

Bill on The Integral Protection of Women with Vulnerable Pregnancy and the Unborn Child

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INTRODUCTION

In recent times, the debate on abortion has been in the center of the public discussion in our country again. Nowadays, most of the bills addressing this issue intend to lift the ban on abortion under three specific circumstances: when there is life risk for the mother, when the fetus is not viable outside the mother's womb, and in cases of rape.[4]

Within the range of different opinions on abortion, there are two with which there is almost a complete agreement. First is the opinion that states that the decision of making an abortion is the result of a society that is not capable of embracing a mother in a vulnerable situation. As president Bachelet said in her speech on May 21st: "Each abortion in the country is the sign that society has arrived to late for prevention of unintended pregnancies." [5]. The second idea is that every pregnant woman should be subject to special protection and support, especially when their pregnancy-for different reasons- has complications. Thereof, society needs to react promptly providing efficient support to pregnant women in vulnerable situations so they can carry on- in the best possible way- this stage in their lives.

We believe that those bills that portray abortion as a solution for women with pregnancies under vulnerable conditions are wrong for two reasons. First, no solution could lead to the direct and deliberate murder of an innocent human. The unborn child is a person and, as such, has equal dignity to a born person; therefore, they should be treated, human rights wise, as such. [6] Secondly, abortion is not a solution for a pregnant woman because it unleashes a series of physical and psychological consequences for her health. A 2008 study by the American Psychological Association showed that induced abortion predisposes women to Post Traumatic Stress Disorder and to Acute Stress Disorder.[7] Dr. Priscila Coleman's study – which analyzes 22 studies and 877.181 patients in total- shows that 81% of women who have undergone abortion have higher risk of presenting mental health problems and developing suicidal behaviors, depression, or anxiety.[8] Another 2005 study in the United States and Finland shows that abortion increases the chances of suicide in two to three times after a year of the abortion.[9] Lastly, from the physical health perspective, it was clear that induced abortion could contribute to the risk of further premature pregnancy[10] and that it increases the chances of *placenta praevia*, spontaneous abortion, and prelabour rupture of the membranes.[11] In other words, abortion is not the solution, neither for the unborn child nor for the pregnant mother.

This bill is the outcome of deep analysis of the work that civil society organizations have done for years on supporting vulnerable pregnant women. We strongly believe that the State should take its responsibility on this issue and protect women in these circumstances and their child, the person in their wombs.

BACKGROUND

Vulnerable Pregnancy

On the study named "Vulnerable Pregnancy: Reality and Proposals"[12] by IdeaPaís and the NGO "Comunidad y Justicia" (Community and Justice), it is shown that pregnant women in vulnerable conditions, if they receive the right support during their pregnancy, they freely change their decision of abortion. This study is based- among other things- on a research made by the MELISA Institute (www.melisainstitute.com) led by epidemiologist Elard Koch[13] published on The Linacre Quarterly under the name of Impact of Reproductive Laws on Maternal Mortality; Recent Scientific Evidence from Natural Experiments on Different Populations, lecture at the Life & Family event in the United Nations [14] in New York [15]. This research- the first one in Chile- has a cohort of 3,134 women in total (more than enough for a sample in the scientific field). It "provides new evidence to argue that abortion

prevention programs as well as those supporting women in risk of abortion are effective when they are focused on solving the problem of vulnerability that causes or is the reason for abortion”[16]. This research is important because it shows that public policy on this issue should focus on integral support rather than on abortion. Because during a vulnerable pregnancy a woman can be subject to pressure from her environment to choose abortion, the community in general (the State and Civil Society) should provide her enough support so that she carries on with her pregnancy in the best possible way. This way an innocent human is not killed and the psychological disorders that result from abortion are avoided. Ultimately, the main goal is to protect completely both legal assets, which entail equal dignity: the life of the mother and the life of the unborn child.

This study- performed by the previously mentioned institutions- addresses the concept of “vulnerable pregnancy”. This is “a dynamical and relational concept because it relates to the circumstances that prevent a pregnancy to be lived normally. In many cases, the social environment in which the woman lives or even her own individual circumstances are what make them subject for special support”[17]. This idea summarizes the reasons that lead women in our country to undergo an abortion. The study of these causes is important for two reasons. First, it is possible to know through this study the reasons for which women decide to make an abortion (the root of the problem) even when finally they do not perform it. Secondly, it is important to know where to focus the efforts for giving support for these women. According to this study, two factors can be highlighted: i) psychosocial factors and ii) specific factors in each pregnancy[18].

