

women behind B A R S

CHILE'S ABORTION LAWS

A HUMAN RIGHTS ANALYSIS

CHAPTER III

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.



Sandra, 24-years-old, a prostitute, says that she got pregnant by accident, without knowing who the father was. Alone and without any money to survive during her pregnancy, she decided to have an abortion, which seemed free of complications. But since she had to continue working, she did not get the rest she needed, much less the medical care, so one day while working she suddenly began to hemorrhage. She ended up in the emergency room where she states that she was mistreated. After her release from the hospital, she was taken directly to jail.

CHAPTER III: ANALYSIS OF DOMESTIC LEGISLATION AND COURT RECORDS: WOMEN PROSECUTED FOR ABORTION

A. THE LEGAL FRAMEWORK OF ABORTION IN CHILE

In Chile, abortion is illegal under any circumstance. Abortion is prohibited by the Criminal Code, articles 342 to 245. It is classified under “Crimes against the Family Order and Public Morality.” The Chilean law on abortion is one of the most restrictive in the world. The Chilean Criminal Code, which dates back to 1896, is the oldest in Latin America. Its framework for penalizing abortion is derived from the 1850 Spanish Criminal Code,⁸³ whose provisions related to abortion have been completely reformed in modern Spain. The Chilean Criminal Code does not define abortion, but in 1963 a Supreme Court ruling defined it as the malicious interruption of pregnancy for the purpose of avoiding the birth of a fetus or of interrupting the natural course of pregnancy. The Criminal Code punishes every kind of intentional abortion, as well as abortions caused by an intentional or unintentional violent act on a woman whose pregnancy is evident. The law punishes both the woman who consents to having an abortion and the abortion provider. The statutory punishment for abortion is three to five years of imprisonment for obtaining an abortion and 541 days to three years for providing one, with medical professionals involved in abortions receiving more severe penalties.

In spite of the restrictive provisions of the Criminal Code, therapeutic abortion was permitted by the Health Code from 1931 to 1989. During this period, women whose lives were in danger could obtain an abortion with the approval of two doctors. In 1989, during the last weeks of Pinochet’s military dictatorship, therapeutic abortion was eliminated. The draftors of the 1989 law concluded that “considering the advances in modern medicine, therapeutic abortion is not justified under any circumstance.”⁸⁴

By abolishing therapeutic abortion, Chilean criminal law subordinates a woman and her life to the life of the fetus. This position is reinforced by the 1980 Constitution, which protects the lives of “the unborn” in the same article as other basic rights. Thus, the life of the fetus is considered to be separate from the pregnant woman’s right to choose whether to

continue the pregnancy. Furthermore, all institutional mechanisms available, including the police, are used to “protect” the life of the fetus.⁸⁵

Following the logic of Chilean law, although the right to life is guaranteed by the Constitution, women’s right to life is subordinated to their obligation to carry to term all pregnancies, even those that are unwanted, including those that result from contraceptive failure, from ignorance of correct contraceptive use, from rape, and even when the pregnancy endangers a woman’s life. Thus, under Chilean law, women’s lives and bodies are nothing more than a vessel, and it is the state, not women, that has control over women’s bodies.

In spite of this, women still have abortions as the last recourse against an unwanted pregnancy. Of all the cases of abortion penalized by Chilean criminal law, the types of abortions that are predominant in this report are self-induced (Article 344) or those performed on them with their consent (Article 342 (3)).

B. PARTICIPATION IN AND CRIMINAL RESPONSIBILITY FOR ABORTION

In Chilean law there are three types of participation in a crime that determine responsibility for such crime: principal, accomplice, and accessory. The principal is the main person responsible for a crime, the person who had control over the criminal action, that is, the person who both objectively and subjectively controlled the criminal behavior, in such a way that he or she was the person who decided to consummate the crime.⁸⁶ Accomplices are those who, not being the principal, cooperate with the criminal behavior before or during its commission.⁸⁷

Accessories are those who, not having participated in the crime, but knowing a crime to already have been committed by another, aid the principal in some way, such as by receiving, hiding or supplying the means or instruments to avoid capture.⁸⁸

Other terms used in this report include women who have had abortions and abortion providers, also referred to as midwives in other studies. Abortion providers are the third parties who perform an abortion procedure on a pregnant woman with her consent.⁸⁹

B.1 ANALYSIS OF THE OFFENDERS BY GENDER

Court records show that most of the persons found guilty of abortion

were women. Table 4 shows that, between 1983 and 1991, men's participation varied between 11% and 20%. The greatest percentages of men convicted of abortion were 29% in 1987 and 21% in 1991.

Table 4: Number of Cases by Type of Responsibility of Those Convicted

| | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1991 |
|-------------------------------|------|------|------|------|------|------|------|------|
| Type of Responsibility | | | | | | | | |
| Principal | 98 | 93 | 92 | 61 | 91 | 83 | 55 | 32 |
| Women | 86 | 85 | 78 | 55 | 66 | 68 | 46 | 24 |
| Men | 12 | 8 | 14 | 6 | 25 | 15 | 9 | 8 |
| Accomplice | 10 | 4 | 7 | 10 | 6 | 6 | 3 | 6 |
| Women | 3 | 1 | 5 | 7 | 5 | 5 | 2 | 5 |
| Men | 7 | 3 | 2 | 3 | 1 | 1 | 1 | 1 |
| Accessory | 1 | 1 | --- | 1 | 7 | 2 | 3 | --- |
| Women | --- | 1 | --- | 1 | 3 | 1 | 1 | --- |
| Men | 1 | --- | --- | --- | 4 | 1 | 2 | --- |
| Total | 109 | 98 | 99 | 72 | 104 | 91 | 61 | 38 |
| Women | 89 | 87 | 83 | 63 | 74 | 74 | 49 | 29 |
| Men | 20 | 11 | 16 | 9 | 30 | 17 | 12 | 9 |

Source: Justice Yearbooks 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1991 published by the National Statistics Institute. The figures for 1990 are not available.

Table 5 shows participation in the cases studied according to sex. It differentiates between principal-participant, the principals who obtained abortions, and principal-providers. This distinction derives from the courts, which have held that a principal-participant need not have taken part directly in the abortion procedure, but is still a principal of the crime because he or she either supplied the means to carry out the procedure or observed the procedure without taking part in it. The total number of those involved in this study, whether as principals of the abortion, providers, or accomplices was 221; of these, 159 were women who had an abortion. Of these 159, four were minor women who reported having had an abortion performed on them without their consent (victims of abortion). The others were women who had an abortion with their consent; of these, 145 were adults of majority age and 10 were minors; five of the minors were indicted and five were not. The total sum of persons involved also includes 39 coprincipals or providers, eight principal-participants, and 15 accomplices. The total number of women involved was 200 (90%), compared with 21 men (10%).

