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U.S. Department of State

Chile Country Report on Human Rights Practices for 1996

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CHILE

Chile is a multiparty democracy with a constitution that provides for a strong executive, a bicameral legislature, and an independent judiciary. Approved by referendum in 1980, the Constitution was written under the former military government and establishes institutional limits on popular rule. President Eduardo Frei, a Christian Democrat, began his 6-year term in 1994. The National Congress comprises 120 deputies and 46 senators. The government coalition of six parties holds a majority in the lower house. An opposition coalition, together with several independent and eight appointed senators, controls the upper chamber. Appointees of the former president, General Augusto Pinochet, continue to influence the constitutionally independent judicial branch. However, turnover in the courts has led to a significant diminution of that influence.

The armed forces are constitutionally subordinate to the President through an appointed Minister of Defense but enjoy a large degree of legal autonomy. Most notably, the President must have the concurrence of the National Security Council to remove service chiefs. The Carabineros (the uniformed national police) have primary responsibility for public order and safety and border security. The civilian Investigations Police are responsible for criminal investigations and immigration control. Both organizations--although formally under the jurisdiction of the Ministry of Defense, which determines their budget--are under operational control of the Ministry of Interior. Some alleged perpetrators of human rights abuses during the military regime remain on active duty in the army. The security forces committed a number of human rights abuses.

The export-led, free market economy experienced its 13th consecutive year of expansion. The most

important export was copper; forestry products, fresh fruit, fish meal, and manufactured goods were also significant sources of foreign exchange. Gross domestic product grew at 8.5 percent, unemployment remained steady at around 5.5 percent, and inflation increased slightly to 8.2 percent. Since 1987 the percentage of the population living below the poverty line has decreased from 45 to 25 percent at the end of 1996. Annual per capita income rose above \$4,700 in 1995.

The Government generally respected its citizens' human rights. However, there continued to be some problem areas. The most serious cases involved allegations of torture, brutality, and police use of excessive force. There continue to be reports of physical abuse in jails and prisons. Discrimination and violence against women, and violence against children are problems. Many indigenous people remain marginalized.

Almost all other human rights concerns are related to abuses that occurred during the former military government, primarily between 1973 and 1978. Efforts to bring abusers to justice in cases dating back to the early years of the military government are limited by the conflicting demands for justice and for national reconciliation. Military authorities continue to resist disclosing abuses from the past. In particular, the courts continue to struggle with the application of the 1978 Amnesty Law to cases that occurred during the first 5 years of military rule. Over the past 2 years, the Government and the opposition debated various proposals that would effectively close all cases covered by the Amnesty Law that are still under judicial investigation. These efforts, however, have largely stalled, and the judicial system continues to investigate and close pending human rights cases.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom from:

a. Political and Other Extrajudicial Killing

There were no reports of political killings.

The Committee for the Defense of People's Rights (CODEPU) reported that at least three individuals died as a result of the use of excessive force by the police, including one innocent bystander who died when caught in a crossfire between criminals and the police. In addition, army personnel shot and killed another individual who was trespassing on army property. These deaths received wide media coverage, and the cases are under investigation by the courts.

The courts made several landmark decisions during the year on cases that occurred under the military regime. In June the Supreme Court invoked the Amnesty Law to end all action in the 1976 murder of Carmelo Soria, a Spanish citizen employed by the United Nations. As a result, the authorities dismissed charges against two ex-agents of the National Intelligence Center (CNI) who were indicted in June 1995 as author and accomplice in this crime; any further official investigation was terminated. This decision provoked concern and condemnation from a broad spectrum, including the embassies of the European Union states, Chilean members of congress, and political parties. In September a group of parliamentarians belonging to the government coalition, charging denial of justice, introduced an impeachment motion against four Supreme Court justices, including Eliodoro Ortiz, the investigating judge who decided that the Amnesty Law applied. Some observers criticized the legislators' effort, however, as an attempt to intimidate the judiciary.

