

Santiago, Bogotá, New York, June 29, 2018

Human Rights Council

Office of the United Nations High Commissioner for Human Rights

Palais des Nations

CH-1201 Geneva 10

Switzerland

RE: Report for the Third Universal Periodic Review (“UPR”) on Chile, 32nd Session of the UPR Working Group (“Working Group”) of the Human Rights Council (“Council”) (January-February 2019)

Distinguished members of the Council:

1. The Center for Reproductive Rights (the “**Center**”) is an independent, non-governmental organization that promotes gender equality and the fulfilment of women’s reproductive rights across the world. Corporación Miles (“**Miles**”) is an independent, non-governmental organization committed to the promotion and protection of sexual and reproductive rights, as well as access to reproductive healthcare in Chile. The Center and Miles would like to contribute to the Council’s work by providing independent information concerning the Republic of Chile’s (“**Chile**”) obligations to guarantee women’s reproductive rights under international human rights law.
2. In light of Chile’s upcoming review by the Council, this letter highlights Chile’s failure to comply with its obligations under international human rights law to take all appropriate measures to eliminate discrimination against women in the field of healthcare, reproductive rights, and other human rights and fundamental freedoms by: (a) not legalizing abortion in those cases where an abortion preserves a woman’s health or in cases of incest; (b) creating overly broad obstacles to the right to access reproductive care by permitting physicians and institutions to conscientiously object to performing an abortion; (c) requiring a legal representative’s authorization to access an abortion in certain circumstances; and (d) not ratifying the Optional Protocol to the Convention on the Elimination of Discrimination Against Women (“**CEDAW**”) Convention.
3. This letter is presented as follows: (1) We provide the various, recent recommendations made to Chile by U.N. Treaty Monitoring Bodies (“**UNTMB**”). (2) We identify how the Chilean government has failed to comply with its constitutional and international law obligations as well as the tragic consequences of Chile’s abortion laws. (3) We include a list of recommended questions directed at Chile. And (4) we include a list of recommendations that we respectfully propose the working group should make.

I. Chile Has Failed to Fully Implement Recommendations from U.N. Treaty Bodies in relation to Women’s Reproductive Rights

4. During the 18th Session of UPR’s Second Cycle in 2013, a number of countries submitted recommendations to Chile relating specifically to reproductive rights, particularly recommendations that Chile decriminalize abortion in some or all circumstances.¹
5. Among these recommendations, Chile supported Belgium’s recommendation 121.134, which suggested ensuring “that sexual and reproductive rights are respected and protected.” But in doing so, Chile explicitly

denied that abortion is part of a woman’s right to sexual and reproductive health, clarifying that its “support [of ¶ 121.134] does not constitute a commitment to legalize [abortion].”² Chile did not support any of the other recommendations related to abortion.³ Chile based this lack of support on art. 19.1 of its Constitution, which enshrines the right to life, including the lives of the unborn.⁴

6. Chile “took note” of the recommendations by ten countries related to ratifying the Optional Protocol (“OP”) to the Convention on the Elimination of All Forms of Discrimination Against Women.⁵ However, the State has not provided a timeline for the ratification of the treaty. Chile explained that it would not accept the ratification recommendations because it could not “commit to supporting them in specific terms for the next review” as those recommendations required parliamentary approval.
7. Chile has voluntarily submitted a report on the Second Cycle mid-term UPR, in which it avoided directly mentioning the recommendations related to women’s reproductive rights. Instead, it focused on describing policies directed at improving women’s representation in politics and addressing the gender pay gap, domestic violence, and discrimination more broadly. Regarding reproductive rights, the report briefly mentioned the legislative project that would later partially decriminalize abortion and programs concerning teenage pregnancy, making no reference to the either rejected or acknowledged recommendations.
8. UNTMB have also urged Chile to reform its laws criminalizing abortion. Between 2006 and 2007, the CEDAW Committee, the Committee on the Rights of the Child (“CRC”), and the Human Rights Committee (“CCPR”) have each called for Chile to review the criminalization of abortions.⁶ In 2004 and 2009 Reports, the Committee Against Torture (“CAT”) called for the review of punitive abortion laws because “they lead to violations of a woman’s right to be free from inhuman and cruel treatment.”⁷

