

Bogota, January 18, 2018

**Secretariat of the Committee on the Elimination of Discrimination Against Women**  
Office of the United Nations High Commissioner for Human Rights  
Palais Wilson  
52, rue des Pâquis  
CH-1201 Geneva 10  
Switzerland

**Re: Supplementary information on Chile, submitted for consideration by the Committee on the Elimination of Discrimination Against Women for the 69<sup>th</sup> Session**

Distinguished members of the Committee:

The Center for Reproductive Rights (the “**Center**”) is an independent non-governmental organization that promotes gender equality and the fulfilment of women’s reproductive rights. The Center seeks to contribute to the Committee’s work by providing independent information concerning Chile’s obligations to guarantee the rights protected under the Convention on the Elimination of Discrimination Against Women (“**CEDAW**”).

In light of Chile’s upcoming review by the Committee, this letter highlights Chile’s failure to comply with its obligations under CEDAW to take all appropriate measures to eliminate discrimination in the field of healthcare (including family planning), reproductive rights and other human rights and fundamental freedoms, as well as Chile’s compliance with the requests set forth in the 2017 CEDAW List of Issues by:<sup>1</sup> (a) not legalizing abortion in those cases where an abortion preserves a woman’s health; and (b) creating an overly broad obstacles to the right to access reproductive healthcare by permitting physicians and institutions to conscientiously object to performing an abortion; and (c) requiring girls and adolescents under the age of 14 to have a legal representative’s authorization to access an abortion.

This letter is presented as follows: first, we set out the legislative background to Chile’s recently approved amendments regarding women’s right to an abortion; second, we set out the remaining legal and policy obstacles for access to abortion, particularly around the conscientious objection exception clause and legal representative requirement for girls and adolescents; third, we explain how the difficulties women face in accessing abortions, contraception, and adequate reproductive healthcare continue to violate Chile’s obligations under CEDAW to eliminate discrimination against women; and fourth, we include a list of recommendations that we respectfully propose the Committee should make to the state.

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<sup>1</sup> CEDAW, *List of issues and questions in relation to the seventh periodic report on Chile*, CEDAW/C/CHL/Q/7, (July 31, 2017) (hereinafter ‘2017 CEDAW List of Issues’).

## I Legislative History of the Right to Abortion in Chile

Beginning in 1931, Chile guaranteed the right to access a “therapeutic abortion,” which consisted of an intervention necessary to save the pregnant woman’s health or life.<sup>2</sup> The reformed Health Code of 1931 legalized abortion which resulted criminal penalties for the presiding physician and the woman seeking the procedure since Chile’s Penal Code of 1874.<sup>3</sup> An amendment to the Chilean Constitution in 1980 guaranteed the constitutional protection of the life of an unborn child.<sup>4</sup>

During the twilight of Augusto Pinochet’s authoritarian rule in 1989, the government explicitly changed its position on abortion, declaring that “no action could be executed whose purpose was to effect an abortion.”<sup>5</sup> From 1989 until September 2017, Chile continued to restrict abortion in this manner, providing for restriction under both the Health and Criminal Codes.<sup>6</sup>

In January 2015, Chile’s President Michelle Bachelet submitted a bill to decriminalize abortion under certain conditions.<sup>7</sup> In her message to the Chamber of Deputies of Chile, President Bachelet described the recent advances Chile has taken leading up to a more permissible legal regime regarding contraception, family planning, and reproductive health. These include: the establishment of the “Programa de Salud de la Mujer” in 1997 to promote and provide broader support for women during all phases of their lives, particularly emphasizing women’s reproductive health;<sup>8</sup> Ley 20.379 and the “Chile Crece Contigo” program to help incorporate children into the public health system from birth;<sup>9</sup> and the final approval of national regulations, and later a law, that allow for the provision of emergency contraception and sexuality education for all medical students.<sup>10</sup>

President Bachelet’s initiative was not the first legislative attempt at restructuring Chile’s abortion regime since 1989. In 1991, Congress people Adriana Muñoz, Armando Aricibia, Carlos Smok, Juan Pablo Letelier and Carlos Montes unsuccessfully moved to introduce a bill changing Article

<sup>2</sup> Código Sanitario (1931), Article 226, available at <https://www.leychile.cl/Navegar?idNorma=5113&tipoVersion=0> (last accessed Jan. 10, 2018).

<sup>3</sup> Código Penal (1874), Articles 342-45, available at <https://www.leychile.cl/Navegar?idNorma=1984&tipoVersion=0> (last accessed Jan. 10, 2018).

<sup>4</sup> Constitución Política de la República de Chile de 1980, Article 19.

<sup>5</sup> Ley 18.826 (Sept. 15, 1989), Código Sanitario (2016), Article 119, available at <https://www.leychile.cl/Navegar?idNorma=5595&idVersion=2016-01-26> (last accessed Jan. 10, 2018).

<sup>6</sup> Código Penal (Aug. 2, 2017), Articles 342-45, available at <https://www.leychile.cl/Navegar?idNorma=1984&idVersion=2017-08-02> (last accessed Jan. 10, 2018).

<sup>7</sup> Mensaje N° 1230-363 (Jan. 31, 2015), *Mensaje de S.E. la Presidenta de la República con el que inicia un proyecto de ley que regula la despenalización de la interrupción voluntaria del embarazo en tres causales*, available at <https://www.camara.cl/pley/pdfpley.aspx?prmID=10113&prmTIPO=INICIATIVA> (last accessed Jan. 10, 2018).

<sup>8</sup> Decreto 48, Ministerio de Salud (Feb. 3, 2007), *Aprueba texto que establece las normas nacionales sobre regulación de la fertilidad*, available at <http://bcn.cl/1v51k> (last accessed Jan. 10, 2018).

<sup>9</sup> Ley 20.379 (2009), *Crea el Sistema Intersectorial de Protección Social e institucionaliza el Subsistema de Protección Integral a la Infancia “Chile Crece Contigo”*.

