

July 9, 2013

Jaime Mañalich Muxi
Ministro de Salud de la República de Chile
Mac Iver 541
Santiago, Chile

Re: Denial of Life-Saving Abortion to Pregnant Chilean Girl Violates International Human Rights Law

Dear Mr. Mañalich,

On behalf of the Global Justice Center, I am writing to urge you to immediately permit doctors to perform a therapeutic abortion to save the life and prevent further cruel, inhuman and degrading treatment of a young Chilean girl, “Belén,” who faces a life-threatening pregnancy resulting from rape.¹

Belén, an 11-year old girl, was impregnated after being raped repeatedly for more than two weeks by her mother’s boyfriend.² According to Belén’s doctors, the pregnancy has placed her life at risk. If, however, her doctors were to provide her a life-saving abortion, they and Belén would both be found in criminal violation of Chile’s absolute ban on abortion, which allows no exceptions for rape, incest or life of the mother. As Chilean law now stands, an 11-year old girl will be forced to endure a life-threatening pregnancy that will either kill her or compel her, a child herself, to give birth to and raise the child of her rapist. This forced pregnancy will continue the violation of her bodily integrity and sovereignty, extending the pain and abuse she has already experienced.³

We draw your attention to the very severe health consequences that rape, pregnancy and child-bearing have on the body, not to mention the mental health, of a young girl such as Belén. According to experts, it is “dangerous for young girls to deliver a child at the state when their bodies are not yet mature” as it “can result in the rupture of the uterus and death of the child.”⁴ Contrary to President Piñera’s recent assertion that Belén was prepared to “have and take care of her baby,”⁵ young girls who have been impregnated through sexual violence suffer from devastating psychological consequences:

The psychological consequences for child survivors of sexual violence can be multiple and long-lasting, including emotional effects (such as post-traumatic stress disorder, somatic and conversion disorders), intense feelings of terror, shock, rage and shame, depression, loss of self-esteem, loss of confidence, self-blame, memory loss, nightmares and day-time ‘flashbacks’ to the rape. Many of these symptoms overlap, and if left untreated, the psychological impact of sexual violence and abuse can strongly influence children’s ability to form meaningful relationships as adults with others, including their own children.⁶

We call on your government to permit a therapeutic abortion as the only humane response to Belén’s predicament, and to reform your restrictive ban on abortion so that future girls and women are not subjected to the physical and psychological dangers of unwanted and life-threatening pregnancies. Each day that doctors are prevented from providing Belén a therapeutic abortion heightens the risk to her life and physical and mental health and perpetuates her cruel, inhuman and degrading treatment at the hands of your government.

International Human Rights law—including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁷ International Covenant on Civil and Political Rights (ICCPR),⁸ and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁹—protects a woman or girl’s right to an abortion in the context of her rights to life and health¹⁰ and her right to be free from torture and cruel, inhuman and degrading treatment.¹¹ Chile, as a nation that has signed and ratified CEDAW, ICCPR and CAT, must heed the unanimous call of the treaty bodies that interpret these binding human rights conventions: provide the option of abortion to women and girls who face life-threatening pregnancies and pregnancies that result from rape, and protect them and their doctors from criminal prosecution. Anything less is a violation of the fundamental and non-derogable human rights of Chilean citizens.

The Committee on the Elimination of Discrimination against Women has found Chile’s abortion ban to be incompatible with its requirements and recommended that Chile reform its law to bring it in accordance with CEDAW. Specifically, the Committee expressed “concern[] that abortion under all circumstances is a punishable offence under Chilean law, which may lead women to seek unsafe, illegal abortions, with consequent risks to their life and health, and that clandestine abortions are a major cause of maternal mortality.”¹² It urged Chile to “[r]eview its existing legislation on abortion with a view to decriminalizing it in cases of rape, incest or threats to the health or life of the mother. . . .”¹³ Condemnation of Chile’s absolute ban on abortion has been unanimous among UN human rights treaty bodies who have considered the issue. For instance, the Human Rights Committee, Committee against Torture, and Committee on Economic, Social and Cultural Rights have all deemed Chile’s abortion ban in violation of human rights norms and urged its reform.¹⁴

In a case with exceedingly similar facts to Belén’s situation, the Human Rights Committee, under Optional Protocol 1 to the ICCPR, found Peru to have violated the ICCPR’s prohibition on “torture or . . . cruel, inhuman or degrading treatment or punishment” by failing to ensure that a therapeutic abortion was given to a teenager with a life-threatening and emotionally distressing pregnancy.¹⁵ As a result, Peru was ordered to “furnish the author with an effective remedy, including compensation.”¹⁶ Chile, as a party to Optional Protocol 1, could likewise be held to have violated Belén’s right to be free from torture and cruel, inhuman and degrading treatment, as well as possibly her right to life, if the government does not immediately alleviate her suffering and risk of death by permitting her a therapeutic abortion.

