

Chile: Children's Reproductive Rights at Risk



UN Photo/Martine Perret

In July 2015, the Center for Reproductive Rights provided supplementary information on Chile, scheduled for review by the Committee on the Rights of the Child (CRC) during its 70th Session. This submission highlights how the total criminalization of abortion, particularly in cases of sexual violence, constitute a failure to respect, protect and fulfill human rights under the Convention.

Sexual violence against children in Chile.

In 2011, the United Nations Office on Drugs and Crime (UNODC) reported 3,590 cases of sexual violence-related offences, one of the highest rate registered between 2006 and 2012.¹ In 2013, the National Prosecutor of Chile reported 24,000 cases of sexual violence,² 74 percent of which involved

children under the age of 18.³ Although most sexual violence in Chile involves children, there have been few public policy responses⁴. This has been a regional problematic in Latin America that has become evident with the cases of Belén, a 11-year-old girl who was denied a therapeutic abortion after she was raped by her mother's partner in Chile⁵, or the case of a 10-year-old girl in Paraguay who was denied an abortion after she was raped by her stepfather.⁶ The Chilean government itself acknowledges that girls who are victims of sexual abuse have higher rates of pregnancy during adolescence.⁷ Chile's absolute ban on abortion means these girls must either carry their pregnancies to term or seek unsafe and clandestine abortions.

Adolescents lack of access to emergency contraception.

The harm suffered by victims of sexual violence in Chile is exponentially exacerbated by the country's restrictive laws and policies. Emergency contraception (EC) is the most effective form of contraception to prevent pregnancy in cases of rape or sexual abuse.⁸ In 2008, in spite of the high rates of sexual abuse in Chile, the Constitutional Court prohibited the sale, distribution, and use of EC in all public health institutions.⁹ In response to this situation, in 2010, the Chilean Congress approved Law 20.418 on "Information, Guidance and Assistance on Fertility Regulation," allowing the use, sale and distribution of EC.¹⁰ The contradiction between the Constitutional Court decision and the most recent law created numerous barriers to access EC in Chile.¹¹ In approximately 20 percent of municipalities today, EC is either not being provided or there are no records of providing it.¹² Stock outs continue to be a problem, as is uncertainty on the part of midwives regarding their ability to write prescriptions.¹³ The persistent obstacles to access contribute to high rates of adolescent pregnancy, especially in low-income regions.¹⁴

Chile's total criminalization of abortion.

Before the military dictatorship in Chile, abortion was permitted on limited grounds.¹⁵ However, Chile repealed Article 119 of the Health Code in 1989, resulting in the total criminalization of abortion under all circumstances—including where pregnancy poses a risk to the woman or girl's life or health and where pregnancy results from rape or incest.¹⁶ A 2013 study by members of the Chilean Ministry of Health estimated that 109,200 illegal abortions take place each year.¹⁷ Prior estimates suggest that 160,000 to 200,000 clandestine abortions are performed annually, one of the highest rates in Latin America.¹⁸

- To rapidly approve legislation that would reform its laws imposing a total abortion ban to allow for exceptions when: (a) pregnancy endangers a woman's life or health; (b) **pregnancy is the result of rape or artificial insemination without the woman's consent**; and (c) congenital fetal anomaly incompatible with life outside the womb to protect adolescent's access to reproductive health services.

¹ United Nations Office on Drugs and Crime, RAPE AT THE NATIONAL LEVEL, NUMBER OF POLICE RECORDED OFFENCES IN CHILE: UNITED NATIONS OFFICE ON DRUGS AND CRIME, DATA (2015), <http://www.unodc.org/unodc/en/data-and-analysis/statistics/crime.html>.

² Javiera Matus, *ONU: Chile es tercero en el mundo en tasa de denuncias por abuso a menores*, LA TERCERA (2014), available at

<http://www.latercera.com/noticia/nacional/2014/05/680-579591-9-onu-chile-es-tercero-en-el-mundo-en-tasa-de-denuncias-por-abuso-a-menores.shtml>.

³ *Id.*

⁴ Gloria Maira Vargas et al., *Violencia sexual y aborto: conexiones necesarias*, RED CHILENA CONTRA LA VIOLENCIA DOMESTICA Y SEXUAL [CHILEAN NETWORK AGAINST DOMESTIC AND SEXUAL VIOLENCE] at 131 (2008).

⁵ Raped 11-year-old stirs abortion debate in Chile - CNN.com, CNN, <http://www.cnn.com/2013/07/11/world/americas/chile-abortion-debate/index.html> (last visited Apr 28, 2015).

⁶ Paraguay blocks abortion request for raped girl, 10 - CNN.com, <http://www.cnn.com/2015/05/01/americas/paraguay-girl-rape-pregnancy/> (last visited Jul 13, 2015).

