

**NGO Parallel Report on the Republic of Chile's
Fifth Report on the Implementation of the
International Covenant on Economic, Social and Cultural Rights**

*Submitted to the
UN Committee on Economic, Social and Cultural Rights
for consideration in the formulation of the
List of Issues during the 66th Pre-Sessional Working Group (9-13 March, 2020)*

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PURPOSE OF THE PARALLEL REPORT

1) The purpose of this parallel report is to assist the Committee on Economic, Social and Cultural Rights (the Committee) in the formulation of the List of Issues, during the 65th Pre-Sessional Working Group (9-13 March 2020), leading to the discussion of the Republic of Chile's Fifth Periodic Reports on the implementation of the Covenant on Economic, Social and Cultural Rights ("CESCR" or "Covenant"). Chile ratified the Covenant on 10 February 1972.¹

2) This Parallel Report focuses on the recent legalization of abortion in certain limited scenarios, and related issues and developments, all of which come under the purview of the Covenant (Articles 15, 12, 10). In particular, we identified three major issues: I) The three circumstances under which abortion is now legal in Chile are excessively narrow and poorly defined; II) The "conscientious objector" exception is too broad and keeps on being broadened; and III) The obstacles for women under 14 years of age to obtain an abortion are too high.

3) In the Concluding Observations to Chile's Fourth Periodic Report, on the question of abortion in Chile, this Honorable Committee welcomed the ongoing dialogue in Chile regarding the adoption of legislation to ease the strict prohibition of abortion. It recommended expedited adoption of such legislation, and a broadening of circumstances under which Chile would allow abortion.² It also emphasized the need to "ensure the accessibility, availability and affordability of sexual and reproductive health services."³ The legalization of abortion in 2017, in three limited circumstances, is certainly something that the Committee should welcome during the discussion of Chile's Fifth Report, but we believe there is still a lot that Chile must do to ensure it fulfills its obligations under the Covenant.

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¹ International Covenant on Economic, Social and Cultural Rights, art. 15(1)(b), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 [hereinafter CESCR].

² Committee on Economic, Social and Cultural Rights, Concluding Observations on the Fourth Periodic Report of Chile (2015), https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fCHL%2fCO%2f4&Lang=en.

³ *Id.*

5) The International Human Rights Clinic of Loyola Law School, Los Angeles is committed to achieving the full exercise of human rights by all persons, and seeks to maximize the use of international and regional political, judicial, and quasi-judicial bodies through litigation, advocacy, and capacity-building.⁴ Loyola Law School, Los Angeles is the school of law of Loyola Marymount University, a Jesuit university.

6) Corporación Miles is a non-profit, non-governmental organization committed to protecting and promoting sexual and reproductive rights in Chile and advocating for universal access to safe, free and legal abortion.

7) The Luca Coscioni Association for the Freedom of Scientific Research is a non-profit organization comprised of members of parliament, academics, researchers and students, along with representatives of patients and advocacy associations. The Luca Coscioni Association promotes the freedom of scientific research and treatment as well as the civil and political rights of patients and people with disabilities. It was founded in 2002 by Dr. Luca Coscioni, an Italian economist affected by Amyotrophic Lateral Sclerosis, who launched a national campaign to promote freedom of scientific research on embryonic stem cells.⁵ Since its foundation, the Association has been active on a range of issues, including the rights of persons afflicted with illness and disabilities, reproductive health, and freedom of scientific research.

BACKGROUND

8) From 1989 to 2017, abortion was illegal in all circumstances in Chile.⁶ However, that did not stop abortion from taking place. It just exposed women and doctors to the risk of criminal prosecution and increased health risks for women. Prior to the partial legalization of abortion in 2017, between 60,000 and 70,000 illegal abortions occurred every year.⁷ Abortion was the third most

⁴ See *International Human Rights Clinic*, Loyola Law School, Los Angeles, <http://www.lls.edu/academics/experientiallearning/clinics/socialcriminaljusticeclinics/internationalhumanrightscclinic/> (last visited Sept. 1, 2017).

⁵ See Luca Coscioni Association, <http://www.associazionelucacoscioni.it> (last visited Jan. 14, 2017).