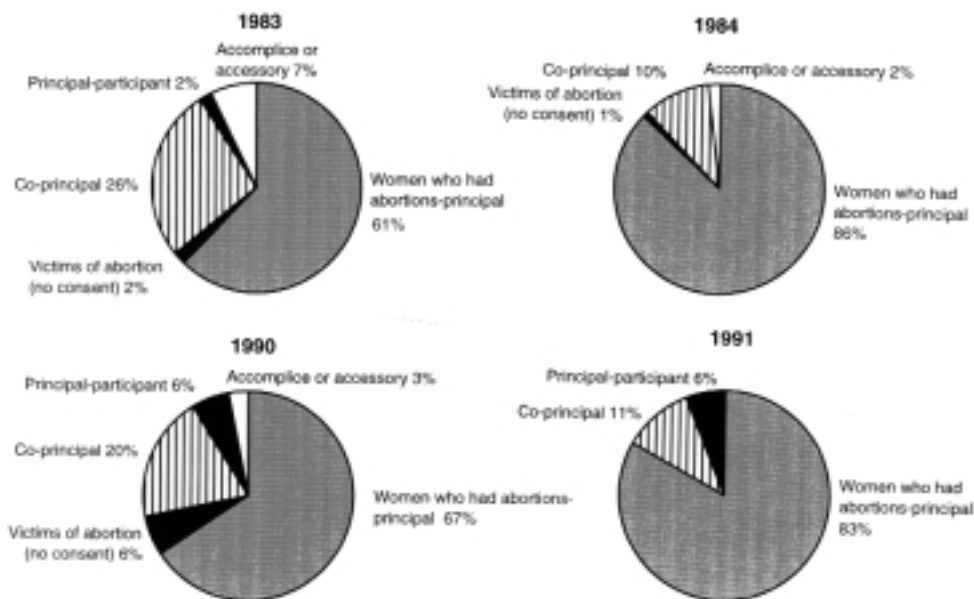
Table 5: Participation and Gender of the Defendants

| | Women | Men | Total | % |
|-----------------------------------|------------|-----------|------------|--------------|
| Participation | | | | |
| Women who had abortions-principal | 155 | -- | 155 | 70% |
| Victims of Abortion (no consent) | 4 | -- | 4 | 2% |
| Co-principals | 31 | 8 | 39 | 18% |
| Principal-participant | 4 | 4 | 8 | 4% |
| Accomplice or Accessory | 6 | 9 | 15 | 7% |
| Total | 200 | 21 | 221 | 100%* |

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

Women’s participation in abortion varies from year to year in the research undertaken and from city to city. Chart 6 shows the distribution by year of women’s participation in the cases studied. The analysis consistently shows that each year women undergo criminal prosecution mostly for having induced their own abortion. The percentage of women tried as coprincipals fluctuated between 26% and 20% (1983 and 1990) and 10% and 11% (1984 and 1991).

Chart 6: Women’s Participation in Abortion



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

B.2 NUMBER OF CASES BY CITY

The cases included in this report cover four Chilean cities, although most of them are from Santiago, followed by Valparaíso, Arica, and Temuco, in that order. The intake of abortion cases countrywide show the same order of prevalence. The National Statistics Institute has statistics on new abortion cases filed every year, according to information provided by the courts (see table 7).⁹⁰

Table 7: Incoming Cases by Court of Appeals

| | Santiago | Valparaíso | Arica | Temuco | Total |
|-------|----------|------------|-------|--------|-------|
| 1983 | 120 | 74 | 6 | 31 | 231 |
| 1984 | 197 | 60 | 10 | 17 | 284 |
| 1991 | 45 | 38 | 1 | 13 | 97 |
| Total | 362 | 172 | 17 | 61 | 612 |

Source: National Statistics Institute

Table 8 breaks down the cases reviewed in this report by year and territory. The number of cases identified is clearly larger than the number of cases reviewed. The difference between the number of cases identified and the number of cases reviewed — see tables 7 and 8 — resulted from the impossibility of locating all court records. In Santiago it was possible to review 90 cases; in Valparaíso, 32; in Arica, 18; and in Temuco, 13. The greatest number of cases was filed in 1984, according to the records of incoming cases in these areas, although NSI figures show 1984 as having the second-highest number of cases filed nationally. A countrywide NSI statistics summary shows that there were 605 incoming cases in 1983; 503 in 1984; 258 in 1990; and 230 in 1991.

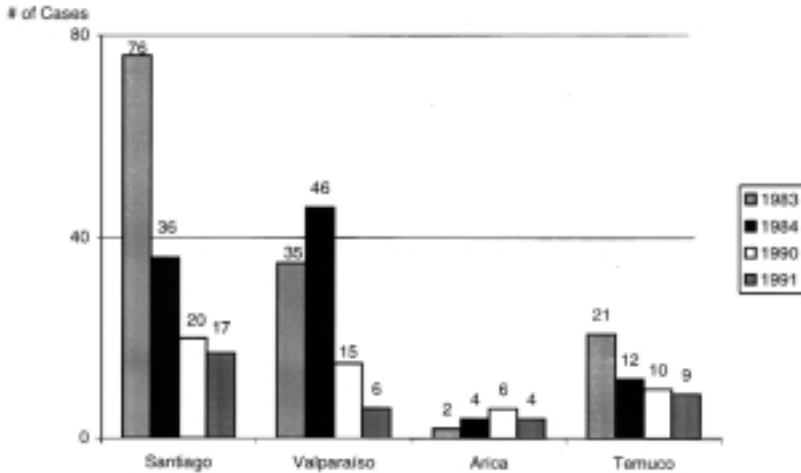
Table 8: Incoming Cases by Court of Appeals

| | Santiago | Valparaíso | Arica | Temuco | Total |
|-------|----------|------------|-------|--------|-------|
| 1983 | 15 | 6 | 4 | 6 | 31 |
| 1984 | 62 | 9 | 10 | 2 | 83 |
| 1990 | 8 | 8 | 3 | 3 | 22 |
| 1991 | 5 | 9 | 1 | 2 | 17 |
| Total | 90 | 32 | 18 | 13 | 153 |

Other figures collected by the NSI show new data on the number of people arrested for abortion. The Intelligence Police (*Policía de Investigaciones*) maintain a record of people arrested and referred to the courts according to the crime. Bar Graph 9 shows the number of per-

sons arrested for abortion from Intelligence Police records, and not the number of cases being prosecuted.⁹¹

Bar Graph 9: People Arrested and Referred to Courts for Abortion, by City



Source: Police Statistics Yearbooks, 1983, 1984, 1990, and 1991, National Statistic Institute and Intelligence Police (*Policía de Investigaciones*), published in separate years, National Statistics Institute, Santiago.

The largest number of persons referred to the courts by the police for abortions was in 1983, the year that, according to court statistics, had the highest number of incoming cases. The only difference between these two sources was in Valparaíso, where the figure was 35 arrested and referred to courts in 1983, compared with 46 in 1984.

C. THE CRIMINAL PROCESS IN CHILE

C.1 THE REPORTING OF THE CRIME

In contrast to the Anglo-American adversarial justice system, in Chile, a civil law country, the courts, composed of one or more judges, both investigate and determine the guilt or innocence of the accused; in order to initiate the criminal process, the court must be informed of the crime. This information can reach the court by various means depending on the category of crime or misdemeanor, since some kinds of crimes require a complaint from the injured party and some do not. According to the Criminal Procedure Code, the criminal process can be initiated either by a reporting of the crime, a complaint, a petition by the Attorney General's Office (*Ministerio Público*), or because the judge investigating

one crime has sufficient cause to initiate an investigation into another crime.⁹² Any person can report a crime without being part of the criminal process.⁹³ Crimes can be reported to the courts, to the police (*Carabineros*) or to the Intelligence Police (*Policía de Investigación*). Table 10 shows that all of the prosecutions for abortion reviewed were initiated by a report, usually from someone affiliated with an institution.

Table 10: Reports Against Women Who Had Abortions, Classified by Origin of the Report

| Total 1983-84; 1990-91 | | |
|-------------------------------|------------|--------------|
| Institutional | # | % |
| Hospital | 127 | 80% |
| Police (<i>Carabineros</i>) | 7 | 4% |
| Intelligence Police | 3 | 2% |
| Other | 1 | 1% |
| Sub-total | 138 | 87% |
| Non-Institutional | # | % |
| Partner (boyfriend/husband) | 8 | 5% |
| Family member | 9 | 6% |
| Stranger | 1 | 1% |
| Herself | 3 | 2% |
| Sub-total | 21 | 14% |
| Total | 159 | 100%* |

*Approximate figures

***Institutional reporting on patient confidentiality:
The legal framework***

Health professionals have an obligation to protect patient confidentiality and to respect a patient’s privacy, an obligation that derives both from ethical obligations and the Constitution. Article 19 of the Constitution creates this obligation in its fourth clause, which guarantees “respect and protection for the private and public life of an individual and his or her reputation and that of his or her family.”⁹⁴ Article 10 of the Chilean Medical Professional Association also establishes that patient confidentiality is a physician’s right and duty, even when the patient is not under his or her care.