<sup>10</sup> Ley 20.418 (2010), *Fija normas sobre información, orientación y prestaciones en materia de regulación de la fertilidad*; p. 215

119 of Chile’s Health Code to permit therapeutic interruptions to pregnancy with the approval of two medical physicians.<sup>11</sup> In 2003 and 2009, legislators attempted this change again, neither of which were successful to date.<sup>12</sup> Lawmakers attempted again in 2013 and 2014 to reform abortion legislation, however both initiatives were archived.<sup>13</sup>

Following two and a half years of parliamentary debate, President Bachelet’s bill lodged with a Joint Commission passed both the Congress and Senate on August 3, 2017.<sup>14</sup> Opposition within Congress sent the finalized language to the Constitutional Court, who approved the law on September 7, 2017.<sup>15</sup>

The recent amendments to Article 119 of the Health Code describe three grounds for which a woman may request the interruption of her pregnancy: when a woman’s life is at risk due to the pregnancy; when the fetus would be unviable outside of the womb; or when pregnancy is the result of rape. Article 119 includes a number of further exceptions to when a woman can access an abortion, including a medical professional’s right to conscientious objection to be involved in the procedure and a legal guardian or representative’s requirement authorization for girls under age 14 seeking the procedure (extracted in the Annex).

Article 344 of the Criminal Code was amended to allow for the three grounds for interrupting a pregnancy laid out in Article 119 of the Health Code, but criminalizes all other forms of abortion with imprisonment (extracted in the Annex).

## II Implications of Continued Obstacles to Reproductive Health Care in Chile

The narrow grounds for accessing an abortion and the remaining exceptions to abortion access continue to discriminate against women in Chile.

### 1. Abortion access

<sup>11</sup> Boletín N° 499-07 (Sept. 7, 1991), *Modifica el artículo 119 del Código Sanitario en lo relativo al aborto terapéutico*, Cámara de Diputados, available at <https://www.camara.cl/pley/pdfpley.aspx?prmID=2490&prmTIPO=INICIATIVA> (last accessed Jan. 11, 2018).

<sup>12</sup> Boletín N° 3197-11 (Jan. 23, 2003), *Proyecto de ley que modifica el artículo 119 del Código Sanitario relativo al aborto terapéutico*, available at [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=3442&prmBoletin=3197-11](https://www.camara.cl/pley/pley_detalle.aspx?prmID=3442&prmBoletin=3197-11) (last accessed Jan. 11, 2018); Boletín N° 6420-11 (Mar. 19, 2009), *Modifica el artículo 119 del Código Sanitario para permitir la interrupción médica del embarazo en caso de riesgo de la madre*, available at [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=6814&prmBoletin=6420-11](https://www.camara.cl/pley/pley_detalle.aspx?prmID=6814&prmBoletin=6420-11) (last accessed Jan. 11, 2018).

<sup>13</sup> Boletín N° 8862-11 (Apr. 2, 2013), *Establece licitud de los procedimientos de interrupción del embarazo en casos determinados*, available at [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=9267&prmBoletin=8862-11](https://www.camara.cl/pley/pley_detalle.aspx?prmID=9267&prmBoletin=8862-11) (last accessed Jan. 11, 2018); Boletín N° 9418-11 (July 9, 2013), *Modifica Código Sanitario, en materia de aborto por indicaciones terapéuticas, eugenésicas o de índole ética social*, available at [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=9826&prmBoletin=9418-11](https://www.camara.cl/pley/pley_detalle.aspx?prmID=9826&prmBoletin=9418-11) (last accessed Jan. 11, 2018).

<sup>14</sup> Boletín N° 9895-11, *Regula la despenalización de la interrupción voluntaria del embarazo en tres causales*, available at [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=10315&prmBoletin=9895-11](https://www.camara.cl/pley/pley_detalle.aspx?prmID=10315&prmBoletin=9895-11) (last accessed Jan. 10, 2018).

<sup>15</sup> Oficio N° 2342-2017, p. 18-19, Tribunal Constitucional, available at <https://www.camara.cl/sala/verComunicacion.aspx?comuid=36861> (last accessed Jan. 11, 2018).

Although Chile's new abortion laws are more lenient than its previous legal scheme, they still pose injurious obstacles to a woman's reproductive health and wellbeing. The legal framework established by the Chile's constitutional right to life before birth and its restrictive abortion laws diminish women's reproductive decision-making autonomy and infringe on women's human rights.<sup>16</sup>

a. Three grounds for interrupting a pregnancy

The first ground for seeking an abortion relies on a serious risk to a woman's life.<sup>17</sup> Under this circumstance, when a woman's health is at risk, but not necessarily her life, she would not have the right to access an abortion. In the public health sector, the reproductive and sexual healthcare services women receive in Chile are not up to the standards set by the Ministry of Health and the WHO.<sup>18</sup> Among pregnancy-related causes of death, abortion is the third most frequent in Chile.<sup>19</sup>

This is the case of "Carolina", a 26-year-old Chilean woman who received an abortion due to an ectopic pregnancy.<sup>20</sup> When she arrived at a clinic in Santiago for severe pain and vomiting, she did not know that she was pregnant. After assessing her medical condition, a physician informed Carolina that she had an ectopic pregnancy and that her life was at risk. Carolina was sent to the maternity ward beside women who were giving birth while she witnessed the death of her own son. Worse still, she had to wait until she was on the verge of losing her life so that doctors could intervene, because of the strict conditions on when a doctor can intervene to perform interrupting a pregnancy. After this procedure, which Carolina considered was performed too late, she lost a fallopian tube and still does not know if she can be a mother. The risk to a woman's reproductive and sexual health is unduly burdened under the first ground of Chile's new abortion regime which forces women to undergo permanent reproductive harm to meet its high legal standard.

The second ground for seeking an abortion is based on the inability of a fetus to live outside of the womb.<sup>21</sup> Women who face giving birth to a child with serious health problems or whose health with gradually deteriorate postpartum would be barred from requesting an abortion.

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<sup>16</sup> Center for Reproductive Rights, *Whose Right to Life? Women's Rights and Prenatal Protections Under Human Rights and Comparative Law*, 2014, p. 3.

<sup>17</sup> 2017 Health Code, Article 119 (extracted in the Annex).

<sup>18</sup> Instituto Nacional de Derechos Humanos (Chile), *Annual Report 2016 - Executive Summary*, p. 21-22, available at <http://bibliotecadigital.indh.cl/handle/123456789/1039> (last accessed Jan. 13, 2018).