⁶ While Chile has never permitted elective abortions in its history, therapeutic abortions were legalized in 1931. Under the both the Criminal and Health Codes during this time, a woman could have an abortion if her pregnancy threatened her life. Two doctors were required to attest to such a threat to receive permission. Therapeutic abortion was abolished in 1989 by the military dictatorship of General Augusto Pinochet at the end of his rule. HUMAN RIGHTS WATCH, *ABORTION: CHILE* (last visited Feb. 6 2019), <https://www.hrw.org/legacy/women/abortion/chile.html>.

⁷ CASAS, Lidia, VIVALDI, Lieta (2013), “La penalización del aborto como una violación a los derechos humanos de las mujeres”, en: VIAL, Tomas (Ed.), *INFORME ANUAL SOBRE DERECHOS HUMANOS EN CHILE 2013* (Santiago, Universidad Diego Portales), p. 92. This is a conservative estimate. The number of illegal abortions is difficult to establish with certainty because most physicians do not register abortions officially, as this would require reporting the woman for investigation and trial.

frequent pregnancy-related cause of death in Chile.⁸ Roughly, 11% of all births in Chile each year are from women between the ages of 10 and 19.⁹

9) Attempts to adopt in Congress bills to legalize abortion failed in 1991, 2003, 2009, 2013 and 2014. In 2015, President Michelle Bachelet, the current UN High Commissioner for Human Rights, led another try, which, this time succeeded. On 3 August 2017, the Chilean Congress passed Law 21.030, amending Chile's Health and Criminal codes.¹⁰ Under amended Article 119 of the Health Code, "the interruption of [a woman's] pregnancy by a medical professional . . . is authorized when: 1) The woman's life is at risk, such that the interruption of the pregnancy would avoid a danger to her life; 2) The embryo or fetus suffers from an acquired or genetic congenital disorder, incompatible with an independent extra-uterine life, as to be of a lethal nature; 3) As a result of rape, as long as no more than twelve gestational weeks have passed. In the case of a girl under the age of 14, the interruption of the pregnancy can be effectuated as long as no more than fourteen gestational weeks have passed".¹¹

10) Articles 342-345 of the Chilean Criminal Code (1847) make it criminal to procure an abortion to oneself or another.¹² However, Law 21.030 amended Article 344 of Chile's Criminal Code, decriminalizing abortions on the three grounds established in Article 119 of the Health Code. All other forms of abortion remain a crime, and Article 344 establishes that "[a]ny woman who, apart from those cases permitted by the law, causes her own abortion or consents that another person caused it, will be punishable with imprisonment to the highest degree. If she does it to conceal her dishonor, she will incur imprisonment to an intermediate degree."¹³ The fact that abortion is still a crime, unless it takes place under one of the three limited circumstances, is a significant problem. In Chile and public hospitals account for 80% of reporting to the criminal justice system.¹⁴

⁸ CENTER FOR REPRODUCTIVE RIGHTS, RE: SUPPLEMENTARY INFORMATION ON CHILE, SUBMITTED FOR CONSIDERATION BY THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN FOR THE 69TH SESSION 4 (Jan. 28, 2018), https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fCHI.%2f29934&Lang=en. However, due to the strict ban against abortion under Chile's previous law, these statistics are likely obscured and underreported.

⁹ *Id.* at 8.

¹⁰ See CODE CIVIL [C. CIV.] [CIVIL CODE] law 21.030 (Chile) (Sep. 23, 2017), <https://www.leychile.cl/Navegar?idNorma=1108237>.

¹¹ *Id.* at art. 1.

¹² 1874 Penal Code, art. 342-345 (Human Rights Watch translation).

¹³ Chile Criminal Code, art. 344.

¹⁴ The Center for Reproductive Law and Policy, Women's Reproductive Rights in Chile: A Shadow Report (1999).

11) Although the passing of Law 21.030 has been an important step forward for Chilean women, it still falls short of what is required for women to enjoy fully their human rights.¹⁵ Numbers suggest as much. Since Law 21.03 entered into force, only 769 women are reported to have received a legal abortion.¹⁶ Moreover, since President Bachelet's term ended, in 2018, the government of Chile has taken several steps to roll back the small progresses that had been made in 2017. As soon as President Pinera, a vocal supporter of Chile's past complete abortion ban, got in office he started taking steps to restrict access to legal abortion. For instance, President Pinera's Minister of Health tried to implement measures that would allow medical professionals at any moment to register as objectors without providing any reasoning or rationale behind their decision.¹⁷ While ultimately unsuccessful, these attempted changes to the law without legislation by the National Congress are indicative of the stance the current administration is taking in attempting to create additional barriers and limit access to legal abortion. Also, under President Pinera's, the Ministry of Health has had no budget item for the training of professionals in abortion techniques. This has pushed some to declare themselves "conscientious objectors" to avoid performing an operation for which they have not been trained, and others to continue using outdated abortion techniques that are unnecessarily painful, costly and dangerous (i.e. Dilation and Curettage in lieu of Manual Vacuum Aspirations).

