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**STATUS OF HUMAN RIGHTS IN THE REPUBLIC OF CHILE
FOR THE 46TH SESSION OF THE
UNIVERSAL PERIODIC REVIEW**

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Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to discuss the status of human rights in the Republic of Chile (Chile) for the 46th session of the Universal Periodic Review (UPR).

Background

2. Chile is a country in South America and has an estimated population of 18.5 million people.¹ The country is predominantly Christian, with approximately 60% of the population identifying as Roman Catholic, 18% as Evangelical, 4% as atheist or agnostic, and 17% as none.²

3. Chile's previous UPR was held on January 22, 2019.³ As a result of the review, Chile received 265 recommendations, 210 of which it accepted.⁴ On the issue of abortion, it was recommended by Slovenia, but only noted by Chile, that the government "[e]xtend the scope of [Law] No. 21.030 to decriminalize abortion in all cases and apply strict justification requirements to prevent the blanket use of conscientious objection."⁵ Chile received eight recommendations regarding abortion, all of which were only noted by the country.⁶ Additionally, it was recommended by Thailand, and supported by Chile, that the government "[t]ake measures to effectively combat trafficking in persons, especially women and children, including by reviewing its criminal legislation on trafficking in persons in line with international standards, ensuring the prosecution of perpetrators and providing rehabilitation and compensation to victims."⁷ Chile received no recommendations on the issue of religious freedom.

Legal Framework

Abortion

4. The Constitution of Chile protects the right to life under Article 19(1), which states that all people are guaranteed "[t]he right to life and to the physical and mental integrity of the person. The law protects the life of the one about to be born."⁸

5. Article 119 ter, of Chile's Law No. 21.030 Regulating the Voluntary Interruption of Pregnancy on Three Grounds allows for abortion in limited circumstances. Under this law:

Mediating the will of the woman, the termination of her pregnancy by a surgeon is authorized in the terms regulated in the following articles, when:

- 1) The woman is at vital risk, so that the interruption of the pregnancy avoids danger to her life.

- 2) The embryo or fetus suffers from an acquired or genetic congenital pathological condition, incompatible with independent extrauterine life, in any case of a lethal nature.
- 3) It is the result of a rape, provided that no more than twelve weeks of gestation have elapsed. In the case of a girl under 14 years of age, the interruption of the pregnancy may be carried out as long as no more than fourteen weeks of gestation have elapsed.⁹

6. Further, the same law allows for conscientious objection of doctors. Doctors who claim the right to conscientious objection must inform the medical facility, and the woman seeking an abortion must be referred to a doctor without a conscientious objection.¹⁰

7. Chile is also a party to the International Covenant on Civil and Political Rights (ICCPR).¹¹ Under Article 6 of the ICCPR, “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹² Also, under Article 19 of the ICCPR, “[e]veryone shall have the right to hold opinions without interference.”¹³ In addition, Chile has a responsibility to uphold pro-life principles enshrined in other international agreements such as the UN Charter, the Universal Declaration of Human Rights (UDHR), and the 1994 Cairo Conference on Population and Development.

Human Trafficking

8. Article 19(2) of Chile’s Constitution guarantees “[e]quality before the law. In Chile there are neither privilege persons nor groups. In Chile, there are no slaves, and anyone that sets foot on its territory will become free. Men and women are equal before the law.”¹⁴

9. Under Article 411 of Chile’s penal code, human trafficking is a punishable offense. Article 411 ter states, “[w]hoever promotes or facilitates the entry into or exit from the country of persons to engage in prostitution in the national territory or abroad shall be punished by a maximum term of lesser imprisonment and a fine of 20 monthly tax units.”¹⁵ A broader definition of human trafficking under Article 411 quáter states that:

Whoever by violence, intimidation, coercion, deception, abuse of power, taking advantage of a position of vulnerability or dependency of the victim, or the giving or receiving of payments or other benefits to achieve the consent of a person having control over another detains, transports, harbors or receives persons to be subject to some form of sexual exploitation, including pornography, forced labor or services, servitude or slavery or practices similar to it, removal of organs, shall be punished by the penalty of imprisonment in its minimum to medium degrees [5 to 15 years’ imprisonment] and a fine of fifty to one hundred monthly tax units.¹⁶