See also the case of a 11-year-old who was raped in Bolivia and who faced barriers to access abortion, and the case of an 11-year-old girl in Uruguay who was raped by her step grandfather available at La Iglesia boliviana rechaza que aborte una niña de 11 años violada - 20minutos.es, ,

<http://www.20minutos.es/noticia/2493164/0/iglesia-boliviana/rechaza-aborto-nina-11-anos/violada-embarazada/> (last visited Jul 14, 2015); Uruguay: niña de 11 años embarazada no quiere abortar, NOTICIAS RCN, <http://www.noticiasrcn.com/internacional-america/uruguay-nina-11-anos-embarazada-no-quiere-abortar> (last visited Jul 14, 2015).

⁷ GOBIERNO DE CHILE [GOVERNMENT OF CHILE], ESTRATEGIA NACIONAL DE SALUD PARA EL CUMPLIMIENTO DE LOS OBJETIVOS SANITARIOS DE LA DÉCADA 2011-2020 [NATIONAL HEALTH STRATEGY TO REACH THE 2011-2020 DECADE HEALTH GOALS] at 91 [hereinafter *Chile National Health Strategy*].

⁸ WHO | Emergency contraception, WHO, <http://www.who.int/mediacentre/factsheets/fs244/en/> (last visited Feb 17, 2015).

⁹ Tribunal Constitucional de Chile, 37 diputados en ejercicio contra el Ministerio de Salud (Apr. 18, 2008), <http://www.tribunalconstitucional.cl/index>

¹⁰ CHILE, LAW 20.428 (2010).

¹¹ UNFPA, ACCESO Y DISTRIBUCIÓN DE LA ANTICONCEPCIÓN DE EMERGENCIA EN CHILE (2012),

http://www.icmer.org/documentos/anticoncepcion_de_emergencia/acceso_distr_de_ae_chile_2012.pdf.

¹² AMNESTY INTERNATIONAL, SUBMISSION TO THE UN UNIVERSAL PERIOD REVIEW, *Chile: Key human rights concerns*, 18th Session of the UPR Working Group, at 7 (2014).

¹³ Dides, *Compliance with Law 20.418*, *supra* note 41, at 35.

¹⁴ Carlos González I, *Estudio de Oxford mide por primera vez impacto de píldora del día después*, LA TERCERA, Aug. 24, 2014,

<http://www.latercera.com/noticia/tendencias/2014/08/659-592716-9-estudio-de-oxford-mide-por-primera-vez-impacto-de-pildora-del-dia-despues.shtml>.

¹⁵ President Michelle Bachelet, *Mensaje de S.E. la Presidenta de la Republica con el que inicia un proyecto de ley que regula la despenalización de la interrupción voluntaria del embarazo en tres causales* [Message from the President of the Republic initiating a bill to regulate the decriminalization of voluntary pregnancy termination in three situations], No. 1230-362, at 8 (Jan. 31, 2015) [hereinafter *Message from President Bachelet*], available at

<http://www.camara.cl/pley/pdfpley.aspx?prmID=10113&prmTIPO=INICIATIVA>.

¹⁶ Ramiro Molina C., *Ley 20.418: historia de una ley por la dignidad de la mujer chilena* [Law 20.418: History of a Law for the Chilean Woman's Dignity], 78 REVISTA CHILENA DE OBSTETRICIA Y GINECOLOGÍA [REV. CHIL. OBSTET. GINECOL.] [CHILEAN JOURNAL OF OBSTETRICS & GYNECOLOGY] 79, 79 (2013).

¹⁷ R. Molina-Cartes et al., *Profile of Abortion in Chile, with Extremely Restrictive Law*, 3 OPEN JOURNAL OF OBSTETRICS & GYNECOLOGY 732-38 (2013).

¹⁸ See GUTTMACHER INSTITUTE, *Aborto clandestino: Una realidad latinoamericana* [Clandestine Abortion: A Latin American Reality] (1994); P. Lavín et al., *Informe preliminar sobre la caracterización de los casos y costos del tratamiento del aborto hospitalizado en Santiago de Chile* [Preliminary Report on the Characterization of Cases and Costs of Abortion Hospitalization Treatment in Santiago de Chile], MEETING OF RESEARCHERS ON INDUCED ABORTION IN LATIN AMERICA AND THE CARIBBEAN, UNIV. EXTERNADO DE COLOMBIA (1994), cited in Verónica Schiappacasse et al., *Chile: Situación de la Salud y los Derechos Sexuales y Reproductivos*, INSTITUTO CHILENO DE MEDICINA REPRODUCTIVA [ICMER] [CHILEAN INSTITUTE OF REPRODUCTIVE MEDICINE] 50 (2003).

¹⁹ CHILE, PROYECTOS DE LEY, BOLETÍN N° 9895-11, 3 MARZO 2015, PUBLICACIÓN OFICIAL, <http://www.camara.cl/pdf.aspx?prmID=11004&prmTIPO=TEXTOSesion>; see also Chile's President Bachelet proposes end to total abortion ban, BBC NEWS, <http://www.bbc.com/news/world-latin-america-31076838> (last visited Apr 17, 2015).

²⁰ Comisión de Salud de la Cámara revisará despenalización del aborto - Nacional - 24horas, , <http://www.24horas.cl/nacional/comision-de-salud-de-la-camara-revisara-despenalizacion-del-aborto-1718036> (last visited Jul 9, 2015).