12) In the following sections, we will explain what are, in our opinion, the main issues limiting access to abortion in Chile. First, the three circumstances in which abortion can take place lawfully are too narrow and not sufficiently defined in law and jurisprudence. Second, the amendments to Article 119 of the Health Code allow a "conscientious objector" exception, giving any doctor the right to refuse performing abortion procedures, but the Chilean government has not taken sufficient steps to try to provide alternatives when doctors opt out. If anything, it has tried to make it as easy as possible to object. Moreover, after a 2017 ruling of the Constitutional Court, entire hospitals and medical institutions can also refuse to perform abortions.¹⁸ Third, adolescent under 14 need to obtain parental consent to seek an abortion, creating unnecessary and arbitrary barriers to access legal abortions, causing undue delay and harmful consequences, particularly when in Chile intra-family sexual violence is disturbingly frequent.

¹⁵ FIDH/Observatorio Ciudadano – Aborto en Chile: las mujeres frente a innumerable obstáculos 24 (N. 791e 2018).

¹⁶ *IVE: Monthly Report Updated as of 25 December 2018*, Chile Ministry of Health, <https://www.minsal.cl/ive-reporte-actualizado/> (last visited July 30, 2019).

¹⁷ Chile Ministry of Health Resolution No. 432.

¹⁸ Constitutional Court of Chile, Decision STC Rol. No. 3729(3751)-17 CPT (Aug. 28, 2017).

I) THREE NARROWLY AND VAGUELY DEFINED GROUNDS FOR LEGAL ABORTION

13) The three grounds on which abortion can take place lawfully in Chile are defined excessively narrowly and vaguely, deterring the exercise of the reproductive rights all Chilean women must enjoy.

i) “The woman’s life is at risk, such that the interruption of the pregnancy would avoid a danger to her life”.

14) The first ground for a legal abortion is when “...the woman’s life is at risk, such that the interruption of the pregnancy would avoid a danger to her life...”¹⁹ Elective abortion, for instance, in the case of unwanted pregnancy, is ruled out, even though unwanted pregnancies often take a toll on a women’s physical and mental health and may produce anxiety, stress, depression, auto-destructive behavior, and suicidal tendencies, particularly in the case of poor women who have no means to raise children or no support.²⁰

15) Interruption of pregnancy because of severe health risks of the woman is not an option either. The threshold is a fatal risk. Pregnancies that force women to be hospitalized for long periods, in bed for several month, that are very painful or can cause the woman health problems that last for life cannot be lawfully interrupted. That is inconsistent not only with the obligations Chile has under the Covenant, in particular Article 12 (right to health) and Article 15 (right to science), but also Chile’s legal system. Although the Constitution proclaims “the law protects the life of those about to be born”.²¹ The balancing act that the Chilean legal system does, therefore, is not between protecting the life of the fetus v. protecting the health of the mother, with protection of life having priority. It is between protecting the life of an entity that is not recognized legal personality v. the health of the mother, who enjoys both the right to life and physical and psychological integrity (Art. 19.1 of the Constitution) and the right to health (Art. 19.9 of the Constitution). By limiting abortion only to life-threatening situations, Chile puts the fetus’ right to life above or on the same level of the mother’s right to health.

ii) “The embryo or fetus suffers from an acquired or genetic congenital disorder, incompatible with an independent extra-uterine life, as to be of a lethal nature”.

¹⁹ CODE CIVIL [C. CIV.] [CIVIL CODE] law 21.030 art. 1 (Chile).

²⁰ Ashton, “The Psychosocial Outcome of Induced Abortion”, British Journal of Ob&Gyn. (1980), vol. 87, pp. 1115-1122.

²¹ Constitución Política de la República de Chile, Aug. 17, 1989, Art. 19.1.