Additionally, it provides that if the victim is a minor, the penalty would be ten to fifteen years imprisonment, and that “[w]hoever promotes, facilitate[s] or fund[s] the implementation of the acts described in this article shall be punished for the crime.”¹⁷

10. However, in Chile, prostitution is legal, but the operation of brothels is prohibited.¹⁸

11. Article 367 of Chile’s penal code protects against the exploitation of minors for prostitution. Article 367 states:

Anyone who promotes or facilitates the prostitution of minors to satisfy the wishes of another, will suffer the penalty of imprisonment minor in its maximum degree. If habituality, abuse of authority or trust or deception occurs, penalties of imprisonment in any of its degrees and a fine of thirty-one to thirty-five tax units per month shall be imposed.¹⁹

Article 367 ter further states that “[a]nyone who, in exchange for money or other benefits of any kind, obtains sexual services by persons over fourteen but under eighteen years of age, without the intervention of the circumstances of the crimes of rape or statutory rape, He shall be punished by imprisonment in its maximum degree.”²⁰

12. Moreover, the ICCPR holds that “[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude.”²¹

13. Chile is also a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.²² Under Article 9 sec. 1 of this Protocol:

States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.²³

14. Additionally, Chile is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).²⁴ Under Article 6 of the CEDAW, “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”²⁵

Abortion

15. In 2017, Chile passed Law No. 21.030, which expanded access to abortion in cases of rape, fetal abnormality, or if continuing pregnancy poses a risk to the life of the mother.²⁶ Between 2017 and January 2022, only 2,313 legal abortions were reported²⁷ in comparison to the roughly 170,000 abortions performed annually.²⁸ So, while abortion has been partially permitted since 2017, most abortions are still conducted illegally.

16. In September 2022, voters overwhelmingly rejected the 2022 draft of Chile’s Constitution, promoted by the residing president, Gabriel Boric, and his leftist party,²⁹ which would have eliminated the protection of the preborn.³⁰ The draft stated in Article 21 that “[e]veryone has the right to life and personal integrity. This includes physical, psychosocial, sexual and affective integrity.”³¹ Furthermore, the 2022 draft would have added the right to an abortion in Article 61, which stated “[e]veryone is the holder of sexual and reproductive rights. These include, among others, the right to decide freely, autonomously and informed about one’s own body, about the exercise of sexuality, reproduction, pleasure and contraception.”³²

The process of another draft is already underway, and in December 2023, a vote will be held to approve or reject the second draft.³³

17. It is encouraging that Chile’s current law on abortion upholds protections for the life of the preborn. For decades, Chile has recognized the inherent value of human life, a position that is consistent with numerous international documents and agreements. Chile’s recent push to expand access to abortion, however, is concerning as it is attempting to change its constitution to be in direct contravention of those same documents. For example, since the 1994 Cairo Conference on Population and Development, U.N. Member States have had an affirmative commitment to “reduce the recourse to abortion” and to “take appropriate steps to help women avoid abortion, *which in no case should be promoted as a method of family planning.*”³⁴ Additionally, the UDHR requires “recognition of the inherent dignity and of the equal and inalienable rights of *all* members of the human family [as] the foundation of freedom, justice and peace in the world,” and provides that “[e]veryone has the right to life”³⁵ Article 6 of the ICCPR likewise states that “[e]very human being has the inherent right to life. This right shall be protected by law.”³⁶ And, the preamble to the United Nations Charter states that “the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person”³⁷ Clearly, these important and fundamental instruments require the protection of human life, and none of them contains a “right to an abortion.”

18. Chile’s current laws on abortion are also consistent with many other U.N. Member States. Currently, out of the 193 U.N. Member States, an overwhelming majority (109) of them have strict limits on abortion.³⁸ Even in the sixty-seven countries that have varying gestational limits for on-demand abortions, the majority of these (52) have a gestational limit of twelve weeks or less.³⁹ Interestingly, the countries that allow abortion up to a certain time period show that even those countries know the inherent value of life because even they don’t allow a *carte blanche* access to abortion.