²¹ *Id.*

²² See, e.g., Human Rights Committee, *Concluding Observations: Peru*, para. 14, U.N. Doc. CCPR/C/PER/CO/5 (2013).

²³ CRC Committee, *Gen. Comment No. 15*, para. 56.

²⁴ *Id.* para. 24

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* para. 70.

²⁸ *Id.*

²⁹ *Id.* paras. 51-57.

³⁰ *Id.* paras. 53-54.

³¹ CRC Committee, *Gen. Comment No. 4*, para. 6.

³² CRC, *supra* note 1, art. 2.

³³ CRC Committee, *Gen. Comment No. 5*, para. 12.

³⁴ CRC Committee, *Concluding Observations: Namibia*, para. 57(a), U.N. Doc. CRC/C/NAM/CO/2-3 (2012); ("The State party's punitive abortion law and various social and legal challenges, including long delays in accessing abortion services within the ambit of the current laws for pregnant girls. In this regard, the Committee notes with concern that such a restrictive abortion law has led adolescents to abandon their infants or terminate pregnancies under illegal and unsafe conditions, putting their lives and health at risk, which violates their rights to life, to freedom from discrimination, and to health").

New York, July 6th, 2015

Secretariat of the Committee on the Rights of the Child
Office of the United Nations High Commissioner for Human Rights
Palais Wilson
52, rue des Pâquis
CH-1211 Geneva 10, Switzerland

Re: Supplementary information on Chile, scheduled for review by the Committee on the Rights of the Child during its 70th Session.

Distinguished Members of the Committee on the Rights of the Child (CRC):

The Center for Reproductive Rights (the Center) is an independent non-governmental organization that works to promote women's equality by guaranteeing reproductive rights as human rights. The Center seeks to contribute CRC's work by providing independent information concerning Chile's obligations to guarantee the rights protected under the Convention on the Rights of the Child (the Convention). In light of Chile's upcoming review under the CRC, this report will highlight Chile's failure to comply with its obligations under the Convention to respect, protect and fulfill children's right to life; survival and development; health; and equality and non-discrimination, by criminalizing abortion in all circumstances, particularly in cases of sexual violence.

We want to thank you in advance for your prompt attention to this matter,

Respectfully,

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This report is divided into three parts. First, it examines the consequences for adolescents of Chile's restrictive access to comprehensive reproductive health services, including abortion, particularly for young victims of sexual violence. Second, it describes the international human rights standards related to self-determination and physical autonomy when accessing confidential sexual and reproductive health services. Third, it argues that these reproductive rights restrictions violate numerous children's rights protected by the Convention.

I. The right to safe and legal abortion services (Articles 6 and 24)

1. Chile's total criminalization of abortion

Before the military dictatorship in Chile, abortion was permitted on limited grounds.² In 1989 Chile repealed Article 119 of the Health Code, resulting in the total criminalization of abortion under all circumstances—including where pregnancy poses a risk to the woman or girl's life or health and where pregnancy results from rape or incest.³ In 1998, the Center reported that enforcement of the country's abortion law has had serious consequences in public hospitals and health care centers, where in certain cases woman who comes to an emergency room when facing the need to end a pregnancy, in cases of obstetric emergencies, or in cases of post abortion care, are presumed to be a criminal and reported to the police by medical personnel.⁴

Currently, women and girls who are convicted of illegally obtaining an abortion must face a prison term of three to five years.⁵ According to a recent study conducted by the University Diego Portales in 2013, between 2006 and 2012, the Chilean Public Ministry processed 800 cases of non-consented abortions and 42 cases of induced abortions.⁶ Of these cases, 130 resulted in sentences.⁷ Although not all the cases that are processed are prosecuted⁸, their experiences demonstrate the Chilean state's failure, through its punitive practices, to respect women's dignity and human rights.

As recognized by the World Health Organization, criminalizing abortion does not reduce the demand for the procedure, but instead creates legal obstacles which reduce its safety. A 2013 study by members of the Chilean Ministry of Health estimated that there are 109,200 illegal abortions annually.⁹ Prior estimates suggest that 160,000 to 200,000 clandestine abortions are performed annually in Chile, one of the highest rates in Latin America.¹⁰

Chile is currently taking positive steps toward improving access to abortion through Bill N° 9895-11, introduced to the legislature by President Bachelet in January 2015.¹¹ This bill would allow for abortions up to 12 weeks into pregnancy where the woman's life is at risk, in instances of fetal abnormality incompatible with life outside the womb, and in cases of sexual violence; a girl below age fourteen could receive an abortion up to 18 weeks into pregnancy. The bill is currently under discussion by Chile's Health Commission at the Chamber of Representatives which is currently going through the process of public hearings calling for various groups and organizations who represent the two spectrums of the abortion debate to intervene.¹² The bill has faced strong opposition from both the Catholic Church and politicians.¹³ If the Health Commission approves the general vote, the Commission will have to study each of the articles of the law and give indications or propose modifications, which will be again voted by the Commission. After such vote, then it would go to the constitutional Commission of the Chamber of Representatives. If it passes both Committees then it would go to the Senate. The vote on if they should legislate about the issue, has been pushed to August 4th.¹⁴

