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CHILE'S FAILURE TO PROTECT WOMEN AND GIRLS: THE CRIMINALIZATION OF ABORTION IS A HUMAN RIGHTS VIOLATION

EXECUTIVE SUMMARY

Despite the advances made in human rights protection in Latin America and the Caribbean, a number of laws remain in force in the region that restrict people's ability to exercise their sexual and reproductive rights. Chile is one of only six countries in the region (the others are El Salvador, Haiti, Honduras, Nicaragua and Suriname) that criminalize abortion in all circumstances, without exception.

In Chile, the Health Code prohibits all actions aimed at inducing an abortion. The Criminal Code provides for prison terms for women who either induce or consent to an abortion, as well as for anyone who assists in them in carrying it out, including health professionals. The Code of Criminal Procedure states that health professionals who believe that a crime has been committed have a duty to report it. Despite Ministry of Health guidelines limiting this obligation, in practice women who arrive at a health centre with complications arising from a clandestine abortion run the risk of being reported to the authorities.

Nevertheless, according to the Ministry of Health figures, there are more than 33,000 abortion-related hospital admissions a year. Studies have produced statistical projections that estimate that there are between 60,000 and 160,000 abortions in Chile each year.

Information provided by the Public Prosecutor's Office indicates that in 2014 alone, judicial investigations were initiated into 174 cases of voluntary abortion involving 113 women. However, the Public Prosecutor's Office also stated that most women are never convicted or, if they are, they are not sentenced to prison terms. The information provided by the Criminal Public Defender's Office supports this and the Prison Service (*Gendarmería de Chile*) confirmed that nationally there were no more than 10 people in custody either accused or convicted in connection with abortions. This suggests that those working in the health and justice systems

tend not to view abortion as a criminal offence. However, current legislation means that this approach could change at any moment.

Amnesty International spoke to women whose pregnancies had posed a serious risk to their lives, who were carrying a foetus that was not viable or who had become pregnant as a result of rape, as well as with health professionals with experience of dealing with such situations. Through their stories, Amnesty International was able to document the difficulties that women can face in such circumstances. These include institutions that are unable to offer them a solution and that often mistreat them; a lack of accurate and unbiased information; and the denial of an opportunity to make their own decision about whether or not to continue with the pregnancy. If, for whatever reason, a woman does decide to have an abortion, she has no option but to do so secretly or go abroad and deal with this difficult experience alone and in fear of being mistreated, judged or criminalized.

The complete lack of protection experienced by women who find themselves in these situations is the result of a series of violations of their human rights. This is why, under international human rights treaties the criminalization of abortion in all circumstances constitutes a human rights violation and is an obstacle to the adequate protection of the sexual and reproductive rights of women and girls. Chilean law means that, in practice, women and girls in Chile whose pregnancy threatens their life or health, is not viable or is the result of rape, experience a series of situations that leave them without protection. They face misinformation and ill-treatment; they are unable to assert their opinion; their lives are put at risk because of late intervention; if they do not have the resources to pay for a safe abortion or to go abroad, they are forced to resort to clandestine abortions; and they face prejudice and isolation. Chile has failed to protect the human rights of women and girls.

On 31 January 2015, President Michelle Bachelet introduced a Bill into Congress which would govern abortion in cases where there is “a current or future risk to the life of the woman, where the embryo or foetus suffers from a hereditary or genetic structural malformation incompatible with life outside the womb or when the pregnancy is the result of rape”.

All national and international indicators point to the need to make progress in this area in order to protect women. All that remains is for the National Congress to rise to the challenge and pass the relevant legislation. Although the Bill put forward by the government is not fully aligned with international human rights standards, its approval would be an important first step towards protecting the human rights of women and girls in Chile.

In order to move towards better protection of women in Chile and for the legislation currently under discussion to bring about changes in practice in the lives of women in Chile, some minimal conditions must be fulfilled. The law must: a) guarantee access to legal and safe abortion services for all women and girls, without discrimination, in cases where the pregnancy poses a current or future risk to the health or life of women and girls, where the foetus is not viable or where the pregnancy is the result of rape; b) include an unconditional guarantee of access to appropriate and affordable services for those suffering from complications resulting from an abortion, whether or not the abortion was carried out within the law; c) ensure that the regulations adopted regarding the requirements and conditions in which this will apply are not so restrictive that, in practice, they prevent effective access to these services.

Only then will Chile have taken a step towards protecting women and girls facing such extreme situations.

METHODOLOGY

The concerns set out in this report are based on information gathered by Amnesty International during the second half of 2014 and the first half of 2015.

During this time, Amnesty International held a number of meetings with most of the civil society organizations working on women's rights in Chile, who shared both information and their perspectives on this issue.

Amnesty International reviewed studies and statistical analyses carried out by other organizations, research centres and universities who approached the issue from a variety of perspectives.

The organization also met representatives of the National Women's Service (Servicio Nacional de la Mujer, SERNAM) in order to understand their perspective on the legislative process regarding the Bill. Amnesty International also met with representatives of the Public Prosecutor's Office and the Criminal Public Defender's Office, who provided information on cases under their mandate. It also requested access to public information under the Law on Transparency in order to obtain additional information from the Public Prosecutor's Office, the Public Defender's Office and the Prison Service.

The organization carried out interviews with two health professionals who, drawing on their vast experience of treating women, shared their views on the reality of abortion in Chile and on the need for legislation in this area. The two health professionals were: (1) Anita Román, President of the Chilean College of Midwives, who has more than 30 years' experience of midwifery and is currently working as a midwife in ante-natal care in the Maternity Unit of the Luis Tisné Hospital in Santiago; and (2) René Castro, Coordinator of the Committee for Sexual and Reproductive Rights in the Southern Cone, a gynaecologist with more than 40 years' experience who was part of the official delegation to the Fourth World Conference on Women in Beijing and has worked in the Chilean Ministry of Health.

Amnesty International interviewed women in Chile whose pregnancies had put their life at risk, who had been pregnant with a foetus that was not viable, or who had become pregnant as a result of rape. Because of the stigma and criminalization that they face, it is difficult to find women in such situations who are willing to have their testimonies made public. Out of a list of 20 possible interviewees, five women were in fact interviewed, two of whom gave their testimony on the understanding that it would be anonymous as they did not want to be identified. In each case, there was an initial meeting of about an hour, followed by a second interview, which was videoed, where possible.

BACKGROUND

“They never saw me as a person, as a whole human being. They saw me as an incubator, someone who could bring children into this world. And afterwards, it didn’t matter if I raised them or not, if I died, if we would go hungry – to them that didn’t matter. They see us as incubators. As machines, machines for reproduction.”

Tania (not her real name), who had a life-saving clandestine abortion in Chile

Despite the advances made in human rights protection in Latin America and the Caribbean, a number of laws remain in force in the region that restrict people’s ability to exercise their sexual and reproductive rights. Chile is one of only six countries in the region (the others are El Salvador, Haiti, Honduras, Nicaragua and Suriname) that criminalize abortion in all circumstances, without exception. Outside the region, only Andorra, Malta and the Vatican have similar laws.

In the region, women and girls continue to face discrimination and violence. Women and girls frequently face violations of their human rights. For example, they are criminalized for seeking or having an abortion; they are denied access to medical treatment for life-threatening complications arising from clandestine abortions; they are subjected to rape and incest that can lead to unwanted pregnancies and the stigma associated with being a victims of sexual abuse; they are denied access to safe abortion services when continuing with the pregnancy poses a risk to their lives or health.

According to international human rights standards, which states have committed to uphold by signing and ratifying various conventions and instruments, the criminalization of abortion in all circumstances constitutes a violation of the human rights of women and girls.

AMNESTY INTERNATIONAL’S POSITION ON ABORTION

Amnesty International is a global organization of 7 million people in almost every country in the world who campaign to defend and protect all human rights. It has been in existence for 54 years and is independent of any government, political ideology, economic interest or religion.

Since 2007, Amnesty International has worked actively to protect and defend sexual and reproductive rights, including the decriminalization of abortion. The organization’s position on abortion was adopted in accordance with the internal democratic mechanisms of the movement, with the participation of its membership and on the basis of existing standards in international human rights law.

In response to efforts by governments and other organizations and individuals to impose restrictions on the most intimate and private aspects of people’s lives, Amnesty International’s work regarding sexual and reproductive rights is based on seven human rights principles:

1. Consensual sex is never a crime, whatever people’s sex, sexual orientation, gender identity or marital status.
2. Everyone has the right to a life free of all forms of violence, including sexual violence.
3. Men and women should have access to comprehensive sexual education. All education and information on sex and relationships must be based on scientific evidence and should be available to everyone.
4. Accessible, confidential and affordable health services, including modern contraception, should be available to everyone. Everyone, men and women, should have access to comprehensive information about sexual and reproductive health, and information about and access to a wide range of contraceptive methods, including emergency contraception.