(i) Psychosocial factors

In this study performed by Dr. Elard Koch, the cohort of 3,134 women with unplanned pregnancies[19][20], could fit into one of two groups according to the different risk patterns and the vulnerability of whether they (i) explicitly manifested their decision to terminate the pregnancy (n= 486 in the “high risk” group); or (ii) did not verbally manifest their intentions (n= 2,648 in the “low to moderate risk” group). Both groups present different vulnerability factors that could -in some cases- affect on the decision to abort. Some of these factors are abandonment by the partner, coercion, violence, life expectancy, being thrown out from the home, among others[21]. This chart shows the different factors according to each group:

Women in high risk of abortion (n=468)	Women in low to moderate risk of abortion (n=2648)
44.4% Coercion to abort by one or both parents or by their partner with or without violence.	36.9% Need for emotional or psychological support.
22.8 % Factors associated to life expectancy such as continuing studying, life project, socioeconomic status, and fear of being a single mother.	20.1% Status of abandonment and loss of the home (whether it was by abandonment of being thrown out)

20.4% Hiding pregnancy out of fear to their partner's or parents' reaction.	9.1% Possibility of putting up for adoption.
2.1% Because of sexual abuse (rape, incest, continuous sexual abuse).	7.9% Abandoned by partner.
1.9% Abandoned by partner.	3.7% Coercion or domestic violence
TOTAL: 91.6% of the cases	1.8% Sexual abuse
	TOTAL: 92.4% of the cases.

There are other psychosocial factors -aside from the ones previously mentioned- that determine a vulnerable pregnancy and that have great relevance nowadays: i) teenage pregnancy, ii) youth pregnancy, iii) pregnancy resulting from rape. In these three cases, pregnant women are in a state of vulnerability that requires support from civil society and from the State. Special attention must be given to the last scenario -pregnancy resulting from rape- for three reasons. First, because rape is a serious and unfair crime that causes a deep psychological impact on the victim. Second, because in some cases, rape victims are minors. Third, because there is a correlation between induced abortion and situations of physical violence and repeated sexual violence[22].

(ii) Factors of vulnerability specific to each pregnancy.

The factors of vulnerability specific to each pregnancy are those associated with the risks in the bearing process and to the mother's health. Even though they are a less frequent reason for induced abortion, they are factors of vulnerability[23]. There are two factors that could be differentiated under this categorization: a) pregnancy threatens the life of the mother, and b) the fetus is not viable.

(a) Pregnancy threatens the life of the mother.

This factor has been one of the most commonly used by the public opinion to justify the claim of legal abortion. However, this alleged justification is groundless. When a pregnant woman is in life risk for any reason, whether it is related to a pregnancy or not, and requires medical care, there is no reason to be denied from it, even if, as an unwanted side effect that is neither a means or an end, the death of the unborn child occurs. When doctors act in such way they are not committing any activity that is penalized by the law, for they do not act with the willful malice that the Criminal Code[24] states. Therefore, adducing that pregnancy threatens the mother's life, as a reason for decriminalizing abortion makes no sense: it is not reasonable to decriminalize a practice that is not a felony[25]. Furthermore- according to the most recent numbers- since the amendments on Criminal Procedure, there is no record of any doctor that has been prosecuted for committing the felony of abortion according to art. 345 of the Criminal Code after performing the previously described medical treatment[26]. This comes from the fact that medical procedures of this kind are not abortion because there is no action that in a direct, malicious, and willful way eliminates the life of an unborn child.

The levels of maternal mortality in our country can only be compared to those in developed countries[27]. To the surprise of many, even when our legislation does not allow any type of abortion, maternity and perinatal mortality rates are much more positive than in countries that allow abortion like the United States[28].

For these reasons, the efforts to decriminalize the so called “therapeutic abortion” seem absurd; moreover, women who carry on abortion that threatens her life should be subject to full support and guidance (this is a vulnerable pregnancy). This is why this bill also aims for their protection.

(b) Pregnancy where the fetus is not viable

“Although there is no consensus on when to determine that the fetus is “not viable”, this term is associated with Lethal Congenital Malformations (LCM) that put the life of the unborn in serious danger.” [29] The term “not viable” is a paradox itself because the unborn child is alive: the intrauterine stage and the development of the unborn while inside it is something only a living being would be able to perform. What happens is that the unborn has a disease that puts his life in imminent danger; sometimes there is even certainty that the child will die a few hours after birth. When facing such situations, it is necessary to use every possible resource so the woman can carry on with the pregnancy in the best possible way, taking care of the mother and the unhealthy unborn as well.

Unfortunately, under the umbrella of the “not viable fetus” argument, several countries have extended the practice of abortion, even including children with diseases that do not fall within the LCM scope. For example, in France, where children diagnosed with Down syndrome are considered to be not viable and, therefore, are being aborted[30].