The bill represents an advancement for the protection of the rights of minors at it would protect their right to life and health, and is a particular advancement in the protection of girls, victims of sexual abuse. The bill protects children that have been victims of domestic violence, coercion, threats or abuse, or in cases of abandonment.¹⁵ In addition, the bill also establishes a duty to strengthen access to information from medical providers, including information related to social and economic support programs, which allows women to have control over their own decisions and bodies.¹⁶ Nevertheless some of the proposed content is not in line with the standards set by the CRC. When a fourteen- to eighteen-year-old adolescent seeks an abortion, the bill would require the provider to notify her parent or guardian after the procedure. If the notification would create "grave risks" to the minor, the provider must notify another adult. The absence of confidentiality in healthcare deters young people from accessing safe, legal services and channels them toward unsafe, clandestine providers. Given the stigma and discrimination surrounding adolescent sexuality and abortion in particular, an adolescent may face violence or physical abuse once her parents are notified.

For young adolescents under age fourteen, Bill N° 9895-11 would require the parents or guardian's knowledge and prior authorization, without leaving the option to obtain the authorization from another adult. In these cases, if the adolescent wants to end the pregnancy, her parent may exercise an absolute veto,

hindering their right to self-determination and physical autonomy when accessing confidential sexual and reproductive health services.

2. Chile's abortion ban disproportionately impacts adolescent girls and victims of sexual violence

Although most sexual violence in Chile involve children, there have been few public policy responses.¹⁷ An example of such violence is the case of Belén, a pregnant 11-year old girl who was raped in Chile by her mother's partner and was refused a therapeutic abortion to protect the children's health and life.¹⁸ In addition to the mental anguish of being forced to carry an unwanted pregnancy to term, in accordance with the World Health Organization (WHO), adolescent pregnancies also pose significant health risks including death, especially for very young adolescents.¹⁹ Complications from pregnancy and childbirth are second cause of death for 15 to 19-year-old girls globally.²⁰ The risk of death from pregnancy-related complications is four to eight times greater for girls below age 15 than for those ages 15 to 19.²¹ Even when carrying a pregnancy to term poses a clear threat to a girl's life or health, these negative health consequences includes anaemia, malaria, HIV and other sexually transmitted infections, postpartum hemorrhage and mental disorders.²²

In spite of these consequences, the case of Belen portrayed the polarization of public opinion towards abortion in Chile. In 2013, former President Sebastian Piñera opposed any loosening of the abortion prohibition.²³ Senator, Juan Antonio Coloma, "defended the current laws, saying that abortion should be prohibited no matter what."²⁴ In 2012, the Chilean Senate discussed and rejected three bills that would have eased the absolute ban on abortions.²⁵

In 2011, the United Nations Office on Drugs and Crime (UNODC) reported 3,590 cases of sexual violence-related offences, one of the highest rate registered between 2006 and 2012 in Chile.²⁶ In 2013, the National Prosecutor of Chile reported 24,000 cases of sexual violence,²⁷ 74 percent of which involved children under the age of 18.²⁸ In 2014, a study conducted by the University of Chile found that 31 percent of college students reported being victims of sexual violence since age 14,²⁹ and just two percent reported these incidents to the authorities.³⁰

Between April 2014 and May 2015, the Chilean Ministry of Justice reported 968 adolescent pregnancies, which of these cases, 10 were reported as sexual violence.³¹ Nevertheless, underreporting is one of the characteristics of this kind of crime. The prevalence of sexual violence against children, paired with inadequate access to emergency contraception (see section II(1) infra), suggest that many girls throughout the country must contend with pregnancies resulting from rape. The Chilean government recognizes that girls who are victims of sexual abuse have higher rates of pregnancy during adolescence.³² Chile's absolute ban on abortion means these girls must either carry their pregnancies to term or seek unsafe and clandestine abortions.

UNTMBs recognize that restrictive abortion laws violate the rights to life and health, and that states must permit abortion, at a minimum, where pregnancy poses a risk to the woman or girl's life or health and in cases of rape or incest. The CRC has recommended that States ensure that health systems can meet the specific sexual and reproductive health needs of adolescents,³³ including access to safe abortion and post-abortion care services, regardless of whether abortion itself is legal.³⁴ UNTMBs—including the CRC³⁵—have also repeatedly called on Chile to amend its abortion law to permit abortion in cases of rape and

incest.³⁶ In June 2015, the U.N. Committee on Economic, Social and Cultural Rights (CESCR) urged Chilean officials to redouble its efforts towards preventing adolescent pregnancy by ensuring the accessibility, availability, and affordability of emergency contraception and other critical reproductive health services.³⁷ By declining to do so, Chile is failing to comply with its international human rights obligations.

