

Introduction

In the past forty years, Chile has undergone monumental social, economic and political transformations, changing it from a struggling Third World country to the most economically powerful and politically stable nation in Latin America. In these past four decades, all Chileans have felt both the positive, as well as the negative affects of these revolutionary occurrences. In particular, this dynamic social change can be noted in the contemporary role that Chilean women play in the public as well as the private sphere. Since 1965, fertility rates in Chile have dropped from 4.4 children per woman to 2.4 per women in 2000.¹ Life expectancy for women has risen from 56.8 years to 78.3 years and since 1980, illiteracy rates have fallen from 9.5% to 3.9% among the female population.² Moreover, for the first time in history, Chile has elected a female president, a feat that has not been accomplished by the United States. Yet, despite these improvements in the standard of living, Chilean women continue to face enormous obstacles in their paths to achieving basic human rights. Adhering to legislation that dates from 1874, the Chilean government severely restricts a woman's autonomy over her reproductive rights. This legislation criminalizes abortion under all circumstances, including when the mother's life is in danger. Furthermore, although contraceptives are not prohibited by law, they are extremely difficult to obtain, especially for young and poor women, making unwanted pregnancies an even more likely occurrence. Despite the fact that both international human rights treaties and Chile's Constitution guarantee the rights to health, reproductive health and family planning, the laws and practices of the Chilean government

¹ Servicio Nacional de la Mujer (SERNAM). "Mujeres Chilenas: Tendencias en la última década. Censos 1992-2002." SERNAM; Marzo 2004

² Servicio Nacional de la Mujer: <http://www.sernam.cl/basemujer/index.htm>

undoubtedly violate a multitude of human rights as human rights and women's reproductive rights are intricately connected.

In this paper, I intend to present a social history of the role of women in Chilean society in order to demonstrate that although women have made progress in advocating for the protection of human rights and a peaceful transition to democracy under the authoritarian regime of General Augusto Pinochet, they continue to face obstacles in their path to achieving full autonomy over their reproductive rights. I will also demonstrate in how, by denying a woman the ability to access her reproductive rights, the government of Chile is also denying her the ability to access other human rights, such as the right to life, security, health, access to healthcare, privacy, liberty and nondiscrimination.

Furthermore, in denying a woman these rights, the government of Chile has violated multiple international laws that it has previously ratified, including the United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, in this paper, I will not only focus on the influence of the political history on women's rights, but also on the role of the Catholic Church in Latin America as a significant impediment to the achievement of full human rights. Finally, I will conclude that although Chile has made remarkable progress in the past forty years, its further development will be hindered unless all women are able to enjoy their reproductive and family planning rights.

From Democracy to Dictatorship: A Brief History

The demand for women's reproductive rights in Chile did not rise out of a vacuum, but rather is the product of a tumultuous political, economic and social history in which Chilean women banded together in order to create a demand for stability in an

unstable society. Repressed by an authoritarian regime, these women successfully development a movement that would not only propel Chile into a transitional stage of democracy, but also create a demand for democracy in the home as well. Today, Chile is one of the most politically and economically stable countries in all of Latin America; however this prized position in the region has only been achieved in the last sixteen years. Prior to 1990, Chile suffered from various economic crises, a brutal dictatorship, and regional wars and restricted political and social liberties. These experiences, although not entirely unique to Chile, have resulted in a relatively unique crisis of women's human rights.

A Legacy of Democracy

From 1932 to 1973, Chile was the only country in Latin America to sustain electoral democracy at a time when its regional neighbors struggled with repressive dictatorships, socialism and social upheaval. Its stable multiparty political system bore more resemblance to West European than to Latin American models. This democratic period served as a time of positive reform from the prior authoritarian regimes of early twentieth century. Seven consecutive presidents implemented various types of economic and social reforms, a new constitution and a model of state capitalism. Through these reforms, Chile was able to nationalize the copper mines which led to a significant increase in GDP, achieve more equitable levels of income distribution, increase access to land, education, housing and healthcare, cut unemployment by promoting industry and public works, and reformulate and liberalize trade policies³. Although these reforms brought many positive changes to Chilean society, not all political parties were pleased with the direction the country was headed, especially under the leadership of Christian

³ United States Library of Congress Country Report: Chile <http://countrystudies.us/chile/>. 2003

Democrat, President Eduardo Frei. Although Frei's government made many positive strides during his tenure, including the "Chilenization" of the copper mines and significantly increasing aid and investment from the United States, his administration was hounded by the right for being too reformist and attacked by the left for being too conservative. As a result of differing opinions within the political parties, the 1970 presidential election yielded no clear winner among the three candidates, Christian Democrat Radomiro Tomic Romero who promised to accelerate change, National Party candidate Jorge Alessandri who promised to slow the pace of reform, and Popular Unity (a coalition of the Socialist, Communist, Radical and Social Democratic parties) candidate Salvador Allende who was intent on transforming Chile into a socialist country. With only 36.2% of the vote, Allende was declared winner of the election⁴. In the midst of the Cold War, the democratic election of a Marxist president sent a shock wave around the globe. Despite pressure from the United States government to declare Alessandri the victor, the Chilean government vowed to uphold its democratic principles and declared the front-runner Allende as president. Although a minority president was not an unusual occurrence in Latin America, one with such a drastic plan to revolutionize the nation, especially during an era of global paranoia, was unique. Regardless, Allende was inaugurated on November 3, 1970.

The "Marxist" President

The Allende government disliked the capitalist approach of the Frei administration and therefore, moved quickly to socialize the economy, taking over the copper mines, foreign firms, elite-controlled industries, banks, and large estates.

⁴ United States Library of Congress Country Report: Chile <http://countrystudies.us/chile/>. 2003

Allende's initial attempts at socializing all means of production proved successful in the short run; however in the long run, the economy could not withstand Allende's ambitious changes. The economy took a turn for the worse as demand exceeded supply, the economy shrank, deficit spending escalated, new investments and foreign exchange became scarce, the value of copper sales dropped, shortages appeared, and inflation skyrocketed, eroding the previous gains for the working class.⁵ The Allende administration attempted various approaches to stabilize the worsening economic situation, but was unsuccessful. Due to his inability to reverse the situation, the opposition began to mobilize against the Popular Unity party, causing much tension in Chilean society. The political center and the political right allied and in Congress, this coalition erected a blockade against all Popular Unity initiatives, harassed Popular Unity cabinet ministers, and denounced the administration as illegitimate and unconstitutional, making political and economic change even more difficult and thus setting the stage for a military takeover. The opposition grew more public and more violent daily. New opposition groups sprung up, demanding change, Allende's resignation and military intervention. Strikes and students' riots occurred throughout the country. By mid-1973 the economy and the government were completely paralyzed.

The Rise of Pinochet

In early September 1973, Allende was preparing to call for a national plebiscite in order to resolve the deadlock between Popular Unity and the opposition in Congress; however the military, headed by newly appointed commander General Augusto Pinochet, successfully intercepted Allende's plans by launching a violent attack on the civilian authority on the morning of September 11, 1973. The armed forces bombed the

⁵⁵ United States Library of Congress Country Report: Chile <http://countrystudies.us/chile/>. 2003

presidential palace, Palacio de la Moneda, blockading Allende and some of his aides inside. However, Allende refused to surrender, and addressed the nation for the last time in a farewell speech. During the coup, Allende died, although the details of his death remain unclear to this day. The armed forces justified the coup as a necessary intervention to eradicate Marxist ideology from the Chilean government, to restore order, and salvage the economy.⁶

Following his ascension to power, General Pinochet formally banned the leftist parties that had constituted former President Allende's Popular Unity coalition. Two days later, the regime dissolved the Congress and outlawed all political parties. Furthermore, all dissident labor and peasant leaders, as well as clergymen, were suspended. All political activity was declared in indefinite "recess," leaving the regime as the only acceptable voice in all political and socio-economic affairs of the country. Additionally, the military government embarked on a campaign of terror against all perceived opponents. During this campaign, egregious human rights violations were committed on a large scale. Approximately 3,000 Chilean residents are known to have been executed or "disappeared."⁷ An additional 27,000 residents were incarcerated and frequently tortured by military police.⁸ Thousands more were exiled from Chile and were received abroad as political refugees. Due to the degree of repression in society at the hands of the regime, Chilean citizens looked for ways to act out against the government. As a result, Pinochet's rule was frequently made unstable by protests and isolated violent attacks. As a result of this chaos and uncertainty within Chilean society, the military government needed to find new ways to bring stability back to the nation; their

⁶ United States Library of Congress Country Report: Chile <http://countrystudies.us/chile/>. 2003

⁷ Amnesty International: Pinochet Case. **Available online:** <http://www.amnesty.org/ailib/intcam/pinochet/>

⁸ Amnesty International: Pinochet Case. **Available online:** <http://www.amnesty.org/ailib/intcam/pinochet/>

solution— to reestablish and reinforce traditional gender roles in Chilean society. The military government believed that the family was the basic unit of society and that strengthening the family would ultimately strengthen civil society and restore order.