II. Chile’s Recent Legislative Enactments

9. As will be explained, Chile has made strides towards fulfilling the recommendations, but it continues to leave many girls and women unnecessarily at risk.
10. On August 3, 2017, Chile’s Congress passed a law to decriminalize abortion under certain circumstances.⁸ The Constitutional Court approved the law on September 7, 2017.⁹ As a result, Article 344 of Chile’s Criminal Code was amended to permit three grounds for interrupting pregnancy, as laid out in Article 119 of the Health Code, but still criminalizes all other forms of abortion with imprisonment¹⁰. The three grounds included in Article 119 are: (a) the pregnancy poses a serious risk to a women’s life (as distinct from her health); (b) the fetus has a disorder that is inconsistent with life outside the womb, and (c) the pregnancy was the result of rape if the abortion occurs prior to the twelve week of pregnancy or prior to the fourteenth week in the case of girls 14 and under.¹¹
11. Even in the above circumstances, a woman may not receive an abortion if (1) the medical professional or institution has a conscientious objection to abortion and (2) in the case of girls under 14 years old, if a legal guardian or representative has not authorized the procedure.¹²
12. The new 2017 legal framework, as a whole, is undoubtedly a major step forward, given that since 1989 Chile has absolutely prohibited and criminalized abortion in all circumstances and with no exceptions. Yet, it is estimated that the law can only cover up to 15% of all of the abortions in Chile, leaving approximately 85% of the cases under other exceptions not regulated by the law unprotected or criminalized. The

continuing limitations restrict basic human rights and serve to perpetuate social models in which a woman is perceived through the procreative role of a mother.

III. Continuing Obstacles to Obtaining Abortion

A. Allowing Abortions When Necessary to Save a Woman's Life, But Not to Preserve Her Health

13. Under the new Article 119 of the Health Code, a woman may request the interruption of her pregnancy when her life is at risk due to the pregnancy. Article 119 does not, however, provide an exception if the abortion would preserve only the woman's physical or mental health—as has been the case in countries like Colombia, Argentina, and Mexico.¹³ Accordingly, any woman who seeks or receives an abortion to preserve her health may be subject to criminal penalties, including imprisonment, under Article 344 of the Criminal Code.
14. Chile's criminalization of abortions required to safeguard women's health may force women with high-risk pregnancies to incur health risks by carrying their unwanted pregnancies to term or may force women to obtain unsafe, illegal abortions to protect their health—increasing the risk of maternal morbidity and mortality. The denial of legal abortion to protect a woman's health is not only dangerous, but a violation of international law.
15. Chile ratified the International Convention on Civil and Political Rights (“**ICCPR**”) on February 10, 1972. As a State Party to the ICCPR, under Article 2(2), Chile has an obligation to take “necessary steps...to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the [ICCPR].” The ICCPR protects the civil, political, economic, social, and cultural rights of all human beings.¹⁴ The Convention protects access to abortion services under a variety of rights including the right to non-discrimination under Article 3, the right to life in Article 6, and the right to be free from torture, cruel, inhuman or degrading treatment under Article 7.¹⁵ Most recently, the Human Rights Committee (“**CCPR**”), in its draft General Comment on Article 6, stated that “State parties may not regulate pregnancy or abortion in a manner that run contrary to their duty to ensure that women do not have to undertake unsafe abortions” and that “the duty to protect the lives of women against the health risks associated with unsafe abortions requires States parties to ensure access . . . to information and education about reproductive options.”¹⁶ In addition, the CCPR draft Comment notes that legal restrictions on abortion must not “jeopardize [women's] lives or subject them to physical or mental pain or suffering which violates article 7” and that abortions should be available, at a minimum, to protect a woman's health and life. The CCPR has also on numerous occasions recommended that state parties amend their criminal abortion laws to comport with the ICCPR.¹⁷
16. Chile ratified the International Covenant on Economic, Social and Cultural Rights (“**ICESCR**”) on February 10, 1972. As a State Party to the ICESCR, in accordance with Article 2, Chile has a duty to “take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the [ICESCR] by all appropriate means, including particularly the adoption of legislative measures.” Article 12(1) of the ICESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” General Comment 14, made by the Committee of Economic, Social and Cultural Rights’ (“**CESCR**”), further clarifies that this includes “the right to control one's health and body, including sexual and reproductive freedom.”¹⁸ Moreover, Article 2 of the ICESCR provides that Covenant rights should “be exercised without discrimination of any kind”—

including on grounds of sex. Non-discrimination in healthcare on grounds of sex has been further bolstered by CESCR General Comment 16, as well as Article 12 of CEDAW,¹⁹ which provide for the equal enjoyment of rights between men and women,²⁰ including in family planning²¹ and “appropriate services in connection with pregnancy.”²²