In order to enforce and provide content for this constitutional norm, criminal law classifies as “slander and insult” the undertaking of a public

or private act intended to damage a person's reputation. The Criminal Code also protects client and patient confidentiality: it is a crime to reveal information gained through a professional relationship with a client or patient. Article 247 (2) of the Criminal Code makes it a criminal offense for anyone who "in the exercise of any profession that requires a degree, reveals the secrets entrusted to him or her by reason of that profession."⁹⁵

Furthermore, the Criminal Procedure Code specifically exonerates professionals from making statements at trial or providing information for a criminal investigation if it means the breach of patient or client confidentiality. Article 201(2) provides that the following persons do not have the obligation to provide statements in criminal trials or investigations: "those who, because of their status, profession or legal function, such as a lawyer, doctor, or priest, have the duty to keep the secret entrusted to them, but only with respect to information directly related to this secret."⁹⁶

Article 84 (5) of the Criminal Procedure Code provides that the following persons do have the obligation to report crimes: "the directors of hospital facilities or private clinics and, generally, medical, dental, chemical, and pharmaceutical professionals as well as professionals from other disciplines related to health preservation and restoration, and the professional support staff of these disciplines, when they find in a person or corpse indications of a crime or a misdemeanor."⁹⁷ Article 494 (9) of the Criminal Procedure Code classifies as an offense the failure to report a crime in accordance with the previous provision, stating that "the physician who, finding in a person or corpse signs of poisoning or any other serious crime, does not report it to the authorities in a timely manner" is guilty of a criminal offense.⁹⁸ Frequently these two articles are cited as creating the obligation to report or a justification for reporting abortion, an interpretation that only some doctors and lawyers agree on.⁹⁹

According to Alfredo Etcheberry,¹⁰⁰ the Chilean legal system establishes an absolute protection of client and patient confidentiality, and the only exception is article 20 of the Health Code. This article compels physicians to report contagious diseases listed in the regulations.¹⁰¹ According to this legal scholar, there is no obligation to report an abortion, since it is not a contagious disease. Moreover, this argument is supported by the exculpatory nature of fulfilling one's duty to maintain confidentiality

under Article 10 (10) of the Criminal Code. Likewise article 20 (2) of the Criminal Procedure Code exempts professionals from making statements in criminal proceedings in order to protect patient and client confidentiality. Etcheberry asserts that respecting these provisions is the correct interpretation of articles 84 (5) of the Criminal Procedure Code and article 494 (9) of the Criminal Code.¹⁰²

On the other hand, there are criminal law scholars in Chile who hold that in spite of patient confidentiality, there are certain cases in which a professional should reveal the secret entrusted to him or her. For example, confidential information can be revealed when the affected party consents to it, or when the law permits it. Eduardo Novoa Monreal¹⁰³ holds that public interest justifies the breach of patient confidentiality, as in the cases of articles 84 and 494 of the Criminal Procedure Code previously quoted.

The right to keep a private clinic's medical records secret was defended successfully in a recent case before the Chilean Supreme Court, a ruling that was based on the right to patient confidentiality.¹⁰⁴ Two physicians from Victoria, near Temuco, were tried for the crime established in article 494 (9) of the Criminal Procedure Code. This criminal prosecution was initiated in 1984 against two physicians who saw Maria Eugenia, one of the women included in the present research. The doctors said that even though a midwife said that the abortion had been induced, from a medical point of view they could not determine whether it was induced or spontaneous, so they did not report it. Nevertheless, the trial judge said in his ruling that they "... had the obligation to report the incident to the authorities, who are the ones who must decide what the facts were." The Supreme Court reversed this ruling on appeal.

Institutional reporting

In this study, institutional reporting of abortion refers to reports made by hospitals, the police, or other institutions, or by individuals acting on behalf of an institution or because they are affiliated with an institution.

Notwithstanding the controversy surrounding the duty to report a crime and the protection of patient confidentiality, the fact remains that, as is apparent in Table 10, the percentage of institutional reports is about 87%. Of all the cases reviewed, only one person turned herself in for abortion, a midwife whose patient died after the procedure.

The highest number of institutional reports came from the public hospitals where women sought help. Ninety-two percent of institutional reports came from hospitals, and 80% of all reports were made by hospitals. All the hospitals that reported women for abortion were public; there was no instance of a private hospital or clinic reporting an abortion to the police.

Each institution and its staff has a specific procedure for reporting abortions. Most do so with a telephone call or in person to a police officer assigned to the hospital. Court records show that some hospitals, such as Felix Bulnes Hospital which is part of the Western Santiago Metropolitan Health Services, had, at least during the 1983–1984 period, the policy of reporting women for abortion through certain pre-established formalities: the Chief of Services sent the Hospital Director a list of the women admitted to maternity services with a diagnosis of induced abortion. The Hospital Director then sent the list to the Director of the Western Santiago Metropolitan Health Services, who then remitted the list to the Institution's Legal Department, which then reported the women on the list.

This system is illustrated by Felix Bulnes Hospital's internal memo No. 71, written in March 1984, which provides as follows: "Please find attached the list of patients admitted to the isolation sections for induced abortion in February." This list of patients includes the names and addresses of 17 women. Some of these reports included the patient's medical record, including her "confession" and the means used for abortion: "probe," "parsley," etc. Also included on the list were those women who had not "confessed," and on their file was written: "woman denies abortion procedure."

The reports of the Legal Department of the Metropolitan Health Services read as follows: "... who on June the 8th, 1984, asks for an investigation to be opened against M.A. for the possible crime of abortion, that a file be opened and that she be punished with the highest penalty for this crime..." Two things are remarkable in this formal claim for prosecution and punishment. First, in spite of the fact that only a possible abortion is being reported, the letter asks for the highest penalty to be applied. Second, the report is presented by health care professionals, whose duty is to protect patient confidentiality.

Moreover, in addition to this formal report, other officials at the Felix

Bulnes Hospital used more efficient methods of reporting abortions. Midwives or physicians called the policeman on duty in the hospital to arrest and question the patient. Sometimes the patient was arrested as soon as she was admitted to the hospital, and interrogated while she received medical attention. A policeman's statement, found in court records, explains the process:

“He was doing the second round of his shift at the Children's Emergency Room in the Felix Bulnes Hospital, when around 0:30 the Midwife told him that [the woman] had induced her own abortion, and that I should take the necessary measures. I immediately sent notice to the Walker Martínez Sub-station and kept the suspect, S.V.B.V., under arrest. During the interrogation she kept silent and refused to say if there was a third party involved.” (Santiago, 1984)

A physician, M.B., a public employee of the Juan de Noé Hospital in Arica questioned patients like a policeman, not a health care professional who has sworn to care for his patients and protect patient confidentiality. In 1983 and 1984, two women admitted to this hospital were forced to sign “confessions” dictated by the physician and written down by a midwife. One of the women declared at trial that she signed the paper because “the doctor wouldn't take care of her otherwise.” The other woman said the doctor had threatened to withhold authorization for release from the hospital if she did not sign. In both cases the signed “confession” was turned over to the police. In the research conducted for this report, it was confirmed that other physicians also showed willingness to punish women who had had abortions. In one medical record the following was recorded:

Gladys was three months pregnant, working to feed her three children and her husband, who had been banished to the south of the country. Her medical record had the following words in her physician's handwriting: “Must be reported.” (Santiago, 1984).

The fear of being reported can be life-threatening. Its consequences range from a dangerous delay in going to a hospital, to flight, to suicide.

A Valparaiso woman reached the hospital with symptoms of an abortion. While she waited to be admitted, she overheard the

staff talk about reporting her, and she fled. However, her condition got worse, and she was forced to return. (Valparaiso, 1984.)

In other cases women admitted to public hospitals were frequently very worried about their children left at home alone, and requested to be released before it was prudent to do so.