The “Traditional” Role of Women

In its attempt to rebuild Chilean society in the way it saw fit, the military government decided to start with the most basic unit of society - the family. Reconstructing society implied a reaffirmation of the existing patriarchal nature of the Chilean social order which adhered to strictly defined concepts of “masculine” and “feminine.” This patriarchal order specifically outlined the culturally acceptable roles that men and women should follow. Men were regarded as the strong, independent public figures. They provided financially for the household and actively participated in political life. Conversely, women were considered weak, financially and politically dependent, and subordinate to their male counterparts. Their primary role was to raise the children as well as to fulfill all household and religious duties.⁹ Chilean society reinforced these cultural perceptions through the diffusion of certain values through the family, the school and the workplace. Additionally, the strong presence of the Catholic Church in Chile further promoted the traditional role of women as chaste and obedient. The Church preached the women should make it their aim to emulate the Virgin Mary; to be submissive, passive and obedient. It also reinforced the role of women as mother and valued motherhood as a sacred and worthy undertaking. For generations prior to the advent of the military government, the majority of women had been accepting the

⁹ Dandavati, Annie G. The Women’s Movement and the Transition to Democracy in Chile. Peter Lang; New York; 1996. pp 25-26.

traditional domestic role that was culturally expected of them. However, the regime intentionally exploited this cultural mode, hoping to use it as a tool for political success.

The exploitation of these historically prescribed roles by the military government profoundly affected women and their social roles. The regime understood the importance of female support and undertook various efforts to gain women's cooperation with their administration. However, they went about it the completely wrong way.¹⁰ Under the dictatorship, the socially conservative regime based its policies on a traditional conception of women's roles as mothers, housewives and good spouses. Pinochet's administration discouraged women's participation in the labor force and in public life, and promoted a return to family life.¹¹ According to the regime, a woman's reason for being was "ser esposa, ser madre."¹² In this way, the military government used women's reproductive capabilities as a means of domination.¹³ This traditional role was not only enforced culturally, but also politically as it was incorporated into national public policy. In particular, the adherence to this role was an essential part of the National Security Doctrine; the dominant ideology of the military government that served as the very basis of the political and social project introduced by the authoritarian regime.¹⁴ The government argued that women's defiance of their traditional place in society would pose a significant threat to Chilean culture and could potentially bring about the very collapse of the family, society and the nation.¹⁵ Thus, Pinochet declared women "protectors of the homeland," in an attempt to expand their support by making them partners in the

¹⁰ Dandavati, 135.

¹¹ International Women's Rights Action Watch: Country Reports (1995): Chile. **Available online:** <http://iwrw.igc.org/publications/countries/chile.htm>

¹² Dandavati, p 25. ("to be spouse and mother")

¹³ Dandavati, 27.

¹⁴ Dandavati, 25.

¹⁵ Dandavati, 27.

construction of a new authoritarian Chile. In a speech to the women of *El Poder*

Femenino, a women's organization, in April 1974, Pinochet stated:

*“women wanted the fall of the Marxist government, which symbolized slavery for their children, but they also wanted a new order: [women] sought the protection of a strong and severe authority, that would restore order and the moral public sphere in our society.”*¹⁶

This extremely traditional and reactionary vision of women's “correct” place in society ultimately contributed to reconstructing a new cultural, political and socio-economic fabric in Chile, although not the “fabric” that the regime had necessarily hoped for.¹⁷

The Rise of a Women's Movement

The regime had assumed that women would faithfully and obediently adhere to the prescribed traditional sexual roles and regime policies that violated basic human rights; however an increasing number of women envisioned a completely different role for themselves as well as a completely different picture of Chilean society, driving them to become active opponents of the regime and to powerfully mobilize against it. They not only protested the political, economic and socio-cultural domination of the military regime, but also sought to transform the existing repressive situation and urge a peaceful return to democracy.¹⁸ Although women had faced subjugation and inequalities numerous times in the past without feeling an overwhelming need to mobilize, the timing, ideologies, and structures were in place for the rise of a multi-class women's movement during the military regime. Author Annie Dandavati states:

*“the impetus for its [the women's movement] rise was the emergence of an alternative vision of society and the growth of gender-based collective identity among Chilean women.”*¹⁹

¹⁶ Franceschet, Susan. *Women and Politics in Chile*. Lynne Rienner; London: 2005., 60.

¹⁷ Dandavati, 25.

¹⁸ Dandavati, 7.

¹⁹ Dandavati, 135.

This new vision was a critique of authoritarianism and cultural patriarchy linked with a strong respect for human rights, equality and participation.

No one reason can adequately explain the cause for the rise of a women's movement under the military government; furthermore, not all women mobilized for the same exact reason. Women mobilized as a result of the egregious human rights violations that were being committed by the regime. They mobilized in favor of a peaceful return to democracy. They mobilized against an inherently patriarchal society. They mobilized against an impending socio-economic crisis and the inability to join the formal sector to help support their families. Although women mobilized for countless reasons, these reasons alone could not have guaranteed the successful development that the women's movement achieved during the military dictatorship. Author Lisa Baldez, in her book *Why Women Protest: Women's Movements in Chile*, purports three factors that fostered the development of a women's resistance to the military government of General Augusto Pinochet. These three factors are the support of the Catholic Church, assistance from the international community and contradictions within the regimes own policies.²⁰

The Catholic Church

When the military government came to power in 1973, it banned all political parties and trade and worker's unions, eliminating from society the voices of opposition that have previously served to maintain democracy within the country. Following the prohibition of all public organizations, the Catholic Church became the only public voice allowed within Chile and thus, took upon itself the role of defender of human rights and

²⁰Baldez, Lisa. Why Women Protest: Women's Movements in Chile. Cambridge University; Cambridge: 2002. p 126.

active opposition party to the regime.²¹ Within a month of the coup, the Archbishop of Santiago set up the *Cooperating Committee for Peace in Chile* to initiate legal actions on behalf of the thousands of political prisoners. In doing so, the Catholic Church soon found itself in the forefront of opposition to Chile's military government and was becoming the focal point for opposition activities, including the women's movement. According to Baldez, the Catholic Church provided an institutional umbrella ("paragua") that sheltered the women's movement from repression and lent moral and material support to victims of the regimes and their family members – most of whom were women.²² Furthermore, the solidarity shown by the Church was decisive in the creation, growth and consolidation of the women's movement as the Church provided the structural, organization, financial and moral support necessary to get the women's organizations off the ground. The development of a women's movement would not have been as successful as it was without the support of the Church. The Church could safely and openly defy the military government on human rights issues and accept financial donations from the international community; the women's movement could not. In this way, the Church served as the spokesperson as well as the body guard for the women's movement.

Aid from the International Community

The support and assistance of the international community also played a significant role in strengthening the women's movement in Chile. Beneath the dictatorship of General Pinochet, many opponents of the administration were forcibly

²¹ Aguilar, Mario I. "Cardinal Raul Silva Henriquez, the Catholic Church, and the Pinochet Regime, 1973-1980: Public Responses to a National Security State" *The Catholic Historical Review* - Volume 89, Number 4, October 2003, pp. 712-731. **Available online:** Project Muse Scholarly Journals Online -- http://muse.jhu.edu/cgi-bin/access.cgi?url=/journals/catholic_historical_review/v089/89.4aguilar.pdf

²² Baldez 126.

exiled, while other Chileans chose to leave of their own volition in order to escape political persecution and economic recession. Many foreign countries willingly accepted these Chilean exiles, which led to a global awareness of the extreme policies of the regime and the resulting wretched situation in Chile. Furthermore, Chilean exiles formed an international solidarity movement against the regime and organized potent opposition abroad. In the midst of this international mobilization, many Chilean women encountered the concept of feminism, especially those exiled in Europe and North America.²³ These women learned of, and witnessed the more progressive female roles enjoyed by women in other countries. International meetings and conferences, particularly the United Nations-sponsored women's conferences, helped to further strengthen feminism in Chile.²⁴ This "feminist consciousness" opened their eyes to the blatant inequalities they faced on a daily basis in male-oriented Chilean society. When they returned to Chile with the transition to democracy, they brought these feminist ideas back with them.

In addition to raising "feminist consciousness" and sheltering exiles, the international community donated considerable amounts of financial assistance geared toward promoting grass roots opposition to the military government. Feminist non-governmental organizations relied on this financial support to run their anti-authoritarian opposition movements. International governments also responded to pressure from domestic constituents and began to pressure the military regime to reduce repression and human rights abuses. This external pressure would cause the military government to ease up on some of its more repressive measures so to maintain friendly relations with the international community.

²³ Baldez, 140.

²⁴ Baldez, 141.

The Contradictory Nature of the Regime's Policies

The third factor that led to the development of a women's resistance was the paradoxical nature of various regime policies. The rhetoric of women's organizations played on these inherent contradictions between the military's discourse and its public actions. Under Pinochet, the military government claimed to place the highest value on the family – the proclaimed “very foundation” of the social order.²⁵ The regime asserted the importance of the family as the basic unit of society as well as the vital role of woman as keys to restoring order.²⁶ Yet, their repression violated the integrity of the family in a very extreme manner. Women active in human rights pointed to this contradiction, stating that they, not the military, were the real defenders of the family.²⁷

The anticipated partnership between the military government and female Chilean citizens faced serious shortcomings when it was put into social and economic practice. A primary example can be seen in the need for women to provide supplemental income to the household as a result of a staggering economy. Due to economic pressures, increasing unemployment coupled with declining real wages, it became necessary for women to assist their husbands in contributing to the household income. Yet, this need implied that women would overstep the public/private dichotomy which the military government claimed was crucial for the prolonged stability of the nation. According to Dandavati:

*“there seemed to be an inherent contradiction in what the government advocated for women and what the social and economic conditions of the period, brought about by the neo-liberal economic experiment..., demanded from them for their sheer survival.”*²⁸

²⁵ Franceschet, 64-65.