16) The second circumstance in which abortion is legal in Chile is when “...the embryo or fetus suffers from an acquired or genetic congenital disorder, incompatible with an independent extra-uterine life, as to be of a lethal nature”.²² This includes situations in which (1) the acquired or genetic congenital disorder will cause death before or during birth, (2) that are associated with a short survival span, or (3) when, in very exceptional circumstances, the woman will experience a very low quality of life.²³

17) Again, this circumstance is too narrow, resulting in a violation of the right to health and right to science of both mothers and their children. Abortion cannot take place when the fetus suffers from serious malformations, diseases, or infections. The threshold, is, again lethality, making it illegal to interrupt a pregnancy when it results in a severely disable child.

18) Moreover, the fact that the fetus is affected by a lethal acquired or genetic congenital disorder, incompatible with independent extra-uterine life must be determined “medical experts”.²⁴ However, the law does not specify who is to be considered “an expert”, giving many doctors and hospitals an easy way out to refuse issuing medical opinions. A doctor might decline because, for example, she is a gynecologist and not a geneticist. Second, it takes not just one expert but two concurring experts.²⁵ This makes it even more arduous for women to find a doctor who is willing to authorize the interruption of pregnancy, particularly in rural areas where finding one expert is already challenging.

iii) “As a result of rape”.

19) The third circumstance in which pregnancy can be lawfully interrupted is when it is the consequence of a rape, as long as no more than twelve gestational weeks have passed, or, in the case of a girl under the age of 14, as long as no more than fourteen gestational weeks have passed.

20) Tragically, sexual violence is rampant in Chile, including against young women and adolescent girls. It is estimated that a rape occurs in Chile every 25 minutes.²⁶ Often, the victims of sexual violence are minors. Over 16% of adolescent and teenage women report having been sexually assaulted at least once.²⁷ Between July and September 2017, 39% of female victims of sexual assault were under age 14.²⁸ Chile also has the highest rate of intra-familial violence in the region.²⁹ Over

²² CODE CIVIL [C. CIV.] [CIVIL CODE] law 21.030 art. 1 (Chile).

²³ *Id.*

²⁴ CODE CIVIL [C. CIV.] [CIVIL CODE] law 21.030 art. 1 No. 2 (Chile).

²⁵ *Id.*

²⁶ *Id.* at 9.

²⁷ *Id.* at 7-8.

²⁸ *Id.*

81% of intra-familial violence victims are women.³⁰ 89% of rape perpetrators are either family members of the victim or are close to them.³¹ These numbers likely underestimate the phenomenon. According to a national survey conducted in 2017, only 23% of female victims of sexual violence have reported the crime.³² This is an important increase from 12% in 2012, but it is still incredibly low. Victims of sexual violence in Chile who do not report the crimes committed against them fail to do so out of fear, more than for any other reason.³³

21) Abortion on the ground of rape can only occur when the victim has reported it to authorities and filed a criminal complaint against the assailant. To corroborate a rape, doctor visits and access to medical devices must be available. An ultrasound must confirm that the gestational age of the fetus coincides with the date of the alleged rape. The procedure must also take place within twelve weeks, for women, or fourteen for girls under the age of fourteen. All of this assumes that victim, at a minimum remembers the exact date of the rape; is willing to go through the socially stigmatized process of filing criminal charges against an assailant, possibly a member of her family; and can find a doctor within 12 or 14 weeks who believes her, since the judicial determination of the assault might take years, or never happen. Considering 20% of the Chilean population lives in poverty,³⁴ and only 70% is covered by the government healthcare system,³⁵ finding a doctor who is willing to perform the procedure might turn out to be simply impossible.

22) Pregnancies that are the result of incest cannot be legally interrupted. Given the high rate of intra-familial sexual assault in Chile, incest should be added as a permissible ground for abortion regardless of whether the woman asserts rape occurred. A woman who has experienced sexual assault by a family member may not want to publicly accuse her attacker due to societal and familial pressures and influence, and the addition of incest as a ground for a lawful abortion would allow her fairer access to the procedure under very similar rationale as rape.

²⁹ *Id.* at 7.

³⁰ *Id.* at 8.

³¹ *Id.* at 9.

³² Subsecretaría de prevención del delito. Ministerio del Interior y Seguridad Pública (2018). Tercera encuesta Nacional de Victimización por violencia intrafamiliar y delitos sexuales: presentación de resultados).