Erica was admitted with symptoms of abortion, and ordered rest and medication. She asked to be released as soon as she felt better, arguing that her three children, including a one-and-a-half-year-old girl, needed her. She argued with the physician in charge until she was released under her own responsibility. However, the doctor warned her that if she returned he would not admit her. She returned to her house, where she had a spontaneous abortion. Upon returning to the hospital, the same physician reported her for abortion. (Viña del Mar, 1991)

Women who have abortions, and even the health care staff, describe incidents that closely resemble police interrogations. Women from Arica, Temuco, and Santiago described in their testimonies, both on and off the court records, that before being treated they had to “confess.” Flora, from Arica, was warned by the midwives that she would not be taken care of unless she confessed. Emilia, from Temuco, was questioned for two days by the midwives and the physician in charge. The physician declared for the court record:

“I must add that two days after being admitted the patient investigated admitted in principle [*sic*] that she had induced her abortion, and later she was questioned again and said she had done it herself, introducing an ovulatory [*sic*] pill at home, and later she continued giving false information, saying that it had not been one pill but two, and later she said it had not been with pills but that she had introduced her finger...” (Temuco, 1983)

Statements for the criminal proceedings were also collected while the women were receiving treatment:

A few minutes before the curettage procedure was started, Lucia was interrogated, but the interrogation had to be suspended because she was going to be operated on. (Santiago 1983)

There are cases in which the health care personnel play a pivotal role in

incriminating the woman, arguing vehemently that the abortion was induced:

The midwife in Ana's case maintained, with all the conviction possible, that the vaginal douche had been used in order to induce an abortion, and even though she couldn't say that the patient had told her so, it was evident, for her, that it was an abortive procedure. (Santiago, 1984)

This same Santiago midwife can frequently be found in court records reporting women. Her signature is in many of the medical records of the women reported, and many of her statements convey this same attitude: the absolute conviction of having observed an induced abortion, without showing judicial officials any doubts. Another midwife, the same one involved in the Felix Bulnes maternity report, was emphatic in her statement against T.S. that her diagnosis of induced abortion was confirmed by the surgical record, which indicated a curettage.

Many women complain in their court statements of being ill-treated by health care personnel. This is not confined to only one hospital: the complaints are common to all the cities included in this research. Marianela, for example, declared before the court that she had had to "confess" her abortion after repeated ill-treatment at the hospital. (Santiago, 1984)

Luzmenia, seven months pregnant, fell down the stairs while carrying buckets of water. She had to receive urgent medical care from the midwife at the rural clinic. She was ordered bed rest, antispasmodic suppositories, and diazepam. When the symptoms of miscarriage grew worse, she tried to reach the hospital, but it took her husband half an hour to find a horse to go and get help. She gave birth at home. Once she reached the hospital, the doctor ignored her statement. She said, "I wanted that baby, it was my first child and I wanted it. The doctor in Cunco treated me very badly, he said that [sic] [what] things I had put up my vagina, I said nothing. I told him about the fall, but it seems he didn't believe me." Luzmenia was reported for induced abortion. (Temuco, 1984)

When reports are made while the woman who had the abortion is still in the hospital, the criminal process can start with her arrest in the mater-

nity ward. After being released from the hospital, she is immediately taken to the courts to give her statement, opening the file on the case. This occurred in the case of two San Juan de Dios Hospital patients (part of the Western Santiago Metropolitan Health Service) reported by a female physician who called the police requesting their arrest. The poor state of health these women were in when taken to court was recorded, and they were immediately released. The court order reads:

“...[C]onsidering the merits of this case, and in particular the precarious state of health of the two accused, which is evident to plain sight, and in order to prevent any complications, injury, or illness, they are to be released for lack of merit.” (Santiago, 1991)

Reporting by individuals

Close to 13% of the reports in the cases reviewed were presented by individuals who were neither police nor public health services officials (see Table 10). They were presented for the most part by the former partner of the women who had the abortion or by relatives. In many of the cases reviewed, the relatives who reported the abortion were the woman's parents. These two subgroups had different attitudes about the pregnancy and the abortion, as well as different reasons to report their partners or daughters.

The men who reported their partners for abortion were frequently motivated by revenge. In most of the cases, they had broken up on bad terms. These men went to the police without considering the consequences, even when they had taken part in the decision to obtain the abortion or in the abortion procedure itself.

Viviana worked and supported the family, but her partner was not inclined to work. She was pregnant, and she earned so little as a saleswoman that it was not enough for her and her son, so together she and her partner induced an abortion, using a wire. Soon thereafter she kicked him out of the house for being irresponsible, and he immediately reported her for abortion. (Valparaiso, 1983)

There are different kinds of couples in these cases. Some are married, some cohabit, some are engaged or are just boyfriend and girlfriend.¹⁰⁵ Three boyfriends reported their girlfriends in the cases reviewed.

Catalina, 15-year-old, was reported by her 17-year-old boyfriend. He accused her mother of forcing her to get an abortion, even though he and his mother were willing to raise the child. Catalina and her mother denied the pregnancy, and held that the boyfriend was angry because Catalina did not want to have sexual relations with him anymore. (Valparaiso, 1990)

There were other instances involving parents. In Arica, a young man accused his partner's mother of forcing her to have an abortion because the mother did not want the child. The couple was living with her mother. Both young people maintained their accusation before the court. In another case, a young woman from Valparaiso was reported by her father, who disliked the man she had relations with. Of the nine relatives who presented reports, seven were mothers who for the most part accused third parties of making the decision or undertaking the procedure.

Soledad's mother, after hearing her daughter, 19-year-old, describe her abortion, and after taking her to the hospital in very bad shape, went to the boyfriend's workplace — a police station — to report him for forcing her daughter to have an abortion. (Santiago, 1983)

Rita's mother accused Rita's boyfriend's mother of performing an abortion on Rita, 17-year-old. She filed this report after Rita, who had to be taken to the hospital after suffering complications, told her mother what happened. (Santiago, 1991)

The only other relative who presented a similar report was a woman who reported her sister-in-law while she was in the hospital. The motives that led individuals to report abortions were always related to the pregnancy, romantic relationships, or interpersonal conflicts. These were very complex situations that involved all sorts of emotional and personal issues, making these reports very different from institutional reports.

C.2 THE RIGHT TO LEGAL ASSISTANCE

Chapter I of this report explains how the right to legal assistance is guaranteed by the Chilean Constitution, and by international human rights treaties ratified by Chile. In the cases reviewed, the research undertaken examined the kind of defense counsel the accused had, if any.

The Constitution and international human rights treaties create an obligation that is not being even remotely respected in Chile. The state provides attorneys either through Legal Aid Corporations or public defenders. Legal Aid Corporations are charged with defending those who cannot afford an attorney. They are staffed mostly by candidates for the legal profession, that is, persons who have just completed their law degree and have to work at least six months for one of these institutions in order to qualify as attorneys. These are persons without any experience, who put in few hours a day with the corporation and on average have an excessive workload of 90 to 100 files.

Public defenders are lawyers selected by a judge from a list of non-exempt lawyers. Once a judge selects a lawyer, he or she must defend whomever the judge decides, as long as the defendant does not have his or her own lawyer.¹⁰⁶

These state-financed institutions simply cannot meet the need for legal assistance and counseling of the poor. In all of the four cities included in this investigation, there are Legal Aid Corporations. There are also other institutions, such as churches and professional associations, that provide legal assistance, but they can reach only a tiny segment of the poor in need of legal services. The result is that the right to legal counsel is moot in most cases, either because there is no one to provide the defense, or because of the bad quality of the service provided.