5. Having an abortion or helping someone else to get an abortion should not be a crime. Therefore:
 - All laws that criminalize women for seeking an abortion and health professionals for carrying out abortions should be abolished.
 - Any woman who suffers complications arising from an abortion should have access to the necessary medical services, irrespective of whether the abortion was carried out within the law or not, without discrimination and without fear of being reported to the authorities.
 - As a minimum, safe and affordable abortion services must be made available to any woman who is pregnant as a result of rape or incest, or whose life or physical or mental health are put at risk by the pregnancy or who is carrying a foetus that is not viable.
6. Every person must be able to exercise their right to participate in the development of laws, policies and plans that affect their bodies and their lives.
7. If anyone is denied their right to choose in relation to sexual and reproductive matters, the authorities must ensure their right to report it, to have the facts investigated and to justice.

In 2014, Amnesty International launched a global campaign, “My Body, My Rights”, which seeks to guarantee the right of every person to make their own decisions about their sexuality and reproductive lives without discrimination, coercion or violence. The campaign calls on governments to reform their laws and practices in order to ensure that everyone’s sexual and reproductive rights are respected, protected and fulfilled and to put an end to the illegitimate use of criminal legislation to control people’s sexual and reproductive lives.

THE REALITY OF ABORTION IN CHILE: WOMEN AND GIRLS AT RISK

Chile's Criminal Code provides for prison sentences for women who bring about or consent to an abortion.¹ It also provides for terms of imprisonment for anyone carrying out an abortion with the woman's consent,² and for longer prison terms in those cases where the person was a medical practitioner.³ At regards the Health Code – which has since 1989 allowed for abortions “with a therapeutic purpose;” that is, where the life or health of the woman or girl is at risk – at present it prohibits any action that aims to induce and abortion.⁴

Given that abortion is criminalized in all circumstances, it is impossible to arrive at accurate figures for the number of abortions carried out each year in Chile. According Ministry of Health figures, more than 33,000 women a year are admitted to hospital in connection with abortions. Of these, more than 3,600 are young girls and teenagers aged between 10 and 19.⁵ This information suggests that on average at least 90 abortions are carried out every day in Chile.

Nevertheless, it is likely that this figure is significantly less than the real number of abortions carried out in Chile. Various studies have estimated that there are between 60,000 and 70,000⁶ abortions a year, while others put the figure at 160,000 a year.⁷

The criminalization of abortion in all circumstances not only forces women and girls to resort to clandestine and illegal abortions, it also means that those who need medical care for complications following the abortion, are reluctant to seek the care they need because they fear that health-care providers might report them to the authorities and they could face criminal charges. This unquestionably puts the lives and health of the women at increased risk.

The Chilean Code of Criminal Procedure states that health professionals who observe symptoms that lead them to believe that a crime has been committed are obliged to report that crime.⁸ To

¹Article 344 of the Criminal Code states that a woman who brings about an abortion or consents to an abortion being carried out by another person will be punished with the maximum short-term imprisonment. If the abortion was carried out in order to conceal dishonour, the sentence shall be medium short-term imprisonment.

²Article 342 (3) of the Criminal Code, states that intentionally inducing an abortion with the woman's consent will be punished with medium short-term imprisonment.

³Article 345 of the Criminal Code states that a medical practitioner who abuses their position and brings about an abortion or cooperates in inducing an abortion shall be sentenced to the punishment set out in Article 342, increased by a degree.

⁴In 1931 Decree-Law No 226 legalized therapeutic abortion in Chile. Article No 226 stated that the early termination of a pregnancy or procedures to sterilize a woman are permitted solely for therapeutic purposes and must be supported by the written opinions of three medical professionals. When it is not possible to fulfil this condition because the case is an emergency or there are insufficient medical professionals in the locality, the procedure must be accompanied by written documentation from the doctor and two witnesses, which will be kept by the relevant witness.

This Decree-Law remained in force until 1968 when Decree-Law No 725 entered into force. This states that early termination is permitted solely for therapeutic purposes. Such a medical intervention requires the written opinion of two surgeons.

However, on 15 September 1989, during the final term of the dictatorship of General Augusto Pinochet, Law No 18,826 was published in the Official Gazette. This states that no action shall be performed whose aim is to induce an abortion. This law remains in force today.

⁵Department of Health Statistics and Information, Ministry of Health, Government of Chile, 2011, available at http://intradeis.minsal.cl/egresoshospitalarios/menu_publica_nueva/menu_publica_nueva.htm, last accessed 28 February 2015.

⁶Chilean Institute of Reproductive Medicine cited in *Annual Report on Human Rights in Chile 2013*, Human Rights Centre, Diego Portales University, Santiago, 2013. The estimate is based on the overall level of fertility, the number of women of child-bearing age and the number who use contraception.

⁷Maité Albagly, *El Aborto en Chile*, Editorial Aún Creemos en los Sueños. Chile, 2008.

counter this, in 2009, the Ministry of Health issued a regulation stating that women and girls seeking emergency treatment as a result of a termination should not be asked to “confess” to having had a clandestine abortion in order to get the treatment they need.⁹

However, information provided to Amnesty International by the Public Prosecutor’s Office shows that in 2014 alone, judicial investigations were initiated into 174 cases of “voluntary abortion” involving 113 women.

The Public Prosecutor’s information regarding previous years indicates that on average investigations are initiated each year into approximately 90 women. However, less than a third result in formal charges for abortion. Of the 159 people whose convictions and sentences were confirmed between 2008 and 2014,¹⁰ in 79% of cases alternatives to prison terms were imposed, 19% were sentenced to prison terms and 1% received fines.

Figures provided by the Criminal Public Defender’s Office indicate that between 2006 and 2014 no more than 500 cases of voluntary abortions requiring the services of a public defender reached the courts. Legal proceedings were completed in 293 of these cases and of these less than 30% were convicted and most were given non-custodial sentences.

In 2010, the Criminal Public Defender’s Office reviewed more than 200 case files relating to people accused of abortion and infanticide dating from 2001 to 2009. This analysis revealed that abortion was a woman’s crime with, in many cases, a woman co-accused: friends, mothers or sisters who offered their support. The majority of those accused were young women from disadvantaged socio-economic backgrounds. The study also concluded that the majority of abortions that came to the attention of the justice system were those involving complications and malpractice – typical of clandestine procedures – that resulted in woman having to go to a public health centre and subsequently being reported for having an abortion. In most cases the accused women had no previous criminal record.¹¹

According to the information provided by the Prison Service, as of April 2015 there were 10 people in its custody for the crime of abortion: eight had been convicted and two were charged awaiting trial.¹²

All of which indicates that the different agencies in the health and justice system tend to treat abortion as something that should not be criminalized. Nevertheless, this does not suggest that legislation to decriminalize abortion is not necessary; the current practices of the justice system could change at any moment. In El Salvador similar legislation to that in Chile has resulted in women being imprisoned, including women who had gone to health centres to seek treatment for miscarriages and who had been accused of inducing the early termination and criminalized. In addition, it is important not to underestimate the impact on the 90 or so women, most from

⁸Code of Criminal Procedure, Article 175 (d).

⁹Ministry of Health, Ord. A15/1675 of 24 April 2009, “Instructions to directors on the subject”, available at http://icmer.org/documentos/salud_y_derechos_sex_y_rep/instruct_minsal_confidenc_y_aborto.pdf

¹⁰Public Defenders Office, “Aborto: la visión de la Defensa Pública”, *La Revista*, available at <http://www.dpp.cl/resources/descargas/revista93/Revista93n11.pdf>, last accessed 2 March 2015. The article bases its analysis on 293 cases of abortion between 2006 and 2014. However, the total number of abortion cases may be higher than that given by the Public Defender’s Office given that this does not include cases involving privately hired defence lawyers where no public defender was required. In addition, the Public Defender’s Office has information only about court cases under the remit of the Public Prosecutor’s Office, and the number of cases that enter the system but do not reach court may also be higher.

¹¹Ibid.

¹²Information obtained on 16 April 2015 in response to a public information request to the Chilean Prison Service.

disadvantaged backgrounds, who each year face criminal proceedings in addition to dealing with the experience of a clandestine abortion.

The effect on women in Chile of the criminalization of abortion in all circumstances goes beyond the risk of imprisonment. When a pregnancy puts the life or health of a woman at risk, when the foetus is not viable, or when the woman has been raped, in addition to overcoming that difficult situation, the woman or girl has to face a series of obstacles that leave her completely without protection.

