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Chile to End Blanket Ban on Abortions

by Benjamin Witte-Lebhar

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After a years-long debate in Congress and a make-it-or-break-it ruling last month by the Tribunal Constitucional (Constitutional Court, TC), Chile is finally set to scale back its zero-exceptions ban on abortion.

The TC decision, reached Aug. 21 by a vote of six to four, clears the way for abortions to be allowed in three specific circumstances: when a pregnancy puts the mother's life is at risk, involves a non-viable fetus, or is the result of rape or incest. The judgment also, however, gives medical practitioners the option to conscientiously object to the practice and thus exempt themselves from having to administer abortions.

The landmark ruling came nearly three weeks after the Chamber of Deputies, the lower house of Congress, gave final legislative approval to the initiative, which President Michelle Bachelet submitted more than two years ago in the form of a bill ([NotiSur, Feb. 13, 2015](#)). The legislation cleared the Senate in July, with 18 votes in favor and 16 against.

The bill's approval in Congress was itself a major milestone for Chile, where conservatives and centrists, normally on opposite sides of the political divide, had long formed a common front to defend the blanket abortion ban ([NotiSur, April 8, 2016](#)). But before Bachelet and her allies could celebrate in earnest, they still needed to get—as part of a deal worked out with opponents—the three-exceptions-initiative past the TC.

The tribunal hasn't, in the past, shied away from challenging the president's policy initiatives. And so there was little guarantee, analysts noted, that it would uphold the abortion-law changes, especially since just two of the tribunal's 10 members are women. One of those women, furthermore, was María Luisa Brahm, designated to the post by Bachelet's conservative predecessor, Sebastián Piñera (2010-2014), whom she served as an adviser.

But after hearing testimony from 130 experts and advocates from both sides in the debate, six of the TC's justices—including Brahm—ruled in favor of the contentious bill, pulling the plug once and for all on an abortion policy that dated back to 1989, when it was pushed through in the waning days of the Gen. Augusto Pinochet dictatorship (1973-1990).

The only thing missing now is a signature from Bachelet, who is expected to enact the historic legislation before the end of the month and thus remove Chile from the short list of countries, most of them in Latin America, that continue to outlaw abortions outright.

'One step closer'

The development made international headlines and drew applause from rights groups such as Amnesty International (AI) and Human Rights Watch. Hailing it as a long-overdue victory for women's rights, the organizations also expressed hope that Chile's policy pivot will push other countries with all-out abortion bans—including Nicaragua, El Salvador, Honduras, and the Dominican Republic ([NotiCen, Feb. 25, 2010](#), and [May 18, 2017](#))—to amend their laws as well.

“Chile has finally moved one step closer to protecting the human rights of women and girls,” Erika Guevara-Rosas, AI’s Americas director, said in a statement. “This victory is testament to the work of millions of women across the Americas and the world who fight against draconian laws that punish women and push them to [seek] clandestine and dangerous abortions, putting their health and lives at risk.”

In Chile, groups like the Corporación por los Derechos Sexuales y Reproductivos (Corporation for Sexual and Reproductive Rights)—which goes by the name Miles Chile—say the blanket ban never stopped women from having an abortion; it just drove the practice underground. Every year, tens of thousands of Chilean women terminate their pregnancies regardless, albeit it in unsupervised and potentially dangerous situations, the rights organization argues. And some are even prosecuted afterwards. Miles Chile claims that between 2010 and 2014, more than 270 people (including 89 men) were prosecuted in Chile for abortion-related offenses.

“We dedicate this day to all those women whose basic human rights were violated by this total penalization of abortion,” the group’s director, Claudia Dides, said in a press release.

Boost for Bachelet

The TC ruling is also huge victory for President Bachelet, a member of the left-leaning Partido Socialista (Socialist Party, PS), who is nearing the end of a historic leadership run that began more than a decade ago ([NotiSur, March 17, 2006](#)). The country’s first and only female head of state, Bachelet is just six months away from completing her second, non-consecutive term. Rolling back the blanket abortion ban had long been a priority for the president and given how little time remains, may prove to be her swan song as far as major legislation is concerned.

“What has prevailed is tolerance, and that every woman may make decisions based on her values, religion, principles, or real options,” Bachelet told reporters after the TC decision went public. “Today, I am proud to say we have fulfilled a fundamental commitment of our government with the women in our country,” she went on to say. “It has been a long battle, fought with the weapons of democracy and dialogue, overcoming barriers and prejudice that in the past impeded hundreds of women from alleviating their suffering.”