²⁶ Baldez, 127.

²⁷ Franceschet, 65.

²⁸ Dandavati, 41.

The government attempted to ameliorate the situation, claiming that a woman's place in the public sphere was only temporary and that she should ultimately focus her energy on her true profession as mother and wife. Author M. E. Valenzuela points out:

“While the discourse of the military regime emphasized the traditional role of women, the consequences of its political economy promoted the exit from the home in order to assume activities in the public area. This nurtured the potential for change in the rigid assigning of patterns of conduct on the basis of sex.”²⁹

Yet, this reassigning of gender-specific roles was not transitory; rather it gravely challenged the traditional division of labor promoted by the regime. Women were forced to bear the double burden of income provider in addition to the traditional wife/mother role. This double burden would, in some ways, be “the straw that broke the camel's back.” Chilean women were tired of being taken advantage of on the basis of their gender. In response to this new and supposedly “temporary” double burden, Chilean women began to fight against the system that had been repressing them for decades. In many ways, women's role in Chilean society would be permanently changed by the contradictory nature of the Pinochet administration.

Moreover and perhaps more importantly, the extreme conditions and human rights violations committed by the military government caused outrage among the female population. The military government had declared women their partners and natural allies in the rebuilding of Chile, yet at the first sign of opposition, they threw them in jail and subjected them to torture and rape³⁰. They also threatened, tortured and killed their spouses and family members by the thousands. Additionally, the special health needs of women were not given any consideration in the formulation of new public health legislation. In 1979, the Office of National Planning issued a document explaining that

²⁹ Dandavati, 41-42.

³⁰ Baldez, 127.

the military government desired an increase in the country's population and therefore outwardly discouraged the use of contraceptives and any form of sterilization. Furthermore, stricter restrictions were placed on already strict abortion legislation and education and teaching regarding contraception and birth control were discontinued.³¹ Thus, women's bodies, their sexuality and reproductive capacities were, to a large extent, controlled by the state as access to contraceptives became extremely limited. Moreover, while the regime promoted increased fertility rates, they neglected to undertake any measures to assist in the "reproduction" of society by providing facilities that would cater to the special needs of pregnant women, new born infants and children.³² Again, the regime's thoughts and practices contradicted each other, giving women even more reason to stand up against the regime.

Women began to seriously question the double standards promoted by the regime. They were endorsed as the allies of the military government, yet their rights were more restricted than ever before. The contradictory nature of the regime, along with the support of the Catholic Church and the international community created an environment under which women would no longer tolerate being the subordinate sex.

Public vs. Private?

Along with these three very decisive factors, author Susan Franceschet also asserts that the blurring of the public/private dichotomy by the policies of the military regime helped the women's movement gain momentum that they have not had in the past. As a result of the repressive public policies of the regime, political parties were forced underground and the formal political arena was closed. Under these conditions, the

³¹ Baldez, 44.

³² Dandavati, 44.

traditional dichotomy between formal and informal politics was blurred, allowing the women's movement and other non-traditional actors the opportunity to participate in arenas in which they had historically never been allowed.³³ This ambiguous line between public and private allowed for the politicization of the movement, giving them a foothold that would later allow them to include their demands in public policy discussion without jeopardizing the autonomy of their movement.³⁴ This position also offered them the ability to critically assess legislation and government policy. However, the reemergence of political parties during the transition to democracy would have consequences for the women's movement, as it would remove the need for their voice in society.

Success of the Movement and Transition to Focus on Reproductive Rights

The conditions were ripe beneath the repressive rule of the military government for the successful development of a united and multi-class women's movement that would forever change the way in which Chilean women regard their role in society. Although the movement initially served as a symbolic opposition to the regime, it quickly transformed into a powerful transformative force within Chilean society that would peacefully oppose the repressive nature of the regime and assist in the transition to democracy. Furthermore, it was the first time in history that Chilean women participated as independent actors and took control of their destiny.³⁵ As the movement's vision of a true democracy in the country was realized, they shifted their attention to achieving true democracy in the home. The movement believed that it was not sufficient to democratize social, economic and political institutions; they needed to democratize the daily life of women and the issues that concern them, namely the issue of reproductive rights. Similar

³³ Franceschet, 58.

³⁴ Dandavati, 137.

³⁵ Dandavati, 7.

to the military regime, the movement believed that the re-conceptualization of the traditional gender roles in the family could be passed on to society as a whole, leading to a democratization of both home and nation.

Despite its impressive successes in advocating democratic ideals and human rights, and in developing a sense of gender identity, the Chilean women's movement continues to face a number of challenges in the twenty-first century. Under authoritarianism, the public/private boundary was blurred so that women's activism was viewed as a legitimate expression of political citizenship. But as the transition to democracy proceeded and political parties reemerged, the boundary was re-constructed along both gender and class lines, with significant implications of how women's participation was viewed by traditional political actors and by women themselves.³⁶ Political parties now act as barriers to women's participation in politics, which, in Chile, is significantly out of step with current trends in Latin America.³⁷ This inability to fully participate in politics silences women's voices in the political arena, making it nearly impossible for them to speak up about gender-specific rights. Moreover, the support that the women's movement received from the Catholic Church under authoritarianism abruptly ended when their focus shifted from basic human rights to women's reproductive rights. The women's movement under the military regime enjoyed considerable success due to the socio-political conditions and the ideals they were advocating. However, a change in the political environment coupled with a change in demands has placed new obstacles in their paths to achieving democracy in both society and the home.

³⁶ Franceschet, 80-81.

³⁷ Franceschet, 85.

Although now a nominally “democratic” nation, women in Chile continue to struggle on a daily basis against patriarchal and unequal relations in a male-dominated society. The most significant obstacle to equality for all women lies in the female lack of autonomy over her reproductive rights due to restrictive legislation and government practices. The issue of reproductive rights is a problem that faces all Chilean women, not just the poor. Chile is one of the few countries in the world that continues to criminalize abortion under all circumstances. Furthermore, restrictions are placed upon access to contraceptives and sterilization procedures that make women more vulnerable to unwanted pregnancies.

History of Abortion in Chile

The controversy surrounding the legality of abortion is not new and although much progress has been made by the women’s movement in the struggle for human rights as well as for women’s rights and equality in Chile, the issue of abortion has seen little legal change since the ratification of the 1874 Penal Code.

Out of the 502 articles that constitute the 1987 Penal Code, four articles are specifically dedicated to the topic of abortion³⁸. These articles are categorized under the

³⁸ Pertinent articles of the 1874 Penal Code as translated by Human Rights Watch

Crimes and misdemeanors against family order and public morals

Abortion (articles 342-345)

Article 342. He who maliciously causes an abortion will be punished:

- Where he caused violence to the pregnant woman, with the punishment of [imprisonment from five years and one day to ten years, as defined in Penal Code article 56].
- Where he acted without the consent of the women, with the punishment of [imprisonment from three years and one day to five years].
- Where the woman had given her consent, with the punishment of [imprisonment from 541 days to three years.]

Article 343:

He who causes an abortion with violence, even if he did not have the intention of causing such abortion, will be punished with [imprisonment from 541 days to five years], where the pregnancy of the woman was noticeable, or the aggressor knew of it at the time of the act.

Article 344:

title “crimes and misdemeanors against family order and public morals” and condemn both the action of abortion and he/she who commits the action, whether intentionally or unintentionally.³⁹ Along with criminalizing the action of abortion, the Penal Code also sets forth penalties ranging from one to five year jail sentences. This original code does not permit abortion under any special circumstances, even when the life of the mother is in danger. Since the creation and ratification of this law in 1874, there have been four subsequent attempts to redraft the criminal code as to allow abortion under certain circumstances such as in the case of rape and harm to the life of the mother. One proposed article, drafted in 1928 at the decree of President Carlos Ibáñez, read:

“The woman who becomes pregnant as a result of rape may obtain special permission from a judge to interrupt her pregnancy when, in consideration of her dignity, the circumstances under which conception occurred led to turmoil or deep moral suffering.”⁴⁰

This notion of allowing “compassionate” abortion was popular at the time in multiple Latin American countries; however, this reform was never enacted and the abortion continued to be criminalized under all circumstances.

In 1931, President Ibáñez promoted another series of health reforms to the *Código*

The woman who causes her abortion, or who consents to another person causing it, will be punished with lesser jail-time in its maximum degree [three years and one day to five years]. If she did it to hide her dishonor, she will be punished with [imprisonment of 341 days to three years].

Article 345:

He who, by abusing his profession, causes an abortion or cooperates in performing an abortion, will be punished with the punishments established in article 342, increased by one degree, as relevant.

³⁹ El Código Sanitario de Chile. Available online: <http://colegioabogados.org/normas/codice/sanitario.html> http://colegioabogados.org/normas/codice/Codigo_penal.pdf as found in <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm>

⁴⁰ Article 92-drafted by appeals court judges Eduardo Erazo and Rafael Fontecilla.