While Bill No. 9895-11—which is currently being debated—is a welcome step toward relaxing Chile’s absolute prohibition of abortion, it nonetheless contains components that will continue to jeopardize adolescents’ reproductive health and rights by failing to guarantee confidentiality and, for younger adolescents, denying them the ability to make decisions about whether to carry a pregnancy to term. First, the bill does not guarantee confidentiality, constituting a serious barrier to children’s access to abortion services.³⁸ When adolescents must inform or seek permission from their parents to access sexual and reproductive health services, many will forego such services but continue to engage in sexual activity, putting their health in jeopardy.³⁹ It is contradictory for the state to recognize that an older adolescent is mature enough to seek an abortion on her own, but then require parental notification. The CRC recognizes that states should guarantee adolescents’ rights to privacy and confidentiality by allowing them the full range of sexual and reproductive health rights and services without parental involvement in accordance with their evolving capacities.⁴⁰ States must not obligate healthcare providers to divulge adolescents’ medical information without their consent.⁴¹

The CRC has urged states to ensure that “girls can make autonomous and informed decisions on their reproductive health”⁴² and to “guarantee that the views of pregnant teenagers are always heard *and respected* in abortion decisions.”⁴³ The CRC has also encouraged states to allow children to consent to sexual and reproductive health services, including safe abortion, without the permission of a parent or guardian.⁴⁴ Other human rights bodies have determined that adolescents should be given the opportunity to participate in decisions about their reproductive health in an environment that protects their privacy.⁴⁵

II. The Right to Sexual and Reproductive Health Information and Services (Article 24)

1. Adolescents lack access to contraception, including emergency contraception (EC)

Although there is conclusive evidence that adolescents in Chile are sexually active, they often lack access to the reproductive health information and services they need. According to a 2010 study of youth in Santiago de Chile, the average age of first sexual intercourse is 13.5 years for boys and 14 years for girls.⁴⁶ Approximately 10 percent of girls and a third of boys in the study reported having more than one sexual partner in the last year.⁴⁷ Furthermore, according to the Chilean Ministry of Health, adolescents accounted for more than 14 percent of pregnancies in 2012,⁴⁸ and the percentage of adolescent mothers rose between 2005 and 2009, the most recent years for which data is available.⁴⁹ Studies show that only slightly more than half of sexually active adolescents in Chile report regularly using contraception.⁵⁰ Even when adolescents know about the various contraceptive methods available to them, studies demonstrate that lack of confidentiality inhibits access.⁵¹ Indeed, concerns regarding confidentiality constitute a major obstacle to adolescents’ access to reproductive health services generally in Chile.⁵²

Disparate access to contraception drives adolescent pregnancy, as do scant educational and economic opportunities, and socialized gender roles that uphold maternity as girls’ destiny.⁵³ In Chile’s metropolitan

regions, higher rates of adolescent pregnancy occur in areas with lower socioeconomic indicators.⁵⁴ The detrimental effects of restricted access to reproductive health information and services disproportionately impact low-income adolescents and those living in rural areas, who often do not receive comprehensive sexuality education.⁵⁵ For Chilean adolescents living in poverty, having a child undermines the realization of their right to education, as many pregnant adolescents drop out of school, which in turn inhibits their future educational and employment opportunities.⁵⁶

As such, access to emergency contraception (EC) is especially critical for adolescents, who may have difficulty negotiating condom use,⁵⁷ experience higher failure rates for other forms of contraception,⁵⁸ and suffer high rates of sexual violence (see section I(2)). A recent study found that the availability of EC in Chile reduced births among adolescents between ages 15 and 19 by almost 7 percent,⁵⁹ and reduced illegal abortion rates by an estimated 55 percent.⁶⁰ The demand for EC among adolescents in Chile is more than double the demand among women ages 20 to 44.⁶¹

In 2006, Chile's Constitutional Court prohibited the sale, distribution, and use of EC in all public health institutions.⁶² Three years later, only half of municipal health centers offered EC, and just 9.3 percent offered EC to any woman who asked for it.⁶³ Although Law 20.418, passed by the Chilean Congress in 2010, requires that EC be provided free of charge within the public health system,⁶⁴ the contradiction between the courts's ruling and Law 20.418 has created numerous barriers to access.⁶⁵ In approximately 20 percent of municipalities today, EC is either not being provided or there are no records of providing it.⁶⁶ Stock outs continue to be a problem, as is uncertainty on the part of midwives regarding their ability to write prescriptions.⁶⁷ The persistent obstacles to access contribute to high rates of adolescent pregnancy, especially in low-income regions.⁶⁸

2. Chile's obligation to guarantee adolescents access to contraceptive information and services

Chile's international human rights obligations require that adolescents be guaranteed the right to access contraception, particularly those who have experienced sexual violence. The CRC has urged states to "ensure universal access to a comprehensive package of sexual and reproductive health interventions,"⁶⁹ including condoms, hormonal contraceptives, and EC. The CRC further recognizes that pregnancy resulting from rape can be a "significant health risk"⁷⁰ and has instructed states parties to "provide . . . adolescent [victims of sexual abuse] with all the necessary services."⁷¹