Chile's inquisitorial criminal procedure system does not allow the defendant's lawyer to intervene in the most important stages of the process, such as the suspect's initial questioning by or statement to police. The law does not require the presence of a lawyer in police interrogations of those suspected of a crime. In the cases reviewed in this report, many of the women gave their first statement while receiving medical attention and were interrogated in the maternity ward, in full view of the medical personnel and the other patients. Although this declaration is not considered dispositive of guilt, it is extremely important, since it can be validated and eventually used to create enough evidence to prosecute and convict the woman. In light of this, it has been proposed that these interrogations, which are usually carried out without a lawyer, be declared null and void.¹⁰⁷

Two of the women accused of abortion told the court they had been mistreated by the police. One woman stated she had been a victim of illegal

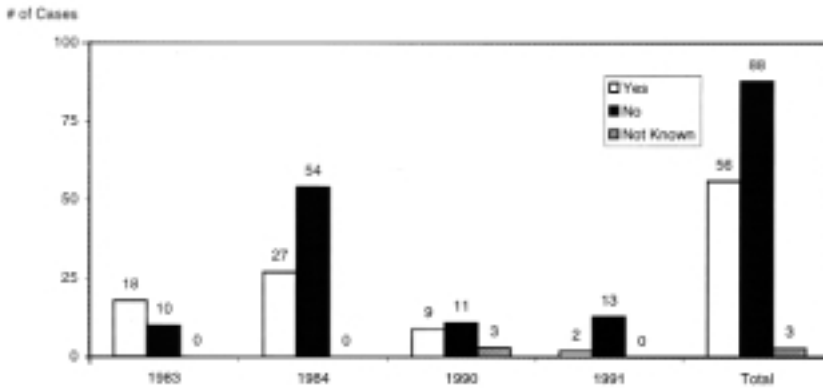
coercion by the Intelligence Police; the other woman reported humiliating treatment by the Sexual Crimes Brigade, a specialized division of the same police. Maria Cecilia, one of them, was told to take off her clothes during the interrogation. Then a woman, presumably a policewoman, examined her and told her that she had better tell the truth, because in any case she was still pregnant. She told Maria Cecilia that if she didn't talk, her parents would go to jail (Viña del Mar, 1983). The second case of abuse is narrated by the lawyer of a woman who was admitted to the maternity ward with symptoms of a spontaneous abortion.

“... she maintains that in the Sexual Crimes Brigade she was treated in a humiliating way, pressured to declare what she had done to herself.” The patient had a prolapsed uterus, which might have caused the abortion. (Santiago, 1984)

Defense counsel of women accused of abortion

Court records reviewed for this research show that a significant portion of the women accused of abortion had no defense counsel at all. Bar Graph 11 shows that, of all four cities, the greatest proportion of cases with defense counsel occurred in 1983, with a 64% prevalence. The year with the least prevalence of defense counsel is 1991 — it was provided in only 13% of the cases. On average, only 38% of women included in this study had defense counsel, and 60% had no assistance from a lawyer whatsoever. This is clearly a transgression of the constitutional guarantee of the right to defense counsel, and a violation of the civil and political rights protected by international human rights treaties. These women were not only denied the right to defense counsel but the right to equality before the law.

Bar Graph 11: Representation by Defense Counsel of Women who had Abortions in All Cities



In the cases reviewed, those women who did have an attorney obtained assistance through the Legal Aid Corporation, which provided lawyers to 34 of the 56 women who had legal defense, or 61%. Three women, 5% of the total number, had a lawyer assigned by a judge as a public defender. There is no information for the rest of the cases.

It is clearly important to have legal defense throughout the criminal process, but the quality of the defense is equally important. In two of the cases reviewed, the effort made by the defense attorney was insignificant. The lawyer, assigned by the court, rebutted the accusation in less than a paragraph. Legally, in the rebuttal of the accusation the defense lawyer has the critical opportunity to present the defendant's version of the facts of the case and circumstances, as well as special considerations that merit the defendant's acquittal or attenuates her guilt. Nidia's attorney, however, simply stated:

"Since N.V. has been accused as the principal in the crime of abortion established in article 342 N.3 (sic) of the Criminal Code, I ask the court to acquit the defendant, since according to her own statements: 'E.A., the Twin, made me have an abortion. I didn't want to go, I wanted to have my child, and they said it was just an injection to check if I was pregnant.' These statements are important in the process, because they show that the accused, N.V., did not have the intention to commit the crime, which was induced by E.A., a.k.a. the Twin, as a way of resolving the prob-

lem of a third party, the person who caused the pregnancy. For the aforementioned reasons, I ask the court to acquit Mrs. N.V.”

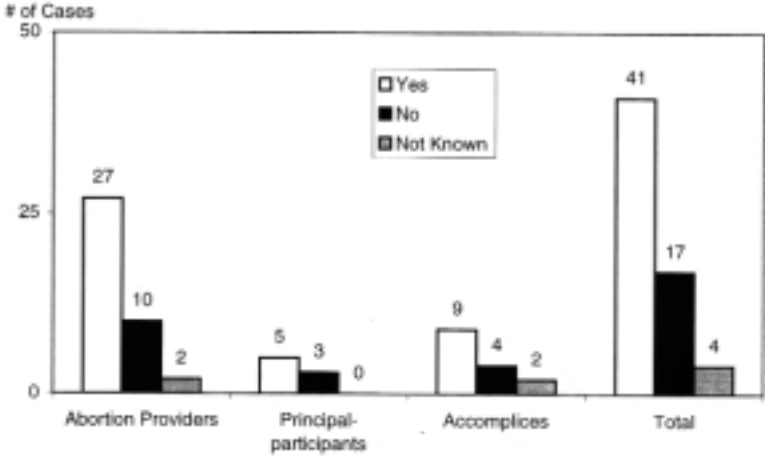
THEREFORE: I REQUEST the court to disregard the accusation and acquit Mrs. N.V. (Arica, 1984)

This defense attorney not only did not adequately explain the facts, he also gave up the opportunity to demand a further investigation and to present evidence, and failed to call as a witness the man who got Nidia pregnant and then deceived her. This woman had two different attorneys. The first one was charged with obtaining her release from prison, and the second, named by a judge, was charged with answering the accusation.

Defense counsel of abortion providers, principal-participants and accomplices

Bar Graph 12 shows the frequency of representation by defense counsel in the cases of abortion providers, principal-participants, and accomplices. Providers had defense counsel 70% of the time, while women who had abortions had legal counsel in only 38% of the cases. Principal-participants and accomplices had legal counsel at rates similar to those of abortion providers. These circumstances might be explained by the fact that the providers usually had been previously prosecuted and convicted for abortion. Consequently, contact with the legal system had familiarized them with the necessary course of action. Moreover, provisional release from prison is harder for abortion providers to secure than for women who have had abortions, so providers need to find a lawyer in an early stage of the process. Of the 41 cases in these categories of defendants that had defense counsel, nine were defended for free, nine were assisted by lawyers from the Legal Aid Corporation, and two by court-nominated attorneys.

Bar Graph 12: Representation by Defense Counsel of Providers, Principal-participants, and Accomplices



C.3 PREVENTIVE IMPRISONMENT

For many of those prosecuted for abortion, especially women who have abortions, this is their first contact with the criminal justice system. In the Chilean criminal process, it is usual for a suspect to remain in prison before the trial and the sentencing. When this incarceration is the result of a court order, it is called preventive imprisonment because its purpose is to prevent the suspect from fleeing.¹⁰⁸

Many scholars agree that preventive imprisonment is used as a penalty in advance of conviction, that is, the trial and sentencing were effectively moved forward and the suspect imprisoned as a punishment.¹⁰⁹ When the preventive imprisonment is longer than a month, the punishment component is obviously high. It is impossible to support the notion that women accused of abortion should be imprisoned because they are a “danger” to society. Rather preventive imprisonment constitutes punishment. The advantages of alternatives to imprisonment, such as rehabilitation and avoiding exposing women to criminal behavior inside the prison, outweigh the supposed justifications of imposing an anticipated punishment.

Women who have had abortions and preventive imprisonment

Comparing cities and years (see Table 13) reveals that 57% of women who had abortions spent time in prison. Close to 48% were in prison for less than 14 days, while 10% were held for more than two months.