<sup>19</sup> Miles Chile, *Primer informe: salud sexual, salud reproductiva y derechos humanos en Chile 2016*, Infografías (Apr. 10, 2017), available at <http://mileschile.cl/?p=4185> (last accessed Jan. 13, 2018).

<sup>20</sup> Amnistía Internacional Chile, *Chile no protege a las mujeres: la criminalización del aborto viola los derechos humanos* (June 17, 2015), available at <https://amnistia.cl/noticia/amnistia-internacional-lanza-campana-chile-no-protege-a-las-mujeres-la-criminalizacion-del-aborto-viola-los-derechos-humanos/> (last accessed Nov. 14, 2017).

<sup>21</sup> 2017 Health Code, Article 119 (extracted in the Annex).

“Isabelle” was a French woman living in Chile where she was pregnant with her third child.<sup>22</sup> Doctors informed her that her fetus had serious genetic problems. Isabelle said that one of the doctors stated, “No, that is not viable,” and even recommended that she return to her country to have a therapeutic abortion, assuming that because she was a foreigner she necessarily wanted to interrupt her pregnancy. With much pain and after several conversations, she and her husband concluded that they did not want to continue with the pregnancy if it meant watching their daughter die gradually, since there was no amniotic fluid left and the fetus’ heartbeats were slowing. They found no solution in Chile, and thus were obliged to raise enough money to travel to France. Once abroad, they immediately confirmed that the fetus was unviable, and Isabelle was given five days to consider and make a decision. After the intervention, Isabelle recognized that she lived her sadness with a little more peace.

In her testimony before the Inter-American Commission on Human Rights in May 2017, Paola del Carmen Valenzuela described how physicians forced her to give birth to her second child, despite early ultrasounds showing low fetal viability.<sup>23</sup> Valenzuela related the “agony and torture” she experienced while having to give birth to her dead child, marking the extreme psychological and physical conditions Chile’s abortion laws obligate women to suffer.

Both of these women’s stories bear witness to the continued difficulties that Chile’s abortion laws represent for women’s access to adequate reproductive and sexual health care.

#### b. Conscientious objection

The conscientious objection exception in Article 119b functions to impede a woman’s right to access information. This right encompasses access to sexual and reproductive health information in order for a woman to make more informed and contextualized decisions about her health.<sup>24</sup> Particularly among poorer populations, burdens on sexual and reproductive rights affect essential aspects of a woman’s life and create cultures of discrimination and inequality.<sup>25</sup> Over 85% of Chilean women feel discriminated against, 74.8% of them due to discrimination in the access to justice and 73.9% in their sexual freedom.<sup>26</sup>

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<sup>22</sup> Amnistía Internacional Chile, *Chile no protege a los mujeres: la criminalización del aborto viola los derechos humanos* (June 17, 2015), available at <https://amnistia.cl/noticia/amnistia-internacional-lanza-campana-chile-no-protege-a-las-mujeres-la-criminalizacion-del-aborto-viola-los-derechos-humanos/> (last accessed Nov. 14, 2017).

<sup>23</sup> IACHR, *Report on Public Hearings from the 162nd Session* (June 27, 2017), available at [http://www.oas.org/en/iachr/media\\_center/preleases/2017/085.asp](http://www.oas.org/en/iachr/media_center/preleases/2017/085.asp) (last accessed Jan. 11, 2018).

<sup>24</sup> IACHR, *Access to Information, Violence Against Women, and the Administration of Justice* (Mar. 27, 2015), OAS/Ser.L/V/II.154, p. 51, available at <http://www.oas.org/en/iachr/reports/pdfs/Access-information.pdf> (last accessed Jan. 11, 2018).

<sup>25</sup> HRC, *Report of the Special Rapporteur on extreme poverty and human rights on his mission to Chile*, A/HRC/32/31/Add.1, (Apr. 8, 2016), ¶ 70.

<sup>26</sup> Instituto Nacional de Derechos Humanos (Chile), *Informe Anual Situación de los Derechos Humanos en Chile 2017*, p. 37, available at [https://www.indh.cl/bb/wp-content/uploads/2017/12/01\\_Informe-Anual-2017.pdf](https://www.indh.cl/bb/wp-content/uploads/2017/12/01_Informe-Anual-2017.pdf) (last accessed Jan. 13, 2018).

The changing political landscape in Chile may compromise the implementation of the new abortion legislation. In 2013, President Sebastián Piñera stoked an abortion debate in Chile over remarks he made about an 11-year-old girl who became pregnant after being raped by her mother's partner. The girl, known only as "Belén," said in an interview that she would have the baby.<sup>27</sup> Belén was repeatedly raped over the course of two years by her mother's partner, who was been arrested and confessed to the abuse. Belén's mother defended her daughter's abuser, saying the relationship was consensual.<sup>28</sup>

Piñera, an open supporter of Chile's then-complete abortion ban, said Belén's decision showed "depth and maturity" and asked the country's health minister to personally watch over her health. Piñera said that in the interest of the girl's health, doctors would consider whether it made sense to induce a premature birth if it protects Belén. At the time, lawmakers voiced their disagreement with Piñera's stance, averring that girls of that age are not mature enough to take care of a child, and that young women in Belén's situation should be treated as victims and consequently protected by the state.<sup>29</sup>

Chile's current sexual assault rates,<sup>30</sup> exacerbated during Piñera's second presidential term beginning in March 2018,<sup>31</sup> augurs an uncertain future for the integrity of Chile's new abortion laws.

Legal guardrails on conscientious objection must be regulated and enforced to prevent the improper denial of abortion to women. While the Chilean Ministry of Health has yet to release its guidelines, which are expected in December 2017, comments from Chilean medical professionals on both sides of the issue give cause for concern. The president of the Chilean Society of Obstetrics and Gynecology, Omar Nazzal, has cautioned that the conflict between physicians' right to objection and patients' right to abortion must be managed lest the law become dead letter.<sup>32</sup> Meanwhile, the Principal of Chile's Catholic University (PUC) network, one of the largest in Chile, and officials from the Parroquial de San Bernardo y San Francisco de Pucón hospitals have stated their intention to refuse to perform abortions, except in cases where the mother's life is

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<sup>27</sup> CNN, *Raped 11-year-old stirs an abortion debate in Chile*, (July 11, 2013), available at <http://www.cnn.com/2013/07/11/world/americas/chile-abortion-debate/index.html> (last accessed Nov. 14, 2017).