The CRC has also recognized that adolescents have the right to confidentiality in healthcare services. In recognition that rigid age requirements can deny competent children from accessing the sexual and reproductive health services they may need, the CRC has urged that, where rigid age restrictions are in place, children below that age should have the opportunity to demonstrate that they have attained the requisite capacity to access such services.⁷² The CRC further recognizes that "children are more likely to use [health] services that are friendly and supportive... give them the opportunity to participate in decisions affecting their health... [and are] confidential and non-judgmental, do not require parental consent and are not discriminatory."⁷³

III. **Chile's Failure to Guarantee Reproductive Rights Violates the Rights to Life, Survival and Development (Article 6), Health (Articles 3(2), 17 and 24), and Non-Discrimination and Substantive Equality (Article 2)**

1. Children's Right to Life, Survival and Development (Article 6)

Guaranteeing all adolescents the right to autonomously make decisions about their sexual and reproductive health a critical step towards realizing the right to life, survival and development. The CRC interprets children's right to development broadly to include their physical, mental, spiritual, moral, psychological and social development⁷⁴ and has urged states to take measures to achieve the optimal development of all children.⁷⁵ UNTMBs have expressed concern about adolescents' lack of access to sexual and reproductive health services and the impact that this has on their lives and development, including by urging states to ensure adequate access to such services to reduce adolescent pregnancy and maternal mortality.⁷⁶ Guaranteeing adolescents' access to sexual and reproductive health services enables them to prevent pregnancy, protect themselves against sexually transmitted infections, and make informed decisions about their sexual and reproductive health.⁷⁷ Where adolescents are unable to autonomously access these services, they may resort to unsafe methods to try to prevent pregnancy or to terminate an unwanted pregnancy, posing serious threats to their lives.⁷⁸ The CRC recognizes that unsafe abortion may lead to maternal mortality, in violation of adolescents' right to life.⁷⁹

2. Children's Right to Health (Articles 3(2), 17 and 24)

Children's right to health is an "inclusive right extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also a right to grow and develop to their full potential, and live in conditions that enable them to attain the highest standard of health by implementing programmes that address the underlying determinants of health".⁸⁰ In the context of reproductive rights, "[c]hildren's right to health contains a set of freedoms and entitlements"⁸¹. This includes "the right to control one's health and body, including sexual and reproductive freedom to make responsible choices"⁸², as well "access to a range of facilities, goods, services and conditions that provide equality of opportunity for every child to enjoy the highest attainable standard of health."⁸³

A holistic approach to the right to health of children within the broader framework of international human rights standards involves the realization of children's right to sexual and reproductive health services.⁸⁴ To this end, the CRC recognizes that adolescents should have access to short- and long-term contraceptive methods;⁸⁵ "safe abortion and post-abortion care services, irrespective of whether abortion itself is legal;"⁸⁶ and maternal health services.⁸⁷ The CRC has urged states to adopt child-sensitive health approaches, including "adolescent-friendly health services which require health practitioners and facilities to be welcoming and sensitive to adolescents, to respect confidentiality and to deliver services that are acceptable to adolescents."⁸⁸ The CRC has also recognized that "children are more likely to use [health] services that are . . . confidential and non-judgmental, do not require parental consent and are not discriminatory."⁸⁹ States parties should guarantee confidentiality in provision of health services,⁹⁰ and ensure that laws regarding adolescents' access to healthcare services do not include parental consent or notification requirements.

International and regional human rights bodies have adjudicated several cases addressing children's right to sexual and reproductive health services. In *KL v. Peru*, the Human Rights Committee determined that denying abortion services to a child carrying a non-viable pregnancy, which posed a risk to her life and her physical and mental health, violated her rights to privacy; be free from cruel, inhuman and degrading

treatment; special protection as a child; and a legal remedy.⁹¹ In *LC v. Peru*, the Committee on the Elimination of Discrimination against Women found that denying a child urgently needed spinal surgery out of fear that it could harm her pregnancy violated the rights to privacy, freedom from gender stereotyping, health, and to a remedy.⁹² In *P&S v. Poland*, the European Court of Human Rights addressed human rights violations stemming from hospital personnel and clergy members intentionally obstructing access to abortion services for a 14-year-old who became pregnant as a result of rape.⁹³ Recognizing the petitioner's vulnerability as a child, the court ruled that the state violated her rights to liberty, respect for private and family life, and to be free from inhuman and degrading treatment.⁹⁴

3. Girls' and Adolescents Rights to Substantive Equality and Non-Discrimination (Article 2)

As established by the CRC in General Comment N° 15, “[a]ll policies and programmes affecting children’s health should be grounded in a broad approach to gender equality that ensures young women full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence.”⁹⁵ The rights to equality and nondiscrimination are fundamental to the realization of all human rights and states must ensure that discrimination does not undermine the realization of girls’ and adolescents rights.⁹⁶