B. Providing for Broad Rights to Conscientious Objection

17. Access to public health care in Chile is limited and the waiting list for most procedures is extremely long. For the set of benefits and treatments that are guaranteed by the State, the waiting period is of approximately 95.63 days, while the average waiting period for surgical interventions is of 400 days.²³ In this context, the right to conscientious objection recognized in Article 119 of the Health Code functions as a considerable obstacle to the exercise of a woman’s right to an abortion on the grounds provided by Chilean law.
18. The right to consciously object to participate in activities that an individual considers incompatible with religious, moral and ethical beliefs in health care settings is recognized by the U.N. Human Rights Committee, which has found said right is protected by Article 18 of the ICCPR. It is, however, a right that is subject to legal restrictions, especially if placed to protect the right to the highest attainable standard of health.²⁴ In this sense, the text of Article 119, as approved by the Chilean Congress in 2017, established that the conscientious objection was essentially of personal character and thus could not be alleged by an institution. It also created an exception to the objection by requiring all health care professionals to perform the procedure in the imminence of the twelve-week deadline for sexual assault cases. But in August of the same year, the Constitutional Court considerably enlarged the breadth of the exception’s application. While exercising judicial review, the Court allowed institutions to consciously object to abortion procedures and struck down the sexual assault exception.²⁵
19. The recent change in the country’s political landscape is also compromising the implementation of the new abortion legislation. Current President Sebastián Piñera had already made polemic remarks in 2013, during his first presidential term, regarding the case of Belén, an 11-year-old who became pregnant after being repeatedly raped by her mother’s partner. He was arrested after confessing to the abuse, while the mother defended him by saying the relationship was consensual.²⁶ As a supporter of the then-complete abortion ban, Piñera praised the girl’s intention to carry the pregnancy to term.²⁷
20. Piñera’s administration, as expected, has already attempted to enlarge the possibilities for conscientious objection through a resolution that revoked the previous government’s guidelines for declaring the objection pursuant to Article 119. The new resolution allowed private institutions that provide public health care service through agreements with the Chilean State to declare the objection and ban abortion procedures from their facilities. The previous regulation, had limited the exercise of the institutional objection to private facilities providing exclusively private health care procedures.²⁸ The new resolution also facilitated the declaration by eliminating some of the formal requisites that had been set for personal and institutional objections, so that an objector would not have to justify the reason for his objection formally.²⁹
21. In May 2018, The General Comptroller of the Republic (*Contraloría General de la República*), however, ordered the Ministry to revoke its new resolution because it does not abide by the law. The *Contraloría* decided the Ministry exceeded its constitutional capacities since the contents of the resolution should have been limited to simple instructions on how to declare the conscientious objection. It also concluded the resolution infringed other Chilean statutes by allowing private institutions that provide public health care to object, and that it violated the legally established exceptional character of the objection.³⁰ Therefore, to

date, there is no protocol available that regulates conscientious objection, leading to an incomplete implementation of the Law N° 21.030, while also leaving women and medical professionals in a state of deep uncertainty.

22. The conscientious objection has already restricted access to abortion in both Uruguay and Mexico, where the objection is strictly personal, due to the small number of professionals willing to perform the procedures.³¹ In Uruguay, for example, approximately 30% of the doctors have presented the objection, and in certain regions of the country this number reaches between 50 and 100% of obstetricians and gynecologists, severely impacting the rights of Uruguayan women to access safe abortions.³²
23. **Recent estimates point out that 31% of Chilean obstetricians and 15% of anesthesiologists have already presented their objections.**³³ Seven hospitals have already institutionally objected to the practice, while other four were considering their position on the matter.³⁴ Access to abortion is already non-existent in certain locations (mostly in rural areas) such as Osorno, a small city in south-central Chile, where all the doctors in the public healthcare network have presented their personal objections,³⁵ leaving more than 84 thousand women at risk despite of the recent passed law.³⁶ Those decided to terminated their pregnancies, were forced to travel long distances and cover their travel expenses, creating the State and an undue burden to access a procedure that must be guaranteed across the country to all citizens.
24. An unlimited and unregulated right to conscientious objection is contrary to international human rights law. The CESCR has recognized that access to abortion in the legally permitted cases is part of the right to health, and that the services provided to women should be accessible and adequate. All States should therefore organize their health care systems in a manner that the right to conscientious objection does not impede the women's access to abortion, or they will be otherwise in violation of human rights law.³⁷