19. By expanding access to abortion, not only will Chile go against its longstanding moral values to protect life and comply with international human rights law, it will also result in physical and psychological harm to Chilean women who would undergo abortion. It has been well-documented that abortion can result in the perforation of the uterus or the laceration of the cervix.⁴⁰ Furthermore, abortion deprives women of the health benefits that come from continuing pregnancy, such as the elimination of the protective effect a full-term pregnancy has against breast cancer.⁴¹ Abortion can also mask other dangerous symptoms, like an undiagnosed ectopic pregnancy.⁴² The World Health Organization even acknowledges the complications of abortion in its 2022 Abortion Care Guideline.⁴³

20. Furthermore, women who have undergone abortions have also been reported to experience negative psychological side effects, from shame to drug abuse to suicidal thoughts.⁴⁴ All of these reasons show why Chile must protect both women and preborn children from the devastating effects of abortion.

21. Chile’s abortion law also provides protections for conscientious objectors which is in line with Articles 6 and 19 of the ICCPR. Abortion is one of the gravest of all offenses against human life because it entails the deliberate killing of an innocent human being. Abortion is not healthcare. Chile’s law protects healthcare workers who refuse to carry out or take part in a procedure that deliberately takes the life of an innocent human being.

Human Trafficking

22. Chile is considered an origin, transit, and destination country for human trafficking, primarily for sexual and labor exploitation.⁴⁵ Most perpetrators are mostly Chilean nationals, and they are increasingly making use of the internet to lure victims and use violence to intimidate and confine bonded persons.⁴⁶ Dismantled networks show sophisticated levels of organization, with international networks mainly involving people from Latin America, targeting victims from Nepal, India, Paraguay, Argentina, the Dominican Republic, and Ecuador among other countries.⁴⁷ It is understood that the human smuggling market involves state actors facilitation, criminal networks with international coordination, and individuals facilitating entry through irregular border crossings.⁴⁸ Additionally, there are many reports of corruption, particularly at Chile's borders, which directly or indirectly facilitates criminal human smuggling through protection or lack of control.⁴⁹ Furthermore, even though a joint task force between Carabineros, Chilean investigative police (PDI), customs, the armed forces, and the civil air control agency has been created to combat organized crime at Chile's northern border, the borders present many vulnerabilities, including numerous unauthorized border crossing points.⁵⁰ In response to the alleged corruption, President Sebastian Piñera announced a plan to incorporate open government measures, anti-bribery and corruption measures, open data, and public probity, which anti-corruption institutions outside the government have aligned with.⁵¹ Accordingly, corruption levels are perceived as fairly low in the country although there still may be prevalent instances of it.⁵² While Chile has one of the lowest regional rates of investment in the judicial system or judges per capita, the judiciary is considered largely independent.⁵³ Overall, the government has a fairly robust framework to provide support to victims of modern slavery, including Chile's Victims Support Programme that assists victims of human smuggling and trafficking with centers in every region and the prosecutor's office, which has a victim and witness attention section to provide support and protection to those going through a penal process.⁵⁴

23. While it appears the Chilean government has the correct legal framework and institutional foundation for combatting criminal activity including human trafficking and smuggling, those issues are still prevalent in the area, which may be due to the general environment of the region. For instance, criminal gangs such as Tren de Aragua, a gang in Venezuela, continually increases the threat of human trafficking in Chile as it expands its influence and territory in South America stretching into Chile.⁵⁵ Tren de Aragua targets migrants and forces them into sexual trafficking or to transport illegal drugs.⁵⁶ The group coerces victims by using family members as hostages or making victims believe that they are indebted to the gang.⁵⁷ For example, in 2022, Tren de Aragua kidnapped a married woman and her daughter from Bolivia and took them to Chile.⁵⁸ The gang then demanded that her husband transport illegal drugs from Bolivia to Chile in order to secure the release of his wife and daughter.⁵⁹ However, the man was arrested by authorities, and the wife and daughter are still missing.⁶⁰ Additionally, migrants may be captured by other criminal gangs and forced to pay ransom money, or others end up "borrowing" ransom money from gangs, and then, in order to pay them back, some are forced into sexual exploitation including prostitution.⁶¹ District Attorney General Raúl Arancibia has noted how criminals extort sex workers in exchange for "security" and immunity from harm.⁶² Legal prostitution more easily enables criminals and gangs sexually exploiting migrants without any repercussions.