Htun, Mala. *Sex and the State: Abortion, Divorce, and the Family Under Latin American Dictatorships and Democracies*. Cambridge Press; New York: 2003. p 165.

Sanitario, the national health law, which included the legalization of “therapeutic” abortion and sterilization.⁴¹ The new reforms read:

*Only with therapeutic objectives may one interrupt pregnancy or perform an intervention to sterilize a woman. The documented opinion of three doctors is required. When it is not possible to proceed in the above said manner, due to the urgency of the situation or the lack of doctors in the area, the doctor and witnesses should document what has been done, with the doctor remaining in charge of the depositions (article 226 of decree law 226, published in the Diario Oficial May 29, 1931)*⁴²

This law authorized doctors to perform abortions and sterilizations without criminal penalization in cases where the procedure was deemed necessary to avert a serious risk to pregnant women’s health or life; hence “therapeutic abortion.” This reform to the law remained in effect until the *Codigo Sanitario* was amended in 1989 by the military government of General Augusto Pinochet. On the eve of the regime’s departure from power, Ibáñez’s reform authorizing “therapeutic abortion” was annulled and the code was amended to state:

*It is prohibited to carry out any action whose objective is to provoke an abortion. (Law 18,826, enacted September 15, 1989)*⁴³

A navy admiral, who was the head of the military government’s legislative commission, and the initiator of the motion to reform the 1931 additions to the *Codigo Sanitario*, stated that the reform reflected the military government’s commitment to protect human life and human rights. This statement was ironic in the very fact that for sixteen years, the junta repeatedly and cruelly violated the rights of its citizens. Additionally, this reform would not protect human rights as it set out to do, but rather severely hinder a woman’s ability to access her basic rights. Despite these inherent

⁴¹Htun, 165

⁴²Htun, 165

⁴³ Htun, 165

contradictions, the code was amended, but this important change was not publicly announced.

To date, Chilean law continues to uphold the 1989 amendment prohibiting abortion under all circumstances. Since the return of civilian rule in 1990, little attempt has been made by politicians or government officials to reinstate debate about liberalizing abortion and only one bill has been presented in Congress regarding the reinstatement of the therapeutic abortion reform of 1931. This bill, sponsored by members of the Socialist and Democratic parties, received support from multiple medical practitioners, but caused concern among the women who had united in the *Concertación de Mujeres por la Democracia*. This concern arose from an earlier agreement between the Concertación and the civilian government to avoid unnecessary controversy arising from such issues as divorce and abortion during Chile's transition to a democratic government (1990-4).⁴⁴ Thus, the bill was not ratified and since then, few legislators have expressed any interest in changing law. Yet, both the Socialist Party as well as the Communist Party have continually voiced their endorsement of the reinstatement of the therapeutic abortion reform.

In addition to attempts to relax abortion legislation, there have been initiatives to strengthen the legislation and to increase the penalties for abortion. In 1998, Senator Hernán Larraín submitted a proposal that would have modified the Chilean Penal Code by imposing heavier penalties on both the abortion providers and on women who seek abortions.⁴⁵ Although rejected, under this law, abortion would have been considered a

⁴⁴ The Concertación de Mujeres por la Democracia was the multi-party women's alliance that helped usher in the democratic transition after the military government ended in 1989. Htun., 166.

⁴⁵ International Women's Rights Action Watch: Country Reports (1995): Chile. **Available online:** <http://iwwraw.igc.org/publications/countries/chile.htm>

crime against the life of a human being. This change would imply a significantly weightier charge than the current one, which considers abortion a crime against morality and family. Furthermore, the proposal would have allowed for the conviction of third parties involved in the abortion procedure and would have provided incentives for women who “repented” after having an abortion.⁴⁶ Additionally, penalties could be reduced for women who reported third parties and providers.

The only politician to publicly support the decriminalization of abortion is former president Ricardo Lagos during his presidential campaign of 1999 in which he publicly supported the 1931 amendment to the *Código Sanitario*.⁴⁷ However, he later retracted those comments and until his departure from office, he consistently expressed his administration’s stance against abortion. Socialist Michelle Bachelet, the former minister of health and defense under former president Ricardo Lagos and the newly elected president has expressed a need for an open and public debate on the topic abortion in Chile. Yet, although not a Catholic like the majority of Chileans, Bachelet, an agnostic, is not in favor of legalizing abortion. During her presidential campaign, she repeatedly stated that, if elected president, the legalization of abortion will not be on her agenda. Instead, she stresses sexual responsibility, declaring:

“Women have the possibility to make their own decisions in various circumstances. I hope that we can behave like adults under all circumstances.”⁴⁸

⁴⁶ International Women’s Rights Action Watch: Country Reports (1995): Chile. **Available online:** <http://iwwaw.igc.org/publications/countries/chile.htm> **note the use of religious language “repent”**

⁴⁷ President Lagos stated that he believed abortion should be decriminalized in cases where the pregnant woman's life or health was in danger; thus he supported “therapeutic abortion.” Human Rights Watch: Women’s Rights- Regional Overview: Chile. **Available online:** <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm>

⁴⁸ Newspaper: La Segunda 10/18/2005. “Bachelet digo que no legalizará el aborto y propone ‘alianza de civilizaciones’ ante terrorismo” www.lasegunda.com

Furthermore, in an interview with *El Mercurio*, one of the most well- respected conservative-slanted newspapers in Chile, when asked if she was in favor of reinstating the therapeutic abortion reform, Bachelet responded:

*“I am against abortion. As a doctor, I am not able to give solely an ethical response, but a technical response as well. It is necessary to see if the advances in today’s medicine justify it [abortion] when it risks the life of the mother.”*⁴⁹

She has expressed similar sentiments in other interviews as well. In an interview with an Argentine newspaper, Bachelet stated that abortion *“is the beginning of the problem rather than the solution to it,”* and states that in order to reduce the number of unwanted pregnancies, it will be necessary to promote sexual education and contraception.⁵⁰

Additionally, in a meeting with Spanish Minister of Public Health, Elena Salgado, (the transcript of which was printed in the Chilean newspaper *La Segunda*), Bachelet stated that abortion *“has been a bad solution for women who do not have methods of regulating their fertility. They use abortion as a last resort due to lack of alternatives.”* As a result, she states that her *“goal is centered on the prevention of unwanted pregnancy, establishing a strategy of prevention and of family planning,”* as well as allowing more widespread access to the morning after pill which she does not view as an abortive.⁵¹

⁴⁹ From an interview with **El Mercurio de Santiago, 3 de Abril del 2005 by Raquel Correa. Translated from the interview** *“-¿A favor de reponer el aborto terapéutico?-Estoy contra el aborto. Como soy médico, no puedo dar una respuesta ética solamente, sino también técnica. Hay que ver si el avance de la medicina hoy lo justifica cuando corre peligro la vida de la madre.”*

as found on her website: www.bacheletpresidente.cl

⁵⁰ From an interview Newspaper: *Diario de Cuyo*. 10/19/2005. *“Así piensa la mujer que quiere gobernar Chile.”* **Available online:** www.diariodecuyo.com **Translated from the text:** *“es empezar por el problema y no por la solución”, que a su juicio está en la reducción del embarazo no deseado a través de la educación sexual y la prevención.”*

⁵¹ Newspaper: *La Segunda* 10/18/2005 *“Bachelet digo que no legalizará el aborto y propone ‘alianza de civilizaciones’ ante terrorismo”* **Available online:** <http://72.14.203.104/search?q=cache:79O8Eg7KzskJ:www.lasegunda.com/ediciononline/politica/detalle/index.asp%3Fidnoticia%3D227671+michelle+bachelet+Y+aborto&hl=es>

Although women's groups are hailing the inauguration of Michelle Bachelet as Chile's new president as a firm step forward for women's rights in that country, it is unlikely that much will change with regards to women's reproductive rights as she has promised not to touch the legality of abortion while in office.

Many women had hoped that the transition to democracy in 1990 would give way to a new conception of women's rights and roles in society. When little changed with the newly established democracy, many had anticipated that the election of a female president would signify a dramatic change in the way in which women's reproductive rights are regarded in Chilean society. Yet, President Bachelet has repeatedly and publicly stated that she will uphold the government's firm stance against the legalization of any form of abortion, a disappointing announcement for the women's movement. Yet perhaps the historically unwavering position on abortion and contraception is not related so much to democratic ideals, but rather to the strong presence and influence of the Catholic Church in Chile.