C. Requiring Some Women and Girls to Obtain Legal Representative's Authorization

25. Article 119 of the Health Code contains a provision requiring women affected by dementia, as well as girls and adolescents under the age of 14, to have a legal representative's authorization (in addition to all other legal conditions) to access abortion.
26. The Chilean Constitution, its Constitutional Court,³⁸ and all international human rights conventions to which Chile is a Party prescribe that the rights and interests of women should be placed at the center of any abortion-related regulation. Although neither the Constitution nor the international conventions explicitly recognize the right to abortion, it is implicit in them that unhindered access to safe and legal abortion is protected under the provisions pertaining to the right to life, the right to health, the right to privacy and autonomy, the right to equality and freedom from discrimination, and, finally, the right to be free from torture, cruelty, and inhuman or degrading treatment.³⁹
27. The right to safely and legally abort thus flows from both national and international law and should be available to a child, adolescent, or adult woman, independent of her age or physical/psychological impairment. It is the woman who should ultimately decide on her maternity status and it is for the legislator to offer the proper means for her to enjoy and exercise fully the rights mentioned above.
28. In all cases in which the child, adolescent, or disabled woman lacks the capacity to independently decide whether her best interests are compromised, a system of assistance needs to be set up to support (and not undermine) her decision-making process. A system based on a third-party authorization, even if this role is

given to parents or guardians, unduly removes the focus of the law from the person who should be its beneficiary: the pregnant woman. By its very existence, this requirement is a source of violation of all of the human rights listed above under both the Chilean constitution and the applicable U.N. conventions.

D. Failing to Ratify the Optional Protocol to the Elimination of All Forms of Discrimination Against Women

29. On October 6, 1999, the General Assembly of the United Nations adopted Resolution 54/4 which includes in its annex the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (“OP”). Chile was among those states that first signed the OP in December 1999, but since then, the ratification process has never been completed and the relevant national legal instrument is still under the review of the Chilean Senate.⁴⁰
30. Chile has delayed the ratification of the OP as the draft approval for ratifying the OP has been inactive in the Senate for almost 17 years.⁴¹ This longstanding failure to adhere to the OP has been deplored domestically and internationally.⁴² Without the OP the implementation of the CEDAW remains exclusively entrusted to its State parties. The absence of a timely ratification amounts to a disregard of the national and international legal norms binding the Chilean public authorities.
31. The OP introduces two sets of procedures whose aim is to give additional practical effect to the CEDAW, first, by allowing individuals and groups to make complaints before the CEDAW Committee in cases of violations of rights contained in the Convention (*communications procedure*) and, second, by enabling the Committee to inquire into and investigate cases of serious and/or systemic abuses of women’s human rights. The lack of a full-hearted commitment to achieving a speedy ratification of the OP has entailed the denial to the women of Chile of two supplemental resources to combat the abuse and discrimination of which they may be the victims and failed to fulfill its primary missions according to its Constitution to be *at the service of the human being* (Article 1) as well as to *respect and to promote* human rights (Article 5).
32. Since 2009, at the occasion of the U.N. Human Rights Council’s Universal Periodic Review and in the framework of the CEDAW ongoing States’ review,⁴³ it has been continuously recommended to the Chilean state to ratify the OP.⁴⁴ **Although Chile has accepted such recommendations, it has refused to commit to a particular date of ratification⁴⁵ and has consistently provided unsatisfactory explanations concerning the 17-year long procedural blockage.⁴⁶**
33. Chile’s failure to timely ratify amounts to a neglect of its international law obligations. Indeed, art. 18 of the Vienna Convention on the Law of Treaties requires that each state, after signing a treaty, refrains from *acts which would defeat* [its] *object and purpose* and this until its entry into force or to the time the relevant nation indicates its intent not to ratify and thus refuses to become a party to the treaty. The compound effect of neither fully accessing the OP nor denouncing the act of signature, thus perpetuating a state of non-implementation, amounts to an in-practice reversal of the instrument, whose *object* is the institution of specific human rights oversight procedures and whose *purpose* is the fostering of women’s human rights protection by allowing an international body to directly intervene in such matters.