24. Amid this crime infested region, Chilean authorities are still attempting to enforce the law. Although Chile shows little records of arrest for human trafficking, there are a few examples. On September 29, 2021, Chile's Criminal Investigation Police arrested nine

individuals for operating a migrant smuggling ring.⁶³ This ring was accused of smuggling approximately 1,000 Haitian immigrants, including at least 267 children as young as six years old,⁶⁴ from Chile with the goal of reaching either Mexico or the United States.⁶⁵ Some of the migrants being smuggled were children who were not traveling with their real parents.⁶⁶

25. Also, on November 5, 2019, police arrested eight people for human trafficking and sexual exploitation.⁶⁷ The traffickers included two Colombians and six Chileans, one of whom was a professor and accused of financing the operations.⁶⁸ The victims were Colombian women between the ages of eighteen and twenty-nine who had been taken to various cities in Chile and forced into prostitution.⁶⁹

Recommendations

26. We ask that, consistent with its constitutional requirement, Chile continue its efforts to protect life at all stages. We also want to encourage Chile to remain steadfast in protecting the life of preborn babies by resisting calls from the international community and domestic actors to expand this harmful practice.

27. Further, Chile must remain vigilant at effectively enforcing its current laws on human trafficking in spite of the geographical and societal challenges it faces. Further, in order to protect girls and women from sexual exploitation, Chile must reform its laws regarding prostitution and criminalize the purchasing of sex, which will help decrease the sexual exploitation of migrants.

¹ Chile, THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/chile/> (Aug. 29, 2023).

² *Id.*

³ *Universal Periodic Review – Chile*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/cl-index> (last visited June 19, 2023).

⁴ *Chile Infographic 32nd*, OHCHR, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session32/CL/Infographic_Chile.pdf (last visited Sept. 5, 2023).

⁵ UPR of Chile (3rd Cycle – 32nd Session): Thematic List of Recommendations, <https://www.ohchr.org/en/hr-bodies/upr/cl-index> (last visited Sept. 5, 2023).

⁶ *Id.*

⁷ *Id.*

⁸ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE, art. 19(1), https://constituteproject.org/constitution/Chile_2021.pdf?lang=en.

⁹ Law No. 21.030 of Sept. 23, 2017, art. 119. <https://reproductiverights.org/wp-content/uploads/2022/01/Ley-21030-Regula-la-Despenalizacion-de-la-Interrupcion-Voluntaria-del-Embarazo-en-Tres-Causales.pdf> (unofficial translation)

¹⁰ *Id.*

¹¹ *Ratification Status for Chile*, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=35&Lang=EN (last visited Sept. 5, 2023).

¹² International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [hereinafter ICCPR].

¹³ *Id.* art. 19.

¹⁴ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE art. 19(2), *supra* note 8.

¹⁵ CHILE PENAL CODE art. 411 ter. <https://antislaverylaw.ac.uk/country/chile/>.

¹⁶ *Id.* art. 411 quáter.

¹⁷ *Id.*

¹⁸ *Countries Where Prostitution is Legal*, WISE VOTER, <https://wisevoter.com/country-rankings/countries-where-prostitution-is-legal/#chile> (last visited July 11, 2023).

¹⁹ CHILE PENAL CODE art. 367, *supra* note 15.

²⁰ *Id.* art 367 ter.

²¹ ICCPR art. 8, *supra* note 12.

²² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-a&chapter=18 (last visited June 19, 2023).

²³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime art. 9, § 1, *adopted* Nov. 15, 2000, 2237 U.N.T.S. 319, https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-38%20AM/Ch_XVIII_12_ap.pdf.

²⁴ *Ratification Status for Chile*, *supra* note 11.

²⁵ Convention on the Elimination of All Forms of Discrimination Against Women art. 6, *adopted* Dec. 18, 1979, 1249 U.N.T.S.

²⁶ *Chile: Law Permits Abortion on three Grounds*, LIBRARY OF CONGRESS (May 25, 2018), <https://www.loc.gov/item/global-legal-monitor/2018-05-25/chile-law-permits-abortion-on-three-grounds/>.

²⁷ Charis McGowan, *Chile's Abortion Rights Movement Faces Uphill Battle*, ALJAZEERA (Mar. 10, 2023), <https://www.aljazeera.com/news/2023/3/10/chiles-abortion-rights-movement-faces-uphill-battle>.

