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COMMITTEE ON
ECONOMIC, SOCIAL AND
CULTURAL RIGHTS

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EXECUTIVE SUMMARY

Amnesty International submits this briefing to the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee), ahead of its examination in June (2015) of Chile's fourth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant or ICESCR).

The briefing is not an exhaustive review of the implementation of the Covenant in Chile, but highlights specific concerns regarding the protection of sexual and reproductive rights in the country taking into account the list of issues adopted at the pre-session Working Group in December 2014.¹

Concerns remain about the failure of Chile to fully implement international law and standards into national law with respect to the realization of sexual and reproductive rights of women and girls. In particular Amnesty International is concerned about the total ban on abortion, which remains in place despite recommendations from this Committee and other UN Committees², to lift the total ban since it violates women and girls' right to life, health and physical integrity.

In January 2015 in a welcoming move, the government filed a bill before Congress proposing to decriminalize abortion when the woman and girl's life is at risk, when the foetus is non-viable and in cases of when the woman or girl has been raped. . However, the bill has not yet passed.

Amnesty International is also concerned that Chile has yet to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,³ which would strengthen the possibilities of women to bring their cases before the UN Committee on the Elimination of Discrimination against Women (CEDAW).

¹Committee on Economic, Social and Cultural Rights, List of issues in relation to the fourth periodic report of Chile, Section III. Issues relating to the specific provisions of the Covenant (Article 12 The right to physical and mental health), E/C.12/CHL/Q/4, 22 December 2014.

²Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by states parties under article 16 and 17 of the Covenant, Concluding observations – Chile, E/C.12/1/Add.105, 1 December 2004, paras. 26 and 53. Human Rights Committee, Concluding observations on the sixth periodic report of Chile, CCPR/C/CHL/CO/6, 13 August 2014, para. 15. Committee on the Elimination of Discrimination against Women, Concluding observations on the fifth and sixth periodic reports of Chile, CEDAW/C/CHL/CO/5-6, 12 November 2012, paras. 34 and 35.

³ Amnesty International sent a letter to the government suggesting human rights commitments prior to Chile's candidature for the Human Rights Council. The government's answer, dated July 2011 explained that the Optional Protocol of CEDAW was in Congress for approval and ratification. However, this was withdrawn from Congress in 2012. The state made a commitment to women's rights in the context of its candidature for election to the Human Rights Council in May 2011, see General Assembly, 65th session, Elections to fill vacancies in subsidiary organs and other elections: election of fifteen members of the Human Rights Council. *Note Verbale dated 18 October 2010 from the Permanent Mission of Chile to the United Nations addressed to the Secretariat*. A/65/730, page 2-4.

SEXUAL AND REPRODUCTIVE RIGHTS

ACCESS TO SEXUAL AND REPRODUCTIVE INFORMATION AND SERVICES

Amnesty International welcomes the responses to the list of issues presented to the Committee in April 2015 in which the Chilean government highlights a number of measures and regulations to prevent teenage pregnancies and abortions. However, the answers fail to report whether the measures put in place so far have had the impact desired.

With respect to barriers to sexual and reproductive information and services, Amnesty International is concerned that there are still a number of barriers in place which do not allow all women and girls to enjoy their sexual and reproductive rights without discrimination. This Committee has stressed that “the realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.”

BARRIERS TO ACCESS EMERGENCY CONTRACEPTION

In 2010, the Chilean Congress passed Law 20.418 on information, orientation and services regarding the regulation of fertility. This law establishes the rights to access contraception and sexual and reproductive health information. However, its implementation has so far been inconsistent. According a study by the Central University of Chile, emergency contraception which should be provided free of charge everywhere under this legislation, does not reach all health centres in the country.

According to a 2013 report by the Universidad Central, out of the 321 municipalities in Chile, 86.3% are providing access to emergency contraception, while 5.9% are not. According to this study the main cause of emergency contraception not being provided in these remote areas is a lack of understanding by health professionals working in those municipalities of how and when to provide the medication; and the second most common cause for emergency contraception not reaching all women and girls is lack of availability of the medication.

BARRIERS TO ADOLESCENTS’ ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH INFORMATION AND SERVICES

According to the CEDAW, all adolescents should have the same right to access health care without third party authorization, whether it is a spouse or a parent, and regardless of the adolescents’ marital status. In relation the 2013 legislation that establishes the rights to access contraception and sexual and reproductive health information, the Ministry of Health has published an administrative ruling stating that the law requires service providers to notify parents after providing emergency contraception to girls age 14 years and younger, and the Minister of Health has stated this is requirement should NOT be an obstacle to providing treatment to adolescent girls 14 and under, but a mechanism for parental notification.

