

## Abortion in Chile: the practice under a restrictive regime

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**Abstract:** *This article examines, from a human rights perspective, the experience of women, and the practices of health care providers regarding abortion in Chile. Most abortions, as high as 100,000 a year, are obtained surreptitiously and clandestinely, and income and connections play a key role. The illegality of abortion correlates strongly with vulnerability, feelings of guilt and loneliness, fear of prosecution, physical and psychological harm, and social ostracism. Moreover, the absolute legal ban on abortion has a chilling effect on health care providers and endangers women's lives and health. Although misoprostol use has significantly helped to prevent greater harm and enhance women's agency, a ban on sales created a black market. Against this backdrop, feminists have taken action in aid of women. For instance, a feminist collective opened a telephone hotline, Linea Aborto Libre (Free Abortion Line), which has been crucial in informing women of the correct and safe use of misoprostol. Chile is at a crossroads. For the first time in 24 years, abortion law reform seems plausible, at least when the woman's life or health is at risk and in cases of rape and fetal anomalies incompatible with life. The political scenario is unfolding as we write. Congressional approval does not mean automatic enactment of a new law; a constitutional challenge is highly likely and will have to be overcome. © 2014 Reproductive Health Matters*

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Chile is one of seven countries that ban abortion under all circumstances.\* This violates women's human rights, requiring urgent legal review. In March 2014, following a three-year period as Executive Secretary of UN Women, Michelle Bachelet took office for the second time as President of Chile.† Since the end of 2010, Chileans (especially students) have taken to the streets to demand a range of changes: from a new constitution and the legalisation of same-sex marriage, to natural resource protection and free quality education. The issue of safe and legal abortion became part of the last presidential debate (2013) as all but one of the eight contenders spoke in favour of at least partially liberalising the law.\*\*

\*In Latin American and the Caribbean, the other countries are: El Salvador, Nicaragua, Honduras and Dominican Republic.

†Bachelet's first presidency was March 2006 – March 2010.

\*\*A bill, tabled by then Senator Evelyn Matthei (member of the right wing party Independent Democrat Union) and Senator Fulvio Rossi (member of the Socialist Party of Chile), allowed abortion in case of serious fetal anomalies or risk to the woman's life or health. It was voted down in the Senate in April 2012. Matthei later ran for president against Bachelet.

President Bachelet's new centre-left government decided to address issues such as taxation, educational, and electoral reform. She also appointed prominent feminists to head the *Servicio Nacional de la Mujer* (National Women's Service, SERNAM) and tabled legislation granting SERNAM ministerial rank. Her governmental agenda now includes legalising abortion if the woman's life or health is at risk and in cases of rape and fetal anomalies incompatible with life. Both the head and deputy head of SERNAM have said that this legislation is now a government priority. In her May 21st State of the Nation address in 2014, Bachelet called for an informed and mature debate on abortion, but her agenda constitutes limited reproductive autonomy because it does not go beyond these three grounds. However, she made specific reference to criminalisation with respect to the case of a 17-year-old girl who was charged, while she lay in hospital in a serious condition, with obtaining an illegal abortion.<sup>1,2</sup> At the time of writing (October 2014) the government had not introduced its own bill or formally endorsed either of two similar bills awaiting legislative review, tabled in Congress in 2013 by members of the

centre-left coalition. There has also been no indication as to whether the proposed legislation will include putting an end to women being reported for obtaining an abortion. Although such initiatives are commendable,<sup>3</sup> and would bring the 25-year-old absolute ban on abortion to an end, they do not recognise women's reproductive rights as human rights. Moreover, any bill that secures Congressional approval is highly likely to face a challenge from the Constitutional Tribunal that must be overcome.\*

This article describes the findings of a comprehensive study of the criminalisation of abortion as a human rights violation in Chile, conducted by the authors in 2013 at the Human Rights Centre, Faculty of Law, Diego Portales University, Santiago, Chile.<sup>4</sup>

### **Methodology**

Information was obtained on hospitalisations and maternal deaths related to abortion, prosecutions, court cases and cases of people in jail or under the supervision of correctional services due to abortions. The information was collected from official sources, including readily available Ministry of Health statistics and information obtained by special request from the Public Prosecutor, Public Criminal Defender and Department of Corrections Office, whose data are not published in annual reports. Semi-structured interviews were conducted with women who had had illegal abortions, their partners, friends and relatives, to capture their experiences, and with health care providers who assisted them in the process. Members of the feminist collective *Linea Aborto Libre* who run a hotline providing information on the safe use of misoprostol for abortion, based on World Health Organization (WHO) guidance,<sup>5</sup> were also interviewed. The research also included a literature review on clandestine abortion in Chile.

The study was approved by the University Ethics Committee. To protect confidentiality, no names were asked or recorded, and we made a commitment not to reveal identities. Consent forms were

marked rather than signed. No audio recordings were made and only written notes were taken due to the risk, albeit unlikely, of a criminal investigation.<sup>†</sup> The participants were recruited through an invitation on social networks and using snowball sampling. In order to cover different types of experiences and contexts, people from diverse backgrounds, ages and social classes were contacted. Interviews were carried out from January – July 2013, either face-to-face, or by telephone or Skype with those who were not in Santiago.

The authors interviewed 41 women who had had abortions, 12 partners, friends or relatives of some of these women, and 8 health care providers. Two of the women had been prosecuted for illegal abortions.\*\* One was sentenced; the criminal proceedings against the other were suspended. It was not possible to reach the original number of 100 women participants as planned. As abortion is a crime and normally silenced, the reluctance of women to speak about their stories became evident; however, those who did share their testimony for this research expressed relief afterwards. Due to the limitations of carrying out a study of a criminalised practice, it is difficult to describe the findings as reflective of all experiences and practices of abortion in Chile. Nonetheless, the results are corroborated by the literature on abortion in an illegal context.

### **Historical context of the law on abortion**

Chile is one of the few countries that does not permit abortion under any circumstances. The 1931 Health Code regulated therapeutic abortion until it was repealed in September 1989, a few months before the end of the regime of dictator Augusto Pinochet in March 1990.<sup>6</sup> The law had permitted the termination of pregnancy to save the woman's life or health and required the signed approval of two doctors. It was interpreted restrictively. Only in the years under socialist President Salvador Allende (1970–1973) did a group of

\*The Chilean Constitution has a clause that states the law will protect the "unborn", which has been interpreted by most constitutional scholars as a prohibition on abortion. With this interpretation, in 2008 the Constitutional Tribunal declared the section on emergency contraception in the Fertility Regulation Guidelines "unconstitutional" as a possible abortifacient, following a challenge by a group of conservative Deputies.

<sup>†</sup>Although both authors are lawyers, we were not protected by attorney-client privilege.

\*\*First author Casas met them in 2009. One woman approached her after being found guilty and needing help to obtain authorisation to leave the country because she had won a scholarship, and her verdict did not allow her to leave Chile for 1.5 years. The other was charged in a case in which Casas was the defence attorney for another woman.

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