³³ *Id.* at 7.

³⁴ Pan American Health Organization, *Chile: Overall Context* (2017), <https://www.paho.org/salud-en-las-americanas-2017/?p=2518>.

³⁵ Becerril-Montekio V, Reyes J, Manuel A. The Health System of Chile. *Salud Pública Mexico*. 2011;53(2):S132–S143.

II) THE CONSCIENTIOUS OBJECTOR EXCEPTION

23) The second major problem limiting the enjoyment of the right to health and the right to benefit from progress in science and technology, including reproductive rights, of women in Chile is the rampant resort to the “conscientious objector” exception and its extension to entire medical facilities.

24) Under Article 119(b) of Chile’s Health Code, as amended by Law 21.030, surgeons, and other medical professionals that would otherwise have a role in the operating room during an abortion procedure, may register with the director of the medical facility in which they work as a “conscientious objectors”.³⁶ Once registered, they can decline to perform or assist abortion procedures.³⁷ In theory, registration should give the facility the time to reassign a non-objecting professional to perform the procedure.³⁸ If the medical establishment does not have a non-objecting doctor or nurse to fill the role, they “must refer out to one immediately so that the procedure may be effectuated by someone who has not manifested said objection.”³⁹ In practice, this is rarely the case.

25) Resort to the conscientious objector exception is widespread, greatly limiting women’s access to legal abortions, especially in rural areas. As of June 2018, the Ministry of Health reported that 20% of registered obstetricians had objected to performing abortions when the woman’s life was at risk, 27% objected in cases where the fetus was unviable, and 47% objected in cases of rape.⁴⁰ Multiple public health institutions have reported that all of their doctors have declared themselves conscientious objectors on at least one of the three permitted grounds. Many hospitals lack a doctor who will perform an abortion due to rape.⁴¹

26) The following example is illustrative. On 6 April 2018, 25-year-old Fernanda Sandoval went to the Quilpue Hospital for an ultrasound. The on-call doctor confirmed the fetus was in grave danger due to a lack of amniotic fluid. After being told the fetus would not survive, Ms. Sandoval requested an abortion. However, the attending doctor told her there was technically, by his estimation, an 18% chance the fetus could live, and therefore he objected to performing the

³⁶ Health Code, Art. 119(b).

³⁷ The objection may be invoked only by medical professionals carrying out actual surgical abortion procedures, and not by those providing pre- and post-procedure medications or care. *Ibid.*

³⁸ Health Code, Art. 119(b).

³⁹ *Id.*

⁴⁰ INTERNATIONAL FEDERATION FOR HUMAN RIGHTS (FIDH), ABORTION IN CHILE: WOMEN FACE COUNTLESS OBSTACLES 8 (Aug. 2018), <https://www.fidh.org/en/region/americas/chile/abortion-in-chile-women-face-countless-obstacles>.

⁴¹ HUMAN RIGHTS WATCH, WORLD REPORT 2019: CHILE (last visited Mar. 26, 2019), <https://www.hrw.org/world-report/2019/country-chapters/chile#085afa>.

abortion. He did not show her the conscientious objector registration certificate as required by law. The next day, another doctor checked on Ms. Sandoval's condition, having read the previous doctor's report, and determined that the previous doctor was wrong, and the fetus was not viable. She administered the first drug to begin the abortion procedure. The following day, when Ms. Sandoval was supposed to receive a second drug in the abortion procedure, the specialist on duty objected, also without showing her his certificate. The specialist told her she had 48 hours to receive the second drug, and the hospital would find a non-objecting medical professional to administer it. However, none was found, and Ms. Sandoval gave birth to a stillborn fetus. She has since taken legal action and publicly denounced the hospital, emphasizing the harm she has suffered and her goal of preventing similar harm from befalling other women.⁴²

27) Moreover, in August 2017, the Chilean Constitutional Court expanded further the scope of the conscientious objector exception. First, it recognized the right of entire institutions, rather than just individual medical professionals, to conscientiously object.⁴³ Second, it struck down a provision that had prohibited private health centers that had received government funding for obstetric and gynecological services from registering as conscientious objectors.⁴⁴ Considering that in Chile many medical institutions are affiliated with Universities that are under the direct or indirect control of the Catholic church, or are run by charities affiliated with it, this decision has further reduced accessibility to abortion in Chile.