²⁸ *Chile*, GUTTMACHER INST., <https://www.guttmacher.org/regions/latin-america-caribbean/chile> (last visited Sept. 5, 2023).

²⁹ *Chile Overwhelmingly Rejects Progressive New Constitution*, REUTERS (Sept. 5 2022), <https://www.reuters.com/world/americas/chileans-head-polls-decide-progressive-new-constitution-2022-09-04/>.

³⁰ *Chile Starts Second Attempt to Draft New Constitution*, REUTERS (Mar. 6, 2023), <https://www.reuters.com/world/americas/chile-starts-second-attempt-draft-new-constitution-2023-03-06/>.

³¹ Chile's Draft Constitution of 2022, art. 21, https://constituteproject.org/constitution/Chile_2022D.pdf?lang=en.

³² *Id.* art. 61.

³³ *Chile Starts Second Attempt to Draft New Constitution*, *supra* note 30.

³⁴ *Report of the International Conference on Population and Development*, U.N. Doc. A/CONF/F.171/13/Rev.1 at 58 (5-13 Sept. 1994).

³⁵ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, pmbl., art. 3 (Dec. 10, 1948) (emphasis added).

³⁶ ICCPR art. 6, *supra* note 12.

³⁷ U.N. Charter pmbl.

³⁸ *The World's Abortion Laws*, CTR. FOR REPROD. RTS. (Sep. 27, 2022), https://reproductiverights.org/wp-content/uploads/2022/09/WALM_20220927_V1.pdf.

³⁹ *Id.*

⁴⁰ *Women's Right to Know: Abortion & Pregnancy Risks*, LA. DEP'T OF HEALTH, <https://ldh.la.gov/page/915> (last visited June 19, 2023).

⁴¹ See Justin D. Heminger, *Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco*, 54 CATH. U.L. REV. 1273, 1288-89, 1290 n.119 (2005).

⁴² See generally *Physical Effects of Abortion: Fact Sheets, News, Articles, Links to Published Studies and More*, THE UNCHOICE, www.theunchoice.com/physical.htm (last visited Sept. 12, 2023) (listing sequelae and referencing sources).

⁴³ *Abortion Care Guideline*, WORLD HEALTH ORGANIZATION & HUMAN REPRODUCTION PROGRAMME 79 (Mar. 8, 2022), <https://www.who.int/publications/i/item/9789240039483>

⁴⁴ Priscilla K. Coleman et al., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their Experiences*, 22 J. AM. PHYSICIANS & SURGEONS 113, 116-17 (2017), <https://www.jpands.org/vol22no4/coleman.pdf>.

⁴⁵ *Chile*, GLOBAL ORGANIZED CRIME INDEX, <https://ocindex.net/country/chile> (last visited Sept. 12, 2023).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Laura Ávila, *How Tren de Aragua Controls the Destiny of Migrants from Venezuela to Chile*, INSIGHT CRIME (July 25, 2022), <https://insightcrime.org/news/tren-de-aragua-controls-destiny-migrants-venezuela-chile/>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Tibusay Zea, *Chile Grapples with Transnational Criminal Organizations Targeting Migrants and Locals*, THE WORLD (Nov. 4, 2022), <https://theworld.org/stories/2022-11-04/chile-grapples-transnational-criminal-organizations-targeting-migrants-and-locals>.

⁶² *Id.*

⁶³ *Chile: Police Dismantle Crime Group Smuggling Hundreds of Children*, INTERPOL (Oct. 4, 2021), <https://www.interpol.int/en/News-and-Events/News/2021/Chile-Police-dismantle-crime-group-smuggling-hundreds-of-children>.

⁶⁴ Henry Pope, *Chilean Authorities Arrest 9 Suspected Human Smugglers*, OCCRP (Oct. 7, 2021), <https://www.occrp.org/en/daily/15288-chilean-authorities-arrest-9-suspected-human-smugglers>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Maria Paula Chaparro, *Human Trafficking Complaints Rise by 500 Percent in Chile*, INSIGHT CRIME (Nov. 18, 2019), <https://insightcrime.org/news/brief/human-trafficking-complaints-rise-in-chile/>.

⁶⁸ *Id.*

⁶⁹ *Id.*