Of that number, most of the women remained in preventive imprisonment for two to three months. Women spent longer periods in preventive imprisonment in the years 1983 and 1984, with the exception of a woman from Temuco who spent almost seven months in jail in 1990.

None of the women accused of having abortions in the cases reviewed had a criminal record. As “first time offenders” and because abortion is “such a particular crime” as some judges say, alluding to the special circumstances that motivate women to have an abortion, many women spend little or no time in prison. To see the amount of time women who had abortions spent in preventive imprisonment in each of the cities, see Tables A-D in Annex II.

Table 13: Time Spent in Preventive Imprisonment for Women who had Abortions in All Cities

| | 1983 | 1984 | 1990 | 1991 | TOTAL # | TOTAL% |
|-------------------|-----------|-----------|-----------|-----------|------------|--------------|
| # of Days | | | | | | |
| No time in prison | 8 | 45 | 3 | 8 | 64 | 43% |
| 1 to 14 | 5 | 16 | 11 | 9 | 41 | 27% |
| 15 to 30 | 7 | 5 | -- | -- | 12 | 8% |
| 31 to 60 | 4 | 5 | 1 | -- | 10 | 7% |
| 61 to 90 | -- | 2 | 3 | -- | 5 | 3% |
| 91 to 120 | 1 | -- | -- | -- | 1 | 1% |
| 121 to 150 | -- | 1 | -- | -- | 1 | 1% |
| 151 to 180 | 1 | -- | -- | -- | 1 | 1% |
| 181 to 210 | -- | -- | -- | -- | -- | -- |
| More than 211 | -- | -- | 1 | -- | 1 | 1% |
| Not Known | 2 | 7 | 5 | -- | 14 | 9% |
| Sub-total | 20 | 36 | 21 | 9 | 86 | 57% |
| TOTAL | 28 | 81 | 24 | 17 | 150 | 100%* |

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

Providers and principal-participants in preventive imprisonment

It seems that coprincipals, that is, providers and principal-participants, were considered by courts to be, as criminal law scholars say, a menace to society. Table 15 shows that 87% of them spent time in preventive imprisonment, compared with 57% of the women who had abortions.

Abortion providers clearly spent a longer time in prison than women who had abortions. Four (9.7%) of the 29 persons whose time in preventive imprisonment is known, spent more than a year in preventive imprisonment. The overall percentage of the persons who spent more than three months in prison was 17%. The longest periods of preventive

imprisonment were ordered by Santiago courts, except in one case in Temuco where an abortion provider spent more than one year in jail.

Table 14: Time spent in Preventive Imprisonment for Coprincipals and Principal-participants in all Cities

| | 1983 | 1984 | 1990 | 1991 | TOTAL # | TOTAL% |
|-------------------|-----------|-----------|-----------|----------|-----------|--------------|
| # of Days | | | | | | |
| No time in prison | 3 | 1 | 2 | -- | 6 | 13% |
| 1 to 14 | -- | 2 | 8 | 4 | 14 | 30% |
| 15 to 30 | 4 | 2 | 1 | -- | 7 | 15% |
| 31 to 60 | -- | 1 | -- | -- | 1 | 2% |
| 61 to 90 | -- | 4 | 1 | -- | 5 | 11% |
| 91 to 120 | 1 | -- | -- | -- | 1 | 2% |
| 121 to 150 | -- | 1 | -- | -- | 1 | 2% |
| 151 to 180 | -- | -- | -- | -- | -- | -- |
| 181 to 210 | -- | -- | -- | -- | -- | -- |
| More than 211 | 4 | -- | 2 | -- | 6 | 13% |
| Not Known | 3 | 3 | -- | -- | 6 | 13% |
| Sub-total | 12 | 13 | 12 | 4 | 41 | 87% |
| TOTAL | 15 | 14 | 14 | 4 | 47 | 100%* |

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

Almost all providers who spent a year or more in prison were involved in abortion cases that had serious consequences, such as complications resulting in hysterectomies or death. Among the principal-participants, those who spent the most time in preventive imprisonment were also part of similar cases, including three cases in which the woman who had the abortion had to have a hysterectomy.

Accomplices in preventive imprisonment

Accomplices are in a similar situation to both women who had abortions and abortion providers. As Table 15 shows, 87% of accomplices were held in preventive imprisonment, a figure that is more like that of abortion providers and principal-participants than that of women who had abortions. However, the periods of time these persons remained in prison were similar to those of women who had abortions. Forty percent spent less than 14 days in jail. No accomplice spent longer than two months in jail. Under the theory that preventive imprisonment is used to punish in advance of conviction, accomplices should and did receive less time in prison than women who had abortions and coprincipals, who are the main actors in illegal abortion procedures. The accomplice who spent the longest period in prison, 54 days, was involved in a case of a woman who died as a result of the abortion. (Santiago, 1983).

Table 15: Time Spent in Preventive Imprisonment for Accomplices in all Cities

| | 1983 | 1984 | 1990 | 1991 | TOTAL # | TOTAL % |
|-------------------|----------|----------|----------|-----------|-----------|--------------|
| # of Days | | | | | | |
| No time in prison | -- | 1 | 1 | -- | 2 | 13% |
| 1 to 14 | -- | -- | 4 | -- | 4 | 27% |
| 15 to 30 | 1 | 1 | -- | -- | 2 | 13% |
| 31 to 60 | -- | 2 | 1 | -- | 3 | 20% |
| 61 to 90 | -- | -- | -- | -- | -- | -- |
| 91 to 120 | -- | -- | -- | -- | -- | -- |
| 121 to 150 | -- | -- | -- | -- | -- | -- |
| 151 to 180 | -- | -- | -- | -- | -- | -- |
| 181 to 210 | -- | -- | -- | -- | -- | -- |
| More than 211 | -- | -- | -- | -- | -- | -- |
| Not Known | 3 | 1 | -- | -- | 4 | 27% |
| Sub-total | 4 | 4 | 5 | -- | 13 | 87% |
| TOTAL | 4 | 5 | 6 | -- | 15 | 100%* |

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

As a result of these comparisons, it is plausible to argue that the time spent in preventive imprisonment is directly related to the concept of punishing in advance of conviction. It is proportional to the sentence that the suspects would get if they were convicted. For example, accomplices on average were in prison for an average of 20.5 days, women who had abortions 31.3 days, principal-participants 68.5 days, and providers 84.1 days.

C.4 LEGAL ARGUMENTS AND STRATEGIES USED BY THE DEFENSE

There are mainly two categories of defense used in these cases. The first one is that it was not possible for the defendant to take any other course of action, an exception provided for in Article 10 of the Criminal Code. The second line of defense is that the sentence normally imposed should be reduced. This argument is based either on mitigating circumstances, contained in Article 11 of the Criminal Code, or on the exception of *honoris causa abortion*, that is, abortion for reasons of honor or reputation, which receives a lesser punishment under Chilean criminal law.¹¹⁰

The Chilean criminal justice system does not accept any extenuating circumstances aside from those specifically provided by law. The judge plays an active part in identifying these circumstances in accordance with the Criminal Procedure Code. Article 109 establishes that: “[t]he judge must zealously investigate not only the facts and circumstances that aggravate the accused’s responsibility, but also those that lessen or mitigate it.”

However, Chilean law contains no other specific extenuating circumstance for abortion aside from *honoris causa*, which was mentioned above. Even so, it is always the defense's task to make sure all extenuating circumstances are investigated.

There are many reasons for a woman to terminate her pregnancy, such as the lack of support from her partner, the lack of means to support another child, fear of her parents' reaction, possible loss of employment, not wanting the child because it is the result of rape, the failure of a contraceptive method, etc. Usually it is not only one reason but the concurrence of many reasons that leads a woman to make the difficult decision to have an abortion. Defense counsel is charged with highlighting these circumstances, and finding a link between the woman's circumstances and the abstract legal rules that might be favorable to her. In the cases investigated for this report, there were three main lines of defense:

1. That the crime had not been proved because there was insufficient evidence of abortion.
2. That the fact that she was forced to have an abortion legally exempts her from responsibility.
3. That the woman had been subjected to an irresistible fear, and was thus legally exempted from responsibility.