28) To make it worse, amended Article 119 of the Health Code prohibits public and private health facilities to advertise that they can and are willing to provide abortion services, with the result that women cannot identify easily where they can go to get an abortion without the risk of being turned down by conscientious objectors. This is in stark contrast with the right to information enshrined in Law 20.584 (which regulates Patient's Rights and Duties), and its inclusion in the law has not been properly justified by either the old or the new governments. It has been said that advertising the provision of abortion might lead to an "abortion market", where private clinics set high prices to access the procedure, but it still remains hard to see why advertisement would not be possible for public health providers, which are free.

⁴² "No quiero que esto le pase a nadie": El crudo relato de joven a la que le negaron aborto por inviabilidad fetal, EL DESCONCIERTO (Apr. 27, 2018) <https://www.eldesconcierto.cl/2018/04/27/video-no-quiero-que-esto-le-pase-a-nadie-el-crudo-relato-de-joven-a-la-que-le-negaron-aborto-por-inviabilidad-fetal/>.

⁴³ Constitutional Court of Chile, Decision STC Rol. No. 3729(3751)-17 CPT (Aug. 28, 2017).

⁴⁴ *Ibid.*

29) In General Comment 22, this Honorable Committee specifically addressed conscientious objection to abortion.⁴⁵ As the Committee stated in Paragraph 43, “[w]here healthcare providers are allowed to invoke conscientious objection, States must appropriately regulate this practice to ensure that it does not inhibit anyone’s access to sexual and reproductive healthcare, including by requiring referrals to an accessible provider capable of and willing to provide services being sought, and that it does not inhibit the performance of services in urgent or emergency situations.”⁴⁶ As discussed above, there have already been instances reported in the press that have violated this provision, and narrowing the conscientious objection exception to its original formulation would better mitigate the potential for it to infringe on women’s rights under the Covenant.

30) Further, the Covenant guarantees women the right to reproductive freedom under Article 12. Chile should take steps to ensure widespread access to medical professionals who can perform abortions in place of those that object. A woman’s right to reproductive freedom and choice is violated when she cannot obtain a safe legal abortion due to the state’s inability to provide access to abortions in all areas, particularly rural areas, or does not know about the availability of abortion clinics or centers.⁴⁷

31) Chile’s expanded conscientious objector exception places undue burdens on women seeking lawful abortions which may prove insurmountable in certain circumstances, in violation of the Covenant. By expanding and facilitating institutional objection through continued public funding of institutions that object, Chilean women’s rights protected under the Covenant are eroded. In rural areas with already limited access to healthcare facilities, institutional objection can result in an outright denial of the rights guaranteed by the Covenant.

32) The narrower version of the exception, as originally written in Law 21.030, better reflects the important balance between the rights of women to access legal abortion, and the rights of conscientious objectors, so that both may be properly guaranteed by the state.

⁴⁵ UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR), *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Art. 12 of the Covenant)*, 2 May 2016, E/C.12/GC/22, para. 43, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdImnsjZZVQfQejF41Tob4CvIjeTiAP6sGFQktiae1vlbbOAekmaOwDOWsUe7N8TLm%2BP3HJPzxiHySkUoHMavD%2Fpyfc p3YlZg> (last visited 17 April 2019).

⁴⁶ *Id.*

⁴⁷ See also CEDAW Art. 16.1 (guaranteeing women equal rights to “decide freely and responsibly on the number and spacing of their children...”); General Comment No. 24 (stressing the importance of the right to reproductive autonomy, stating that this right is violated when the means by which a woman can exercise the right to control her fertility are restricted).