The Catholic Church in Latin America

Roman Catholicism is one of the oldest and most influential ethical traditions in Latin America. The influence of Christianity in this region has been overwhelmingly evident since the beginning of colonization in the 15th century. With the arrival of the Spaniards came the introduction of a new moral code, new definitions of good and evil, the Christian conceptions of heaven and hell, and new laws defining social organization and norms. The pagan practices of the indigenous religions were publicly denounced and the continued adherence to such practices was discouraged with the threat of punishment

and/or death. The natives were forced into subservient roles beneath the Spaniards, simultaneously becoming subjects of the Spanish crown and members of the Church. Attempts to reduce ecclesiastical power in various Latin American countries occurred during the nineteenth century, but were not very successful. Today, more than 500 years later, an overwhelming majority of Latin Americans claim membership to the Catholic Church. In fact, according to recent statistics, 41% of the Catholic Church's 1.1 billion members reside in Latin America alone.⁵²

Catholic Doctrine as it Pertains to Women's Rights

Because the vast majority of Latin Americans are Catholics, the influence of the church doctrine deeply permeates all facets of society especially state organization and public policy. This influence is particularly evident in women's rights rhetoric. In Latin America, both the philosophy of St Thomas Aquinas and Catholic doctrine pertaining to morality and sexual ethics form the historical backdrop for law and policy making on women's rights, marriage and abortion⁵³. Until the mid nineteenth century, the Catholic Church considered women to be less rational and therefore, placed them in a subordinate position to men. Likewise, men and women were not afforded equal rights or responsibilities. The encyclical *Rerum novarum* of 1891 mandated that a man was to govern the household with power. Accordingly, the Church rejected legal reforms which would give women a greater level of decision-making power in family matters, such as control of marital property. Yet, doctrine began to change in the 1950s and 1960s. Various church encyclicals like *Peace on Earth* and *Gaudiam et Spes* along with

⁵² Newspaper: *The San Diego Union-Tribune*. 5/17/05. "How Catholic is Latin America?"
Available online: http://www.signonsandiego.com/uniontrib/20050517/news_lzle17oppenh.html

⁵³ Htun, 31.

significant changes introduced by the Second Vatican Council expressed a much greater awareness of the importance of equality between men and women.⁵⁴ The encyclical *Gaudium et Spes*, a major document regarding the relations between Church and State, promulgated dignity and equality within the institution of marriage. As a consequence of these significant changes within Church doctrine, during the 1960s and 1970s many Latin American bishops supported reforms to civil codes that would grant women greater equality and legal power in regards to parenthood and the administration of marital property. However, not all bishops were supportive of these changes because they felt that legal reforms have the capability of compromising the sacred institution of marriage.

Although historically the Roman Catholic tradition has provided prescribed norms of proper behavior for men and women, the nature of marriage and family, and the significance of reproduction, this tradition has evolved over time, allowing for more equality between men and women. This progression of women's rights has led the Church to advocate an "essentialist difference feminism" which proclaims that women are equal to, but essentially different from men.⁵⁵ This type of feminism implies that women should not be discriminated against on the basis of sex. Additionally, it promotes the need for special rights and protections for women. However, this feminism has a negative connotation as well. It implies that because women are biologically different, it is necessary to monitor the way in which their sexuality is used. Thus, although this feminism promotes a higher degree of equality, inherent inequalities and provisions that continue violate women's human rights continue to exist.

The stance of the Catholic Church on issues of women's rights in the family and

⁵⁴ Htun, 32

⁵⁵ Htun, 31

society has experienced many positive changes; however its position on issues such as abortion and contraceptives has been unwavering. The Church has recognized women's equality as persons, but insisted that this equality be rooted in women's proper nature as dictated by Church doctrine. In 1974, Pope Paul VI lauded women's demands for equality, but rejected a "false equality which would be in contradiction with women's proper role."⁵⁶ Through "essentialist difference feminism," the Church asserts that women are distinct from men on account of their unique mission that stems from their reproductive capacity and vital role as mother. Author Mala Htun states that the Roman Catholic Church's "essentialist difference feminism" justifies gender equality from an essentialist standpoint.⁵⁷ Hence, correlative sex differences are paramount in determining the nature of equality.

The Catholic Position on Abortion

For the last fifty years, the topic of abortion has been at the forefront of both the Catholic Church's and women's rights groups' agendas. According to Catholic doctrine, abortion is the murder of an innocent human life. This current stance of the Church on the subject of abortion is more resolute today than it historically has been. The Church had always condemned abortion, but had not considered it to be homicide until the fetus had acquired a soul. Until the mid-nineteenth century, the Aristotelian notion prevailed that the fetus only acquired a soul forty to eighty days after conception. Although there was some debate over the distinction of when a soul was acquired, most Church canons accepted the Aristotelian notion until more extensive scientific advances were made. Additionally, developments in the doctrine of the Immaculate Conception (a declaration

⁵⁶ Htun, 32

⁵⁷ Htun, 33

by the Pope that Mary, the Mother of Jesus Christ, was free from sin at the moment of her conception) prompted the Church to discard the distinction between the ensouled and unensouled fetus.

Especially relevant to the themes of abortion and Latin America is the debate and ambiguity surrounding the lawfulness of “therapeutic abortion.” Therapeutic abortion is defined as aborting the fetus to avert serious risk to the life of the mother.⁵⁸ The argument was that if the abortion occurs as an indirect consequence of a medical procedure intended to save the mother, it may be morally valid because the primary intention was to protect life, not to abort the fetus.⁵⁹ Hence, many Catholic intellectuals supported therapeutic abortion until the encyclical *Casti conubii* was published in 1930, which harshly condemned all forms of abortion. Furthermore in *Humanae Vitae*, Pope Paul VI stated:

*"[W]e must once again declare that the direct interruption of the generative process already begun, and, above all, directly willed and procured abortion, even if for therapeutic reasons, are to be absolutely excluded as licit means of regulating birth."*⁶⁰

The Catholic Position on Contraception

Similar to abortion, the Catholic Church retains a strong opinion regarding the use of contraceptives. The Christian condemnation of contraception dates back to biblical times and throughout the centuries, various important Christian followers and scholars have continued to condemn the use of contraceptives, labeling them as evil and sinful. However, in 1968 the papal encyclical *Humanae Vitae* strongly and publicly declared that “contraception violates the moral law and that each and every marital act must of

⁵⁸ Htun, 34

⁵⁹ Htun, 34

⁶⁰ 1968 Papal Encyclical *Humanae Vitae*. Available online: Vatican; The Holy See http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html

necessity retain its intrinsic relationship to the procreation of human life.”⁶¹ According to Catholic doctrine, contraceptives are defined as:

*"any action which, either in anticipation of the conjugal act [sexual intercourse], or in its accomplishment, or in the development of its natural consequences, proposes, whether as an end or as a means, to render procreation impossible."*⁶²

This includes sterilization, condoms and other barrier methods, spermicides, *coitus interruptus* (withdrawal method), the Pill, and all other such methods. As an alternative to conception, the Catholic Church advocates chastity, proclaiming that sexual relations between a man and woman should only occur within the sacred institution of marriage and solely for the purpose of procreation. Unlike contraceptives, chastity does not harm true love nor denies the sovereign role of God in the transmission of human life.

For centuries, the Catholic Church's position on abortion and contraception has remained unchanged as both violate the natural law as well as God's design for human life. For countries with large percentages of Catholics, this perspective has very serious implications for women's rights, as is clearly visible in the case of Chile. This perspective does not take into consideration the fact that frequently women in developing countries lack the autonomy to make their own reproductive decisions. Due to restricted rights and cultural norms, women often cannot deny a man sex for fear of severe repercussions. In such cases, abstinence as promoted by the Catholic Church, is not an option.

The Catholic Church as Traitor

During the military government of General Pinochet, the Catholic Church surfaced as the biggest supporter of the women's movement in their fight to end human rights violations and to assist Chile in a peaceful return to democracy. However, with the

⁶¹ 1968 Papal Encyclical *Humanae Vitae*

⁶² 1968 Papal encyclical *Humanae Vitae*

peaceful transition to democracy realized, the Church has returned to its traditional functions as a provider of pastoral and charitable services.⁶³ Additionally, the women's movement has refocused its efforts on a new goal: the achievement of women-specific human rights. This shift in focus from general human rights to women's human rights concerned the Catholic Church as it posed a profound conflict with the traditional teachings of the Church. While the Church openly defied the military government on human rights issues, its views on issues such as abortion and divorce closely matched those of the military regime.⁶⁴ Spouting new and explicitly feminist goals, women's groups that were aligned with the Church clashed. The Church began to set clear limits on the issues women could address and broke with groups that refused to give up their new found feminist ideology. *Why Women Protest* recounts an incident of a Chilean woman, Betty Walker, who worked with human rights groups for the Vicariate de Solidaridad, a preeminent Church-run human rights group, in Santiago, Chile. Ms. Walker soon learned the limits of working within the church: "I began to get involved with what is the core issue for women, sexuality, the body...things that prompted the Vicaría to ask me to resign."⁶⁵ Many women faced similar experiences with the Church and feeling betrayed, left church-sponsored human rights organizations to participate in exclusively women's human rights organizations. Today, the Catholic Church remains one of the biggest opponents to granting women reproductive freedoms. Its unwavering stance on women's reproductive rights coupled with its influence over Chilean politics has not only created the need for a women's movement, but also continues to lead the women's

⁶³ International Women's Rights Action Watch: Country Reports (1995): Chile. **Available online:** <http://iwwraw.igc.org/publications/countries/chile.htm>

⁶⁴ Baldez, 136.

⁶⁵ Baldez, 134.

movement to actively pursue equality in a gendered nation. Because of the women's movement, women in Chile are more aware of the fact that they are largely denied reproductive rights by the government. This awareness has increased demand for social change and more importantly, for safe and legal abortions.