<sup>28</sup> The Guardian, *Chilean president praises raped girl, 11, for going through with pregnancy* (July 9, 2013), available at <https://www.theguardian.com/world/2013/jul/10/chilean-president-praises-raped-pregnancy> (last accessed Nov. 14, 2017).

<sup>29</sup> See *supra* note 27.

<sup>30</sup> Fiscalía Nacional del Ministerio Público de Chile, Boletín Institucional Enero Septiembre 2017 (Nov. 3, 2017), available at <http://www.fiscaliadechile.cl/Fiscalia/estadisticas/index.do> (last accessed Jan. 12, 2018).

<sup>31</sup> El País, *Piñera ganas las elecciones en Chile con una diferencia clara de nueve puntos* (Dec. 18, 2017), available at [https://elpais.com/internacional/2017/12/17/america/1513524486\\_934861.html](https://elpais.com/internacional/2017/12/17/america/1513524486_934861.html) (last accessed Jan. 12, 2018).

<sup>32</sup> Omar Nazzal Nazal, *Editorial: Objeción de Conciencia*, Rev. Chil. Obstet. Ginecol. 2017; 82(4) 348, available at <http://www.revistasochog.cl/articulos/ver/1016> (last accessed Nov. 14, 2017).

threatened.<sup>33</sup> This fractured approach within the medical profession may lead to inadequate health care services, a pattern already experienced in Colombia, Mexico, Peru.<sup>34</sup>

The treatment that women undergo when seeking an abortion consultation is an important concern for ensuring a just healthcare system.<sup>35</sup> Although health professionals have the right to conscientious objection, its exercise should not burden a woman's right to access an abortion by delaying her referral to a physician who does not object or locating another medical facility.<sup>36</sup>

### c. Legal representative requirement for adolescent girls under the age of 14

The new Chilean legislation includes a legal representative requirement for women under age 14 seeking an abortion. Chile has the region's highest rate of intra-familial violence,<sup>37</sup> placing women at a high risk of complicating their abortion under the current legal representative requirement. Delaying access to an abortion or restricting abortion by creating additional requirements forms harmful consequences for women. Given the background of serious health risks related to induced abortion in Chile,<sup>38</sup> the legal representative requirement creates an obstacle to accessible sexual and reproductive health care.

The most recent statistics from the Ministry of the Interior and Public Security reveal that fear is the most frequent reason why Chileans do not report crimes of sexual violence.<sup>39</sup> From July to September 2017, 39% of all female victims of sexual crimes and violence in Chile were under the age of 14 (the highest of any age category by over 13 percentage points).<sup>40</sup> Over 16% of girls and

<sup>33</sup> El Mostrador Braga, *Objeción de conciencia: ¿pueden los centros de salud negarse a realizar abortos en las tres causales?* (August 25, 2017), available at <http://www.elmostrador.cl/braga/2017/08/25/objecion-de-conciencia-pueden-los-centros-de-salud-negarse-a-realizar-abortos-en-las-tres-causales/> (last accessed Nov. 14, 2017).

<sup>34</sup> Lauren R. Fink, et al., "The Fetus Is My Patient, Too": *Attitudes Toward Abortion and Referral Among Physician Conscientious Objectors in Bogotá, Colombia*, 42 *International Perspectives on Sexual and Reproductive Health* 71 (2016); Lidia Casas, *Invoking conscientious objection in reproductive health care: evolving issues in Peru, Mexico and Chile*, 17 *Reproductive Health Matters* 78 (2009).

<sup>35</sup> Instituto Nacional de Derechos Humanos (Chile), *Informe Anual Situación de los Derechos Humanos en Chile 2016*, p. 231, available at <http://bibliotecadigital.indh.cl/handle/123456789/998> (last accessed Jan. 13, 2018).

<sup>36</sup> WHO, *Safe abortion: technical and policy guidance for health systems*, (2d edition 2012), p. 69, available at [http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1) (last accessed Jan. 14, 2018).

<sup>37</sup> Programa de las Naciones Unidas para el Desarrollo (PNUD), *Informe Regional de Desarrollo Humano: 2013-2014, Seguridad Ciudadana con rostro humano: diagnóstico y propuestas para América Latina*, p. 84, available at <http://www.oas.org/es/cidh/informes/pdfs/PobrezaDDHH2017.pdf> (last accessed Jan. 11, 2018).

<sup>38</sup> HRC, *Report of the Working Group on the issue of discrimination against women in law and in practice*, A/HRC/29/40/Add.1, (May 20, 2015), ¶ 62.

<sup>39</sup> Subsecretaría de Prevención del Delito, Ministerio del Interior y Seguridad Pública (Chile 2017), *Tercera encuesta nacional de violencia intrafamiliar contra la mujer y delitos sexuales: presentación de resultados*, available at <http://cead.spd.gov.cl/?wpdmprom=presentacion-encuesta-nacional-de-victimizacion-por-violencia-intrafamiliar-y-delitos-sexuales-envif-2016&wpdmdl=2396&> (last accessed Jan. 12, 2018).

<sup>40</sup> Centro de Estudios y Análisis del Delito (Chile), *Estadísticas Delictuales, Abusos sexuales y otros delitos sexuales, Sexo y Edad de Víctimas y Victimarios, 2017, 3º Trimestre (Jul-Sep)*, available at <http://cead.spd.gov.cl/estadisticas-delictuales?r=1> (last accessed Jan. 12, 2018).

teenaged women report having been sexually assaulted at least once.<sup>41</sup> It is estimated that around 109,000 illegal abortions occur in Chile every year.<sup>42</sup> Around 30,000 women in Chile undergo a hospitalized abortion every year.<sup>43</sup>

In addition to the direct strictures that abortion restrictions place on women’s reproductive rights, these laws degrade the integrity on abortion and reproductive health indicators and statistics by obscuring the frequency of abortions.<sup>44</sup>

The legal representative requirement to abortion access for women under age 14 thus targets a particularly vulnerable and fearful population, who are already more at risk of being victims of sexual violence and hesitant to reporting instances of sexual violence, especially when over 81% of intra-family violence victims are women.<sup>45</sup> According to the most recent statistics in Chile, nearly 11% of all live births were from women between the ages of 10 and 19.<sup>46</sup> The additional need to have a legal representative further burdens a woman’s right to access reproductive health services, with an disproportionate effect on women under age 14.