33) Chile may find it helpful to look to Colombia for a blueprint upon which to model its conscientious objection regime to better protect women's right to lawful abortion. In a number of decisions,⁴⁸ the Constitutional Court of Colombia established that:

“a.) CO can only be invoked by direct providers of abortions and not by medical assistants, nurses etc.; b.) CO is an individual right and cannot apply to institutions; c.) CO claims must be provided in writing; d.) Physicians can be sued for failing to comply with standards around CO, and e.) “Because CO cannot be invoked with the effect of violating women's fundamental rights to health care . . . individual objecting physicians have a duty of immediate referral, and institutions must maintain information of non-objecting physicians to whom patients can promptly be referred.”⁴⁹

The Inter-American Commission on Human Rights has referred to these guidelines as the ideal human rights standards regarding conscientious objection for the region.⁵⁰

III) LEGAL REPRESENTATIVE REQUIREMENT FOR WOMEN UNDER 14

34) Article 119 of Chile's Health Code provides that women under the age of 14 seeking an abortion must have the consent of a legal representative.⁵¹ If a girl's legal representative refuses, or she does not have one, she may petition a court to determine the existence of one of the three permitted grounds for the abortion.⁵² Evidence of one of the grounds must be submitted by a doctor, along with the girl's petition and, in the case of refusal by her legal representative, a statement from that person as to the reasons for refusal.⁵³ The court must then rule on the petition within 48 hours.⁵⁴

35) A physician may request a judicial authorization, in lieu of consent from a legal representative, when she determines “there is evidence to believe that seeking the authorization

⁴⁸ Constitutional Court of Colombia, Decisions C-355 (2006), T-209 (2008), T-946 (2008) and T-388 (2009).

⁴⁹ Diya Uberoi and Beatriz Galli, *Refusing Reproductive Health Services on Grounds of Conscience in Latin America*, 13 SUR n.24 105, 109 (2016), <https://sur.conectas.org/wp-content/uploads/2017/02/10-sur-24-ing-diya-uberoi-beatriz-galli.pdf>.

⁵⁰ *See id.* (citing OAS, Inter-American Commission on Human Rights (IACHR), Access to Information on Reproductive Health from a Human Rights Perspective, OEA/Ser.L/V/IL, doc. 61 (2011) para 63).

⁵¹ Chile Health Code, art. 119.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

from the representative could cause a serious risk of physical or psychological abuse, coercion, abandonment, displacement or other acts or omissions damaging to [her] wellbeing.”⁵⁵

36) We believe the legal representative requirement for women under age 14 creates unnecessary and arbitrary barriers to access legal abortions, causing undue delay and harmful consequences. As mentioned above, between July and September 2017, 39% of female victims of sexual assault were under age 14.⁵⁶ About 11% of all births in Chile each year are from women between the ages of 10 and 19.⁵⁷ Chile also has the highest rate of intra-familial violence in the region.⁵⁸ Over 81% of intra-familial violence victims are women.⁵⁹ 89% of rape perpetrators are either family members of the victim or are close to them.⁶⁰ Victims of sexual violence in Chile who do not report the crimes committed against them fail to do so out of fear, more than for any other reason.

37) Given these statistics, the legal representative requirement creates obstacles to access legal abortions for a particularly vulnerable and fearful group. Women under 14 are at particular risk of sexual violence, and would be particularly fearful to report such attacks. Given the high rates of intra-familial violence in Chile, a woman under 14 seeking a legal abortion may require the permission of the very person who assaulted her. Even if a doctor determines this to be the case, obtaining a judicial authorization creates even further obstacles and delay for these victims. Moreover, for women under 14, Chile’s three grounds are still applicable on top of this parental consent requirement.

38) Pursuant to this Honorable Committee’s General Comment 22, “States are obliged to ensure that adolescents have full access to appropriate information on sexual and reproductive health . . . regardless of . . . whether their parents or guardians consent, with respect for their privacy and confidentiality.”⁶¹ Further, “States must also take affirmative measures to eradicate social barriers in terms of norms or beliefs that inhibit individuals of different ages and genders, women, girls and adolescents from autonomously exercising their right to sexual and reproductive health.”⁶²

39) This Honorable Committee enumerated States’ requirements to comply with Article 12 in its General Comment 14. The right to maternal, child and reproductive health requires States

⁵⁵ *Id.*

⁵⁶ CENTER FOR REPRODUCTIVE RIGHTS, *supra* note 8, at 7-8.

⁵⁷ *Id.* at 8.

⁵⁸ *Id.* at 7.

⁵⁹ *Id.* at 8.

⁶⁰ *Id.* at 9.

⁶¹ UN CESCR, *General Comment 22*, *supra* note 45, para. 44.

⁶² *Id.* para. 44.

to adopt measures to improve child and maternal health, including increasing access to family planning information and the resources necessary to act on that information.⁶³ With Chile's parental consent requirement for women under 14, both maternal and child health are implicated. Not only must special care be taken to safeguard children's health and mothers' health, but surely resources must be all the more accessible when a child is the one pregnant.