In another high-profile case, retired General Manuel Contreras and Brigadier Pedro Espinoza continue to serve their 7- and 6-year prison terms, respectively, as the intellectual authors of the 1976 murder in

Washington, D.C. of former Chilean Foreign Minister Orlando Letelier and his U.S. citizen assistant, Ronni Moffit. Both filed petitions for pardon but neither has been approved. However, the authorities granted Contreras credit for the 50 days he served while under house arrest pending resolution of the U.S. Government's extradition request in 1978. In addition, Italian courts convicted Contreras and Raul Iturriaga, another former DINA (National Intelligence Directorate) officer, in absentia for the attempted murder of former Chilean Vice President Bernardo Leighton and his wife Anita Fresno, and sentenced each man to 18 years in prison. The Italians have requested neither their extradition nor that they serve their sentences in Chile.

The January arrest in Argentina of former Chilean intelligence agent Enrique Arancibia Clavel once again drew attention to the 1974 assassination in Buenos Aires of former Chilean army chief Carlos Prats. Prats was the army commander under President Salvador Allende and was succeeded by General Pinochet in August 1973. He left Chile for Argentina several days after the coup against Allende. The case was reopened in 1992 as a result of a petition filed by the Prats family containing new evidence. The Government has agreed to be a coplaintiff in the Argentine trial of Arancibia.

In the case involving the 1982 murder of Tucapel Jimenez, the third chamber of the court of appeals unanimously denied bail to retired army Major Carlos Herrera on the grounds that he is a danger to society. Herrera, previously convicted of unnecessary violence which resulted in the 1984 death of political activist Mario Fernandez, began serving his 10-year sentence in Punta Peuco prison in January.

After more than 9 years, a military judge dismissed the case of the June 1987 deaths from "Operation Albania", in which CNI agents killed 12 people connected to the Manuel Rodriguez Patriotic Front (FPMR). This was in spite of a unanimous ruling in 1995 by the military tribunal--a higher court--that the deaths were homicides and that the cases should go to trial. At the time, the authorities claimed that all 12 died in shoot-outs with security officers, and therefore no crime was committed. The authorities implicated 28 former officers and enlisted men in this case. The decision to close the case has been appealed to the Supreme Court.

On April 10, Supreme Court Justice Alfredo Pfeiffer reopened the investigation of the April 1991 assassination of Democratic Independent Union (UDI) founder and Senator Jaime Guzman, due to controversial public statements made by Jorge Barraza, the police detective in charge of the 1991-93 investigation. According to Barraza, the assassination's intellectual author was FPMR leader Juan Gutierrez Frischman, also known as "El Chele," who also happened to be married at the time to Cuban armed forces chief Raul Castro's daughter. Barraza charged that his superiors in the Interior Ministry removed him from the case in 1993 because they feared that his investigation would reveal crimes committed by confidential informants. As a result of the initial investigation, the courts found two members of the FPMR guilty and gave them life sentences. The courts found three other FPMR members guilty in absentia but the authorities never apprehended them. Gutierrez was not listed then as a conspirator. Barraza claims that when he presented a secret document to his Interior Ministry superiors in August 1993 detailing Gutierrez's role, he was transferred, and his investigative unit disbanded.

Pfeiffer resigned in June, claiming death threats and political pressure to drop the case, and Raquel Camposano was appointed in his place. On December 18, as a result of her investigation, Camposano issued an arrest warrant for Investigations Police director Nelson Mery, charging him with obstruction of justice for withholding from judicial authorities a key surveillance videotape of the terrorist cell involved in the Guzman assassination. Separately, the judge also issued indictments against former Deputy Director of Public Security Marcelo Schilling, his assistant, and several subordinates for having illegally obtained information from leftwing terrorists in exchange for immunity from prosecution. President Frei declined to accept resignations from Mery and Schilling; an appeals court subsequently dismissed the cases, and the Supreme Court upheld the dismissal.

b. Disappearance

There were no reports of politically motivated disappearances.