IV. Questions for Chile

34. We respectfully suggest that the Working Group ask Chile the following questions:

- (a) Could Chile produce the relevant figures reflecting:
 - (i) the number of abortions done following the authorisation of a legal representative since the approval of the abortion law,
 - (ii) in how many cases such authorisation has been denied,
 - (iii) the number of cases brought before the judiciary arising from a refusal to grant an authorisation, and finally
 - (iv) how these cases have been resolved?
- (b) Could Chile outline all steps undertaken by the national parliament since August 2001 concerning the draft assent approving the OP?
- (c) Are there any policies being implemented to guarantee women's right to an abortion? Particularly, are there policies that secure such access in locations where most of the health care professionals have presented a conscientious objection to the abortion procedure?
- (d) Could Chile provide information as to whether, and under what circumstances, medical care has been denied or delayed to pregnant women whose health is endangered by continuing their pregnancies in the interest of protection of fetal interest?
- (e) Could Chile produce figures reflecting the number of women who have died or suffered serious mental or physical health consequences due to the unavailability of abortions to preserve a woman's health?

V. Recommendations

35. We respectfully request the Working Group address the following recommendations to Chile:

- (a) Amend Chile's three grounds for interrupting a pregnancy, by:
 - (i) Allowing a woman to access an abortion when her mental and physical health, and not just her life, are at risk;
 - (ii) Allowing a woman to access an abortion when her pregnancy is the result of incest.
 - (iii) Abolishing the current legal representative notification requirement.
- (b) Amend Chile's conscientious objection exception to the right to an abortion by formulating informed policies that account for the urgent needs for interrupting a pregnancy, the availability of medical professionals in poorer or rural areas, or where the majority of professionals have objected to the practice, and the woman's specific ability to consult with a different medical professional if her first choice demonstrates a conscientious objection.

- (c) Prohibit institutional conscientious objection by hospitals and clinics, either public or private, that could serve as a barrier for women to access reproductive health services.
- (d) Ratify the Optional Protocol to the CEDAW Convention.

We appreciate the Council’s longstanding commitment to reproductive rights and to the eradication of discrimination in the provision of reproductive health care. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

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¹ Human Rights Council (hereinafter “HRC”), *Report of the Working Group on the Universal Periodic Review: Chile*, A/HRC/26/5 (2 April 2014), ¶¶ 121.2, 121.4-12.7, 121.133-121.143 [hereinafter “Second Cycle Report”].

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Chile—Addendum—View on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/26/5/Add.1, ¶ 5 [hereinafter “Chile’s Response”].

³ Chile’s Response, ¶ 15.

⁴ Chile’s Constitution, art. 19.1 provides: “La Constitución asegura a todas las personas: 1°. El derecho a la vida y a la integridad física y psíquica de la persona. La ley protege la vida del que está por nacer. La pena de muerte sólo podrá establecerse por delito contemplado en ley aprobada con quórum calificado. Se prohíbe la aplicación de todo apremio ilegítimo. (The Constitution assures to all persons: The right to life and to the physical and psychological integrity of the Person. The law protects the life of those about to be born. The death penalty can only be established for a crime provided for in a law adopted by qualified quorum. The application of any illegitimate pressure is prohibited.”).

⁵ The ten countries make the recommendations at Second Cycle Report, ¶¶ 121.2, 121.4-121.7. Chile took note of the recommendations at Chile’s Response, ¶ 7.

⁶ Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter “CEDAW”) Committee, *Concluding Observations: Chile*, U.N. Doc. CEDAW/C/CH/CO/4 (2006) ¶ 20; Committee on the Rights of the Child, *Concluding Observations: Chile*, U.N. Doc. CRC/C/CHL/CO/3 (2007), ¶ 56; HRC, *Concluding Observations: Chile*, U.N. Doc. CCP/C/CHL/CO/5 (2007), ¶ 8.

⁷ United Nations, *Interim Report of the Special Rapporteur on the Right to Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, U.N. Doc. A/66/254 (2011), ¶¶ 22, 22 n.11; Committee Against Torture, *Concluding Observations: Chile*, U.N. Doc. CAT/C/CR/32/5 (2004) ¶ 6(j); Diario de Sesiones del Senado, *Publicación Oficial (Chile)* (2012), http://www.senado.cl/appsenado/index.php?mo=sesionessala&ac=getDocumento&teseid=34415&idparl=230&tema=proyecto&nrobol=737307_P&legiid=&tagid=11.

⁸ Boletín N° 9895-11, *Regula la despenalización de la interrupción voluntaria del embarazo en tres causales*, http://www.camara.cl/pley/pley_detalle.aspx?prmID=10315&prmBoletin=9895-11 (last accessed May 25, 2018).

⁹ Oficio N° 2342-2017, p.18-19, Tribunal Constitucional, <https://www.camara.cl/sala/verComunicacion.aspx?comuid=36861> (last accessed May 25, 2018).