Amnesty International spoke to women who had lived through such experiences and also with health professionals working in this field. It has been able to document the difficulties that women face in these circumstances. These include: institutions that are unable to offer them a solution and that often mistreat them; a lack of accurate and unbiased information; and the impossibility of making their own decision about whether or not to continue with the pregnancy. If, for whatever reason, a woman does decide to have an abortion, she has no option but to do so secretly or go abroad and to deal with this difficult experience alone and in fear of being mistreated, judged or criminalized.

WOMEN'S STORIES

Reference is made throughout this report to the cases of five women who agreed to give their stories to Amnesty International.

Carolina (not her real name) was 26 when she became pregnant, some 10 years ago. She did not use contraceptives, but took emergency contraception within 72 hours. She had been given the pills by a medical friend; she said it was for a friend of hers. Fifteen days after taking the emergency contraception her period began, which she took to indicate that she was not pregnant. However, a week later, after experiencing severe pain and vomiting, she went to a private clinic in Santiago. There she learned that she was pregnant and that it was an ectopic pregnancy, which would put her life at risk if it continued. She was hospitalized to monitor how the pregnancy progressed. It was only three days later, when there was an immediate threat to her life, that doctors intervened. At no point was she asked her opinion on what was happening nor did anyone explain clearly the reasons for proceeding in this way.

Tania (not her real name) was 31 years old and married with three children aged between three and seven when she had a clandestine abortion more than 20 years ago. She decided to have an abortion because she became pregnant in the middle of her cancer treatment. She would have had to stop the treatment in order to continue the pregnancy without putting the foetus at risk, which would have put her life in danger. However, the doctor treating her did not give her any options. He merely told her not to worry, that nothing would go wrong and that if she tried to have an abortion he would have to report her. After seeking other opinions from a midwife and a doctor, who confirmed that she could not continue both her treatment and her pregnancy, she decided to seek a clandestine abortion. She had the abortion in a private clinic and paid for the procedure, which was carried out at night and was registered as a gynaecological operation.

Isabelle is a 39-year-old French astronomy researcher who teaches physics at the university. She came to Chile for her work four years ago with her two daughters; this was her second time in the country. She met Carlos the year she arrived. He also has two children. The couple decided they would like to have a child together. In 2012 Isabelle became pregnant with Amanda, who was discovered to have Trisomy 13, which meant that she would not survive outside the uterus. However, in Chile, Isabelle had no option other than to continue with the pregnancy to term, which for her would have been torture. She had an abortion in France, struggling to find the money to pay for the journey and the procedure. At the time of the interview, Isabelle was pregnant with Facundo, who was born on 8 May 2015.

Paulais a 39-year-old professor in history and drama theory at the University of Chile and has just finished her doctorate. She has lived in France, Argentina and Brazil and has a six-year-old son. While she was living in Brazil in 2006 with her then partner, she became pregnant, but the foetus suffered from malformations and a serious reduction in amniotic fluid. After coming to Chile to get a second opinion, she discovered that she had no legal options in the country and so had an abortion in Brazil, far from her support networks and family.

Rossana has lived in Belgium for 24 years. She is a nurse but hopes to become a writer; one of her books has already been published. She went to live in exile in Belgium with her then partner and their son. In 1989, before moving to Europe and during the fourth year of her French degree, she was raped by a young man with whom she had a relationship and became pregnant. She was 21. She decided she could not keep the child of a man whom she now hated. She told almost no one that she had had a clandestine abortion in the house of the doctor who carried out the procedure. This was the first time that she told her story.

LACK OF INFORMATION

Given that the law does not allow women to decide to have an abortion in any circumstances, Amnesty International has documented cases in which health professionals treating them have not provided comprehensive or accurate information about their condition or the specific complications that some women may face and the risks associated with continuing the pregnancy.

Carolina told Amnesty International that the private clinic where she was treated for an ectopic pregnancy never mentioned the word “abortion”, despite the fact that it was impossible for her to take her pregnancy to term. She was not treated immediately; instead doctors waited until her life was in imminent danger before performing an emergency procedure. This is one of the consequences of the existing legislation, according to which early intervention to terminate a pregnancy can be considered a crime. She told Amnesty International: “they kept fobbing me off and never told me clearly what the situation was. To this day, I don’t know if I will be able to become a mother as easily as I would wish because we had to wait until the last moment for the procedure. That’s my biggest criticism, apart from the fact that they don’t give you all the background information. They don’t tell you the truth. They don’t tell you basically ‘you know what? I can’t operate on you because the law doesn’t allow it. I have to let you get to the point where your life is in danger in order to justify this operation’.”

In Tania’s opinion, the doctor who treated her initially withheld crucial information. She was in the middle of cancer treatment when she became pregnant. Tania told Amnesty International: “The first doctor who treated me told me that I should stay calm, that I had to continue with it [the pregnancy] and that I shouldn’t be scared, that nothing bad would happen and that everything that was happening to me was normal...” He went even further and indicated that if she had an abortion, he would have to report her. A midwife and a doctor that Tania consulted subsequently told her that this was not true and that in her condition taking the pregnancy to term would make it impossible for her to continue her cancer treatment. In other words, continuing with the pregnancy meant choosing either to continue her medication, which would put the viability of the foetus at risk, or to stop her medication, in which case it was likely that the cancer would have spread. These risks were not properly explained during the first medical consultation.

THE EMOTIONAL HARM OF NOT BEING ALLOWED TO DECIDE

In addition to not receiving all the necessary information, women in Chile, irrespective of their circumstances, are put in a position where they cannot make decisions about their pregnancy or its consequences.

Carolina recalls that no one ever explained properly why she was being hospitalized instead of being operated on immediately even though she had an ectopic pregnancy¹³ that could not be taken to term. No one asked her opinion about this. She explained: “to this day I don’t have all the background information and I don’t understand why we had to let it get to that extreme point [waiting until it became an emergency before carrying out the operation]. The doctor never told me and I don’t even remember his name; I never saw him again. He knew nothing about my situation, or my life, what I feel or think, what I would have wanted or not wanted. He never asked. Clearly, he followed the procedures because he is a doctor. But I could not choose. I might have opted for something else, if I had had all the background information.”

After she had obtained second opinions from the midwife and a doctor, Tania concluded that it would be impossible to take the pregnancy to term unless she stopped all her cancer treatment and risked dying herself. However, “here in Chile there is zero possibility of having an abortion legally”. She had to look for other, clandestine options in order to save her life.

Isabelle remembers when she got the sad news that the much-wanted pregnancy was not viable and that her daughter would not survive outside the womb. She was about three months pregnant: “the doctor explained that there was nothing that could be done, that there was a lengthy process that allowed labour to be induced at 38 weeks; a normal pregnancy lasts 40 weeks. This seems absurd to me. It appears I have to go before a series committees who will assess the case and if it is determined that the baby really is not viable, for reasons that I didn’t understand, there was a way of having an induced birth at 38 weeks.” She described how she and her husband decided that they didn’t want to continue with this pregnancy. She said: “ I know there are people who want to, who think that, if they were in the same situation, they would want to carry on with the pregnancy. I understand that perfectly because it is a very personal question. But what I don’t understand is that there are people who impose their opinions on others who are in this situation: ‘you have to keep your baby until it dies naturally, you have to continue with five more months of pregnancy’.”

For Isabelle, the idea of continuing with the pregnancy was “like torture because when you have an ultrasound scan, on the one hand you think ‘this baby is going to die, I hope it’s quick’, but at the same time you don’t want the baby to die because it’s your baby. Going for a scan to be monitored and find out how your baby is dying for eight months is a horrific prospect. How can you follow your baby’s agony? How can the law decide that this is what women must go through?”

René Castro, an obstetrician, described a similar case in which the woman did have to wait until the end of the pregnancy. “Just a little while ago I was talking to a woman who had a malformed child... she told me how painful it was for her to have to wait for nine months to deliver her son, knowing that he would die in the first 24 hours, which is what in fact happened. What was worse was that she did not have anyone to support her emotionally, to protect her at least from the impact of this”. His experience has led him to conclude that: “Women carrying a foetus that cannot live should be able to decide whether to terminate or continue with the pregnancy. And, if a women continues with the pregnancy, she must be offered all the appropriate support and care she needs to continue”.

Paula is Chilean, but she became pregnant while living in Brazil where she learned that the foetus was not viable. That was the reason she returned to Chile. “I came to Chile, I was coming back, but here in Chile I couldn’t do anything. For me it was a very complicated situation

¹³In Chile, the treatment of ectopic pregnancies is left totally to the doctor’s discretion, regardless of the woman’s views. Under current legislation, in cases where there is a risk to the woman’s life, doctors should take action to save her life. In these circumstances, the actions of the doctor are understood not to be aimed at inducing an abortion and are therefore not a crime. However, the consequence of the law – as was the case for Carolina – is that doctors do not take action in a timely manner, but rather wait until there is an imminent risk to life.

because my emotional support, my family, everyone was in Chile. You know the doctors and you expect to find a solution”. Paula felt that “to a certain extent, doctors washed their hands of me. They weren’t unpleasant or unsympathetic, but it was as if they were saying ‘ go and find a solution over there in Brazil, we know that it’s possible there, but here there it’s absolutely impossible’.”