The Daily Reality

The criminality of abortion and the restricted access to contraceptives and sterilization procedures has severe repercussions for all Chilean women, regardless of their socio-economic status. As a result of the restrictions placed on contraceptives, many women each year are faced with unwanted pregnancies. Due to the absolute prohibition of abortion, women whose lives are endangered by their pregnancy cannot have a legal therapeutic abortion. Moreover, women who have suffered sexual violence or who are forced by their circumstances to terminate an unwanted pregnancy are forced to resort to clandestine abortions, which poses a great risk to their health, and sometimes their lives.⁶⁶ The legislation and actions of the Chilean government are contradictory; they prohibit abortion under all circumstances, yet they do not give women the education and contraceptives necessary to prevent unwanted pregnancies in the first place.

Despite the illegality of abortion, the per capita number of abortion procedures in Chile is one of the highest in Latin America. About 35 percent of all pregnancies terminate in abortions, corresponding to approximately 160,000 abortions per year, 64,000 of them by girls under eighteen.⁶⁷ Furthermore, twenty-five percent of maternal

⁶⁶ "Women Behind Bars: Chile's Abortion Laws. A Human Rights Analysis." The Center for Reproductive Law and Policy and the Open Forum on Reproductive Health and Rights. CRLP; New York: 1998. p. 23.

⁶⁷ Human Rights Watch: Women's Rights- Regional Overview: Chile. **Available online:** <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm>

deaths are due to unsafe abortions, and this number has been increasing since 1990.⁶⁸ These statistics would be lower if women had proper access to contraceptives and family planning materials. Although national health programs have facilitated access to birth control since the 1960s, these programs provide easy access to birth control only to women who have already had at least one child. Therefore, for women who have not already had a child, obtaining contraceptives is a relatively difficult process. The difficulty of this process is compounded for younger and poorer women.

In law and in practice, Chilean government provides few family planning options for its female citizens. Chilean law criminalizes abortion and contraceptives, although legal, are practically impossible to obtain by the women who need them most. Women who find themselves with unwanted pregnancies have few options. A woman from the middle and upper classes can usually find a licensed doctor who is willing to perform the procedure for significant compensation for his/her silence and the procedure itself. Under these circumstances, the woman is likely to receive adequate post-abortion care from this provider; however women without the means to obtain safe, yet clandestine abortions must turn to unsafe abortion providers or abortion methods. Often times, these methods are faulty and do not provide post-abortion care, causing multiple complications for the woman. Complications from unsafe abortions can include chronic inflammation, sterility, menstrual alternations, future pregnancy and child birth complications, and the possible rupture of internal scars from previous perforations caused by abortions.⁶⁹ These women must turn to public health facilities for treatment. Yet, seeking professional care runs the risk of being arrested. Therefore, these women are left with the choice to either seek care

⁶⁸ International Women's Rights Action Watch: Country Reports (1995): Chile. **Available online:** <http://iwwaw.igc.org/publications/countries/chile.htm>

⁶⁹ *Women Behind Bars*, 39.

and risk being arrested, or self-medicate and hope that they fully recover from the procedure.

Therefore, by criminalizing abortion and restricting access to contraceptives that would prevent unwanted pregnancies in the first place, the Chilean government creates conditions under which women must risk their lives or their physical and mental health. In doing so, the Chilean government blatantly violates, not only women's reproductive rights, but a multitude of human rights as well.

Chile: Fulfilling its International Obligations?

Through the implementation of abortion legislation and the criminal cases that result from this prohibition, and the failure to provide its female citizens with their basic family planning needs, the government of Chile violates not only health-related human rights, but a multitude of other human rights on a daily basis. The criminalization of abortion and the failure to provide basic family planning needs violates the rights to life, liberty, and security, the right to be free from discrimination based on sex, and the right to reproductive health and family planning.⁷⁰ In addition to the rights violated by the prohibition itself, the methods by which women are reported to the police, and the criminal process they, abortion providers and 'accomplices' undergo violate numerous other rights, such as the right to due process, to privacy, and the right of a criminal defendant to be afforded an attorney.⁷¹

The Chilean government is obligated to respect the human rights established in international treaties that the country has ratified. In this way, the Chilean people are protected not only by domestic law, but also by the regional and universal human rights

⁷⁰ *Women Behind Bars*, 23.

⁷¹ Chile's Abortion Law Violates Human Rights and International Law. WIN News. Lexington: Winter 1999. Vol. 25. Iss. 1, p. 22.

system.⁷² Therefore, the restrictive abortion laws and contradictory practices in Chile violate numerous human rights protected by national laws as well as by regional and international human rights norms, such as the U.N.'s Universal Declaration of Human Rights (UDHR), U.N.'s Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), U.N.'s International Covenant on Civil and Political Rights (ICCPR), and the U.N. International Covenant on Economic, Social and Cultural Rights (ICESCR). The obligations created by these international laws must be observed within the territory of each state as provided by that state's laws. Thus by criminalizing abortion and failing to provide basic family planning needs, Chile not only fails to meet its national obligations, but its international obligations as well.

International Human Rights Legislation

Scholarly interpretations of international law acknowledge that the ability to obtain a safe and legal abortion is vitally important to women's enjoyment and exercise of all of their human rights.⁷³ Additionally, two key United Nations world conferences in the 1990s, the International Conference on Population and Development (ICPD), held in Cairo and the Fourth World Conference on Women, held in Beijing, both re-emphasized this statement in their affirmation of the interconnectivity of reproductive rights and human rights. The ICPD Program of Action declared that "reproductive rights embrace certain human rights that are already recognized in the national laws, international human rights documents and other consensus documents."⁷⁴ The Beijing Platform for Action confirmed this statement declaring that:

⁷² *Women Behind Bars*, 27.

⁷³ Human Rights Watch: Women's Rights- Regional Overview: Chile. **Available online:** <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm>

⁷⁴ Human Rights Watch as taken from United Nations General Assembly, Program of Action of the

“the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”⁷⁵

Additional U.N. bodies and conferences have repeatedly emphasized that human rights are jeopardized by restrictive abortion laws and practices. They also acknowledge the importance of a woman’s ability to access safe and legal abortion services and the positive role of the government in guaranteeing unrestricted access to reproductive health information and service.

For decades, the U.N. has insisted that women should have the right to decide for themselves in all matters related to reproduction and has simultaneously produced international human rights legislation regarding the protection of women’s reproductive rights. Chile, although having ratified all of these documents, including CEDAW, International Covenant on Civil and Political Rights (ICCPR) as well as International Covenant on Economic, Social and Cultural Rights (ICESCR), and as member of the United Nations, has fallen notably short in meeting its international legal obligations. Moreover, its national legislation directly conflicts with the principles present in international humanitarian law. The failure to abide by international law as well as the refusal to change national law had led to a situation in Chile in which not only the reproductive rights but all fundamental human rights of women are repeatedly violated. These rights include the right to equality, health, healthcare, life, liberty, privacy, the right to decide on the number and spacing of children as well as freedom of conscience and religion.

International Conference on Population and Development, U.N. Doc. A/171/13, New York, October 18, 1994 (ICPD Programme of Action), para. 7.3

⁷⁵ Human Rights Watch as taken from United Nations General Assembly, Beijing Declaration and Platform for Action: Fourth World Conference on Women, U.N. Doc. A/Conf.177/20, New York, October 17, 1995 (Beijing Platform for Action), para. 95

CEDAW

On December 18, 1979, the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women or “CEDAW.”⁷⁶ This was the first international document to comprehensively address women’s rights within the spheres of politics, culture, society, economics and family life. The convention promotes the full enjoyment of rights by women and was the first critical step in developing appropriate human rights language suited specifically for women’s needs. Along with establishing the foundation for women’s rights, CEDAW also calls for ratifying nations to surmount barriers of discrimination against women in multiple areas, including education, health care and employment. Additionally, these countries must critically examine the actual situation of women and girls and take action to eliminate conditions of discrimination and inequality. As of March 18, 2005, 180 countries had ratified the convention, including Chile. Chile became a signatory of CEDAW on July 17, 1980, but did not ratify the treaty until nearly 20 years later on December 7, 1989.⁷⁷ Upon signature, the government of Chile declared:

The Government of Chile has signed this Convention on the Elimination of All Forms of Discrimination Against Women, mindful of the important step which this document represents, not only in terms of the elimination of all forms of discrimination against women, but also in terms of their full and permanent integration into society in conditions of equality.

*The Government is obliged to state, however, that some of the provisions of the Convention are not entirely compatible with current Chilean legislation.*⁷⁸

⁷⁶ Milani, Leila Rassekh et al. CEDAW: The Treaty of the Rights of Women. The Working Group on Ratification of the U.N. Convention on the Elimination of all Forms of Discrimination Against Women; 2004.