Currently, there are two bills in Congress that are aimed at giving full support and guidance to families whose children have been diagnosed with LCM[31]. These bills have been of great help for designing this proposal. Even so, it is important to highlight that abortion is not an option for a vulnerable pregnancy; abortion is not a solution, it is precisely the other way around, abortion in the end is an attack against the pregnant woman and the unborn child: they are both victims.

PURPOSE OF THE BILL

To summarize, the bill has the purpose of:

Providing integral protection to women with vulnerable pregnancies, establishing that guidance and support are ways of integral protection.

In that tenure, the bill includes an article that creates an Act for the Integral Protection of Pregnant Women and the Unborn Child. The Act would have two sections: Section I refers to the general provisions about the responsibility of the State bodies of creating and implementing policy in favor of pregnant women and the unborn child and several definitions included in the Act. Section II refers to the protection of motherhood, especially the requirement of integral assistance.

It is also important to rememberr that this Bill Proposal can be replicated to any other country in Latin America with the necessary adaptations.

LEGISLATIVE PROPOSAL:

BILL ON THE INTEGRAL PROTECTION OF WOMEN WITH VULNERABLE PREGNANCY AND THE UNBORN CHILD.

FIRST ARTICLE. An Act for the Integral Protection of Pregnant Women and the Unborn Child shall be created under the following:

Section I: “General Provisions”

ARTICLE 1. *Purpose of the Act.* This Act has the fundamental purpose of providing integral protection to women with vulnerable pregnancies and the unborn child, regardless of the fetal developmental stage.

ARTICLE 2. *General obligation of the State Administration bodies.* Each of the State Administration bodies shall- in the spheres of their competence- create and implement policies aimed at providing every pregnant woman and ever unborn child, regardless of its fetal developmental stage and without any arbitrary discrimination, the enjoyment and exercise of the rights and liberties granted to every person by the Political Constitution of the Republic, the law and international treaties ratified by this country.

ARTICLE 3. *Vulnerable pregnancy.* The term “vulnerable pregnancy” refers to a pregnancy that cannot be carried in a normal manner or represents special difficulties for the woman and, therefore, she requires especial support. This situation is caused by circumstances related to the social context in which the woman develops or due to individual factors- whether they are psychosocial or pregnancy related factors or due to the abandonment by the partner, coercion, violence, the case of pregnancy resulting from raping, life expectancies, a fetus with Lethal Congenital Malformations, being thrown out from the home, being a teenager, risk for the mother’s life, among others.

SECTION II “Obligations of integral support and care”

ARTICLE 5. *Integral assistance and support.* When a woman is in the situation of vulnerable pregnancy, she shall have the right to receive support and medical, psychological, psychiatrically, social, legal, and spiritual assistance as well as any special care that her particular situation requires, whether this assistance is provided by the public or private system.

The said integral assistance and support shall be voluntary for the mother.

The Ministry of Health shall regulate -by written rules- the specifics in which this right of receiving integral assistance and support shall be performed; as well as the ways in which private and public health institutions shall implement these services.

The integral support services that this Act states for particular cases could be provided by the State and its bodies or through a third party.

ARTICLE 6. *Obligation of informing.* In the case of vulnerable pregnancy, the pregnant mother and their family will be immediately informed about the right to receive the integral assistance and support stated in the previous article.

ARTICLE 7. *Publicity.* The public health assistance services, the Prosecutor’s Office and the other institutions named in the written rules shall have the communication material on the integral assistance and support stated in this Act for its distribution.

TRANSITORY ARTICLE. The requirements to prove a vulnerable pregnancy to private and public health institutions shall be stated in the written regulations that the Ministry of Health shall create. These written regulations shall be dictated within the next 60 days from the publication of this Act -date in which it will become fully effective.

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[4] There are nine bills regarding abortion, whether to decriminalize it or to offer support to women with vulnerable pregnancies. Seven bills intend to legislate on abortion: five on the Senate: Bulletin no. 7965-11 presented by Senators Pizarro, Ruiz-Esquide, Wlaker, and Zaldivar. Bulletin no. 8862-11 presented by

Senators Allende, Gomez, Lagos, and Rossi. Bulletin no. 9021-11 presented by Senator Guiraldi. Bulletin no 9418-11 presented by Senators Urresti, Guirardi, Guillier, Muñoz, and Quintana. Two in the Chamber: Bulletin no. 6420-11 presented by congressmen De Urresti, Escobar, Espinoza, Monsalve, Rossi, Quintana Nuñez, Farías, Jiménez, and Sule. Bulletin no 8925-11 presented by congressmen Ascencio, Castro, Cornejo, Gutiérrez, Muñoz, Pacheco, Saa, Silver, Nuñez, and Robles. The two bills regarding support to pregnant women are on the Senate: bulletin no 7984-11 presented by Senators Alvear, Ruiz-Esquide, Sabag, Walker, and Zaldívar. Bulletin no 9093-11 presented by Senators Chahuán, Larrain, Rossi, Ruiz-Esquide, and Uriarte.