Paula said: “In Chile there are no options at all. Unless you break the law and they puncture the placenta in an illegal operation; wherever you go, the law means that you have to lose it naturally with all the risks that that poses. The other option was to go to Brazil and go through this whole legal process where psychologists, lawyers, judges – everyone but you – decides, and then your husband signs... that is, if your husband doesn’t agree, you cannot have a termination. For me that was awful, because in the end everyone had a say, except me.”

Rossana told Amnesty International: “whether they put you in prison for having a clandestine abortion, and not always in the kind of good conditions that I was able to have because I could pay, or whether they put something in you, I don’t know, and mess you up so that you can never be a mother, or whether you have to do the stuff that you read about on the internet, in the end, it seems degrading to me that there is no respect for the fundamental right of every person to make their own decision.”

ILL-TREATMENT BY HEALTH INSTITUTIONS

Because abortion is criminalized in all circumstances in Chile, women whose pregnancies pose a risk to their lives or are not viable or are the result of rape have found that health institutions and professionals are not prepared to offer an appropriate response to their situation. The statements received by Amnesty International show that because abortion is illegal in all circumstances, and in the absence of clear protocols and regulations, in the end what happens in each case is left to the discretion of the doctor. The doctor may choose to give only partial information, take little account of the woman’s emotional needs in this difficult situation, or simply give the impression of not knowing what to do.

While Carolina was waiting for the ectopic pregnancy to develop, she was admitted to a maternity ward: “I was sitting next to people who were simply having babies and there I am losing a baby which I didn’t even know I had, and on top of that getting black looks from them.”

Carolina had decided not to tell her father what was happening; she told him that she was receiving treatment for something else. One day, her father came to visit her in the clinic and the midwife in reception told him about the diagnosis, which she had not wanted him to know about. Carolina described how he “came [into my room in the clinic] shouting. I was lying in bed. Why did they tell him? If I didn’t want to be judged by my father, why did they do this in a clinic where you assume that things will be done properly and you have rights?” That night Carolina underwent an emergency operation in which a fallopian tube had to be removed.

When Tania consulted the first doctor, his initial reaction was to get annoyed with her for getting pregnant. “He was very annoyed when he learned that I was pregnant. He made me feel guilty. I remember that there was something on the table, I don’t remember what. He took it and threw it. He was very angry, very annoyed.” The suddenly, he changed: “It was as if he became another person and he said, ‘don’t worry because your illness is under control. Straight away he was separating things, it was as if he was cutting me up: the illness, me and the baby, as if we were three separate things.” Tania said she felt that: “They always saw me in a disjointed way. They never saw me as a person, as a whole human being. They saw me as an incubator, someone who could bring children into this world. And afterwards, it didn’t matter if I raised them or not, if I died, if we would go hungry – to them that didn’t matter. They see us as incubators. As machines, machines for reproduction.”

When Tania woke up after her operation, she was alone: “There as no support, there was no one to support me at that moment.” She added: “I have been in hospital many times [for the cancer]

and seen women who had had abortions. They were treated very badly. You can't imagine the inhuman treatment they get, from the person who sweeps the wards to the doctor. They faced constant recriminations, all day."

Isabelle felt that the way they told her that her pregnancy was not viable was "very brusque" and lacked the necessary sensitivity given the painful situation she faced. The doctor treating her asked another doctor for a second opinion. When he arrived in the room, he looked at the scan quickly. Isabelle described how the doctor still looking at the scan, simply said: "This isn't viable. Look at the size of the head, the organs have not developed, there no this and that, look at the fingers, they're twisted. This baby must have a serious genetic problem." Then, finally addressing Isabelle, he said: "The baby is not viable and will certainly die during pregnancy, in the final part, perhaps at eight or eight and a half months. Failing that, it will die at the moment of birth. My advice is that you should go back to your country and have a therapeutic abortion and try afresh to have another child in a couple of months." Isabelle felt that for the doctor "it was obvious that, as I'm French, I should travel and have an abortion and start a new baby, as if making babies was like making a new cake when the previous one didn't come out right. I was stunned, but deep down my first reaction and the reaction of my husband was surprise. We were sad, but I think we couldn't believe what was happening to us."

Isabelle felt that this was in stark contrast to the treatment she received in France after she had decided that she did not want to continue with the pregnancy and was able to get the money she needed to go there. "I really liked the way we were received in France. Our baby was born in a room dedicated to this kind of birth. You don't give birth to a baby that is going to die right next to two women who are having normal births. The same person cared for us right from the moment we arrived for the first ultrasound scan to the moment when we were handed the baby's body. That one person was the link between the doctors, the midwife and the morgue or the place where the body was kept. Being accompanied in that way gave us really valuable support."

Paula did not feel a lack of sympathy or ill-treatment, but she did feel that the doctors were in a hurry to extricate themselves from a situation that made them feel uncomfortable because they didn't know how to deal with it. They suggested that she have an abortion in Brazil, where she was living at that time. "And that was it, a uncomfortable situation and then 'hey, hope it all goes OK, see you, ciao'. That was the extent of his involvement, even though he was a doctor my family knew well. It was as if he were saying: 'I'm not going to get involved in a conflict over this situation'."

All the women interviewed were of the view that as they were trying to deal with their situation, their feelings, opinions and experiences were not taken into account and that the attitude of health professionals was influenced by the fact that alternative treatments were illegal. This meant that, on the one hand, health professionals did not have clear regulations on how to treat them appropriately and, on the other hand, they were afraid to undertake procedures that according to the legislation are a crime.

Finally, there is always the risk that the attending doctor might report women who try to have an abortion.

Anita Román, President of the Chilean College of Midwives, described one case where a woman was reported for haemorrhaging. "That year, a woman arrived in my department who was losing so much blood that the doctor who saw her reported her. She was taken from there to a women's counselling centre (*centro de orientación femenina*) and from there to prison. I think she was there for an afternoon. Various solidarity networks got involved and lawyers managed to get her out and to sign in weekly, but she ended up detained for an afternoon."

WOMEN WHOSE LIVES ARE AT RISK

The legislation criminalizing abortion frequently puts women's lives at risk.

The Health Code states that all actions aimed at inducing an abortion are prohibited. This has been interpreted to allow for the termination of a pregnancy when a woman's life is at risk. This interpretation is based on the view that when a woman's life is in imminent danger, the doctor has a duty to save her life, even if one of the consequences of the procedures needed to do so is the termination of the pregnancy. The Health Code allows this because the procedure is not "intended" to induce an abortion, but to save the woman's life and the termination of the pregnancy is an unwanted consequence of that procedure.

However, Anita Román told Amnesty International that: "When those who are opposed to the campaign say that the issue is clear when it comes to risk to life because there are standards that tell doctors what they have to do, that is not right. Because when you face this situation, you find that it's not written... and when you ask the doctor why they're not going to operate, they reply 'because if I do, it's an abortion'."

Obstetrician René Castro highlighted the problems caused by having to wait until there is a imminent danger before being able to take action: "Today there is a much greater consensus internationally when talking about quality of life. The issue is whether I wait until a woman is in intensive care because of a grave complication of a pre-existing condition before taking action, or whether I'm going to forestall this serious episode and accept it when a woman tells me 'doctor, I'd prefer to terminate the pregnancy before I get to that point'" because "the focus should be on the woman's own decision".

This was the case with Carolina, whose case is mentioned above. Despite the fact that it was clear that she had an ectopic pregnancy and that it was impossible for her to continue with the pregnancy, doctors, without asking her opinion, waited until her life was at imminent risk before taking action.

This was not the only case of late intervention in cases of ectopic pregnancies. Anita Román told Amnesty International: "One of the cases I saw was of a woman admitted in a wheelchair diagnosed with an ectopic pregnancy who was made to wait. [They made her wait] and at one point, they had to give her a bed in the emergency unit because while she was lying there a fallopian tube burst. Why did they allocate her a bed when the tube burst and not before? For that woman, the delay meant death because when they operated she had acute anaemia caused by the rupture of the tube. The anaesthetist asked for blood, but the blood that they gave her was not compatible and she died. Why do they wait to operate until women are in this state, when their lives are in immediate danger?" The reasons for waiting for these extreme situations to develop before taking action in cases of ectopic pregnancy, putting women's lives at risk, include the legislation criminalizing abortion and the lack of clear regulations. That is why Anita Román believes it is essential to clarify the legislation regarding risk to life, because the current legislation means "doctors' hands are tied".

