

# Reproductive Rights in Chile: An analysis of abortion legislation in one of the world's most restrictive legal contexts

Kelsey Holt, MA, Doctor of Science student  
Harvard School of Public Health



## OBJECTIVE

I analyzed international and regional human rights norms and case law related to abortion—focusing on the potential conflict between women's rights and embryonic/fetal rights—to identify justifications for reforms to abortion law in Chile to match human rights standards. I also considered public health and public opinion justifications.

## HISTORY OF CHILE'S ABORTION LAW

- 1874-today: Penal Code criminalizes abortion in all circumstances
- 1931-1989: Health Code allowed for abortion in cases where pregnancy endangered woman's life until Pinochet dictatorship removed exception in 1989
- Several legislative attempts failed in recent years to legalize abortion
- 2013 bill proposed by civil society group "Miles" legalizing abortion in three circumstances:
  1. Conditions that place a woman's health or life in danger
  2. Congenital fetal malformations incompatible with extra uterine life
  3. Rape

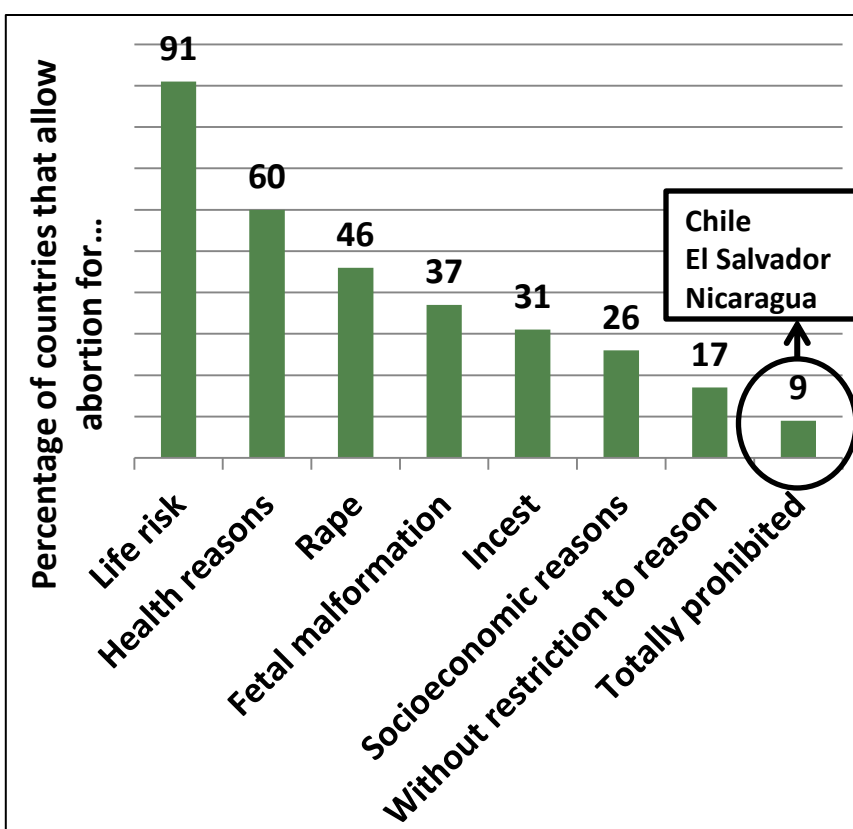


Figure 1: Circumstances in which abortion is permitted in the Americas and the Caribbean (data from the Center for Reproductive Rights)

## ABORTION AS A PUBLIC HEALTH ISSUE IN CHILE

- According to the WHO, unsafe abortion causes an estimated 12% of maternal deaths in Latin America and the Caribbean (1,100 deaths in 2008)
- A disproportionate impact of morbidity and mortality from unsafe abortion in Chile is on vulnerable populations, due to higher unintended pregnancy rates and less access to expensive, safe procedures in private clinics
- Maternal mortality has decreased as contraceptive coverage increased (see Figure 2), though data are limited on abortion rates and outcomes
  - Estimated maternal mortality 2009 = 19.7/100,000 live births (Molina 2012)
  - Estimated maternal mortality from abortion 2009: 1.2/100,000 live births (Molina 2012)
  - Koch et al. (2012) concluded that the 1989 removal of the exception to the Penal Code's complete criminalization of abortion did not increase maternal mortality, though the analysis did not take into account actual availability of therapeutic abortion
  - Restrictive abortion laws in general do not reduce rates of abortion (Sedgh et al., 2012)