While the administrative rule (referenced above) does not require third party authorization for adolescents' access to emergency contraception, Amnesty International is concerned that its mandatory notification requirement,- which does not provide for assessment of adolescents' "evolving capacities" and considerations of the "best interest of the child"-as stipulated by the Convention on the Rights of the Child, could lead some adolescent girls to avoid seeking emergency contraception and other services that are crucial to avoid unwanted pregnancies, unsafe abortions, ill health and death.

Amnesty International interviewed approximately 50 adolescents in 2014 and since January 2015. Their testimonies appeared to confirm that in practice health centres often require the presence of an adult or parent when adolescents ask for information on contraception, despite that this is not required under the law or the administrative rule. This is particularly worrying considering Chile's high teenage pregnancy rates, as well as the high levels of sexual abuse and rape reported. It is therefore crucial that the Chilean state evaluates its different programs to ensure its legislation to access to sexual and reproductive health information and services is actually having the impact it is intended to have among all young people without discrimination.

TOTAL BAN ON ABORTION

During Chile's previous periodic review in 2004 the Committee expressed its concern "about the consequences for women's health of the legal prohibition on abortion, without exceptions, in the State party. While there are no official statistics on the number of abortions performed annually, the large number of women who are hospitalized for abortion complications every year (34,479 in 2001) gives an indication of the extent of this problem." In its previous periodic review the Committee also recommended "that the State party revise its legislation and decriminalize abortion in cases of therapeutic abortions and when the pregnancy is the result of rape or incest."

Despite this recommendation, a total ban on abortion remains in force in Chile to date, and women, girls and health professionals are criminalised in these circumstance.

International human rights jurisprudence and standards recommend that no one should be criminalized as a consequence of an abortion. The criminalisation of abortion leads to grave human rights violations, such as the right to life, equality, non-discrimination and privacy, as well as the enjoyment of the highest attainable level of health, which includes the right to control one's health and the right to access health-related information and a system of health protection without discrimination. .

In its General Recommendation 24 (women and health), the CEDAW called on states to "refrain from obstructing action taken by women in pursuit of their health goals." The Committee then explained that barriers which obstruct women's access to appropriate health care "include laws that criminalize medical procedures only needed by women and punish women who undergo those procedures." Notably, abortion is a procedure only needed by women and girls. The CEDAW has recommended that "when possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion." To that end, the CEDAW has consistently urged the Chilean government to decriminalize abortion in cases of rape, incest or threats to the health

or life of the pregnant woman, and to gather statistical data on illegal and unsafe abortion.

It is well recognized that the criminalization of abortion compels women to undergo illegal abortions and that many die as a result of such clandestine and unsafe interventions. At the regional level (Latin America and the Caribbean), unsafe abortions – often illegal and clandestine – are responsible for about 12% of maternal deaths, and globally they cause about 47,000 deaths per annum. Unsafe abortions also result in preventable disabilities for an additional 5 million people.

Both the UN Human Rights Committee and the CEDAW have repeatedly emphasized the link between laws that criminalize abortion and the risks to the lives of pregnant women and girls. These Committees have also consistently confirmed that access to legal and safe abortion can save lives and, therefore, governments have the obligation to ensure all women and girls have access to safe and legal abortion, at least in cases of rape or incest, and when the health or life of the pregnant woman or girl is at risk.

In August 2013, official representatives from 38 member countries and associate members of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) adopted the “Montevideo Consensus on Population and Development,” which contains a agreements to strengthen implementation of population and development issues beyond 2014, at the end of the First session of the Regional Conference on Population and Development in Latin America and the Caribbean. In this Consensus, Governments in the region, including Chile, agreed to “...consider amending their laws, regulations, strategies and public policies relating to the voluntary termination of pregnancy in order to protect the lives and health of women and adolescent girls, to improve their quality of life and to reduce the number of abortions.”

Calculating the number of abortions that take place in Chile each year is almost impossible difficult due the procedure being criminalized in all circumstances. Some studies estimate that approximately 60,000 and 70,000 clandestine abortions take place per year, while others estimate that the figure is closer to 160,000 per year. According to data from Ministry of Health, in 2012 the health services registered (egresos hospitalarios) 30,434 cases of abortion. The same data from the Ministry of the Health states that in 2012 there were 3,200 cases of abortion amongst adolescents of 10 to 19 years of age.

In practice, the total ban on abortion obstructs women's and girls' access to safe reproductive health services, which puts their health and lives at risk. This is of particular concern for those women and girls who do not have the means to obtain legal abortions outside Chile or to pay for illegal abortions in the country.

The total ban on abortion does not only force women and girls to opt for clandestine and illegal abortions, but those who may need post-abortion care can be reported by medical providers and face criminal charges.