Bachelet first held office from 2006-2010 but was prevented by Chile’s term-limit laws from seeking immediate reelection. She then took up a position as head of the UN Entity for Gender Equality and the Empowerment of Women, also known as UN Women, before returning to Chile in 2013 to campaign for a second term, which she won easily ([NotiSur, April 19, 2013](#), and [Dec. 20, 2013](#)).

Once in office again, the then-powerful president—with solid majorities in both chambers of Congress—got off to a soaring start. But less than a year into her new term, Bachelet was broadsided by a corruption scandal involving her son and daughter-in-law ([NotiSur, April 24, 2015](#)). The Chilean economy, in the meantime, had entered into a marked slump, and her approval numbers plummeted. Two years later, with the economy still growing at a snail’s pace, the president continues to struggle.

The late-hour success of her abortion legislation was, in that sense, a much-needed win, not only for the sake of Bachelet’s legacy, but also as a momentum booster for her frayed, center-left Nueva Mayoría (New Majority, NM) coalition, which risks losing its hold on power in parliamentary and presidential elections set to take place Nov. 19. A presidential runoff, if necessary, would be held Dec. 17.

Conservative opposition

The current front runner in the race to replace Bachelet is the same person who succeeded her last time around: Piñera, a political veteran and billionaire investor ([NotiSur, July 21, 2017](#)). As president, Piñera had his own serious popularity problems. Right now, though, he is benefiting from deep divisions within the NM, and from a general sense among voters that conditions in Chile (particularly on the economic front) have taken a turn for the worse in recent years. Like the “Make America Great Again” slogan fellow right wing billionaire Donald Trump used in his campaign for the US presidency, Piñera promises “Tiempos Mejores” (Better Days).

On the subject of abortion, Piñera came out very much against Bachelet’s reform. “My position is widely known,” he said in reaction to the TC ruling. “I’m always going to be in favor of protecting the lives of everyone, especially the unborn, who are the most innocent and defenseless.” A week later, the conservative candidate went further still by referring to so-called “therapeutic abortions”—abortions carried out to protect the physical well-being of the mother—as a “scam.” He also promised that, if elected, he would change the law.

Piñera’s position on the matter puts him at odds, according to polls, with more than 70% of the population. But among the country’s elites, support for the blanket ban has always been high, including among members of the centrist Partido Demócrata Cristiano (Christian Democratic Party, PDC), which is technically part of Bachelet’s NM coalition but opted, for the upcoming presidential election, to run its own candidate, Sen. Carolina Goic.

The NM’s other member parties support Alejandro Guillier, an independent senator and former newscaster. Both are being challenged on the left by another journalist, Beatriz Sánchez of the upstart Frente Amplio (Broad Front, FA), who not only supports the blanket-ban rollback, but wants abortion to be legalized in general. “This is a very precise law [that authorizes abortions] in three specific circumstances,” Sánchez told reporters. “My proposal is something else entirely. I believe in full decriminalization of abortion.”

Conscientious objectors

Whether Piñera’s defense of the all-out abortion ban will cost him in the election remains to be seen. So far he’s proven to be something of a Teflon candidate, maintaining his lead in the polls despite his own mixed record as president and conflict of interest allegations involving his many business holdings ([NotiSur, April 7, 2017](#)). But political analyst Carlos Correa, for one, thinks the abortion issue could end up haunting Piñera down the road, particularly in a runoff scenario, where the left might be able to use his opposition to the reform as a way to mobilize women voters.

“Just the threat that a Piñera government will try to reinstate this imposition on women could prompt a lot of undecided women to go to the polls,” Correa wrote in a recent column for the Canal 13 website.

A more immediate problem for the soon-to-be-enacted law is implementation, particularly in light of the TC’s decision to allow conscientious objections. A number of private hospitals—including the Hospital Clínico de la Universidad Católica and Clínica Universidad de los Andes, in Santiago—have already gone public saying they’ll refuse to perform abortions. The Universidad Católica rector, Ignacio Sánchez, also promised to oppose the new abortion law and said he expects the

professors under him to do the same. "If they're going to be professors at the university, they need to keep in mind where the university's thinking lies," he said.

In response, the Colegio Médico, the Chilean doctors' guild, promised to compile a definitive list of conscientious objectors so that women eligible for abortions under the new law will know where they can and cannot go to seek treatment. A law allowing abortion in certain circumstances is useless, after all, if women are unable to find professionals to perform the procedure.

As AI's Guevara-Rosas explained, "The real test now is to ensure the law is actually enforced, that women and girls are fully able to access the comprehensive health services they need, and that this reform opens the door for them to be able to fully enjoy their sexual and reproductive rights."

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