The major human rights controversy involved past disappearances and efforts by all political forces and the Government to reinterpret the 1978 amnesty in such a way as to achieve both justice and national reconciliation. As interpreted under the so-called Aylwin Doctrine (named after former president Patricio Aylwin), the courts should not close a case involving a disappearance (those who disappeared are considered to have been "kidnaped") until either the bodies are found or credible evidence is provided to indicate that an individual is dead. This could affect up to 542 cases, which cover about 1,100 persons still classified as "detained or missing" from the early years of the military regime. The application of the Aylwin Doctrine, however, has been uneven, as some courts continued the previous practice of applying the 1978 amnesty to disappearances without conducting an investigation to identify the perpetrators. The court closed 16 cases during the first half of the year through application of the amnesty; 170 cases are active; and an additional 356 cases are temporarily closed but subject to being reopened.

The Government attempted to alter implementation of the amnesty through a proposal negotiated by Minister of the Interior Carlos Figueroa and opposition leader Miguel Otero. The bill they introduced proposed to keep secret the identity of key witnesses, including those implicated in the crimes, in exchange for whatever confidential information they might provide on the fate of those who disappeared. This information, which would never be available to the public, would serve as the basis for the permanent closure of the case. However, the proposal was criticized by both the right and the left and never came to a vote.

The Social Aid Foundation of Christian Churches (FASIC) brought four disappearance cases that had been closed in 1995 with the fate of the victims still unknown to the attention of the Inter-American Commission on Human Rights (IACHR). While the commission has made rulings on these cases, they have yet to be published. The FASIC also appealed an additional 14 cases to the IACHR.

Some progress has been made in locating a number of those who disappeared. The remains of three bodies were discovered in early December 1995 on the grounds of a military camp situated 25 miles north of Santiago. The authorities identified two of them as Manuel Weibel Navarrete and Ignacio Orlando Gonzalez Espinoza, both former members of the Chilean Communist Party. There are suspicions that a large number of bodies were buried in military precincts, but the military authorities refuse access to these areas, thus preventing the possible closure of a number of these cases.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution forbids "the use of illegal pressure" on detainees, but CODEPU has received reports of instances of mistreatment and abuse by some Carabinero and Investigations Police units. CODEPU lawyers visit detainees during their interrogation (see Section 1.d.) and represent many suspected terrorists in court. CODEPU alleged that there were some cases of use of excessive force against detainees during the year. It found a significant improvement in the record of the plainclothes Investigations Police, while complaints against the uniformed Carabineros increased in number. The Minister of Interior normally asks the courts to conduct independent investigations of credible complaints of police abuse, but such investigations rarely result in arrests, due in part to the reluctance of judges to pursue the issue vigorously. The courts convicted and sentenced only four police officials for committing acts of violence against detainees. However, as indicated in the CODEPU report, police authorities often impose administrative sanctions on abusive officers without waiting for a judicial

ruling.

According to a report by the United Nations Commission on Human Rights, while considerable progress has been made since the return to civilian rule in 1990, acts of torture still continue. A study by Diego Portales University indicated that 71 percent of detainees interrogated had suffered some form of ill treatment. The United Nations report concluded that although abuses are not systemic, the Government has taken insufficient action to ensure that the activities of the Carabineros are in accord with the law. It recommends that the Carabineros be entirely subordinated to the Ministry of Interior.

Prisons are overcrowded and antiquated, but the conditions are not life threatening. Food meets minimal nutritional needs, and prisoners may supplement the diet by buying food. Those with sufficient funds can often rent space in a better wing of the prison. Prison guards have been accused of using excessive force to stop attempted prison breaks. Although most reports state that the guards generally behave responsibly and do not mistreat prisoners, several prisoners have complained of beatings. There are about 300 minors in adult prisons (see Section 5).

The maximum security prison houses 79 prisoners, most of them charged with or convicted of terrorism. Prisoners continue to complain that strict security measures, prohibition of visitors, hidden cameras, and the extremely rigid regulations violate their rights. Recently, the president of the Santiago Court of Appeals confirmed the existence of listening devices in prison cells. In a reply to this report, the Minister of Justice confirmed that microphones were present but said that they were never used.

In June 1995, a new prison at Punta Peuco, 25 miles north of Santiago, was completed. This prison was constructed specifically for government and military officers sentenced to jail. As of August, it had 15 inmates including Brigadier Pedro Espinoza and retired General Manuel Contreras.