## 2. Emergency contraception access

Chile’s continued lack of clarity on the regulation of emergency contraception (“EC”) prejudices women’s right to reproductive and sexual health. In 2008, Chile’s Constitutional Court ruled that a law banning the provision, sale, and use of emergency contraception by public health facilities was unconstitutional. However, in 2010, the Chilean legislature overrode the Court’s decision, legalizing emergency contraception, including the hormonal day-after pill.<sup>47</sup> The resulting legal contradiction has confusion over and numerous access barriers to emergency contraception in

<sup>41</sup> Subsecretaría de Prevención del Delito, Ministerio del Interior y Seguridad Pública (Chile 2016), *Informe Final: Estudio de género y factores de riesgo socio delictual en el Programa de Atención Integral Familiar (PAIF) 24 horas*, “Tabla 125. Agresión sexual sufrida por niños, niñas y adolescentes, según sexo,” p. 219, available at [http://www.seguridadpublica.gov.cl/media/2015/04/Informe-Final\\_Estudio-G%C3%A9nero-PAIF-24-horas\\_VCF\\_12Abril-1.pdf](http://www.seguridadpublica.gov.cl/media/2015/04/Informe-Final_Estudio-G%C3%A9nero-PAIF-24-horas_VCF_12Abril-1.pdf) (last accessed Jan. 13, 2018) (hereinafter ‘Informe Final PAIF’).

<sup>42</sup> Enrique Donoso S. & Claudio Vera P-G., *El aborto en Chile: aspectos epidemiológicos, históricos y legales*, Rev. Chil Obstet Ginecol 2016; 81(6): 534, p. 544, available at <http://www.revistasochog.cl/files/pdf/ARTICULOESPECIAL10.pdf> (last accessed Jan. 14, 2018).

<sup>43</sup> MILES Chile, *Primer informe: salud sexual, salud reproductiva y derechos humanos en Chile 2016* (Apr. 10, 2017), p. 117-18, available at <http://mileschile.cl/wp-content/uploads/2017/04/Informe-DDSSRR-2016-Cap%C3%ADtulo-V.pdf> (last accessed Jan. 13, 2018).

<sup>44</sup> CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention*, CEDAW/C/CHL/7, (Dec. 20, 2016), ¶ 133.

<sup>45</sup> Centro de Estudios y Análisis del Delito (Chile), *Estadísticas Delictuales, Violencia intrafamiliar, Sexo y Edad de Víctimas y Victimarios, 2017, 3º Trimestre (Jul-Sep)*, available at <http://cead.spd.gov.cl/estadisticas-delictuales?r=1> (last accessed Jan. 12, 2018).

<sup>46</sup> Instituto Nacional de Estadísticas (Chile), “Estadísticas de género,” “Indicadores prioritarios para seguimiento,” *Número y porcentaje de personas nacidas vivas de madres adolescentes por año, según grupo de edad de la madre, sobre el total de personas nacidas vivas (1990-2015)*, available at <http://www.ine.cl/estadisticas/menu-sociales/genero> (last accessed Jan. 13, 2018).

<sup>47</sup> Ley 20.418, Article 4 (2010).

Chile.<sup>48</sup> These include the question of legitimacy of prescriptions for emergency contraception by medical providers, the lack of awareness of the legality of emergency contraception, and the lack of availability of emergency contraception in rural areas and towns.<sup>49</sup>

Emergency contraception plays a critical role in the response to sexual violence in Chile, where rape is the chief reason why women seek out EC.<sup>50</sup> A woman is raped in Chile every 25 minutes.<sup>51</sup> Consequently women constitute over 86% of all rape victims in the country.<sup>52</sup> Given that 89% of rape perpetrators are family members of or someone close to the victim,<sup>53</sup> emergency contraception ought to be more widely available to women than Chile's legislation provides.

Even though the current law grants access to emergency contraception to all women who solicit it, doctors and midwives who deliver it to girls under 14 years are obliged to inform the girl's father, mother, or guardian, which restricts these girls' access to the resource.<sup>54</sup> Since the same age group is victim to the highest rate of sexual violence in Chile,<sup>55</sup> this notification requirement further aggravates young women's access to adequate medical care.

### 3. International calls to reform restrictions on reproductive and sexual health in Chile

Since its last U.N. Human Rights Council Universal Periodic Review in 2014, Chile has openly opposed abortion as part of a woman's right to reproductive and sexual health.<sup>56</sup>

In 2015, the U.N. Committee on Economic, Social and Cultural Rights (CESCR) noted Chile's strict prohibitions on abortion, which it related to insufficient sexual and reproductive health services and education. The CESCR recommended that Chile expedite its legislative deliberation and improve access to reproductive health services.<sup>57</sup> Before the legislative reform in the summer

<sup>48</sup> UNFPA & Universidad Central de Chile, *Acceso y distribución de la anticoncepción de emergencia en Chile*, (May 2012), Boletín 2, p. 2, available at [http://www.ucecentral.cl/prontus\\_ucentral2012/site/artic/20120711/asocfile/20120711091025/boletin\\_2.pdf](http://www.ucecentral.cl/prontus_ucentral2012/site/artic/20120711/asocfile/20120711091025/boletin_2.pdf) (last accessed Nov. 14, 2017).

<sup>49</sup> UNFPA & FLACSO-Chile, *Entrega de la Píldora Anticonceptiva de Emergencia en el Sistema de Salud Municipal, Chile: Estado se Situación*, (Mar. 2010), available at <http://www.flacsochile.org/wp-content/uploads/2015/02/Entrega-de-la-P%C3%ADldora-Anticonceptiva-de-Emergencia-en-el-Sistema-de-Salud.pdf> (last accessed Nov. 14, 2017).

<sup>50</sup> *Id.* at 11.

<sup>51</sup> Miles Chile, *Primer informe: salud sexual, salud reproductiva y derechos humanos en Chile 2016*, Infografías, (Apr. 10, 2017), available at <http://mileschile.cl/?p=4185> (last accessed Jan. 13, 2018).