The CRC recognizes that children who are discriminated against “are more vulnerable to abuse, other types of violence and exploitation,” and their health and development are put at greater risk.⁹⁷ Article 2 requires states parties to respect the rights set forth in the Convention without discrimination, and ensure that all children are protected against discrimination.⁹⁸ States are obligated to take affirmative measures to protect children’s right to non-discrimination and diminish or eliminate conditions that cause discrimination through measures such as legislative changes, changes in administration and resource allocation, and educational measures designed to change attitudes.⁹⁹

Guaranteeing all adolescents the right to make autonomous decisions about their sexual and reproductive health and rights is a critical component of the right to equality and nondiscrimination, due to the disproportionate impact this has on girls. UNTMB recognize that restrictive laws on sexual and reproductive health services—such as laws restricting the legality of specific services and requiring third-party authorization—violate the right to nondiscrimination.¹⁰⁰ Unintended pregnancy impacts girls’ lives in myriad ways, as they must bear the health risks and social norms often compel them to assume childrearing responsibilities. Furthermore, rigid parental consent requirements perpetuate the discriminatory notion that children are incapable of making informed decisions about their sexual and reproductive health, contradicting human rights norms recognizing that they must be enabled to make informed decisions about their sexual and reproductive health in line with their evolving capacities. Where adolescents’ age or gender is coupled with another basis for discrimination, such as disability, sexuality, gender identity, race, or migration status, the discrimination they face in exercising their sexual and reproductive rights can be greatly exacerbated and also manifest in unique ways. Recognizing that gender stereotypes and patriarchal values undermine the exercise of girls’ right to be heard, states are urged to pay special attention to this right for girls.¹⁰¹ States should proactively take targeted measures to ensure that adolescents facing multiple forms of discrimination are able to exercise their sexual and reproductive rights on the basis of equality.

IV. Conclusion

We applaud the Committee on the Rights of the Child for its commitment to girls' sexual and reproductive health and rights and the strong recommendations the committee has issued in the past, which stress the need to enact, implement, and monitor effective policies geared towards increasing these rights. We also applaud the great advancements the Chilean Government has taken in the last years to protect reproductive rights. Particularly, we congratulate the Chilean Government for enacting Law 20.418 and introducing Bill N° 9895-11 to improve access to contraception and abortion services. However, while the introduction of this bill represents a significant step in the route towards achieving reproductive rights for all girls, the change of law remains a plan and not yet a reality. In light of the information provided above, we hope that this Committee will consider addressing the following questions to the government of Chile:

With regard to sexual violence:

- Children and adolescents who have been victims of gender-based violence are more vulnerable to teenage pregnancy. What policies and/or programs are being taken by the State to prevent sexual violence against adolescent girls?

With regard to abortion:

- What measures is the state taking, while the abortion law is pending, to protect the risks of girls facing unwanted pregnancy?
- What is the government doing to ensure access to timely, quality and affordable post-abortion care and reproductive health counseling?

With regard to emergency contraception:

- What measures are being taken by the State to address the lack of information about the legality of emergency contraception in the country?
- What measures is the State undertaking or planning to undertake to provide contraceptive methods, information and services to vulnerable populations, including poor, rural, and adolescent women?

We believe that now more than ever, an explicit recommendation towards the decriminalization of abortion is determinant for the recognition of the right to health without discrimination for adolescents. We respectfully request the Committee on the Rights of the Child to consider addressing the following recommendations to the Chilean government during the 70th Session:

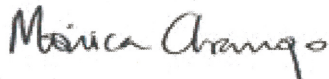
1. To rapidly approve legislation that would reform its laws imposing a total abortion ban to allow for exceptions when: (a) pregnancy endangers a woman's life or health; (b) pregnancy is the result of rape or artificial insemination without the woman's consent; and (c) congenital fetal anomaly incompatible with life outside the womb to protect adolescent's access to reproductive health services.

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2. To repeal rigid parental consent and notification requirements and guarantee adolescents' access to sexual and reproductive health services, including abortion and all forms of contraception.
3. To take positive measures to address the underlying inequalities that inhibit adolescents' access to sexual and reproductive health services, including lack of education, stigma and discrimination surrounding girls' sexuality and their reproductive health needs, and to recognize denial of services as discrimination.