René Castro gave more examples: "If a woman suffers from a condition and a colleague, the doctor treating her, a cardiologist tells her: "Listen, with your heart condition, if you continue with the pregnancy, you will put your life at risk", or if she has cancer that needs prompt treatment and she is prevented from having this until her pregnancy ends, the woman is being put at risk. And what is worse, she is being subjected to prolonged anguish during all that time. It's obvious that what should happen is that she should be given all the information available so that the woman herself can make this decision."

Anita Román told Amnesty International: "Women have died of cancer who were wholly dependent on the discretion of the doctor in front of them. I have seen women who have been diagnosed with cancer and are undergoing treatment when they fall pregnant who have had their cancer treatment stopped because its effects could kill the foetus. But stopping the treatment means that the woman will die."

Tania's case is a clear example of this. She became pregnant while she was receiving treatment for cancer and found that in Chile her only option was to continue with the pregnancy. The only choice offered her was to continue the treatment, which would probably mean that her pregnancy was not viable, or stop the treatment, which would probably put her own life at risk. For that reason, she opted for a clandestine abortion in order to save her life.

Anita Román came to the conclusion that: "It is not true that the technical guidelines cover cases of risk to life, they don't. We raised this and the answer we get is that the Health Code is higher up the hierarchy of law than the technical guidelines from the Ministry. Therefore, doctors don't operate on a women unless there is a risk to life and, if they are lucky, they will survive. I have seen at least two or three women die in these circumstances."

CHOOSING TO CONTINUE THE PREGNANCY AGAINST THEIR WILL, CLANDESTINE ABORTION OR (IF THE RESOURCES ARE AVAILABLE) GOING ABROAD

Chile's legislation gives women no alternative but to continue with the pregnancy at all costs, so women who decide to get an abortion have to resort to a clandestine procedure or travel to a country where women in their situation can get an abortion legally. This means that a woman's economic resources is a key factor in obtaining a safe abortion, whether to pay to go abroad or for a clandestine abortion in less dangerous conditions.

There can be major differences in clandestine abortions. Sometimes women pay for an abortion that is carried out by a health professional. In other, increasingly frequent, cases abortions are carried out using Misotrol administered illegally.¹⁴ Generally, women with few economic resources do not have access to either of these alternatives and have to resort to extremely dangerous abortion methods.

Tania decided to have an abortion to save her life and was able to have a clandestine abortion in safe conditions. She said: "It wasn't an easy decision to take because, looking beyond what was happening to me at that moment, I wanted to have more children and the only option I had was to have a hysterectomy and so I would never be able to have a child afterwards." In the end "with the father and my children, the midwife and the gynaecologist, we decided that in reality I had to decide to save my life because that was the choice, it was that stark. It was clear there was no other way. I felt sure when I did it; I felt at that point I was fighting for my life". Tania described how "they took me to a clinic at night, at around 10 or 11 o'clock at night. It was all very clandestine, but the procedure was carried out in a clinic. They took me there at night and the following morning I went home and I had follow-up checks as though it had been an operation to remove cysts. That's what they wrote in the records; that I'd had an operation for cysts."

When Rossana found out that she was pregnant as a result of a rape, she was certain that she wanted to terminate the pregnancy and she was also able to pay for the abortion. The abortion was clandestine, but it was carried out by a doctor in his home. He told her to bring clean underpants, a towel and plastic, among other things. She said that doctor was "a very sweet,

¹⁴Misotrol or Misoprostol is a drug that was original approved for the treatment of gastric ulcers. However, a side effect of the drug is that it causes contractions. As a result, it has been used to induce abortions. It is a safe method if used in the first nine weeks of pregnancy or before a maximum of 12 weeks, but can be dangerous after week 13. In Chile, Misotrol is not sold in pharmacies and is not even available on prescription and is only approved for use in hospital. However, there are various ways of obtaining it illegally on the internet (see for example, <http://vendomisotrol.com/> o <https://misotrolsantiago.wordpress.com/>), and can cost between CLP\$50,000 and CLP\$150,00 (approximately US\$74 to US\$222), according to the information available on various internet pages selling the drug. In addition, there are organizations that provide public information about the use of the drug (see, for example, <http://infoabortochile.org/wp-content/uploads/2013/05/manual.pdf>).

charming man. When he put the speculum in me – I'd not had much experience of going to a gynaecologist – I knew about this device... I remember I was lying on the bed, looking at the ceiling and on my left there was a window that overlooked other buildings. I was looking at the lights outside and I started thinking, "what am I doing". But I knew I couldn't keep the child of a man that I loathed and I couldn't have told my parents because they would have started saying 'we told you so, see, etc''. Rossana described how "suddenly, I felt, when he pulled out the speculum, a warm liquid flowing from my vagina. I thought I had urinated, but the doctor told me that it was blood and he showed me the pincers, which were gripping a small white dot, and he said 'that's the little egg, relax, you need to rest a little'. I said: 'No, I want this over as quickly as possible'. I went to the bathroom and washed. I'd brought sanitary towels with me. Afterwards he gave me a huge hug and said: 'you are a very brave woman. You will forget this. Here is a prescription, go and buy these antibiotics and if you have any problems let me know'."

Tania and Rossana were able to pay to get abortions which, even though they were clandestine, were carried out in conditions of at least some degree of safety. However, this is not the case for all women.

The availability – albeit illegal – of Misotrol as an abortion method has reduced the risks for women who have abortions. Anita Román highlighted the fact that: "today, women who take Misotrol and abort in their homes don't need health care and don't come to health facilities, public or private". René Castro also confirmed that: "Misotrol has clearly had a positive impact, at least as regards this aspect. It has reduced the number of complications and clearly reduced the number of deaths associated with induced abortion".

However, Misotrol is not available to all women and some do not have the resources to buy it. According to Anita Román, access to Misotrol in rural areas is very limited so that women are forced to resort to "abortion procedures that are very dangerous. For example inserting implements or drinking potions that could poison them". In addition: "The women or men who carry out abortions tell the women 'don't go to the hospital unless you get a temperature, but wait'. And while they are waiting, because of what the abortionist said, they don't go to the hospital and the infection spreads... and infects the woman's whole system and she dies".

Anita Román said that she had direct experience of very serious cases where women had survived clandestine abortions using very dangerous procedures but had been mutilated for the rest of their lives. She recalled in particular two cases of teenagers who had been made pregnant as a result of rape and whose mothers, when they discovered this, had induced the abortions. In one case, the mother herself had carried out the abortion with a pair of scissors causing internal injuries to the child. In the other case, in an effort to bring about an abortion *Rinso* (a detergent containing caustic soda) was injected directly into the uterus completely burning it.

The other option – which is not available to all women – is to travel abroad to have an abortion, as Isabelle and Paula did.

For Isabelle this was difficult because, although she was French and could get an abortion in France, she had to pay all the costs of the journey and of the procedure. She was not covered by the French health insurance system. Fortunately, she was able to get the money together, in part through a fundraising campaign.

Paula travelled to Brazil to terminate the pregnancy. It was not what she would have wanted. She said: "I would have preferred to stay with my family in this situation, with my networks. Having to do this elsewhere means that people don't know about your experience. You arrive back in Chile and it's as though you'd been on holiday in Brazil".

ISOLATION, FEAR AND PREJUDICE

Taking the decision to have an abortion is generally a difficult decision for any woman and having to decide in a context where it is criminalized and there is no adequate protection makes

it even worse. René Castro, with 40 years' experience as a health professional, told Amnesty International: "I don't remember ever having heard a woman say she was happy to have had an abortion. The experience is always surrounded by pain isolation and rejection".

Anita Román stressed that in her experience, the psychological trauma associated with abortion is mostly caused by the fear of resorting to an illegal abortion. She told Amnesty International: "There is an implicit fear because it has to be clandestine. Women know that if they talk to anyone other than the person who will accompany them, that person becomes an accomplice. That means the whole process is shrouded in fear, and obviously that is going to be traumatic." However, "the relief that these women feel after the abortion is striking. There is fear of the act itself, but afterwards far from turning out badly, everything turns out really well because they did not want that pregnancy."

As a general rule, women tell very few people what they are going through and they experience the whole process very much alone and with a real fear that people might find out what is happening because of the stigma surround the issue. Many of the women interviewed waited for years before daring to tell their stories and some still prefer that their identity not be made public.

Carolina only told her mother at the time and very few people afterwards: "I feel I have still not entirely come to terms with the experience. It's something that I couldn't talk about for a long time and there is so much prejudice about the issue. But I also don't want to make myself out to be a victim, because I never felt like one. I haven't talked about it much and when I have it was because I wanted to raise my voice. Things like this happen in real life. Why hide the fact that these things happen? Everyone has such things happen in their lives".

Tania has kept her experience secret right up to today, more than 20 years later. "Most people don't know. My children don't know. It stayed between the midwife, the doctor, my husband and me. Because that's what we agreed between us."