In the event none of the strategies above was accepted, the defense argued that the punishment should be reduced, because one or more of the following extenuating circumstances was present:

1. That the same arguments used to argue that the defendant had no choice but to have an abortion be accepted as extenuating circumstances.
2. That the woman acted out of extreme grief.
3. That the woman had the abortion to protect her reputation (*honoris causa abortion*).
4. That the woman had irreproachable conduct prior to the abortion.
5. That she zealously tried to repair the damage.

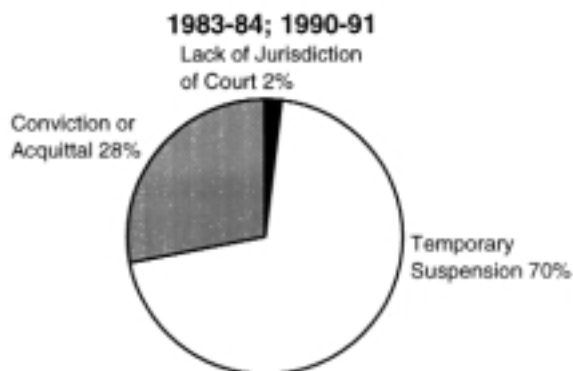
C.5 RESULTS OF CRIMINAL PROSECUTIONS FOR ABORTION

Results of the prosecutions of women who had abortions

Not every criminal prosecution ends with a conviction or acquittal. In fact most criminal prosecutions for abortion in Chile end with a “suspension decree” (*resolución de sobreseimiento*), which could be temporary or definitive, and results in the investigation being either terminated or suspended. The suspension decree is an “abnormal” way of ending the criminal justice process, since there is no court decision that acquits or convicts the accused parties, except in the case of a definitive suspension decree.¹¹¹ However, some legal scholars consider a suspension decree to be a form of acquittal, since there is no criminal record. The court can decide to suspend the proceedings at any stage during the criminal process, even when there has been a conviction and a sentence, but the defendant cannot be found to notify him or her. There are other forms of ending the criminal process. For example, the court may decide that it lacks jurisdiction, that is, that it is incompetent to hear the case, and that the case must be remitted to the appropriate court.

In this report we found that the trend in all cities was to end abortion prosecutions with a suspension decree. In almost every city, prosecutions for abortion ended in the following manner: 28% in a conviction, 2% due to lack of jurisdiction (competency) of the court, and 70% in suspension. The main reason for issuing the suspension decree was that the Institute of Forensic Medicine¹¹² could not confirm or deny the abortion procedure. In such cases, according to Article 409(1) of the Criminal Procedure Code, the criminal process must be suspended. The report of forensic doctors is determinative of whether the suspension decree must be issued. These reports usually state that, except in cases where the pregnancy was very advanced, the women examined showed no signs of pregnancy or abortion, and that the only reason to believe there had been an abortion was the defendant’s declaration as stated in her medical record.

Chart 16: Results of Prosecutions of Women Who Had Abortions in All Cities (Total # of Cases: 150)



All the suspensions were temporary, resulting in the suspension of the criminal process and not in its termination. In almost all the cases, the case was suspended to wait for better evidence, in accordance with the Criminal Code.¹¹³ In some cases, the temporary suspensions resulted in absurd situations. A Santiago woman was reported in 1984, two years after her stay in the maternity ward with signs of abortion. Because she did not show up for the trial, she was declared in contempt of court in accordance with the Criminal Procedure Code¹¹⁴ and the case was suspended. In 1989, seven years after the abortion and five years after being reported to the Intelligence Police, the Institute of Forensic Medicine stated, naturally, that it had found no signs of an abortion. The court decided, after taking all the customary statements, to decree once more the temporary suspension of the case. It is hard to understand why, if after seven years there was no longer any way of continuing the investigation, the judge would consider it necessary to suspend the investigation and continue it some time in the future.

A woman from Arica went through a similar situation in 1987, when she was arrested as she was leaving the country, years after her presumed abortion. Her lawyer successfully interposed the *recurso de amparo*, a kind of writ similar to the writ of habeas corpus that is used to protect constitutional rights. The lawyer argued that the order for her arrest was invalid since she was a minor when the supposed abortion took place, in 1983. During the supposed time of the pregnancy, the woman had been

sent to a state home for children, since because of her parent's advanced age, they could not care for her.

Table 17: Incoming Cases, Convictions, Acquittals and Temporary Suspensions in Abortion Cases from 1982 to 1991

| | Incoming Cases | Convictions | Acquittals | Temporary Suspension |
|------|----------------|-------------|------------|----------------------|
| 1991 | 218 | 24 | 8 | 134 |
| 1989 | 294 | 45 | 10 | 181 |
| 1988 | 282 | 51 | 17 | 171 |
| 1987 | 354 | 62 | 16 | 220 |
| 1986 | 312 | 46 | 22 | 217 |
| 1985 | 396 | 69 | 8 | 219 |
| 1984 | 503 | 66 | 23 | 240 |
| 1983 | 605 | 66 | 18 | 230 |
| 1982 | 643 | 81 | 23 | 207 |

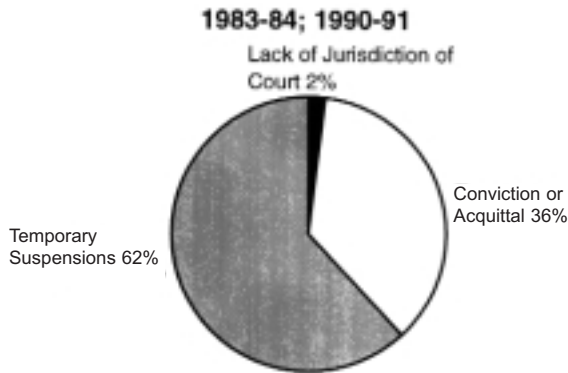
Source: National Statistics Institute, Justice Yearbook, years 1989, 1988, 1987, 1986, 1985, 1984, 1983, 1982, Ministry for Economy, Promotion and Reconstruction, published in various years, and unpublished statistics for 1991 of the National Statistics Institute. 1990 not available.

In this study, in Santiago 22% of the cases ended in conviction or acquittal, compared to 33% in Valparaíso and 25% in Arica. The only city where a case did not end in acquittal, conviction, or temporary suspension, was in Santiago, where 3% of the cases ended in a declaration of lack of jurisdiction of the court.

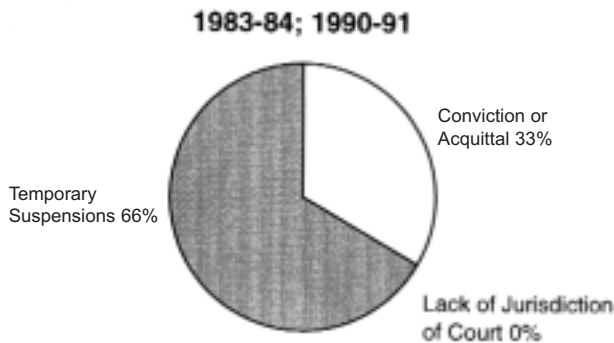
Results of the prosecutions of providers and accomplices

Chart 18 illustrates the situation of the persons prosecuted as providers and as principal-participants in abortion. Thirty-six percent of the cases resulted in conviction or acquittal while 62% were temporarily suspended. Chart 19 shows that prosecutions against accomplices had almost identical results: 33% of the cases resulted in conviction or acquittal, and 66% were temporarily suspended.