⁷⁷ United Nations: CEDAW: <http://www.un.org/womenwatch/daw/cedaw/states.htm>

⁷⁸ United Nations: CEDAW <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

At the same time, it reports the establishment of a Commission for the Study and Reform of the Civil Code, which now has before it various proposals to amend, inter alia, those provisions which are not fully consistent with the terms of the Convention.⁷⁹

One such provision of the Convention which is not compatible with current legislation is contained within Article 12. Although CEDAW does not explicitly mention abortion, Article 12 requests that ratifying nations take “steps to eliminate discrimination from the field of health care, including access to services such as family planning.”⁸⁰ The CEDAW Committee has repeatedly stated that the term “family planning” does not take abortion into account. Nevertheless, this does not prohibit the Committee from taking action in countries where statistics have shown that unsafe, illegal abortions have contributed to a high maternal mortality rate.⁸¹ In cases such as these, the committee has insisted upon improvements in women’s health and access to family planning as well as the reassessment of the criminal status or legal restrictions placed upon abortions. Such is the case in Chile where reported maternal mortality is 16.7 per 100,000 live births with unsafe abortion accounting for an estimated 25 percent of these deaths.⁸²

Reproductive Rights as a Human Rights Issue

As a result of the interconnectedness of human rights and women’s rights, the punitive and restrictive abortion and anti-contraceptive laws and policies in Chile not only violated reproductive rights but also are in violation of women’s human rights when examined in light of the norms contained in numerous international human rights

⁷⁹ United Nations: CEDAW <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

⁸⁰ Milani, 59.

⁸¹ Milani, 60.

⁸² Statistics taken from Human Rights Watch: Women’s Rights- Regional Overview: Chile. **Available online:** <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm> <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm>

treaties⁸³. Moreover, and perhaps more importantly in terms of public policy, to date these laws and policies have not served as an effective solution to the public health problem which principally affects the poorest and most vulnerable women in Chilean society.

Various international human rights instruments, including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Universal Declaration of Human Rights (UDHR), insist that women should have the right to decide for themselves in all matters related to reproduction. According to Human Rights Watch, “The denial of a pregnant woman’s right to make an independent decision regarding abortion violates or poses a threat to a wide range of human rights.”⁸⁴ Due to the interconnectivity of human rights, by denying a woman the option of obtaining an abortion if she should so choose, denies her the ability to access other human rights, such as the right to life, health, access to healthcare, privacy, liberty and nondiscrimination. Therefore, it is necessary to discuss reproductive rights within the human rights framework because the two are not separate entities.

Specific Violations of Women’s Human Rights

In criminalizing abortion and restricting access to contraceptives, the government of Chile has not only violated women’s reproductive rights, but all of the human rights that are explicitly set out in international human rights legislations. The following describes more specifically the way in which Chilean law consequently violates women’s human rights. Moreover, the following rights do not include the multitude of human rights that are continually violated by restrictive Chilean law and practice. They are

⁸³ *Women Behind Bars*, 23

⁸⁴ Human Rights Watch: Women’s Rights- Regional Overview: Chile. Available online: <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm>

merely some examples of the ways in which the prohibition placed on reproductive rights effects basic human rights.

The Right to Nondiscrimination and Equality

Multiple international human rights documents set forth the right to nondiscrimination and equality. However, the criminalization of abortion directly contradicts these rights in that abortion is a medical procedure that only women need and therefore constitute a form of discrimination based on gender. The CEDAW committee declared:

“It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account.”⁸⁵

The criminalization of abortion disproportionately effects women and puts them at a severe disadvantage to men. In ratifying CEDAW, as well as other U.N. conventions, Chile has the responsibility to guarantee access for all women to safe reproductive health services and information. The ability to access safe and legal abortion services is paramount to the protections of women’s rights to nondiscrimination and equality.

The Right to Health and Health Care

The lack of safe and obtainable abortion services has serious repercussions for a women’s right to health and health care. Unsafe abortions alone constitute a significant threat to a women’s mental and physical health. Furthermore, health problems that result from unsafe abortions, such as infections and hemorrhaging often are left untreated due to fear of legal repercussions. It is not unheard of for a woman to die from such

⁸⁵ United Nations: Division for the Advancement of Women- Department of Economic and Social Affairs; CEDAW: <http://www.un.org/womenwatch/daw/cedaw/committee.htm> Available online: as taken from CEDAW Committee, General Recommendation 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, Temporary Special Measures, *U.N. Doc. No. CEDAW/C/2004/I/WP.1/Rev.1* (2004), para. 8.

complications. With that having been said, it is the responsibility of the government of Chile to promote and protect women's right to health and health care so that women have the opportunity to enjoy the highest level of health care possible. The CEDAW committee, although not verbally condoning the practice of abortion, often recommends that states parties review legislation prohibiting abortion to meet their international obligation to eliminate discrimination against women in the health field.⁸⁶

The Right to Life

The criminalization of abortion has serious implications for the health and lives of women. Due to the fact that women are not able to receive safe and legal abortions, they must turn to unsafe and often unsanitary abortions that leave them with serious mental and/or physical complications or more gravely, kill them. According to the Center for Reproductive Law and Policy, the right to life is violated in cases of deaths from pregnancies or childbirth when the pregnancy resulted from the state's failure to guarantee access to basic reproductive health services.⁸⁷ The current maternal mortality rate for Chile is 16.7 per 100,000 live births. This figure signifies that the government of Chile, through its criminalization of abortion, does not respect a woman's right to life. Therefore, it is the obligation of the Chilean government to change its laws so that they are in accordance with the various international human rights treaties that protect a woman's right to life.

Opponents of contraceptives and abortion in Chile, especially the Catholic Church, often apply the right to life to the unborn fetus, arguing this right as a reason to

⁸⁶ Human Rights Watch: Women's Rights- Regional Overview: Chile. **Available online:** <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm>

⁸⁷ *Women Behind Bars*, 28.

criminalize abortion and regulate the use of contraception. However, this interpretation of international human rights law is wrong. In 1981, the Inter-American Commission on Human Rights was asked to clarify whether or not the right to life provisions present in international human rights law was compatible with a woman's right to access safe and legal abortion services and information. The commission declared:

“[I]t is important to note that the conferees in Bogotá in 1948 rejected language which would have extended that right to the unborn ... [and] ... adopted a simple statement on the right to life, without reference to the unborn, and linked it to the liberty and security of the person. Thus it would appear incorrect to read the Declaration as incorporating the notion that the right to life exists from the moment of conception. The conferees faced this question and chose not to adopt language which would clearly have stated that principle.”⁸⁸

The Right to Freedom of Conscience and Religion

The rights to freedom of conscience, thought and religion are protected in the International Covenant for Civil and Political Rights (ICCPR) which was ratified by Chile on September 9, 1995⁸⁹. Freedom of religion not only entails the ability to practice the religion of one's choosing, but also includes the freedom from being obliged to comply with laws designed with the intention to uphold doctrines of religious faith. This right has special pertinence for the current situation in Chile as the present legislation is significantly influence by Catholic doctrine and its unwavering position on abortion and the use of contraception. In accordance with this right, women cannot be required to comply with laws based on religious teaching as most laws that criminalize abortion are.

⁸⁸ Human Rights Watch: International Human Rights Law and Abortion in Latin America. **Available online:** <http://hrw.org/backgrounder/wrd/wrd0106/> as taken from Inter-American Commission on Human Rights, *White and Potter (“Baby Boy Case”)*, Resolution No. 23/81, Case No. 2141, U.S., March 6, 1981, OAS/Ser.L/V/II.54, Doc. 9 Rev. 1, October 16, 1981, para. 14 (a).

⁸⁹ United Nations: Office of the United Nations High Commissioner for Human Rights (UNHCHR) *Status of the Ratifications of the Principle International Human Rights Treaties*. **Available online:** <http://www.unhcr.ch/pdf/report.pdf>

Conclusion

In the past forty years, Chile has witnessed a multitude of social, political and economic changes that have ultimately transformed it from a struggling Third World country to the most prosperous and politically stable nation in Latin America. Yet, in spite of these changes, the relationship between men and women continues to be significantly unequal in many instances. Despite the changes in the past four decades, the “machista” attitude in Chile has not been eradicated; conversely, it was publicly reinforced by the military government of General Augusto Pinochet from 1973-1989, causing a notable backlash from the female citizenry, and leading to the rise of a successful women’s movement that would advocate for the protection of human rights and a peaceful transition to democracy. Although the transition to democracy in 1990 was anticipated to strengthen the women’s movement, it actually had the opposite effect. The women’s movement was pushed out of the political limelight and replaced by the political parties who had been disbanded under the regime, relegating women to the home once again, and leaving little space for a feminist voice in politics.

However, politics alone cannot be blamed for the lack of consideration given to women’s reproductive rights. The influence of the Catholic Church in Chile has had an overwhelming affect on the construction of women’s roles and rights in Chile. Although the stance of the Church on issue of women’s rights in the family and in society has experienced many positive changes, its position on issues such as abortion and contraceptives has been unwavering. This stance has proven to be extremely detrimental to women’s health and ability to access healthcare. Regardless of the statistics, the perspective of Roman Catholicism, one of the oldest and most influential ethical

traditions in Latin America, continues to maintain significant influence over the polity, as viewed in the language of the law and in daily governmental practice. Abortion is criminalized under all circumstances in order to protect human life; an ironic statement given that the inability to access safe abortions harms human life as well.