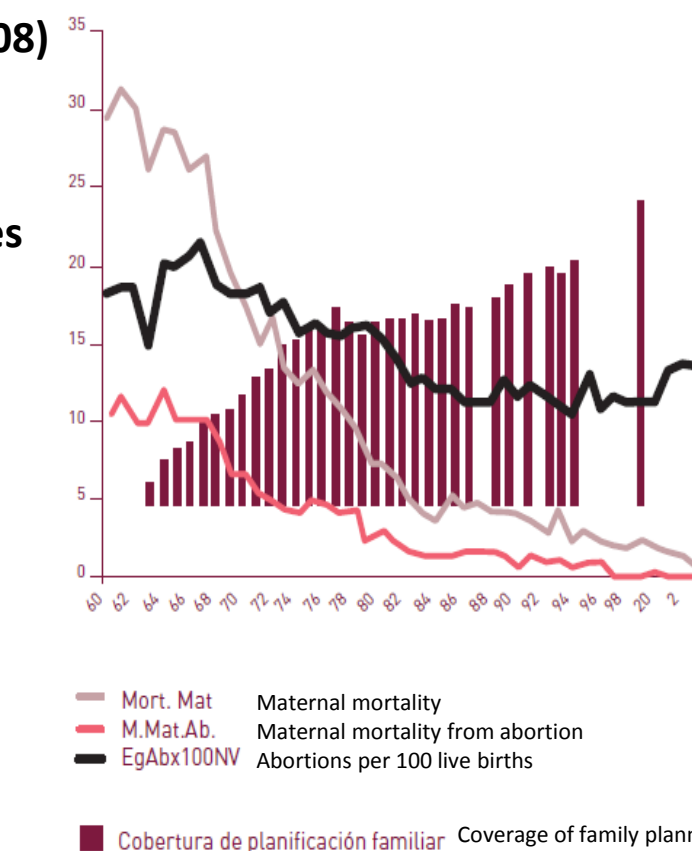


Figure 2: Maternal mortality and contraceptive coverage in Chile, 1964-2004 (Molina 2012)

## PUBLIC OPINION IN CHILE

In a national survey conducted in 2009, a majority agreed abortion should be available in cases of rape (67%), malformation of the fetus (64%), danger to the woman's life as a result of the pregnancy (64%), and incest (58%); 40% supported abortion legalization for reasons related to the mother's mental health and 15% believed abortion should be available for "any reason that the woman decides." (Dides et al., 2011)

## HUMAN RIGHTS ANALYSIS

### Women's right to abortion

1. Several human rights are relevant for women's right to abortion (see Table)
2. Several Latin American and Islamic states issued formal reservations to the Cairo Program of Action due to a possible interpretation allowing for legal abortion, though Chile was not one of them; Chile also signed on to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and joined the Beijing Platform consensus—both of which suggest a right to abortion in certain circumstances
3. Highlights of abortion rights interpretation and regional case law:
  - Committee on Economic, Social and Cultural Rights (CESCR) 2004 and CEDAW 2006 & 2012: recommended Chile decriminalize abortion in cases of rape, incest, and threat to women's life/health
  - Committee against Torture (CAT) 2004: recommended Chile stop extracting confessions from women seeking post-abortion care after having illegal abortions
  - Cases in other South American countries related to human rights violations from denial of abortion access have been adjudicated by human rights bodies
  - Only legally-binding statement making explicit a right to abortion is regional African Maputo Protocol
4. Inter-American Commission on Human Rights held hearing on impact of criminal abortion laws in 2013

### Embryonic/fetal rights?

1. Interpretation of human rights treaties suggests protections do not begin before birth (CRR 2012)
  - Universal Declaration of Human Rights: "All humans born free and equal in dignity and rights"
  - International Covenant on Civil and Political Rights (ICCPR): Drafters rejected proposal to amend article to extend right to life to conception
  - Convention on the Rights of the Child: issued no comments suggesting right to life before birth
2. American Convention on Human Rights: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception."
  - Interpretation suggests no absolute protections: in *Baby Boy v. United States*, Inter-American Commission on Human Rights clarified that this does not preclude a liberal abortion law, and in 2012 the Inter-American Court struck down Costa Rica's ban on in-vitro fertilization
3. Chilean Constitution: "The constitution assures the right of all people to life and physical and mental integrity. The law protects the life of those about to be born."
  - Establishes distinct judicial status for embryo/fetus as "object of imperative protection"; this protection is akin to responsibility of State to project environment and animals (Lux 2011)
  - September 2013: Legislators established annual "Day of Those About to be Born and Adoption"