[5] President Michelle Bachelet 82014). “Presidential Speech May 21st.”

[6] Also, The American Convention on Human Rights or Pact of San José, ratified by Chile and currently in force, on its article 4.1 states that “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life”.

[7] AMERICAN PSYCHOLOGICAL ASSOCIATION (2008), “Mental Health and Abortion”. (Available at: <http://www.apa.org/pi/woman/programs/abortion/index.aspx>).

[8] Priscila Coleman, “Abortion and mental health: quantitative synthesis and analysis of research published 1995-2009”, BJP, . 199:168, United Kingdom.

[9] GISSLER M., (2005), et. al., “Injury deaths, suicides and homicides associated with pregnancy, Finland 1987-2000”. (Available at: <http://www.ncbi.nlm.nih.gov/pubmed/16051655>)

[10] WHITEMAN, V., et. al., (2014), “Preterm birth in the first pregnancy and risk of neonatal death in the second pregnancy: A propensity core-weighted matching approach”, J ObstetGynaecol, 24:1-7 (Available at: <http://www.ncbi.nlm.nih.gov/pubmed/25058689>)

[11] MAKHLOUF, M., et al., (2003) “Adverse Pregnancy Outcomes among Women with Prior Spontaneous or Induced Abortions”. Am J. Perinatol. 2013 Dec 17.

[12] Available at:

http://www.ideapais.cl/system/publicacions/archivos/000/000/024/original/Embarazo_vulnerable_%283%29.pdf?1415021653

[13] Dr. Elard Koch runs the Molecular Epidemiology Institute at the Catholic University of Santísima Concepción. He is assistant professor and researcher for the Department on Family Medicine of the School of Medicine of the University of Chile. He has received international awards for his academic work.

[14] Available at: <http://www.alliancedefendingfreedom.org/MDGs>

[15] Available at: <http://www.alliancedefendingfreedom.org/MDGs>

[16] Vulnerable Pregnancy, Reality and Proposals. Pg. 5

[17] Luna, F. (2008). “Vulnerability: the metaphor of the layers”. Published at Jurisprudencia Argentina. IV fascicle. No. 1 pg. 60-67. Available

at: http://www.introdb2.wikispaces.com/file/view/Luna_F%5B1%5D.Vulnerabilidad_la_metafora_de_las_capas.pdf.

[18] Vulnerable pregnancy: Reality and proposals. Pg. 4

[19] This term of “unplanned pregnancy” refers to the fact that the child’s conception was not planned or deliberate by the parents, as opposed to the concept of “unwanted pregnancy” which refers to an alleged right to abortion.

[20] This study was performed using statistics by the Program for Integral Support “Acoge una Vida” by Fundación Chile Unido.

[21] Vulnerable Pregnancy: Reality and Proposals. Pg. 9

[22] Ibid. Pg. 4

[23] Ibid pg. 13

[24] Article 342 of the Criminal Code sanctions whoever “willfully” causes abortion. Criminal dogmatic and jurisprudence interpret this as a demand of direct malice, which does not happen when the purpose of the doctors’ actions is to save the life of the mother.

[25] On the same tenure, this medical activity is categorized as medical *Lex Artis*. See: Chilean Medical Board’s Code of Ethics (2011) art. 9

[26] These numbers were obtained from the Prosecutor’s Office, the Judicial Power, and the Gendarmerie. The NGO Comunidad y Justicia through a transparency petition requested them.

[27] Maternal mortality rates due to abortion in our country are close to 10%. Source: "Gender, Equity, and Health Reform in Chile" Working paper from the Ministry of Health of Chile and the Panamerican Health Organization (OPS), 2002. Document number 4. Pg. 4

[28] See also: "Comparative analysis on maternal mortality in Chile, Cuba, and United States of America" by Enrique Donoso and Enrique Oyarzún for the Chilean Obstetrics and Gynecology Review. 2004; 69 (1): 14-18.

[29] Ibid. Pg. 15.

[30] Ibid. Pg. 15

[31] Bulletin No. 7984-11 presented by Senators Alvear, Ruiz-Esquide, Sabag, Walker, and Zaldivar; Bulletin No. 9093-11 presented by Senators Chahuán, Larraín, Rossi, Ruiz-Esquide, and Uriarte.