In 2009 the authorities issued a health regulation stipulating that women and girls are not required to “confess” to having had a clandestine abortion in order to receive emergency health care as a result of the intervention, a regulation the UN Committee against Torture had urged them to implement since 2004:

“Eliminate [the Committee against Torture stated] the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion; investigate and review convictions where statements obtained by coercion in such cases have been admitted into evidence, and take remedial measures including nullifying convictions which are not in conformity with the Convention. In accordance with World Health Organization guidelines, the State party should ensure immediate and unconditional treatment of persons seeking emergency medical care.” Despite the 2009 regulation, according to data of the Criminal Prosecutor, in 2014 alone there were 174 persons indicted with the crime of “consented abortion,” of which 113 were women. These type of cases appear not to end in a conviction or with a prison sentence. However, having an indictment is difficult enough until the judicial process finishes and is a clear example of the criminalisation women and those carrying the procedure continue to face.

RECENT PROGRESS TO LIFT THE TOTAL BAN ON ABORTION

On 31 January 2015, President Michelle Bachelet filed a bill in Congress to lift the total ban on abortion and regulate it in three cases:

- a) When the life of the woman is at risk, current or future, and the abortion can avoid a danger to her life;
- b) When the embryo or foetus has a structural congenital or genetic alteration incompatible with life outside the uterus, or
- c) When the pregnancy is the result of rape (in this case, the bill sets a time limit: abortion can only be performed within the first 12 weeks of pregnancy, and if the woman is under 14 years of age the time limit is extended to 18 weeks)

The preamble of the bill states that abortion must be considered a legitimate healthcare service, and recognizes that current legislation which prohibits abortion in all circumstances “does not correspond to the treatment that the State of Chile must provide to its citizens in these situations.”

The bill also proposes to regulate the exercise of “conscientious objection” by health professionals by requiring health care workers to express “conscientious objection” previously and in writing. Additionally, the bill requires health care workers to provide abortion services where there is an immediate medical need and when there is no other professional available at the time to provide the service.

International standards establish that states must take measures to ensure access to sexual and reproductive health care services, including removing barriers such as the unregulated practice of “conscientious objection.” The right to access adequate and timely health services trumps the right of providers to object to provision of services based on their “conscience.” This would include, but is not limited to, emergency situations and where a woman’s life is at risk. UN Treaty Bodies have specifically recognised that conscientious objection is a barrier to access reproductive health services, and have issued recommendations to countries across Europe and around the globe on the issue. They have generally stated that governments have a positive obligation to ensure that the application of

“conscientious objection” clauses does not violate women’s right to access to quality, affordable and acceptable sexual and reproductive health care services. Thus, it is important that the new legislation ensures that these principles are effectively protected.

Despite the promising components of the 2015 bill, Amnesty International notes that there are at least two components of the bill that should be amended to fully comply with international human rights law.

Firstly, the bill only includes the risk to a woman’s life as a legal basis for an abortion, leaving aside the possibility of having an abortion should the health of the women be at grave risk. International standards set by both the Human Rights Committee and the CEDAW, have consistently stressed that access to legal and safe abortion can save lives and, therefore, governments have the obligation to ensure that all women and girls have access to safe and legal abortion when the health or life of the pregnant woman or girl are at risk.

The second concern relates to the, the proposed time limits the bill offers for accessing an abortion in cases of rape. At present the bill offers a 12-week limit to those over 14 years of age and an 18-week time limit to those under 14 years of age in cases of rape. This time limit will put a barrier to those women and girls who having experienced the trauma of rape and then the added trauma of being pregnant as a result of rape, take longer to decide to terminate the pregnancy.

Amnesty International considers that it is crucial that any legislation to be approved does not include any barriers in terms of time, economic capacity, availability of services or other things that may render the legislation ineffective in practice and discriminate against women and girls.

RECOMMENDATIONS

Amnesty International recommends that the Chilean State:

- Ensure that sexual and reproductive rights are respected, protected and fulfilled, including through the provision of access to health services, contraception and emergency contraception, as well as information about these services to all women and girls without discrimination.
- Ensure that adolescents’ “evolving capacities” are systematically considered during the provision of health services, and that services are available without parental or other third-party authorization or notification, when it is in the “best interest of the child.”
- Provide information on the impact of the measures and programmes the State is implementing to ensure sexual and reproductive rights are respected and on those the

State refers to in its response to the Committee's list of questions of April 2015.

- Repeal all legislation criminalizing women and girls for having an abortion, as well as the service providers performing it, and take measures to ensure access to safe and legal abortions – without undue barriers in terms of time limitations, economic capacity, availability of services and other matters– at a minimum, when pregnancies are the result of rape or incest, when they pose a threat to women's and girls' life or health, and in cases when the foetus is not viable.
- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and to the International Convention on Economic, Social and Cultural Rights.

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