For Paula the experience of having a non-viable pregnancy and then an abortion meant the end of her relationship because her partner did not completely agree with her decision. For her that had a huge impact: "Is there no limit? Am I just an incubator for society, for other people, for my partner? And what happens to me doesn't matter? You only realize this when you are in that situation."

Isabelle was able to return to her job in academia. However, her husband ended up quitting his job. "He felt that people at work didn't understand. They saw his absence when he went to France with me as showing a lack of responsibility towards his work. I think that in such a sexist society people don't understand men who leave work to support their pregnant wives, men who put their private lives first and their professional lives second at these times."

Rossana never wanted to talk about the abuse she suffered: "It wasn't something that I thought about all the time. My dad died 15 years ago and my mother died just a few months ago, so my secret can't hurt them now."

"I didn't want to carry the stigma of being someone who 'had an abortion or was a rape victim'". She also went through the abortion on her own. A friend went with her for half the journey to the doctor's house, but she was alone during the whole procedure. She said: "When I got the courage to write my statement, because I knew that people were starting to talk about the abortion law, I said if the enormous suffering I went through then can help other women who have felt or who feel as sad as I did at that moment, well, I'll take the plunge and let others decide to disclose what I never dared to disclose out of respect for my parents more than anything and out of fear."

HUMAN RIGHTS FRAMEWORK¹⁵

The enormous risks faced by women who find themselves in the kind of situations described in this report are indicative of a series of human rights violations. This is why under international human rights treaties the criminalization of abortion in all circumstances constitutes a human rights violation and an obstacle to the adequate protection of sexual and reproductive rights of women and girls.

This is based on three key points:

- a) Sexual and reproductive rights are human rights.
- b) It is impossible to talk about abortion without talking about sexual and reproductive rights.
- c) It is impossible to talk about sexual and reproductive rights without talking about abortion.

A) SEXUAL AND REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS

Respect for sexual and reproductive rights is essential for human dignity. These rights are grounded in human rights that are recognized in regional and international human rights treaties that Chile has signed and ratified.¹⁶ These treaties include rights such as the right to privacy, to physical and mental integrity, to non-discrimination and to freedom from cruel, inhuman or degrading treatment, among others. These standards protect and ensure people's right to take free and informed decisions about their sexual and reproductive rights, free from violence, coercion and discrimination and to have those decisions respected.

There is already a worldwide recognition that sexual and reproductive rights are human rights. All states have an obligation to respect, protect and ensure sexual and reproductive rights.

Fundamental sexual and reproductive rights include: the freedom to choose whether or not to be sexually active; the freedom to engage in consensual sex, whatever your sexual orientation; the freedom to engage in sex that is not linked to reproduction; the freedom to choose your partner; the freedom to decide when and whether to have children and how many to have; and the right to be free from violence and harmful practices; to access to contraceptive and family planning information and services; and to access to sexual education, especially for adolescents.

¹⁵For more information about sexual and reproductive rights in international human rights law, see Amnesty International's report *El aborto y los derechos sexuales y reproductivos: Fundamentos de los Derechos Humanos*, available at <http://amnistia.cl/web/wp-content/uploads/2015/02/El-aborto-y-los-Derechos-Sexuales-y-Reproductivos.-Fundamentos-de-DDHH.pdf><http://amnistia.cl/web/wp-content/uploads/2015/02/El-aborto-y-los-Derechos-Sexuales-y-Reproductivos.-Fundamentos-de-DDHH.pdf>

¹⁶The main relevant treaties are: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the American Convention on Human Rights; and the Inter-American Convention the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará).

B) IT IS IMPOSSIBLE TO TALK ABOUT ABORTION WITHOUT TALKING ABOUT SEXUAL AND REPRODUCTIVE RIGHTS

Regulation of abortion is not the only solution to the complex problems facing Chile regarding discrimination, violence and unwanted pregnancy. It cannot be seen in isolation.

Measures to protect sexual and reproductive rights are like a complex mechanism made up of multiple components, all of which are essential and interlinked. That is why it is essential that laws such as the one currently under discussion on early termination of pregnancy are accompanied by sexual education, information and effective access to a range of affordable contraceptives, including emergency contraception, that allow people to prevent those pregnancies that they wish to and can prevent.

They also need to be supplemented by appropriate and affordable services during pregnancy and labour. This must include health services and support for all women, especially those who are in particularly vulnerable situations for a variety of reasons.

Importantly, such measures must be seen in the context of general efforts to combat discrimination against women and gender stereotypes that mean women are not able in practice to assert their decisions about sexual and reproductive issues. Progress must also be made in combatting violence against women given that sexual violence is a frequent reason for unwanted pregnancy, including among young girls and adolescents.

C) IT IS IMPOSSIBLE TO TALK ABOUT SEXUAL AND REPRODUCTIVE RIGHTS WITHOUT TALKING ABOUT ABORTION

Adopting the measures outlined above – such as sexual education, access to contraception and emergency contraception, combatting gender-based violence and providing appropriate prenatal services – effectively could cut the number of unwanted pregnancies to a minimum. This would reduce the situations in which women, for a variety of reasons, face the dilemma of having an abortion or continuing with the pregnancy. However, even if these measures were completely successful, there would still be circumstances in which abortion would need to be available as an option. If it were not, then one of the essential components of the mechanism to protect sexual and reproductive rights would be missing, leaving some women unprotected.

It is not normally possible to predict when a pregnancy will put the life or health of the woman at risk or when the foetus will not be viable. On the contrary, as some of the testimonies in this report have shown, a pregnancy that is very much wanted can, sadly, not have the hoped for outcome.

On the other hand, when a pregnancy is the result of rape, the state has an obligation to ensure access to justice and reparations for the victim, as well as to take all the necessary measures to prevent sexual violence. According to the Sexual Crimes Unit of the Public Prosecutor's Office, 17 women are raped and 34 sexually abused in Chile every day; 75% of victims are minors.¹⁷ These women and girls have already been forced to endure non-consensual sex and

¹⁷“Análisis revela que en Chile se cometen 17 violaciones diarias y 34 abusos sexuales”, Chilean Public Prosecutor's Office, available at http://www.fiscalia.dechile.cl/Fiscalia/sala_prensa/noticias_det.do?id=605, 28 February 2015.

should not then be forced to continue with the resulting pregnancy without reference to their wishes.

In such cases, the methods to prevent pregnancy outlined earlier are of no use. It is not even possible to state with certainty that access to emergency contraception will resolve the situation for those pregnant as a result of rape. Often such cases are not reported in time to ensure that emergency contraception will be effective or else there are barriers to obtaining it, for example there are no tablets in the clinic.

In those cases where the pregnancy is the result of rape, women and girls must be able to make free and informed decisions about whether or not to continue with the pregnancy. The role of the state in such situations is to provide the woman, girl or adolescent with all the information they need in order to make a decision, without bias or attempting to influence the decision either way. Whatever decision she makes, the state must then provide all the necessary health services.

As various UN bodies have stated, forcing someone to continue with a pregnancy against her will with the threat of criminalization should she seek an early termination, especially in such extreme circumstances, is tantamount to cruel, inhuman or degrading treatment inflicted by the state. In addition, it may also create a whole range of violations of human rights, such as the rights to life, health, physical and mental integrity, privacy and due process, among others.

It is also important to note that bodies charged with interpreting and monitoring the fulfilment of these treaties have consistently found that criminalizing abortion in all circumstances is in breach of human rights. Recommendations have been issued to Chile in the context of the following UN mechanisms and bodies: the Universal Periodic Review; the Human Rights Committee; the Committee for the Elimination of Discrimination against Women; the Committee on Economic, Social and Cultural Rights; and the Committee on the Rights of the Child. All have made recommendations in the context of periodic reviews of the implementation of the treaties they monitor urging Chile to establish exceptions to the criminalization of abortion at least in those cases where the life of the woman is at risk, the foetus is not viable or the pregnancy is the result of rape or incest.¹⁸

“Cuenta anual Fiscalía Nacional: el 74% de las víctimas de delitos sexuales son menores de edad”, *La Tercera*, 29 April 2014, available at <http://www.latercera.com/noticia/nacional/2014/04/680-576014-9-cuenta-anual-fiscalia-nacional-el-74-de-las-victimas-de-delitos-sexuales-son.shtml>, 28 February 2015.

¹⁸The text of the recommendations made by each of the committees can be found in Annex 1.

THE IMPORTANCE OF THE BILL CURRENTLY UNDER DISCUSSION: CHILE IS FAILING TO PROTECT WOMEN AND GIRLS

As this document has shown, Chilean legislation means that, in practice, women and girls face a whole series of situations in which they are without protection. They are given inaccurate information and ill-treated; they are unable to assert their wishes; their lives are put at risk by delayed operations; they are put at risk by clandestine abortions when they do not have the resources to pay for an abortion in safe conditions or to go abroad; and they face prejudice and isolation. Chile has failed to protect the human rights of women and girls.