The Government permits prison visits by independent human rights monitors.

d. Arbitrary Arrest, Detention, or Exile

The Constitution allows civilian and military courts to order detention for up to 5 days without arraignment and to extend the detention of suspected terrorists for up to 10 days. The law affords detainees 30 minutes of immediate and daily access to a lawyer (in the presence of a prison guard) and to a doctor to verify their physical condition. The law does not permit a judge to deny such access; police authorities generally observed these requirements.

As of September, 9 percent of the general prison population were under investigation but not charged with a crime, 50 percent were charged with an offense and were awaiting trial or sentencing, and 41 percent were serving sentences.

The police have the authority to make arrests based on suspicion, particularly of youth in high crime areas late at night. In practice, the detainees are not promptly advised of charges against them, nor are they granted a speedy hearing before a judge. The Constitution provides for the right to legal counsel, but this is a reality only for those who can afford to pay. The poor, who account for the majority of cases, may be represented by law students doing practical training (who are often overworked) or, on occasion, by a court appointed lawyer. Arrest procedures do not require police to allow detainees to telephone relatives or a lawyer. The Constitution allows judges to set bail.

Law enforcement authorities often failed to inform foreign embassies when their nationals were arrested.

There were no cases of forced exile.

e. Denial of Fair Public Trial

The Constitution calls for a judicial system independent of the other branches of government.

Cases decided in the lower courts can be referred to the appeals courts, and ultimately to the Supreme Court. Although the judiciary, and particularly the Supreme Court, has been dominated by appointees of the former military regime, the passage of time is changing this legacy. Criminal court judges are appointed for life, and appointments to the Supreme Court and the appeals courts are made by the President from lists prepared by the Supreme Court. Of the 16 justices on the Supreme Court, 7 have been appointed since the end of the military regime. The Supreme Court continues to work with the other branches of government on broad judicial reform.

The jurisdiction of military tribunals is limited to cases involving military officers. If formal charges are filed in civilian courts against a military officer, including Carabineros, the military prosecutor asks, and the Supreme Court normally grants, jurisdiction to the military. This is of particular consequence in the human rights cases dating from 1973 to 1978, the period covered by the 1978 Amnesty Law. In addition, military courts have the authority to charge and try civilians for defamation of military personnel and for sedition, but their rulings can be appealed to the civilian Supreme Court.

Based on the Napoleonic Code, the judicial system does not provide for trial by jury, nor does it assume innocence until proven otherwise. Criminal proceedings are inquisitorial rather than adversarial. The Constitution provides for the right to legal counsel, but the poor do not always get effective legal representation (see Section 1.d.).

CODEPU reports that there are four political prisoners; however, these individuals were convicted of crimes related to terrorist acts.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution prohibits such practices, government authorities generally respect these prohibitions, and violations are subject to effective legal sanctions. The 1995 Privacy Law bars obtaining information by undisclosed taping, telephone intercepts, and other surreptitious means, as well as its dissemination.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and the press, and the authorities generally respected these rights in practice.

The press maintains its independence, criticizes the Government, and covers issues sensitive to the military, including human rights. The Privacy Law also applies to the media, which are not exempt from its provisions.

The print and electronic media are largely independent of government control. The State is majority owner of La Nacion newspaper, but the newspaper is editorially independent. However, La Nacion's editorial policy rarely, if ever, disagrees with government policy. The Television Nacional network is state owned but not under direct government control. It receives no government subsidy and is self-

financing through commercial advertising. It is editorially independent and is governed by a board of directors which, although politically appointed, encourages the expression of varied opinions over the network.

Military courts have the authority to charge and try civilians for defamation of military personnel and for sedition, but their rulings can be appealed to the civilian Supreme Court.

A draft press law, building on one proposed by the Aylwin government in 1993, would transfer cases involving freedom of speech (including charges of defamation and sedition) for nonmilitary personnel from military to civilian courts. As the bill moved from the House to the Senate, it remained the subject of considerable controversy, with the press arguing that some of its provisions might undermine aspects of freedom of expression. The bill was still under consideration in the Senate at year's end.