In May of this year, the Inter-American Court of Human Rights—to whose jurisdiction Chile has submitted—ordered the government of El Salvador to permit doctors to perform a therapeutic abortion for an ill young woman, “Beatriz,” whose pregnancy placed her life at risk.¹⁷ The Court argued that the State was “obligated to guarantee that the treating medical team has the corresponding protection [i.e. freedom from prosecution] to fully exercise its function according to the decisions that, based on medical science, said medical team should adopt.”¹⁸ In this case, doctors had requested and been denied permission from the State to provide a life-saving abortion to Beatriz. In this decision, the Court made clear that the mandate to protect “the right to life and personal integrity”¹⁹ of women facing dangerous pregnancies trumps any contrary national abortion laws.

Again, we urge your government to save the life of Belén, by immediately permitting her doctors to perform a therapeutic abortion without fear of legal consequences. Furthermore, we call upon your government to change the penal code to decriminalize abortion in all circumstances, or at the very least, in the case of life- and health-threatening pregnancies as well as pregnancies resulting from rape or incest.

Decriminalization of abortion is in line with fundamental human rights norms, which Chile is under an obligation to uphold.

We thank you for your urgent attention to this matter.

Sincerely,



Janet Benshoof
President and Founder

¹ See Nicole Rojas, *Eleven-Year-Old Girl's Rape Sparks National Abortion Debate in Chile*, LATINOS POST, July 6, 2013, available at <http://www.latinospost.com/articles/23040/20130706/eleven-year-old-girls-rape-sparks-national-abortion-debate-chile.htm>.

² Sabrina Bachai, *11-Year Old Chilean Girl Raped -- Legally Not Allowed to Have an Abortion*, Medical Daily, July 6, 2013, available at <http://www.medicaldaily.com/articles/17153/20130706/11-year-old-chilean-girl-raped-legally-abortion.htm>.

³ See Concluding observations of the Committee against Torture: Nicaragua, UN Doc. CAT/C/NIC/CO/1 (2009), para.16 (expressing alarm at a State's "general prohibition of abortion . . . even in cases of rape, incest or apparently life-threatening pregnancies," and arguing that "[f]or the woman in question, this situation entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression.").

⁴ Helen Liebling, Henny Slegh, & Benoit Ruratotoye, *Women and Girls Bearing Children through Rape in Goma, Eastern Congo: Stigma, Health and Justice Responses*, Itupale Online Journal of African Studies, Vol. IV, 25 (2012).

⁵ See *Chile's Pintera stokes abortion row over rape victim*, BBC News, July 10, 2013, available at <http://www.bbc.co.uk/news/world-latin-america-23253296>.

⁶ Save the Children, *Unspeakable Crimes against Children: Sexual Violence in Conflict* (2013), 16.

⁷ Signed and ratified by Chile.

⁸ Signed and ratified by Chile.

⁹ Signed and ratified by Chile.

¹⁰ See Report of the Committee on the Elimination of Discrimination against Women, Twentieth & Twenty-first sessions, UN Doc. A/54/38/Rev.1 (1999) (regarding Colombia), para. 393 ("The Committee notes with great concern that abortion, which is the second cause of maternal deaths in Colombia, is punishable as an illegal act. No exceptions are made to that prohibition, including where the mother's life is in danger or to safeguard her physical or mental health or in cases where the mother has been raped. The Committee is also concerned that women who seek treatment for induced abortions, women who seek an illegal abortion and the doctors who perform them are subject to prosecution. The Committee believes that legal provisions on abortion constitute a violation of the rights of women to health and life and of article 12 of the Convention"); Concluding observations of the Human Rights Committee: Chile, UN Doc. CCPR/C/CHL/CO/5 (2007), para. 8 ("The Committee reiterates its concern about Chile's unduly restrictive abortion laws, particularly in cases where the mother's life is in danger. The Committee regrets the fact that the Chilean Government has no plans to legislate in this area (article 6 of the Covenant [right to life]). The State party should amend its abortion laws to help women avoid unwanted pregnancies and not have to resort to illegal abortions that could put their lives at risk."); Concluding observations of the Human Rights Committee: Poland, UN Doc. CCPR/CO/82/POL (2004), para. 8 ("The Committee reiterates its deep concern about restrictive abortion laws in Poland, which may incite women to seek unsafe, illegal abortions, with attendant risks to their life and health.").