**Chart 18: Results of Prosecutions of Abortion Providers and Principal-Providers in All Cities
(Total # of Cases: 47)**



**Chart 19: Results of Prosecutions of Accomplices in All Cities
(Total # of Cases: 15)**



Convictions and acquittals

Chart 20 shows that of those women who terminated their pregnancies whose cases were not temporarily suspended but went to trial, the majority were convicted. Twenty-four percent of them were acquitted by the trial court, while 10% were convicted at trial, but were acquitted by the court of appeals. Consequently, one-third of the women in this study who were tried for abortion were acquitted. Sixteen percent of all women prosecuted for abortion were convicted, while the great majority had their cases suspended (70%), and 9% were acquitted. In the same

chart, the category “Not Known” corresponds to three cases whose results are unknown.

**Chart 20: Convictions and Acquittals of Women Who Had Abortions in All Cities
(Total # of Cases: 42)**

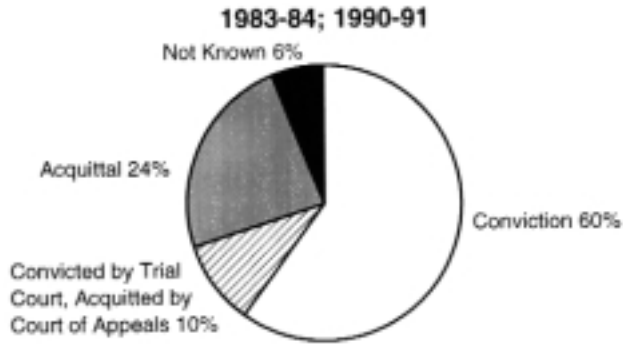


Chart 21 shows that abortion providers and principal-participants who were actually tried had an experience similar to that of the women accused of having abortions. Sixty-nine percent were convicted, 24% acquitted, and 7% convicted at trial and acquitted by the Court of Appeals, for a total of 31% of acquittals. If all cases of providers and principal-participants are taken as a whole, 42% were convicted, 36% had their cases temporarily suspended, and 19% were acquitted.

**Chart 21: Convictions and Acquittals of Providers and Principal-Participants in All Cities
(Total # of Cases: 29)**

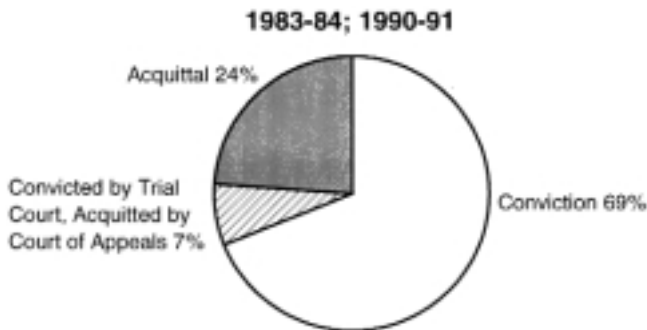
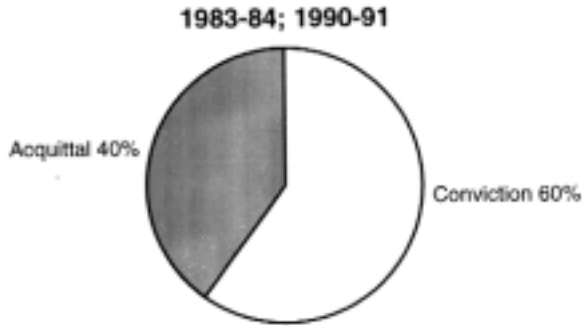


Chart 22 shows what happened to the accomplices. Sixty percent of the cases that were not temporarily suspended ended in conviction and 40%

in acquittal. In 40% of all cases, accomplices were convicted, 27% were acquitted and 33% had their cases temporarily suspended.

**Chart 22: Convictions and Acquittals of
Accomplices in all Cities
(Total # of Cases: 10)**

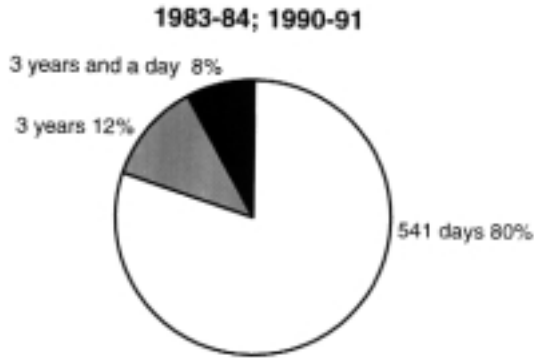


Penalties upon conviction

Under the Chilean Criminal Code, the penalty for abortion varies according to the role the individual played in the crime. The woman who has consented to her own abortion is punished with a category of punishment called “lesser imprisonment of the highest degree.” The applicable prison term would range from three years and a day to five years. If she had the abortion to protect her honor, the so-called *honoris causa abortion*, the applicable punishment is from 541 days to three years. Third parties who are not physicians who provide abortions are subject to less severe penalties than physicians: the penalty is from 541 days to three years. If the abortion provider is a physician, then he or she receives a longer sentence.

Chart 23 illustrates the length of sentences imposed on women who had abortions. Most of them were sentenced to 541 days of prison. All the women who had abortions were eligible for alternative punishments such as conditional deferral of the sentence or parole, meaning they did not have to spend any additional time in prison. See, however, the previous section on “Preventive Imprisonment”: 57% of all women prosecuted for having abortions spent time in preventive imprisonment.

**Chart 23: Length of Sentence of Women Who Had Abortions in All Cities
(Total # of Cases: 20)**



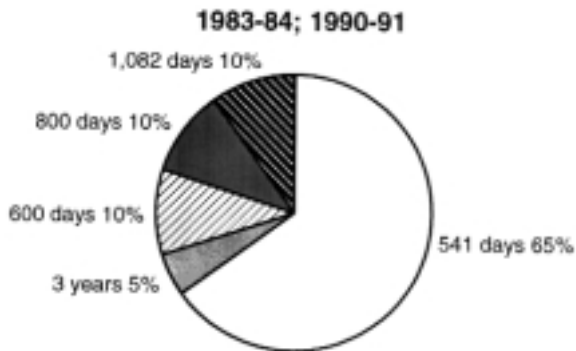
The alternative punishments prescribed by Law 18,216 are conditional deferral of the sentence, parole, and nightly detention. The first alternative punishment referred to above is for prison sentences that are not longer than three years, the second for those from two to five years, and the third for those shorter than three years. There are other conditions that must also be met for one of these to apply: lack of a criminal record, a favorable opinion on the part of the Chilean Police in regard to the defendant's rehabilitation, and that the defendant have a known activity or profession. If the defendant violates any of these conditions, she must complete her sentence in jail.

Most abortion providers in this study were sentenced to 541 days in prison. However the percentage—65%—is lower than that of women who had abortions. The range of sentence length is greater for abortion providers than for women who had abortions. Unlike the women who had abortions, not all the providers could benefit from Law 18,216, since many of them had previous convictions.

As discussed above, abortion providers spent more time in preventive imprisonment, which seemed to function as an additional punishment. Even those judges who are personally opposed to abortion tend to be more understanding of the woman's position. As several judges recognized, having an abortion can be explained in many ways, and often the explanations are very moving. The provider, however, is perceived as someone who is out to make a profit, even though in many cases, as can be seen from the cases in this study, these individuals, especially

women who provided abortions, did so free of charge to help other women in need.

**Chart 24: Length of Sentence of Abortion Providers and Principal-participants in All Cities
(Total # of Cases: 20)**



The law regards accomplices as having secondary responsibility, and their sentences reflect this situation. Chart 25 shows that four out of the six accomplices were sentenced to 61 days in prison, and their sentences were conditionally deferred for a year, under the oversight of a Penitentiary Board. The absence of clear and uniform criteria in the application of sentences is seen in the following examples: the accomplice sentenced to more than 200 days was involved in an abortion that resulted in death. In another case, the judge sentenced an accomplice to 541 days in prison even though the abortion did not result in serious medical complications.

**Chart 25: Length of Sentence of Accomplices in All Cities
(Total # of Cases: 6)**

