractions in order to induce an abortion. Together with other commonly used drugs, such as quinine, such drugs can have serious side effects.⁸¹ For example, there can be allergic reactions, some highly toxic, causing death by kidney or respiratory collapse, among others.⁸²