<sup>52</sup> Emol, *Infografía: El panorama de las violaciones denunciadas en Chile durante una década* (Sept. 5, 2017), available at <http://www.emol.com/noticias/Nacional/2017/09/05/873969/Infografia-El-panorama-de-las-violaciones-denunciadas-en-Chile-durante-una-decada.html> (last accessed Jan. 13, 2018).

<sup>53</sup> Miles Chile, *Embarazo Forzado por Violación: el Estado no puede ser cómplice* (Apr. 2015), p. 2, available at <http://www.mileschile.cl/documentos/minuto%205%20%20%28sellado%29%20Embarazo%20Forzado%20por%20Violacion-.pdf> (last accessed Jan. 13, 2018).

<sup>54</sup> Ley 20.418, Article 2 (2010).

<sup>55</sup> Centro de Estudios y Análisis del Delito (Chile), *Estadísticas Delictuales, Abusos sexuales y otros delitos sexuales, Sexo y Edad de Víctimas y Victimarios, 2017, 3° Trimestre (Jul-Sep)*.

<sup>56</sup> HRC, *Report of the Working Group on the Universal Periodic Review - Chile*, A/HRC/5/Add.1, (Mar. 5, 2014), ¶¶ 5, 15.

<sup>57</sup> CESCR, *Concluding Observations: Chile*, E/C.12/CHL/CO/4, (June 19, 2015), ¶ 29.

of 2017, Chile ranked along Suriname as the only two countries in South America prohibiting abortion in any form.<sup>58</sup>

In 2016, the U.N. Committee on the Rights of Persons with Disabilities (CRPD) communicated its concern over the inadequacy of Chile’s reproductive and sexual health services information, with particular emphasis on women and girls.<sup>59</sup>

At the Inter-American Human Rights System, on the occasion of International Women’s Day in 2015, the Inter-American Commission on Human Rights urged states in the region to reexamine reproductive rights and noted the deleterious effects of restrictions on access to abortion in any form.<sup>60</sup> Following the introduction of Chile’s bill in 2015, the IACHR’s Rapporteur on the Rights of Women recognized this effort as a “major legislative initiative in 2016 to guarantee and advance respect for women’s rights” in the region.<sup>61</sup> The IACHR has recognized the double impact of complications to a woman’s health resulting from restrictive abortion legislation and the lack of accessible safe and legal health services.<sup>62</sup>

Despite international pressure to reform its restrictive policies, and recent efforts by the most recent government, Chile still continues to limit a woman’s right to abortion and access to adequate reproductive and sexual health care.

### **III Current Reproductive Healthcare Conditions and the Abortion Amendments Demonstrate Chile’s Failure to Guarantee Reproductive Rights under CEDAW**

#### 1. Chile violates the Right to Substantive Equality and the Right to be Free from Discrimination (Articles 2, 3, 5 and 24)

In Chile, women are disproportionately subjected to sexual violence and widespread discrimination.<sup>63</sup> The U.N. Special Rapporteur for Violence against Women, its Causes and Consequences, recently published a report,<sup>64</sup> recommending to the international community that:

<sup>58</sup> Center for Reproductive Rights (CRR), *Abortion Worldwide: 20 Years of Reform* (2014, Briefing Paper, p. 29-31, available at [https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/20Years\\_Reform\\_Report.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/20Years_Reform_Report.pdf) (last accessed Jan. 11, 2018).

<sup>59</sup> CRPD, *Concluding observations on the initial report of Chile*, CRPD/C/CHL/CO/1, (Apr. 13, 2016), ¶¶ 51-52.

<sup>60</sup> IACHR, *En el Día Internacional de la Mujer, CIDH urge a los Estados a garantizar los derechos sexuales y reproductivos de las mujeres* (Mar. 6, 2015), Press Release, available <http://www.oas.org/es/cidh/prensa/comunicados/2015/024.asp> (last accessed Jan. 11, 2018).

<sup>61</sup> IACHR, *Annual Report 2016*, p. 504, available at <http://www.oas.org/en/iachr/docs/annual/2016/TOC.asp> (last accessed Jan. 11, 2018).

<sup>62</sup> IACHR, *Pobreza y derechos humanos* (Sept. 7, 2017), p. 120, OEA/Ser.L/V/II. Doc.147, available at <http://www.oas.org/es/cidh/informes/pdfs/PobrezaDDHH2017.pdf> (last accessed Jan. 11, 2018).

<sup>63</sup> From January to September 2017, 87% of all rape, sexual abuse and other sexual crime victims were women. Centro de Estudios y Análisis del Delito (Chile), *Estadísticas Delictuales, Abusos sexuales y otros delitos sexuales, Sexo y Edad de Víctimas y Victimarios, 2017, 3° Trimestre (Jul-Sep)*.

<sup>64</sup> HRC, *Report of the Special Rapporteur on violence against women, its causes and consequences*, A/HRC/35/30, (June 13, 2017), ¶ 101.

*“When formulating and implementing national laws on violence against women and domestic violence, States should apply the human rights-based approach provided by [CEDAW] and regional instruments to prevent violence against women, protect women’s right to live free from violence and prosecute perpetrators. States need to establish a coherent legal framework of aligned laws addressing protection services...”*

Under Articles 2, 3 and 24 of CEDAW, Chile must “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”<sup>65</sup> and “repeal all national penal provisions which constitute discrimination against women.”<sup>66</sup> As reflected in its 2017 List of Issues, the Committee requested Chile to discuss the “safeguard mechanisms that are in place to protect girls who have been allowed to marry, such as information about domestic violence legislation, sexual reproductive health and property rights.”<sup>67</sup> Chile’s current abortion legislation continues to discriminate against women by burdening their access to reproductive health care on a national level, placing a woman’s right to life at risk.<sup>68</sup>

The three grounds available for women to access an abortion force her to give birth to a child except when: the woman’s life is at risk; the child would not survive outside of the womb; or the pregnancy was a result of rape.<sup>69</sup> In addition, the right to conscientious objection and legal representative requirement create further obstacles on a woman’s right to equitable treatment under Chile’s laws.<sup>70</sup> According to Chile’s Physicians’ College, the unregulated use of conscientious objection burdens adequate and timely availability of health services.<sup>71</sup> By forcing women to fall into one of the three limited grounds for abortion, under international human rights law Chile denies women the right to be free of cruel, degrading, or inhuman treatment,<sup>72</sup> as well as the right to be free of interference within a woman’s privacy and family.<sup>73</sup>

Although Chile’s new legislation curbs some of the serious concerns regarding the health of a pregnant woman during high-risk pregnancies, or rape, certain notable situations still remain without coverage, such as incest.<sup>74</sup> By not covering a wider variety of situations and taking Chile’s sexual violence rates into consideration, the Chilean government does not adequately protect

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<sup>65</sup> CEDAW, Article 2.