¹¹ See Human Rights Committee, *K.L. v. Peru*, Comm. No. 1153/2003, 24 October 2005, UN Doc. CCPR/C/85/D/1153/2003) (finding Peru in violation of Article 7 of the International Covenant on Civil and Political Rights [Prohibition of torture and other cruel, inhuman or degrading treatment or punishment] for denying a woman access to a therapeutic abortion); Concluding observations of the Committee against Torture: Nicaragua, UN Doc. CAT/C/NIC/CO/1 (2009), para. 16; Conclusions and recommendations of the Committee against Torture: Peru, UN Doc. CAT/C/PER/CO/4 (2006), para. 23 ("Current legislation severely restricts access to voluntary abortion, even in cases of rape, leading to grave consequences, including the unnecessary deaths of women. According to reports received, the State party has failed to take

steps to prevent acts that put women's physical and mental health at grave risk and that constitute cruel and inhuman treatment.”).

¹² Concluding Observations of the Committee on the Elimination of Discrimination against Women: Chile, UN Doc. CEDAW/C/CHI/CO/4 (2006), paras. 19, 20.

¹³ Conclusions and recommendations of the Committee on the Elimination of Discrimination against Women: Chile, UN Doc. CEDAW/C/CHL/CO/5-6 (2012), para. 35(d).

¹⁴ Concluding Observations of the Human Rights Committee: Chile, UN Doc. CCPR/C/79/Add.104 (1999), para. 15 (“The criminalization of all abortions, without exception, raises serious issues, especially in the light of unrefuted reports that many women undergo illegal abortions that pose a threat to their lives. The legal duty imposed upon health personnel to report on cases of women who have undergone abortions may inhibit women from seeking medical treatment, thereby endangering their lives. The State party is under a duty to take measures to ensure the right to life of all persons, including pregnant women whose pregnancies are terminated. In this regard: The Committee recommends that the law be amended so as to introduce exceptions to the general prohibition of all abortions and to protect the confidentiality of medical information.”); Conclusions and recommendations of the Committee against Torture: Chile, UN Doc. CAT/C/CR/32/5 (2004), para. 6(j) (“[E]xpress[ing] concern about . . . [r]eports that life-saving medical care for women suffering complications after illegal abortions is administered only on condition that they provide information on those performing such abortions. Such confessions are reportedly used subsequently in legal proceedings against the women and against third parties, in contravention of the provisions of the Convention. . .”), para. 7(m) (“[R]ecommend[ing] that the State party . . . [e]liminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion; investigate and review convictions where statements obtained by coercion in such cases have been admitted into evidence, and take remedial measures including nullifying convictions which are not in conformity with the Convention.”); Conclusions and recommendations of the Committee on Economic, Social and Cultural Rights: Chile, UN Doc. E/C.12/1/Add.105 (2004), paras. 26, 53 (noting its concern “about the consequences for women’s health of the legal prohibition on abortion, without exceptions, in the State party” and “recommend[ing] that the State party revise its legislation and decriminalize abortion in cases of therapeutic abortions and when the pregnancy is the result of rape or incest”).

¹⁵ See Human Rights Committee, *K.L. v. Peru*, Comm. No. 1153/2003, 24 October 2005, UN Doc.

CCPR/C/85/D/1153/2003, paras. 2.1 - 2.7, 6.3.

¹⁶ See *id.* at para. 8.

¹⁷ See Amnesty International, *El Salvador: Government must act immediately to save young woman’s life*, 31 May 2013, available at <http://www.amnesty.org/en/news/el-salvador-government-must-act-immediately-save-young-woman-s-life-2013-05-31>.

¹⁸ See Center for Justice and International Law, *Inter-American Court of Human Rights orders the Salvadoran State to save the life of “Beatriz”*, 30 May 2013, available at <http://cejil.org/en/comunicados/inter-american-court-human-rights-orders-salvadoran-state-perform-a-therapeutic-abortion>.

¹⁹ See *id.*