¹⁰ According to Chilean law¹ the maximum punishment for women who terminate their pregnancy voluntarily is 5 years (*See*: Chilean Penal Code, art. 344); and 2) for any sentence below 5 years it is possible to commute the sentence with community service. Between 2007 and 2017, 108 women have been sentenced for abortion, however none of them have been prosecuted, however they have been sanctioned in other ways (*See*: Gendarmería de Chile, Sistema integrado de la Gestión Judicial – SIAGJ- del Poder Judicial. The information was solicited by Corporación Miles according to the Law N° 20.285, which regulates access to public information). Yet, any type kind of criminalization and sanction on abortion represents itself a violation to women’s reproductive rights. Women who undergo abortions and are later investigated, face uncertainty, anxiety and social exclusion for simply asserting a choice over their own body or trying to protect their health.

¹¹ Health Code art. 119.

¹² *Id.*; Tribunal Constitucional, Sentencia Rol n. 3729(3751)-17-CPT (Aug. 18, 2017), <https://www.tribunalconstitucional.cl/expedientes?rol=3729-17> (last accessed May 18, 2018); Amnesty International Chile (Ana Píquer), *Por qué el protocolo de objeción de conciencia debiera indignar a todo el mundo* (Apr. 4, 2018), <https://www.amnesty.org/es/latest/news/2018/04/por-que-el-protocolo-de-objecion-de-conciencia-debiera-indignar-a-todo-el-mundo/> (last accessed May 22, 2018).

¹³ Argentina’s Penal Code (at Articles 85-88) prohibits abortion except when performed to prevent endangerment of the mother’s life or health, when this cannot be achieved by other means. *See also* Corte Constitucional, Sala Plena mayo 19, 2006, Sentencia C-355/2006 (pp.299-300) (Colom.), <http://www.corteconstitucional.gov.co/relatoria/2006/c-355-06.htm> (ruling that abortion is legally permitted when the continuation of pregnancy presents a risk of life or physical or mental health of the woman). In Mexico, abortion is regulated on the state level, and some states have permitted abortion to preserve a woman’s health. *See* Código Penal [CP] of Jalisco, art. 229,8-2-1982 (permitting abortion when the woman’s health would be seriously jeopardized by continuation of the pregnancy). In 2007, Mexico City’s legislature reformed articles 145 through 148 of the Criminal Code and Article 14 of the Health Code, effectively decriminalizing abortion during the first twelve weeks of pregnancy. *See* Decreto por el que se Reforma el Código Penal para el Distrito Federal y se Adiciona la Ley de Salud para el Distrito Federal, Gaceta Oficial del Distrito Federal, Abril 26, 2007 (Mex.), at 2-3. On August 28, 2008, Mexico City’s National Supreme Court upheld the law. *See* Acción de Inconstitucionalidad 146/2007 y Su Acumulada 147/2007, Pleno de la Suprema Corte de Justicia, SFJG, Novena Época, tomo XXIX, 08-2008 (Mex.)

¹⁴ International Covenant on Civil and Political Rights (hereinafter “ICCPR”), Dec. 16, 1966, 99 U.N.T.S 171.

¹⁵ HRC, General Comment 28 on Equality of Rights Between Men and Women, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000); Human Rights Watch, Q&A: Human Rights Law and Access to Abortion (Jul. 24, 2017).

¹⁶ HRC, Draft General Comment 36 on art. 6 of the ICCPR, on the Right to life (Jul. 2017).

¹⁷ See Concluding Observations on Poland, CCPR/CO/82/POL(2004), ¶ 8; Concluding Observations on Guatemala (2001), CCPR/CO/72/GTM, ¶ 19; Concluding Observations on Nicaragua, CCPR/C/NIC/CO/3(2008), ¶ 13; Concluding Observations on Ecuador, CCPR/C/79/Add.92 (1998), ¶ 11; Concluding Observations on Argentina, CCPR/CO/70/ARG(2000), ¶ 14; Concluding Observations on Peru, CCPR/CO/70/PER(2000), ¶20; Concluding Observations on Chile, CCPR/C/79/Add.104(1999), ¶ 15.

¹⁸ Committee for Economic, Social and Cultural Rights (hereinafter “CESCR”, General Comment 14, U.N. Doc E/C.12/2000/4, (Aug. 11, 2000), ¶8.

¹⁹ Article 12 of CEDAW states that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning.”

²⁰ CESCR, General Comment 16, U.N. Doc E/C.12/2005/4 (Aug. 11, 2005), ¶ 29.