<sup>66</sup> *Id.*

<sup>67</sup> 2017 CEDAW List of Issues, ¶ 23.

<sup>68</sup> American Convention on Human Rights (“ACHR”), Article 4; International Covenant on Civil and Political Rights (“ICCPR”), Article 6(1); Universal Declaration of Human Rights (“UDHR”), Article 3.

<sup>69</sup> Ley 18.826, Article 119.

<sup>70</sup> *Id.*

<sup>71</sup> Sofía P. Salas et al., *El médico y la objeción de conciencia: opinión del Departamento de Ética del Colegio Médico de Chile A.G.*, Rev. Med. Chile 2016, 144: 382, p. 386.

<sup>72</sup> ACHR, Article 5; ICCPR, Article 7; UDHR, Article 5.

<sup>73</sup> ACHR, Article 11; ICCPR, Article 17; UDHR, Article 12.

<sup>74</sup> CEDAW, *Concluding observations on the fifth and sixth periodic reports of Chile, adopted by the Committee at its fifty-third session (1-19 October 2012)*, CEDAW/C/CHL/CO/5-6, (12 Nov. 2012), ¶¶ 34-35.

woman from resorting to illegal abortion procedures.<sup>75</sup> Chile’s continued punitive legislation of women who seek abortions outside of the three grounds now provided for also infringes on the right to access health care free.<sup>76</sup>

2. Chile violates the Right to Access Equitable Reproductive and Sexual Healthcare and Education (Articles 10, 12, 13 and 16)

Chile’s current abortion laws pose many obstacles to a woman’s access to adequate reproductive and sexual healthcare. The most recent WHO recommendations have identified restrictive laws, insufficient availability of services, health professional conscientious objection rights, and third-party authorization requirements as critical “*barriers to accessing safe abortion.*”<sup>77</sup> In its 2017 List of Issues, the Committee requested more recent information on Chile’s new abortion laws, as well as a status update on Chilean rules in the context of family planning and contraception.<sup>78</sup> Chile’s total maternal mortality has steadily increased over the past decade,<sup>79</sup> and the rate of death due to abortion has more than tripled since 2009.<sup>80</sup> Chile has the obligation to prioritize for the time-sensitive, broad, provision of sexual and reproductive health services.<sup>81</sup>

Patterns of use of contraceptive methods and rates of spontaneous or induced abortion have been highlighted as the determinants having the greatest impact on fertility, especially among teenagers. In this regard, although there has been an increase in the use of contraceptives among young people who are sexually active, their use varies significantly depending on their socioeconomic stratum and their geographical area of urban-rural residence.<sup>82</sup>

In the realm of education, the Committee has expressed concern over the role of pregnancy and maternity in discriminating against school-aged women and girls in Chile.<sup>83</sup> In Chile, over 11% of mothers under age 18 take care of their child alone, while 55% parent with the help of their family.<sup>84</sup> Mothers under age 18 have a 10% chance of abandoning their schooling, a statistic the Chilean Ministry of the Interior and Public Security relates to the country’s cycle of poverty and low levels of education.<sup>85</sup> Particularly amongst adolescents, reproductive and sexual health

<sup>75</sup> CEDAW, *General Recommendation 19*, ¶ 24(m).

<sup>76</sup> CEDAW, *General Recommendation 24*, ¶ 31(c).

<sup>77</sup> WHO, *Preventing unsafe abortion*, Media Centre, Fact Sheets (updated Sept. 2017), available at <http://www.who.int/mediacentre/factsheets/fs388/en/> (last accessed Jan. 14, 2018).

<sup>78</sup> 2017 CEDAW List of Issues, ¶ 16.

<sup>79</sup> Instituto Nacional de Estadísticas (Chile), *Compendio Estadístico - 2017*, Table 1.2.2-05, pp. 118, available at <http://www.ine.cl/estadisticas/menu-sociales/genero> (last accessed Jan. 14, 2018).

<sup>80</sup> *Id.*

<sup>81</sup> CEDAW, *General Recommendation 24*, ¶ 23.

<sup>82</sup> José Manuel Moán Faúndes, *La anticoncepción de emergencia en Chile: estructuración de su demanda en función de variables socioeconómicas*, R. Bras. Est. Pop. v. 30 n. 1, 125 (2013), p. 130, available at <http://www.scielo.br/pdf/rbepop/v30n1/v30n1a07.pdf> (last accessed Nov. 14, 2017) (hereinafter ‘Moán Faúndes’).

<sup>83</sup> 2017 CEDAW List of Issues, ¶ 14.

<sup>84</sup> Informe Final PAIF, “Tabla 113,” p. 213.

<sup>85</sup> *Id.* at p. 441.

education which is respectful to their privacy is an important government duty.<sup>86</sup> However, 34% of Chilean school-aged adolescents would characterize sex education in their schools as “bad” or “very bad.”<sup>87</sup> Chile must reassess the quality of its sexual and reproductive health education, particularly among adolescent populations.

3. Chile violates the Right to Adequate Health Care for Women in Rural Areas and of a Vulnerable Socioeconomic Status (Article 14)

In Chile, poverty, low levels of education, and rurality increase the chances that women have children. For teenagers under 20 years, the inequality of fertility is even more accentuated. Fertility rates among women between 15 and 19 years are higher if they live in rural areas and belong to the lowest socioeconomic tercile.<sup>88</sup> Under Article 14 of CEDAW, Chile has the obligation to “*eliminate discrimination against women in rural areas*” as regards “*health care facilities, including information, counselling and services in family planning.*”<sup>89</sup> Being of low socioeconomic status in Chile raises a teenage girl’s probability of being pregnant by 38%.<sup>90</sup> Higher density of rural populations also correlate to higher rates of adolescent pregnancy in Chile.<sup>91</sup> Guaranteeing these populations’ equal access to reproductive and sexual healthcare is consequently a major issue for the Chilean government to address.