On 31 January 2015, President Michelle Bachelet introduced into parliament the Bill to Regulate the Decriminalization of the Termination of Pregnancy on Three Grounds.¹⁹ The three grounds are to avoid “a current or future risk to the life of the woman, where the embryo or foetus suffers from a hereditary or genetic structural malformation incompatible with life outside the womb or when the pregnancy is the result of rape”. The presidential motion (*mensaje*) proposing the amendment states that the termination of a pregnancy “must be integrated as a legitimate health service. If it does not ensure that women can go to health facilities, this regulation will be pointless. Moreover, it will perpetuate inequalities between women based on their social and economic status.” However, access to services is not explicitly set out in the Bill.

The background to the Bill states that: “the law currently in force on termination of pregnancy, which prohibits terminations in all circumstances without exception, falls short of the Chile’s duty to treat citizens who find themselves in this situation with dignity” and that “a state that respects human rights cannot feel pride or satisfaction in threatening women who face this dilemma with a prison sentence”.

As stated earlier in this report, most countries in the world have concluded that it is necessary to set out at least some exceptions to the criminalization of abortion and international human rights bodies have taken the same view. In Chile, according to the data analysed, the criminal justice system has chosen not to prosecute the crime of abortion. In addition, public opinion also reflects the belief that, at least in the three situations that are currently under discussion, abortion should not be a crime and should be properly regulated.²⁰ The World Health Organization has stated that the legal position with regard to abortions in a country makes no substantive difference to the number of induced abortions as women decide to have an abortion whether or not it is legal irrespective of whether it is available through legal health facilities.²¹

As this report has shown through the information and statements gathered, women and girls whose life is at risk, whose pregnancy is not viable or who have been raped continue to face

¹⁹Bill to Regulate the Decriminalization of the Termination of Pregnancy on Three Grounds, Bulletin No 9895-11. The following paragraphs relate to the corresponding paragraphs of the Bill. A summary of the Bill can be found in Annex 2.

²⁰Recent opinion polls about the Bill currently under discussion show that more than 70% of those questioned were in favour of decriminalizing abortion in cases where the life of the woman was at risk, when the foetus was not viable and when the pregnancy was the result of rape. For example, see: a survey on views about the government’s performance, June 2014, Adimark, available at: http://www.adimark.cl/es/estudios/documentos/4_eval%20gobierno%20jun_2014.pdf, 17 February 2015; a survey on women’s views on the situation and quality of life of women in Chile in 2014, Corporación Humanas, available at <http://www.humanas.cl/?p=14017>, 17 February 2015; Survey No 5 on reproductive rights, INJUV, available at http://www.injuv.gob.cl/portal/wp-content/uploads/2015/02/SONDEO_J%C3%B3venes-y-el-aborto.pdf, 17 February 2015; and Track weekly public opinion poll No 56, Plaza Pública Cadem, available at <http://plazapublica.cl/wp-content/uploads/Track-PP56-Febrero-S1-Especial-Aborto.pdf>, 17 February 2015.

²¹See, for example, WHO, *Safe abortion: technical and policy guidance for health systems* (2012).

multiple barriers that prevent them from deciding whether or not to continue with the pregnancy and leave them completely without protection if they decide to terminate the pregnancy.

All indicators point to the need to make progress in this area in order to protect women. It only remains for the National Congress to rise to the challenge and pass the relevant legislation.

Although the Bill put forward by the government is not fully aligned with international human rights standards, its approval would be an important first step towards protecting the human rights of women and girls in Chile.

In order to move towards better protection of women in Chile and to ensure that the legislation currently under discussion brings about changes in practice in the lives of women in Chile, some minimal conditions must be fulfilled. The law must:

a) Ensure that it guarantees access to legal and safe abortion services for all women and girls, without discrimination, in cases where a pregnancy poses a current or future risk to the health or life of the woman or girl, where the foetus is not viable or where the pregnancy is the result of rape. Those women who, finding themselves in these three situations, decide to continue with the pregnancy must also be guaranteed access to services in accordance with their specific needs.

b) Include an unconditional guarantee of access to appropriate and affordable services for those suffering from complications resulting from an abortion, whether or not the abortion was carried out within the law, and ensure that health personnel neither should nor can report women to the authorities in these situations nor make medical care conditional on the woman admitting that she has undergone an abortion.

c) Ensure that the regulations adopted regarding the requirements and conditions in which the law will be applied, or in relation to the exercise of conscientious objection to providing such services, are not so restrictive that, in practice, they prevent effective access to these services.

Only then will Chile have taken a step towards protecting women and girls facing such extreme situations. This law must not be an isolated measure, but must be accompanied by other measures to protect sexual and reproductive rights that address preventing unwanted pregnancies, maternal health care and support for pregnant women and girls at risk.

The approval of this Bill, incorporating these recommendations is essential in order to provide comprehensive protection. It would mean that in future women who experience situations such as those faced by Carolina, Tania, Isabelle, Paula and Rossana would be able to rely on the law to ensure that they had access to all the necessary information to make a decision and that, if they decide to terminate their pregnancy, they can do so in Chile, with the support networks of their choice, in safe conditions and without facing discrimination or prejudice.

Until this legislation is passed, Chile will continue to put women and girls like them at risk.

ANNEX 1: RECOMMENDATIONS OF UNITED NATIONS BODIES TO CHILE ON SEXUAL AND REPRODUCTIVE RIGHTS AND ABORTION

UNIVERSAL PERIODIC REVIEW²²

Report of the Working Group on the Universal Periodic Review: Chile. Human Rights Council, United Nations, Twenty-sixth session (A/HRC/26/5), 2 April 2014

121.133 Make sure that adequate information on family planning and the regulation of fertility is publicly available (Finland);

121.134 Make sure that sexual and reproductive rights are respected and protected (Belgium);

121.135 Initiate and promote a public debate on abortion in cases of diagnosed medical necessity and decriminalize abortion in such cases (Czech Republic);

121.136 Review and alter its current legislation that criminalizes the termination of pregnancies in all circumstances, including in cases of rape, incest and situations where the life of the mother is at risk (Finland);

121.137 Take measures to guarantee full and effective recognition of sexual and reproductive rights, in particular through the decriminalization of the voluntary interruption of pregnancy (France);

121.138 Take measures to allow legal and safe abortions in cases of rape or incest and in cases of risk to the woman's life or health (Germany);

121.139 Take steps to strengthen and protect women's sexual and reproductive rights in line with CEDAW recommendations, review the national legislation on abortion and enforce the national legislation with regard to access to birth control (Norway);

121.140 Review its absolute criminalization of abortion and initiate open discussions in the field of sexual and reproductive health in order to amend the respective legislation, so that abortion is no longer a criminal offence (Slovenia);

121.141 Make further efforts to ensure that the abortion laws are brought in line with Chile's human rights obligations (Sweden);

121.142 Decriminalize abortion, at least in certain cases, such as danger to the mother's life and health, the non-viability of the foetus or a pregnancy arising from rape (Switzerland);

121.143 Repeal all laws criminalizing women and girls for abortion and take all necessary measures to ensure safe and legal abortion in cases of rape or incest and in cases of serious danger for the health of women (Belgium);

HUMAN RIGHTS COMMITTEE

Concluding observations on the sixth periodic report of Chile Human Rights Committee, United Nations, 111 Session (7-24 July 2014)

15. The Committee, recalling its previous concluding observations (CCPR/C/CHL/CO/5, para. 8), expresses its concern at the continued, absolute criminalization of abortion, which forces

²²The Universal Periodic Review is a mechanism of the Human Rights Council (the Council). Its aim is to improve the human rights situation in each of the 193 United Nations member states, based on a review by state parties. Under this mechanism, the human rights situation in each UN member state is reviewed every 4.5 years and recommendations are issued by all other member states that wish to do so. The result of each review is an outcome report that lists the recommendations that the state under review must implement before the next periodic review, indicating which state made which recommendation.

pregnant women to seek backstreet abortions that endanger their lives and their health. While the Committee takes note of the information provided by the delegation concerning a bill under consideration that makes provision for exceptions to the absolute prohibition of abortion, it notes with concern that the bill does not provide for an exception to be made in cases where a pregnancy is the result of incest. The Committee is also concerned about the high rates of backstreet abortion, which is associated with more maternal deaths, and about teenage pregnancies (arts. 3 and 6).

The State party should establish exceptions to the general prohibition of abortion to take account of therapeutic abortion and cases where a pregnancy is the result of rape or incest. The State party should ensure that all women and adolescents have access to reproductive health services in all parts of the country. The State party should, furthermore, increase the number of sexual and reproductive health education and awareness-raising programmes, particularly for adolescents, and make sure that they are implemented.

