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**CHILE**

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## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Chile must revise its laws and policies concerning the sanctity of life of all human beings, including the unborn and protect the rights of parents and legal guardians with respect to their children. It also examines the levels of maternal mortality and morbidity in the country, spelling out the need to improve quality and access to healthcare, especially in rural and remote areas.

### (a) Abortion

3. Article 19 of the 1980 Political Constitution of the Republic of Chile guarantees to all persons ‘the right to life and to the physical and psychological integrity of the individual’, as well as ‘the life of those about to be born’.
4. The protection afforded by the Constitution to the right to life of the unborn was weakened as a result of the Constitutional Court ruling on 28<sup>th</sup> August 2017<sup>1</sup>, affirming the constitutionality of a legislative proposal, later adopted as Law No. 21.030. This piece of legislation, also known as “Ley de las tres causales”, has decriminalized abortion in three circumstances by modifying Article 119 of the Health Code and Article 344 of the Criminal Code.
5. Through this law, abortion has been made legal in the following three cases: 1) when the mother’s life is at risk; 2) when the fetus has a fatal defect that is “incompatible with extrauterine life”; and 3) when the pregnancy resulted from rape and no more than 12 weeks of gestation have passed (14 weeks in the case of a girl under 14 years of age).
6. The law also provides that girls who have not reached the age of 14 may have access to abortion on these three grounds upon receiving prior consent from their legal representatives. Girls between 14 and 18 years old are not required to attain parental consent for an abortion, although notice of the abortion is required. Nevertheless, such requirements can be waived by a judge if the girl fears objection or pressure by her parents. Outside of the above-described circumstances, abortion remains illegal.
7. Pro-abortion organizations and activists argue that softening Chile’s abortion law is necessary to respect and fulfil the human rights of women, as well as for the sake of improving maternal health and reducing maternal mortality and morbidity, and that Chile should fully decriminalize abortion and make it available on demand.

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<sup>1</sup> Constitutional Court of Chile, Decision No. n° 3729(3751)-17-CPT, 28 August 2017.

8. Additionally, in March 2018, Chile came under renewed pressure from the Committee on the Elimination of Discrimination against Women, which recommended the country to further extend the scope of Law No. 21.030 in order to decriminalize abortion in all cases<sup>2</sup>.
9. Such recommendations and pressures to relax the law on abortion are not supported in international law. On the contrary, international law recognizes the right to life of the unborn. Moreover, the absence of a general parental consent requirement for minors seeking to undergo an abortion contravenes the universally recognized right of parents to provide appropriate direction and guidance to their children on such matters.

*The right to life in international law*

10. Chile ratified the International Covenant on Civil and Political Rights (ICCPR) on 10 February 1972, and the Convention on the Rights of the Child (CRC) on 13 August 1990.
11. Article 6(1) of the ICCPR states, ‘Every human being has the inherent right to life.’ Furthermore, Article 6(5) of the ICCPR states, ‘Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.’ The ICCPR’s prohibition on the death penalty for pregnant women implicitly recognizes the right to life of the unborn. As the *travaux préparatoires*<sup>3</sup> of the ICCPR explicitly state, ‘The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.’<sup>4</sup> Similarly, the Secretary General report of 1955 notes that the intention of the paragraph ‘was inspired by humanitarian considerations and by consideration for the interests of the unborn child[.]’<sup>5</sup>
12. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states, ‘[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.’ Article 1 of the CRC defines a child as ‘every human being below the age of eighteen years.’ This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of ‘child’ attaches. Moreover, Article 6 of the CRC holds that “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both Articles 1 and 6 of the CRC indicate recognition and protection of unborn life.

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<sup>2</sup> Concluding observations on the seventh periodic report of Chile, CEDAW/C/CHL/CO/7, 12.

<sup>3</sup> In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a “supplementary means of interpretation.”

<sup>4</sup> Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957. A/3764 § 18.

<sup>5</sup> Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955. A/2929, Chapter VI, §10.