Given the especially vulnerable position of women living in rural areas, Chile’s restrictive abortion regime and emergency contraception laws have a heightened effect. In his latest mission to Chile, the U.N. Special Rapporteur on Extreme Poverty and Human Rights recommended that “*a sustained effort be made to acknowledge and promote sexual and reproductive rights, both as a matter of human rights and as a necessary complement to labor market reforms*” as a key measure in combatting discrimination and inequality among Chile’s poorer populations.<sup>92</sup>

**IV Recommendations**

We respectfully request the Committee addressing the following recommendations to the Chilean government:

- a) Amend Chile’s three grounds for interrupting a pregnancy, by:

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<sup>86</sup> CEDAW, *General Recommendation 24*, ¶ 18, 23.

<sup>87</sup> Miles Chile, *Primer informe: salud sexual, salud reproductiva y derechos humanos en Chile 2016*, (Apr. 10, 2017), p. 21 available at <http://mileschile.cl/wp-content/uploads/2017/11/Informe-DDSSRR-2016-Miles-v2-L.pdf> (last accessed Jan. 13, 2018).

<sup>88</sup> Moán Faúndes, p. 129.

<sup>89</sup> CEDAW, Article 14(2).

<sup>90</sup> Miles Chile, *Primer informe: salud sexual, salud reproductiva y derechos humanos en Chile 2016*, Infografías (Apr. 10, 2017), available at <http://mileschile.cl/?p=4185> (last accessed Jan. 13, 2018).

<sup>91</sup> *Id.*

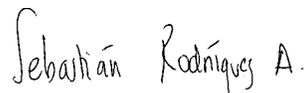
<sup>92</sup> HRC, *Report of the Special Rapporteur on extreme poverty and human rights on his mission to Chile*, A/HRC/32/31/Add.1, (Apr. 8, 2016), ¶ 70.

- (i) allowing a woman to access an abortion when her health, and not just her life, is at risk;
  - (ii) allowing a woman to access an abortion when her pregnancy is the result of incest.
- b) Amend Chile’s conscientious objection exception to the right to an abortion by formulating better policies surrounding urgent needs for interrupting a pregnancy, the availability of medical professionals in poorer or rural areas, and the woman’s specific ability to consult with a different medical professional if her first choice demonstrates a conscientious objector.
- c) Prohibit institutional conscientious objection by hospitals and clinics that could serve as a barrier for women to access reproductive health services.
- d) Ensure the wide availability and use of emergency contraception by:
- (i) expanding coverage in current public health regulations; and
  - (ii) abolish the current legal representative notification requirement for girls and adolescents under age 14 in under the current emergency contraception law.

We appreciate this Committee’s longstanding commitment to reproductive rights and to the eradication of discrimination in the provision of reproductive health care. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.



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**Annex: Extracts from the Health Code and Criminal Code as modified by Law 21.030**

**1. Chile's Health Code**

Article 119. According to the will of the mother, the interruption of her pregnancy by a medical surgeon, in the terms regulated in the following articles, 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 pregnancy can be effectuated as long as no more than fourteen gestational weeks have passed.

In any of the above grounds, the woman must communicate her will to interrupt the pregnancy in an express, prior, and written manner. When this is not possible, articles 15, parts b) and c) of law N. 20.584 shall be applied, which regulate the rights and obligations which individuals have in relation to actions concerning attention to their health, without prejudice to the following sections.

...

In the case of a girl under the age of 14, in addition to her will, the interruption of pregnancy must rely on the authorization of her legal representative, or of one of them, at the girl's choosing, if she has more than one. Lacking in this authorization, being understood as the refusal of the legal representative, or if this representative is lacking, the girl, with the assistance of a member of the medical team, shall be able to petition for the intervention of a judge to determine the presence of one of the grounds. The court will resolve the petition for the interruption of pregnancy without a formal judgment and verbally, before forty-eight hours following the submission of the petition, with the evidence which the medical team provides, hearing from the girl and the legal representative who refused the authorization. If he/she deems it appropriate, he/she will also hear from a member of the medical team.

When the physician adjudges that there is evidence to believe that seeking the authorization from the legal representative could cause a serious risk of physical or psychological abuse, coercion, abandonment, displacement or other acts or omissions damaging to the wellbeing of the girl under 14 years of age, such authorization will be waived and a substitutive judicial authorization will be requested.

...

Article 119(b). The medical surgeon required to interrupt the pregnancy for any of the grounds described in the first section of article 119 shall be able to abstain from effectuating it when he/she has manifested his/her conscientious objection to the director of the medical facility, prior written form. The rest of the personnel to whom the functions of the surgical room during the intervention correspond will also hold this same right. In that case, the establishment will have the obligation to immediately reassign the patient to another non-objecting professional. If the medical establishment does not have any physician that has not effectuated a manifestation of conscientious objection, it must refer out to one immediately so that the procedure may be effectuated by someone who has not manifested said objection. The Ministry of Health will determine the protocols necessary for the execution of the conscientious objection. Said protocols must ensure medical attention for patients who require interruption of pregnancy in accordance with the previous articles. The conscientious objection is of a personal nature and may be invoked by an institution.

If the medical professional that manifested the conscientious objection is required for interrupting the pregnancy, he will be obligated to immediately inform the director of the medical facility what the woman in question must be referred out.

In the case of a woman who required immediate and urgent medical attention, invoking the ground 1) of the first section of article 199, anyone who has manifested conscientious objection will not be excused from effectuating the interruption of the pregnancy when there is no other medical surgeon who could effectuate the intervention.

## **2. Chile's Criminal Code**

Article 344. Any woman who, apart from those cases permitted by the law, causes her own abortion or consents that another person cause it, will be punishable with imprisonment to the highest degree (*presidio menor en su grado máximo*).

If she does it to conceal her dishonor (*deshonra*), she will incur imprisonment to an intermediate degree (*presidio menor en su grado medio*).