40) This Honorable Committee has recognized adolescents as a demographic likely to experience multiple forms of discrimination and marginalization, and special measures must be taken to "overcome the often exacerbated impact that intersectional discrimination has on the realization of the right to sexual and reproductive health."⁶⁴ Chile's parental consent requirement directly contradicts the Committee's concept of special care, instead choosing to feed into intersectional discrimination. Here, Chile disregarded intersectional discrimination and instead added a barrier to abortion access for women under 14.

41) This Honorable Committee also declared that under Article 12, all health facilities, goods and services must "respect confidentiality and improve the health status of those concerned."⁶⁵ By requiring parental consent for under 14 to get an abortion, questions of patient confidentiality arise. Although a girl's decision regarding getting an abortion could benefit from adult guidance, the parents could be uneducated or ashamed and stop the girl from accessing abortion services. As Chile has such high rates of intra-familial violence, it is very much possible that one of the girl's family members impregnated her. In that situation, it is all the more likely a parent would not let their daughter access abortion services and expose the incest or assault.

42) This further infringes on the right to health because health services are meant to "improve the health status of those concerned."⁶⁶ If Chile's parental consent scheme does not allow a girl to get an abortion, her health could be in danger. This danger comes in the form of trying to abort the pregnancy herself, dying in childbirth, or facing some retaliation from her rapist. Girls without access to safe abortions will be pressed to turn to illegal and unsafe abortions. In special circumstances, a parent forbidding their child from having an abortion places the pregnant girl at

⁶³ UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, para. 14, <http://www.refworld.org/docid/4538838d0.html> (last visited 30 July 2019).

⁶⁴ UN CESCR, *General Comment 22*, *supra* note 45, para. 30.

⁶⁵ UN CESCR, *General Comment 14*, *supra* note 63, para. 12(c).

⁶⁶ *Id.*

risk of death.⁶⁷ Specifically, for most young girls, their bodies are not prepared to survive the stress of childbirth. Women of all ages should control whether they get an abortion, and parents should not interfere in this decision.

43) Under the Limburg Principles, when implementing rights under the Covenant, “due regard should be paid to all relevant international instruments.”⁶⁸ Therefore, in enforcing rights in the ICESCR, it is relevant to consider the intersection of those rights with other human rights instruments. Chile is a party to the Convention on the Rights of the Child. In the Committee for the Rights of the Child’s (CRC) General Comment 15, the CRC declared that “States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services. States should work to ensure that girls can make autonomous and informed decisions on their reproductive health.”⁶⁹ The CRC identifies the special position adolescents are in, just as this Committee did. Instead of simply addressing “women,” the CRC specifically stated that States must cater to the unique needs of “adolescents.” Chile must ensure that girls under 14 not only have access to safe abortion services, but these “girls” must be able to make autonomous decisions regarding their own reproductive health. Chile restricts girls’ autonomy by invoking this parental consent requirement.

RECOMMENDATIONS

44) We respectfully recommend this Honorable Committee include at least one of the following questions in the List of Issues it will prepare for Chile.

1. Please explain what steps Chile intends to take to ensure availability and access to abortion by all women, and in particular women living in rural areas.
2. Please, report how many persons have been prosecuted in Chile for seeking or procuring an illegal abortion since 2017.
3. Please explain what steps Chile intends to take to clarify the three circumstances under which abortion can lawfully take place in Chile so as to ensure availability and access to abortion by all women, and in particular women living in rural areas.

⁶⁷ World Health Organization [WHO], *Maternal Mortality* (Feb. 16, 2018), <https://www.who.int/news-room/fact-sheets/detail/maternal-mortality>.

⁶⁸ The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Commission on Human Rights, E/CN.4/1987/17 (Jan. 8, 1987), para. 41.

⁶⁹ UN Committee on the Rights of the Child (CRC), *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, at “Article 24, paragraph 2(d).”

4. Please explain what steps Chile plans to take to ensure allowing institutional objectors does not prevent women from accessing legal abortions without undue burden, especially in rural areas.
5. Please collect and publish statistics regarding how many girls under 14 get pregnant annually in Chile; how many seek and obtain a legal abortion; how many are reported to have sought and obtained an illegal abortion.