²¹ CEDAW, art. 12(1).

²² CEDAW, art. 12(2).

²³ Instituto Nacional de Derechos Humanos, *Informe Anual Situación de los Derechos Humanos en Chile 2017*(Chile), 52, https://www.indh.cl/bb/wp-content/uploads/2017/12/01_Informe-Anual-2017.pdf (last accessed May 22, 2018).

²⁴ Luisa Cabal, et al. *Striking a Balance: Conscientious Objection and Reproductive Health Care from the Colombian Perspective*, Health and Human Rights, 2014, 16/2, <https://www.hhrjournal.org/2014/09/striking-a-balance-conscientious-objection-and-reproductive-health-care-from-the-colombian-perspective/> (last accessed on June 12, 2018).

²⁵ Tribunal Constitucional, Sentencia Rol n. 3729(3751)-17-CPT of Aug. 18, 2017, <https://www.tribunalconstitucional.cl/expedientes?rol=3729-17> (last accessed May 18, 2018); Amnesty International Chile (Ana Piquer), *Por qué el protocolo de objeción de conciencia debiera indignar a todo el mundo* (Apr. 4, 2018), <https://www.amnesty.org/es/latest/news/2018/04/por-que-el-protocolo-de-objecion-de-conciencia-debiera-indignar-a-todo-el-mundo/> (last accessed May 22, 2018).

²⁶ The Guardian, *Chilean president praises raped girl, 11, for going through with pregnancy* (July 9, 2013), <https://www.theguardian.com/world/2013/jul/10/chilean-president-praises-raped-pregnancy> (last accessed May 22, 2018).

²⁷ CNN, *Raped 11-year-old stirs an abortion debate in Chile*, (July 11, 2013), <http://www.cnn.com/2013/07/11/world/americas/chile-abortion-debate/index.html> (last accessed May 22, 2018).

²⁸ Ministerio de Salud, Resolución Exenta n. 61 del 22 de enero de 2018, http://www.minsal.cl/wp-content/uploads/2018/02/Protocolo_Objecion_Conciencia.pdf (last accessed May 22, 2018).

²⁹ Ministerio de Salud, Resolución Exenta n. 432 del 22 de marzo de 2018, <http://www.minsal.cl/wp-content/uploads/2018/02/Protocolo.pdf> (last accessed 22 May 2018).

³⁰ Contraloría General de la República, Dictámen n. 11781 del 9 de mayo de 2018, pp.3-7.

³¹ La Tercera, *Expertos de México y Uruguay entregan sus experiencias en aborto* (7 October 2017), <http://www2.latercera.com/noticia/expertos-mexico-uruguay-entregan-experiencias-aborto> (last accessed May 22, 2018).

³² El País, *Médicos objetores ante el aborto legal en Uruguay* (May 5, 2015), https://elpais.com/internacional/2015/05/05/actualidad/1430856524_552810.html (last accessed May 22, 2018); El Mostrador, *Aborto y objeción de conciencia: Ministro de Salud asegura que gobierno no quiere “bloquear la ley”, pero experiencia dice lo contrario* (April 2, 2018), <http://www.elmostrador.cl/braga/2018/04/02/aborto-y-objecion-de-conciencia-ministro-de-salud-asegura-que-gobierno-no-quiere-bloquear-la-ley-pero-experiencia-dice-lo-contrario> (last accessed on May 22, 2018).

³³ El Mercurio Online, *Revés para el Gobierno en aborto: Contraloría declara ilegal cambios al protocolo de objeción de conciencia* (May 9, 2018), <http://www.emol.com/noticias/Nacional/2018/05/09/905613/Aborto-tres-causales-Contraloria-declara-ilegal-cambios-del-Gobierno-al-protocolo-de-objecion-de-conciencia.html> (last accessed May 22, 2018).

³⁴ Publimetro, *Estos son siete los centros de salud con objeción de conciencia ante casos de aborto* (March 19, 2018), <https://www.publimetro.cl/cl/noticias/2018/03/19/objecion-conciencia-aborto.html> (last accessed May 22, 2018).

³⁵ La Tercera, *Gremio de matrones en picada por médicos del hospital de Osorno que se acogieron a objeción de conciencia* (Apr. 14, 2018), <http://www.latercera.com/nacional/noticia/gremio-de-matrones-en-picada-por-medicos-del-hospital-de-osorno-que-se-acogieron-a-objecion-de-conciencia/133305> (last accessed May 22, 2018).