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Concluding observations on the combined fifth and sixth period report of Chile, adopted by the Committee at its Fifty-third session (1-9 October 2012), CEDAW/C/CHL/CO/5-6, 12 November 2012

34. The Committee commends the State party for the implementation of the National Plan for Education on Sexuality and Emotional Health, which included extensive training on sexual and reproductive health, the Youth Health Check Strategy and the establishment of teen-friendly areas in 59 municipalities. However, the Committee deeply regrets that all the recent parliamentary initiatives aimed at decriminalizing abortion have failed in the State party, including those where the health or life of the mother are at risk, in cases of serious foetus malformation or rape. While welcoming the statement made by the delegation that the right to life of the mother prevails where her health or life is at risk, the Committee reiterates the concern expressed in its previous concluding observations (CEDAW/C/CHI/CO/4, para. 19) that abortion remains a criminal offence in all circumstances. The Committee is further concerned about reported cases of involuntary sterilization of women with HIV/AIDS in the State party, as well as about cases of HIV/AIDS mandatory testing for pregnant women, although Circular No. A/15/47 (December 2011) explicitly allows women to refuse such a test. In addition, while noting with satisfaction the enactment of legislation on sexual and reproductive rights in 2010 (Act No. 20.418), in the light of the high number of early pregnancies and resulting unsafe abortions, the Committee is concerned about serious gaps in the implementation of Act No. 20.418 and women's difficulties in access to and availability of contraceptives methods and family planning services.

35. The Committee urges the State party to:

(a) Take all necessary measures to provide adequate access to family planning services and contraceptives, including emergency contraception, to prevent early pregnancies and ensure the effective implementation of the new legislation by municipalities;

(b) Ensure that fully informed consent is systematically sought by medical personnel before sterilizations are performed, that practitioners performing sterilizations without such consent are sanctioned and that redress and financial compensation are available for women victims of non-consensual sterilization;

(c) Ensure that medical personnel duly comply with and enforce Circular No. A/15/47 and that pregnant women are informed of the possibility of refusing HIV/AIDS testing;

(d) Review its existing legislation on abortion with a view to decriminalizing it in cases of rape, incest or threats to the health or life of the mother;

(e) Undertake a thorough study which includes statistical data on illegal and unsafe abortions and on their impact on the health and lives of women, in particular those resulting in maternal mortality, and consider using it as the basis for legislative and policy action.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Concluding observations on the fourth periodic report of Chile, Committee on Economic, Social and Cultural Rights, United Nations, Fifty-fifth session, 1-19 June 2015, E/C.12/CHL/CO/4, 19 June 2015

Sexual and reproductive health

29. While the Committee notes that the bill regarding voluntary termination of pregnancy is under discussion, it is concerned that the strict prohibition on abortion remains in force. In addition, it is concerned at the high levels of teenage pregnancy, due in part to the lack of sexual and reproductive services and of appropriate information (Article 12).

The Committee recommends that the State party:

- a) Ensure that the Bill on voluntary termination of pregnancy is promptly adopted and that it is in line with fundamental rights, such as women's right to health and to life, by considering an extension of the permitted circumstances;
- b) Redouble its efforts to ensure that sexual and reproductive health services are accessible, available and affordable, including the provision of emergency contraception; and
- c) Increase and strengthen comprehensive, age-appropriate education on sexual and reproductive health for both sexes in the curriculums of primary and secondary schools.

COMMITTEE ON THE RIGHTS OF THE CHILD

Concluding observations: Chile, Committee on the rights of the Child, United Nations Forty-fourth session, (26 January to 2 February 2007), CRC/C/CHL/CO/3, 23 April 2007

Adolescent health

55. The Committee, while noting certain progress in the area of sexual education in schools, is concerned over the high rate of teenage pregnancies, the criminalization of the termination of pregnancies in all circumstances and the lack of adequate sex education and accessible reproductive health services. These factors all contribute to the elevated incidence of maternal mortality among adolescent girls.

56. The Committee recommends that the State party promote and ensure access to sexual and reproductive health services for all adolescents, including sex and reproductive health education in schools, as well as youth-sensitive and confidential counselling and health care services, taking into account the Committee's general comment No. 4. on adolescent health and development in the context of the Convention (CRC/GC/2003/4). The Committee urges the State party to review its criminalization of the termination of pregnancies in all circumstances, including in cases of rape, incest and situations where the life of the mother is at risk. Furthermore, the Committee recommends that an appropriate strategy dedicate adequate resources to awareness raising, counselling services and other measures in order to prevent adolescent suicides.

ANNEX 2: BILL PRESENTED BY THE GOVERNMENT OF PRESIDENT BACHELET, JANUARY 2015 (BULLETIN NO 9895-11)

GROUND(S) (AMENDMENT TO THE HEALTH CODE)

Article 119 – with the woman’s consent, a surgeon is authorized to terminate a pregnancy when:

- 1) There is a present or future risk to the life of the woman and the termination of the pregnancy would avoid this risk to life;
- 2) The embryo or foetus suffers from a hereditary or genetic structural malformation incompatible with life outside the womb.
- 3) The pregnancy is the result of rape, as defined in the second sub-section of the following article, and is no further advanced than the 12th week of gestation. In the case of minors under the age of 14, the pregnancy may be terminated up to and including the 18th week of gestation.

In each of the scenarios set out above, the woman must give her give express prior consent in writing to the termination. When this is not possible, Article 15 of Law No 20,584 regulating the rights and duties in relation to those providing health care will apply, without prejudice to the following sub-sections.

MINORS

For minors under the age of 14, in addition to their consent, the permission of their legal representative (or a legal representative of their choice where there are more than one) is required for a termination of pregnancy. In the absence of such permission, the minor, with the support of their health-care team, may request the intervention of the family court competent to confirm that the case corresponds to the stipulated grounds. The court will authorize the termination of the pregnancy, without a hearing and orally, within a maximum of 48 hours after the request has been submitted, on the basis of the background information provided by the health-care team and, if it is deemed necessary, the oral testimony of the minor.

Those over the age of 14 and under the age of 18 can state their decision to have their pregnancy terminated. Their legal representative (or a legal representative of their choice if there are more than one) must be informed of the decision. In the absence of a legal representative, or if the background is such that providing this information to the representative would expose the minor to one of the dangers set out in the following sub-section, the minor must designate another adult who will be informed.

PROVISION OF INFORMATION IN ORDER TO TAKE DECISIONS

The health-care provider must give the woman accurate information on medical services, in accordance with Articles 8 and 10 of Law No 20,584. The health-care provider must ensure the woman has written information on alternatives to terminating the pregnancy, including the social and economic support available.

Under no circumstances should this information be aimed at influencing the woman’s decision.

MEDICAL DIAGNOSIS

Article 119(a). In those cases authorized in paragraphs 1 and 2 above, before the procedure is performed, a written diagnosis by a surgeon and a written confirmation by a second surgeon must

be obtained. In cases where immediate medical intervention is necessary and cannot be delayed, the second opinion may be dispensed with. In cases of ectopic pregnancy, no second opinion is necessary to terminate the pregnancy.

In cases covered by Article 119, paragraph 3, the health-care team, especially created for this purpose, will evaluate and provide information on the facts of the case. In carrying out its responsibilities, the health-care team must ensure that their treatment of the woman is humane and respectful.

CONSCIENTIOUS OBJECTION

Article 119 (b) – The surgeon who is required to carry out a termination of pregnancy on the grounds set out in Article 119 may refuse to participate in the procedure providing they have previously made their conscientious objection known to the director of the health facility in writing. The health facility has an obligation to assign another surgeon to the patient or refer the patient immediately so that the procedure can be carried out by someone who has not expressed a conscientious objection. The Ministry of Health shall establish the necessary protocols for the exercise of conscientious objection.

A surgeon who has expressed a conscientious objection and who is required to carry out a termination has an obligation to inform the director of the health facility immediately that the woman requiring the procedure must be referred.

In cases where the woman requires immediate medical attention that cannot be delayed, the doctor who has expressed conscientious objection cannot refuse to carry out the termination of a pregnancy if there is no other surgeon available who can perform the procedure.

DECRIMINALIZATION OF ABORTION ON THE THREE GROUNDS SET OUT ABOVE (AMENDMENT TO THE CRIMINAL CODE)

Voluntary termination of pregnancy on the grounds permitted under Article 119 of the Health Code does not constitute a criminal offence.

CONFIDENTIALITY (AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE)

The crime of abortion (Article 344 of the Penal Code) is an exception to the obligation of health professionals who observe symptoms that lead them to believe that a crime has been committed to report this to the authorities. In cases of abortion, the primary duty of the health professional is to maintain confidentiality.