13. Providing access to abortion means that more women suffer from abortion-related complications. There are numerous maternal risks associated with abortion. A major study published in the British Medical Journal in 2015 concluded that States with 'less permissive' abortion laws 'exhibited consistently lower maternal mortality rates.'<sup>6</sup> Although the study explains these differences in terms of other independent factors rather than in terms of abortion legislation itself, it nevertheless concludes, 'No statistically independent effect was observed for abortion legislation, constitutional amendment or other covariates.'<sup>7</sup> Because abortion legislation has no effect on maternal mortality, abortion need not be legalized to protect women's health. Abortion is further associated with a high risk of hemorrhaging, developing sepsis, and developing injuries to internal organs, including intrauterine perforations.<sup>8</sup> Moreover, abortion can never be safe because it takes the life of the unborn child and harms the mother through the loss of her child.
14. Introducing new measures to reduce recourse to abortion is in line with paragraph 8.25 of the Program of Action of the International Conference on Population and Development. Measures to reduce recourse abortion include improving access to education, which empowers women and leads to social and economic development, as well as facilitating healthy decision-making.
15. Relatedly, Article 5 of the Convention on the Rights of the Child provides that "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, [...] legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance" to the child.
16. The notion that parents have no right to be informed about or be involved in decisions with respect to their children, especially in light of the fact that there is no internationally-recognized right to abortion (particularly in light of paragraph 8.25 of the Programme of Action of the International Conference on Population and Development), is a clear violation of the rights of parents to provide such appropriate direction and guidance to their children.
17. Chile must continue to live up to its international obligations by protecting the right to life of the unborn and helping women get through pregnancy and childbirth safely, rather than ending pregnancies. Chile should also provide women with access to knowledge-based education about their bodies, healthy behaviours and responsible decision-making, and redirect resources to further improve maternal health and medical infrastructure so to guarantee better conditions for pregnant women, women undergoing childbirth, and postpartum women, especially those living in rural and remote areas of the country and those belonging to vulnerable age groups.

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<sup>6</sup> Elard Koch, Monique Chireau, and Fernando Pliego et. al., Abortion Legislation, Maternal Healthcare, Fertility, Female Literacy, Sanitation, Violence Against Women and Maternal Deaths: A Natural Experiment in 32 Mexican States, *BMJ OPEN* 2015:5 e006013, doi:10.1136/bmjopen-2014-006013, 1.

<sup>7</sup> Ibid.

<sup>8</sup> Gunnel Lindell and Folke Flam, Management of Uterine Perforations in Connection with Legal Abortions, *ACTA OBSTET GYNECOL SCAND.* (1995) May 74(5):373-5, available at <http://onlinelibrary.wiley.com/doi/10.3109/00016349509024431>.

**(b) Maternal health**

18. According to the World Health Organization, Chile's maternal mortality rate in 2015 was 22 per 100.000 live births, and 99,7% of the births were attended by skilled medical professionals<sup>9</sup>. For several decades, Chile's maternal mortality rate has been the lowest<sup>10</sup> in all of Latin America and surprisingly lower than a large number of developed countries where abortion is widely legalized.
19. Almost all maternal deaths are preventable, particularly when skilled birth attendants are present to manage complications and the necessary drugs are available, such as oxytocin (to prevent haemorrhage) and magnesium sulphate (to treat pre-eclampsia).
20. Frequent calls to increase legal abortion access as a necessary precondition to further reducing maternal mortality rates are misguided. Legalizing abortion also does not guarantee that pregnancy and childbirth will become safer, but rather will mean more women will suffer from abortion complications.
21. In line with paragraph 8.25 of the Program of Action of the International Conference on Population and Development, Chile must focus on introducing measures to avoid recourse to abortion by way of investing in social and economic development and by providing women with support throughout and after pregnancy.

**(c) Recommendations**

22. In light of the aforementioned, ADF International suggests the following recommendations be made to Chile:
  - a. Affirm that there is no international human right to abortion and that the right to life applies from conception until natural death, and as such the unborn child has the right to protection of his or her life at all points;
  - b. Resist calls to further liberalize abortion, and instead implement laws aimed at protecting the right to life of the unborn and their mothers in all cases;
  - c. Recognize that the legalization of abortion does not make pregnancy and childbirth any safer;
  - d. Focus on safely getting mothers and babies through pregnancy and childbirth, with special attention paid to women from rural and remote areas.
  - e. Repeal all laws which threaten to unjustly deprive parents or legal guardians of their parental rights over the medical treatment of their children.

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<sup>9</sup> World Health Organization, Global Health Observatory data repository, Mortality and Global Health Estimates, Maternal Mortality, 2015, <http://data.worldbank.org/indicator/SH.STA.MMRT>.

<sup>10</sup> Pan American Health Organization Mortality Data 2015, ICD-10 Chapters, Chapter XV Pregnancy, Childbirth and puerperium.



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