| Human right   | Relevant norms  | Philosophical/ethical justification for relationship to abortion   |
|---|---|--|
| Physical integrity: Life  | ICCPR Article 6, ICRC Article 6                         | -Pregnancy may endanger a woman's life<br>-Unsafe abortion leads to maternal mortality   |
| Physical integrity: Free from torture, inhuman or degrading treatment | ICCPR Article 7   | -Particularly in cases of rape or incest, being forced to carry a pregnancy to term can be considered a form of torture or inhuman/degrading treatment                           |
| Highest attainable standard of health                                 | ICESCR Article 12, ICEDAW Article 24, ICEDAW Article 12 | -Pregnancy may pose negative risks to a woman's physical or mental health<br>-Unsafe abortion leads to maternal morbidity  |
| Non-discrimination  | ICEDAW Article 16 1(e), ICCPR, ICERD                    | -Women and men should be equal in terms of their ability to decide number and spacing of their children  |
| Self-determination and reproductive freedom                           | ICEDAW, Cairo 1994 & Beijing 1995 conferences           | -Women (and men) have the right to decide number and spacing of their children as it relates to their freedom to pursue economic, social, cultural development                   |
| Liberty and security of the person                                    | ICCPR Article 9   | -Criminalization for seeking health services is incompatible with a woman's right to liberty   |
| Privacy   | ICCPR Article 17  | -Women's decisions about their bodies—including whether to terminate a pregnancy—are private matters<br>-Requiring doctors to report women who have an abortion violates privacy |
| Freedom of religion, conscience and opinion                           | UDHR Article 18, 1981 Declaration                       | -There is no universal moral agreement on when life begins and abortion laws based on religious ideas of when life begins are discriminatory                                     |

Table: Women's right to abortion: Related human rights

## CONCLUSION

- Chile's relatively low maternal mortality rate is unique among countries with highly restrictive abortion laws
- International and regional human rights norms and treaty monitoring bodies reveal unquestioned support for abortion in cases of life endangerment and rape given the need to protect women's right to physical integrity
- The relationship of abortion with rights to privacy, liberty, autonomy, non-discrimination, and religious freedom, and the 2011 statement by the Special Rapporteur on the Right to Health (see below) supporting decriminalization of abortion in all circumstances, suggest that human rights norms and decisions should eventually more clearly support abortion in more circumstances
- The imperative to protect prenatal life—as in the American Convention on Human Rights and the Chilean constitution—has not been interpreted as absolute. Further explicit guidance from Human Rights normative bodies is needed to clarify potential conflict of prenatal protections and human rights

## RECOMMENDATIONS

- Chile should modify its abortion law to match human rights standards and protect women's health and rights
- Advocacy efforts can be bolstered by human rights guidance, public opinion polls, and momentum for legal change in other countries in the region

*"Criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women's right to health and must be eliminated. These laws infringe women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health."*  
- United Nations Special Rapporteur on Right to Health, 2011

References:  
Center for Reproductive Rights (CRR), *Whose Right to Life? Women's Rights and Prenatal Protections under Human Rights and Comparative Law* (New York: CRR, 2012).  
Dides C, et al., eds., *Estudio de Opinión Pública Sobre Aborto y Derechos Sexuales y Reproductivos en Brasil, Chile, México, y Nicaragua* (Santiago: Flacso-Chile, 2011).  
Koch E, et al., "Women's Education Level, Maternal Health Facilities, Abortion Legislation and Maternal Deaths: A Natural Experiment in Chile from 1957 to 2007," *PLOS One*, 7, No. 5 (2012).  
Lux LM, "La Vida Del Que Está Por Nacer Como Objeto De Protección Legal," *Revista Derechos Fundamentales* 5 (2011): 63-80.  
Molina R. *FLACSO Bulletin*. Volumen 1, Número 4, Noviembre, 2012.  
Sedgh G, et al., "Induced Abortion: Incidence and Trends Worldwide from 1995 to 2008," *Obstetrical & Gynecological Survey* 67, No. 6 (2012): 341-2.