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

Respectfully,



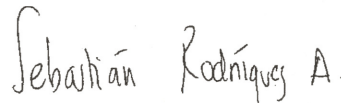
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- ¹ Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sep. 2, 1990) [hereinafter CRC].
- ² President Michelle Bachelet, *Mensaje de S.E. la Presidenta de la Republica con el que inicia un proyecto de ley que regula la despenalización de la interrupción voluntaria del embarazo en tres causales* [Message from the President of the Republic initiating a bill to regulate the decriminalization of voluntary pregnancy termination in three situations], No. 1230-362, at 8 (Jan. 31, 2015) [hereinafter *Message from President Bachelet*], available at <http://www.camara.cl/pley/pdfpley.aspx?prmID=10113&prmTIPO=INICIATIVA>.
- ³ Ramiro Molina C., *Ley 20.418: historia de una ley por la dignidad de la mujer chilena* [Law 20.418: History of a Law for the Chilean Woman's Dignity], 78 REVISTA CHILENA DE OBSTETRICIA Y GINECOLOGÍA [REV. CHIL. OBSTET. GINECOL.] [CHILEAN JOURNAL OF OBSTETRICS & GYNECOLOGY] 79, 79 (2013).
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- ⁵ CÓDIGO PENAL [CÓD. PEN.] [PENAL CODE] arts. 344, 56 (Chile).
- ⁶ UNIVERSIDAD DIEGO PORTALES, FACULTAD DE DERECHO, INFORME ANUAL SOBRE DERECHOS HUMANOS EN CHILE (2013). at 85
- ⁷ *Id.* at 88
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- ¹⁴ *Id.*
- ¹⁵ CHILE, PROYECTOS DE LEY, BOLETÍN N° 9895-11, 3 MARZO 2015, PUBLICACIÓN OFICIAL, <http://www.camara.cl/pdf.aspx?prmID=11004&prmTIPO=TEXTOSesion>. Art. 1.
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[COLOMBIAN JOURNAL OF OBSTETRICS & GYNECOLOGY] 15-22 (1996), cited in *Chile National Health Strategy*, *supra* note 21, at 170.

²² WHO | Adolescent pregnancy, *supra* note 19.

²³ Raped 11-year-old stirs abortion debate in Chile - CNN.com, *supra* note 13.

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²⁵ UNIVERSIDAD DIEGO PORTALES, FACULTAD DE DERECHO, *supra* note 6. at 81; 11-Year-Old's Pregnancy Sparks Abortion Debate in Chile, THE HUFFINGTON POST, http://social.huffingtonpost.com/2013/07/05/chile-abortion-debate_n_3551960.html (last visited Apr 28, 2015).

²⁶ United Nations Office on Drugs and Crime, RAPE AT THE NATIONAL LEVEL, NUMBER OF POLICE RECORDED OFFENCES IN CHILE: UNITED NATIONS OFFICE ON DRUGS AND CRIME, DATA (2015), <http://www.unodc.org/unodc/en/data-and-analysis/statistics/crime.html>.

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³² GOBIERNO DE CHILE [GOVERNMENT OF CHILE], ESTRATEGIA NACIONAL DE SALUD PARA EL CUMPLIMIENTO DE LOS OBJETIVOS SANITARIOS DE LA DÉCADA 2011-2020 [NATIONAL HEALTH STRATEGY TO REACH THE 2011-2020 DECADE HEALTH GOALS] at 91 [hereinafter *Chile National Health Strategy*].

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³⁴ CRC Committee, *Gen. Comment No. 15*, para. 70.

³⁵ See Committee on the Rights of the Child, *Concluding Observations: Chile*, para. 56, U.N. doc. CRC/C/CHL/CO/3 (2007).

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³⁷ ESCR Committee, *Concluding Observations: Chile*, para. 29 U.N. Doc. E/C.12/CHL/CO/4 (2015).

³⁸ CRC Committee, *Gen. Comment No. 15*, para. 56.

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⁴⁶ Sanchez, Ninive et al, *Sexual Intercourse among Adolescents in Santiago, Chile: A Study of Individual and Parenting Factors*, 28.4 REVISTA PANAMERICANA DE SALUD PÚBLICA [PAN AMERICAN JOURNAL OF PUBLIC HEALTH] 267-274 (2010).

⁴⁷ *Chile National Health Strategy*, *supra* note 21, at 138.

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⁵⁰ ENCUESTA NACIONAL DE CALIDAD DE VIDA (ENCAVI) (2006), cited in *Chile National Health Strategy*, *supra* note 21, at 138.

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⁵² GOBIERNO DE CHILE, MINISTERIO DE SALUD, [CHILEAN GOVERNMENT MINISTRY OF HEALTH], *Resumen Ejecutivo [Executive Summary]. En salud los jóvenes se eligen* (2011), available at <http://web.minsal.cl/portal/url/item/b554a9fa503bef14e04001011e017f17.pdf>.

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⁶⁹ CRC Committee, *Gen. Comment No. 15*, paras. 53-54.

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⁷¹ *Id.* para. 22.

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⁸⁵ *Id.* para. 70.

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⁸⁸ *Id.* para. 52.

⁸⁹ *Id.* para. 56.

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⁹⁸ CRC, *supra* note 1, art. 2.

⁹⁹ CRC Committee, *Gen. Comment No. 5*, para. 12.

¹⁰⁰ CRC Committee, *Concluding Observations: Namibia*, para. 57(a), U.N. Doc. CRC/C/NAM/CO/2-3 (2012); (“The State party’s punitive abortion law and various social and legal challenges, including long delays in accessing abortion services within the ambit of the current laws for pregnant girls. In this regard, the Committee notes with concern that such a restrictive abortion law has led adolescents to abandon their infants or terminate pregnancies under illegal and unsafe conditions, putting their lives and health at risk, which violates their rights to life, to freedom from discrimination, and to health”).

¹⁰¹ CRC Committee, *Gen. Comment No. 12*, para. 77.