Although women in Chile are considerably better off today than they were forty years ago in terms of education, life expectancy, poverty levels and over-all standard of living, they are continually denied the ability to access their reproductive and family planning rights. This problem is only further compounded by their inability to effectively vocalize their needs and concerns regarding reproductive health in the public arena. Therefore, Chile's restrictive abortion laws which date from 1874 and their limited provision of contraceptives continue to mandate over women's reproductive capabilities in harmful way. As a result of these strict policies, about thirty-five percent of all pregnancies terminate in abortions and twenty-five percent of all maternal deaths are the result of unsafe abortions.⁹⁰ These statistics are indicative that the current laws and practices of the Chilean government are not effective in protecting women's reproductive rights or basic human rights.

Not only are these laws and practices not effective in protecting women's rights, they also are in direct violation of national, regional and international legislation ratified by the Chilean government. In prohibiting abortion and restricting access to family planning needs, the government of Chile inevitably violates not only reproductive rights, but all basic human rights as all rights are intrinsically interconnected. Denying a women the right to a safe abortion, denies her the right to health, healthcare, privacy and

⁹⁰ Human Rights Watch: Women's Rights- Regional Overview: Chile. **Available online:** <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm>

nondiscrimination based on gender. These are just a few of the multitude of rights violated by this restrictive legislation. The denial of these rights is in direct violation of multiple regional and international legislation that acknowledge the ability to obtain a safe and legal abortion as vitally important to a women's enjoyment and exercise of all their human rights.⁹¹ Thus, the government of Chile has repeatedly failed to meet its international obligations as a ratifying party of treaties like CEDAW, ICCPR, and ICESCR with little public chastisement from the international community.

In light of these findings, perhaps the Chilean government should reconsider its use of the word "democratic" when referring to the way in which it treats its female citizenry, which currently constitutes more than half of the total population. Until women are guaranteed the unrestricted ability to access all of their basic human rights, including reproductive rights can Chile consider itself a democracy in every sense of the word. In achieving true democracy, the government of Chile must decriminalize abortion, make it safe and legal for women of all socio-economic classes, guarantee access to contraceptives for all women, especially the young and poor, and provide women with all necessary family planning needs, such as sexual education from a young age. In order to attain these goals, the government must provide a forum for female voices in national, regional and local politics. Additionally, the government must also overlook the opinions of the Catholic Church regarding female reproductive rights in the best interest of its female population. This is not to say that the Catholic tradition must be completely discarded; it solely means that the government must prioritize the lives and welfare of its female citizenry over the ideals and ideologies of the Catholic Church. Only by taking

⁹¹ Human Rights Watch: Women's Rights- Regional Overview: Chile. **Available online:** <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm>

these steps will Chile achieve a true democracy and be able to develop to its full potential socially, politically and economically.

As stated, the Chilean government needs to drastically change the way in which it regards the rights of its female citizenry. However, as understood by the multiple public comments made by current president Michele Bachelet, is it unlikely the government of Chile will undertake the necessary measures anytime soon to protect women's reproductive rights. Therefore it is the duty of the international community to speak out against the blatant violations of women's rights in Chile and the Chilean government's deliberate failure to comply with international legislation that it has willingly ratified. What is the purpose behind international legislation if all nations sign it, but fail to comply with the standards it aims to uphold? In order for international legislation to be considered valid and binding, other ratifying nations must condemn Chile for its failure to meet its obligations and offer penalties and criticism until Chile agrees to finally meet the standards it set for itself in signing the legislation. The international community has historically had significant influence over the Chilean government and civil order. Therefore, like Chile under authoritarian rule, the international community must resume the role of watchman to ensure that Chile fully meets its obligations. In providing women with unrestricted access to their human rights, the Chilean government will meet its obligations to both its citizenry as well as to the international community at large.

In conclusion, although the government of Chile has witnessed significant progress in the past forty years, it still must make significant changes to the ways in which it regards women's basic human rights. In order to achieve a true democracy, the Chilean government must guarantee unrestricted access to abortion and family planning

services and prioritize the health and welfare of its female citizens over the strict teachings of the Catholic Church. Only in doing so, will Chile reach its full potential as a role model for democracy and equality in Latin America.

Works Cited

- 1968 Papal Encyclical *Humanae Vitae*. **Available online:** Vatican; The Holy See
http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html
- Amnesty International: Pinochet Case. **Available online:**
<http://www.amnesty.org/ailib/intcam/pinochet/>
- Aguilar, Mario I. "Cardinal Raul Silva Henriquez, the Catholic Church, and the Pinochet Regime, 1973-1980: Public Responses to a National Security State" *The Catholic Historical Review* - Volume 89, Number 4, October 2003, pp. 712-731. **Available online:** Project Muse Scholarly Journals Online -- http://muse.jhu.edu/cgi-bin/access.cgi?url=/journals/catholic_historical_review/v089/89.4aguilar.pdf
- Baldez, Lisa. Why Women Protest: Women's Movements in Chile. Cambridge University; Cambridge: 2002.
- Blofield, Merike H. and Haas, Liesl. "Defining a Democracy: Reforming the Laws on Women's Rights in Chile, 1990-2002." *Latin American Politics and Society*. Volume 47, No. 3. Fall 2005
- Chile's Abortion Law Violates Human Rights and International Law. **WIN News**. Lexington: Winter 1999. Vol. 25. Iss. 1, p. 22.
- Dandavati, Annie G. The Women's Movement and the Transition to Democracy in Chile. Peter Lang; New York; 1996.
- El Codigo Sanitario de Chile. **Available online:**
<http://colegioabogados.org/normas/codice/sanitario.html>
- Franceschet, Susan. Women and Politics in Chile. Lynne Rienner; London: 2005.
- Homepage of presidential candidate (and current president) Michele Bachelet. **Available online:** www.bacheletpresidente.cl
- Htun, Mala. Sex and the State: Abortion, Divorce and the Family Under Latin American Dictatorships and Democracies. Cambridge University; Cambridge: 2003.

- Human Rights Watch: Women's Rights- Regional Overview: Chile. **Available online:** <https://www.hrw.org/photos/2005/argentina0605/html/chile.htm>
- Human Rights Watch: International Human Rights Law and Abortion in Latin America. **Available online:** <http://hrw.org/backgrounder/wrd/wrd0106/>
- International Women's Rights Action Watch: Country Reports (1995): Chile. **Available online:** <http://iwwaw.igc.org/publications/countries/chile.htm>
- Milani, Leila Rassekh, et al. *CEDAW: The Treaty of the Rights of Women*. The Working Group on Ratification of the U.N. Convention on the Elimination of all Forms of Discrimination Against; 2004.
- Miller, Francesca. *Latin American Women and the Search for Social Justice*. Univ. Press of England; London: 1991.
- Newspaper: *La Segunda* 10/18/2005. "Bachelet digo que no legalizará el aborto y propone 'alianza de civilizaciones' ante terrorismo." **Available online:** <http://72.14.203.104/search?q=cache:79O8Eg7KzskJ:www.lasegunda.com/edicio+nonline/politica/detalle/index.asp%3Fidnoticia%3D227671+michelle+bachelet+Y+aborto&hl=es>
- Newspaper: *Diario de Cuyo*. 10/19/2005. "Así piensa la mujer que quiere gobernar Chile." **Available online:** www.diariodecuyo.com
- Newspaper: *The San Diego Union-Tribune*. 5/17/05. "How Catholic is Latin America?" **Available online:** http://www.signonsandiego.com/uniontrib/20050517/news_lzle17oppenh.html
- Organization of American States. *1874 Penal Code of Chile*. **Available online:** http://www.oas.org/JURIDICO/mla/sp/chl/sp_chl-int-text-cp.pdf
- Poblete, Renato and Gilfeather, Katherine. "La Mujer ¿Agente de Cambios en la Iglesia?" *Chile: Mujer y Sociedad*. UNICEF; Santiago: 1978.
- Servicio Nacional de la Mujer (SERNAM). "Mujeres Chilenas: Tendencias en la última década. Censos 1992-2002." SERNAM; Marzo 2004
- Servicio Nacional de la Mujer; Pagina de Estadísticas: **Available online:** <http://www.sernam.cl/basemujer/index.htm>
- Shadow Report on the Third Periodic Report of Chile*. La Morada, Santiago, Chile, International Women's Human Rights Law Clinic City University of New York School of Law, and Center for Reproductive Rights. United Nations ICESCR 2004.

Tinsman, Heidi. "Reviving Feminist Materialism: Gender and Neoliberalism in Pinochet's Chile." *Journal of Women in Culture and Society* .Vol. 26, No. 1. 2000

United Nations: Division for the Advancement of Women- Department of Economic and Social Affairs; CEDAW. **Available online:**
<http://www.un.org/womenwatch/daw/cedaw/states.htm> and
<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> and
<http://www.un.org/womenwatch/daw/cedaw/committee.htm>

United Nations: Office of the United Nations High Commissioner for Human Rights (UNHCHR) *Status of the Ratifications of the Principle International Human Rights Treaties*. **Available online:** <http://www.unhchr.ch/pdf/report.pdf>

United States Library of Congress: Chile <http://countrystudies.us/chile/>. 2003

"Women Behind Bars: Chile's Abortion Laws. A Human Rights Analysis." The Center for Reproductive Law and Policy and the Open Forum on Reproductive Health and Rights. CRLP; New York: 1998.

Women's Reproductive Rights in Chile: A Shadow Report. Women's Reproductive Rights in Chile. CRLP; New York: 1999. Available online:
www.reproductiverights.org