³⁶ 84,305 women are part of the urban and rural population of Osorno. Available at <https://resultados.censo2017.cl/Region?R=R10> (last accessed June 12, 2018).

³⁷ OHCHR, *Serie de información sobre salud y derechos sexuales y reproductivos*, http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB_SP.pdf (last accessed June 12, 2018).

³⁸ Sentencia del Tribunal Constitucional de Chile, 28 de agosto de 2017, pp.85 and 123 (*derechos personalísimos*).

³⁹ Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (hereinafter “CAT”) and its Optional Protocol, ratified by Chile respectively on Sep. 30, 1988 and on Dec. 12, 2008 – see, in particular, CAT art. 16 and Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53 (Feb. 1, 2013); ICCPR and its Second Optional Protocol, ratified by Chile respectively on Feb. 10, 1972 and on Sep. 26, 2008 – see, in particular, CCPR arts. 6, 17, and 26 as well as General Comment 36 on art. 6 of the ICCPR, on the Right to Life, Advance Unedited Version, Revised draft prepared by the Rapporteur, HRC; CEDAW, ratified by Chile on Dec. 7, 1989 – see, in particular, CCPR arts. 2, 3, 5, 12, 14.2.(b), 16.1.(e) as well as General Recommendation 24: Art. 12 of the Convention (women and health) of the CEDAW, Twentieth Session (1999); International Covenant on Economic, Social and Cultural Rights, ratified by Chile (Feb. 10, 1972) – see, in particular, CESCR art. 12 as well as General Comment 22 (2016) on the Right to Sexual and Reproductive Health of the Committee on Economic, Social and Cultural Rights, United Nations E/C.12/GC/22, Economic and Social Council dated May 2, 2016; Convention on the Rights of the Child and its two Optional Protocols, ratified by Chile respectively on Aug. 13, 1999, on Jul. 31, 2003, and on Feb. 6, 2003 – see, in particular, CRC arts. 6 and 24 as well as the view taken by the Committee on the Rights of the Child with regards to the right of life of the child as not excluding abortion, e.g., Committee on the Rights of the Child, 22nd Session, Concluding Observations: Russian Federation, CRC/C/15/Add.110 (1999) and Committee on the Rights of the Child, 12th Session, Initial Report of China, CRC/C/SR.298 (1996) and Committee on the Rights of the Child, 26th Session, Concluding Observations: Palau, CRC/C/15/Add.149 (2001); Convention on the Rights of Persons with Disabilities, ratified by Chile on Jul. 29, 2008 – see, in particular, CRPD Preamble (paragraphs (e), (q), (r), (v)) and arts. 1, 6, 7, 16, 17, 19, 21, 22, 23, 25 as well as the Comments on the draft General Comment 36 of the HRC on art. 6 of the ICCPR submitted by the Committee on the Rights of Persons with Disabilities.

⁴⁰ The OP entered into force on December 22, 2000, in accordance with the provision contained in its article 16.

⁴¹ Draft Law trackers of the lower and higher chambers of the Chilean Parliament: https://www.camara.cl/pley/pley_detalle.aspx?prmID=1748&prmBL=2667-10; http://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=2667-10.

⁴² For a recent account, see the intervention of Consuelo Contreras Largo, Director of Chilean National Human Rights Institute, at the 2018 review of Chile by CEDAW. Reported in *CEDAW discusses situation of women in Malaysia, Chile, Republic of Korea and Fiji with civil society representatives* (<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22673&LangID=E>).

⁴³ See, e.g., CEDAW/C/CHL/7 (March 9, 2018), Concluding Observations on the Seventh Periodic Report of Chile, ¶¶ 10, 11.

⁴⁴ See, e.g., A/HRC/12/10 (June 4, 2009), Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, Chile, ¶ 96.3.; A/HRC/26/5, Report of the Working Group on the Universal Periodic Review, Chile, ¶¶ 121.2, 121.4-7.

⁴⁵ A/HRC/26/5/Add.1/Rev.1, Informe del Grupo de Trabajo sobre el Examen Periódico Universal, Chile, Adición, Opiniones sobre las conclusiones y/o recomendaciones, compromisos voluntarios y respuestas presentadas por el Estado examinado, ¶5.

⁴⁶ For most recent instances, see CEDAW/C/SR.1574, Consideration of Reports Submitted by States Parties under art. 18 of the Convention. Seventh Periodic Report of Chile, ¶20. CEDAW examines the report of Chile (Feb. 21, 2018) (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22688&LangID=E>).