It is a criminal offense to besmirch the honor of state institutions and symbols, such as the Congress, the military services, the flag, and the President. In December 1995, the courts convicted a former cabinet minister in Pinochet's government of defaming state institutions after he charged that unnamed members of congress used drugs and jailed him until he agreed to accept a suspended sentence and a nominal fine. The Santiago court of appeals overturned the verdict in January, but the Supreme Court reinstated it in May.

On October 29, the Investigations Police arrested Gladys Marin, Secretary General of the Communist Party, and jailed her on charges of having slandered army commander-in-chief Augusto Pinochet. The army brought charges against Marin under the National Security Law for public statements she made on September 11 characterizing Pinochet as a psychopath and accusing him and the army of human rights violations. The army subsequently dropped the charges, and Marin was released on October 21. Prior to the charges being dropped, however, both the court of appeals and the first chamber of the Supreme Court upheld the warrant for Marin's arrest.

In June a Santiago court ordered the arrest of Eduardo Meneses, leader of the rap group Panteras Negras. In January 1995, police officers, with the support of the Council for the Defense of the State, had filed a suit against Meneses under the military penal code for insulting the police, citing the lyrics of his song "War in the Streets." The song was included in a December 1995 concert at which members of the police had been present.

In the only case involving film censorship to reach the courts during the year, the Film Classification Board on November 11 voted to reclassify the banned 1988 film "The Last Temptation of Christ" as suitable for theater showings for those over the age of 18. However, on November 14, the court of appeals accepted a motion by the conservative group "Chile's Future" ("El Porvenir de Chile") to prohibit the film's showing pending further judicial review. The controversy was front page news; the conservative group argued that the board's reclassification was illegal and that the film is an attack against the honor of the Catholic Church, Christ, and Christians. Party for Democracy Deputy Victor Barraeto and other opponents of film censorship have proposed amending the Constitution to prohibit film censorship and to restrict the board's power to that of simply rating films.

Francisco Martorell, the author of the book "Diplomatic Impunity," returned from self-imposed exile in Argentina to present himself for sentencing for slander against prominent figures in a case that dates back to 1993. Martorell's book alleged sexual promiscuity and other misconduct by a number of prominent figures in society and politics while recounting the exploits of the Argentine Ambassador to Chile in 1989-91. The prison sentence was suspended, but Martorell was fined about \$25,000 (10 million pesos). His book is still banned.

The courts rarely issued orders prohibiting media coverage of cases in progress, although one prominent instance drew wide protests. When the courts renewed investigation into the 1990 assassination of Senator Jaime Guzman, a gag order was imposed, then lifted 2 months later. The law does not set any limits on a judge's power to impose such prohibitions nor does it require the reasons for the ban to be cited. In reaction to the presence of the media when the Investigations Police arrested a Carabinero, the court of appeals reaffirmed provisions of the Code of Penal Procedure that prohibit police from publicly disclosing the findings of their investigations.

The Government does not restrict academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for these rights, and the Government respects them in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government respects this right in practice. All denominations practice their faiths without restriction. Although church and State are officially separate, the Roman Catholic Church receives official preferential treatment. A 1995 municipal ordinance made it illegal to cause disturbances in the streets, which has been interpreted by some evangelical groups as an attempt to prevent them from proselytizing and preaching in public.

The small Jewish population is free to practice its religion but faces some discrimination in public life. In October a cabinet minister and a subcabinet member were reported to have made anti-Semitic comments in government meetings. Subsequently a Jewish vice minister resigned his post. Knowledgeable sources believed this was partly the result of internal policy differences and partly because of the Government's failure even to acknowledge that the remarks had been made.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respects them in practice. For minor children to leave the country, either alone or with only one of their parents, they must have notarized permission from both parents.

The Government cooperates with the United Nations High Commissioner for Refugees and other humanitarian organizations in assisting refugees. The issue of the provision of first asylum has never arisen. There were no reports of forced return of persons to a country where they feared persecution.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Chile is a constitutional democracy, and citizens have the right to change their government through periodic elections. There is universal suffrage for citizens 18 years of age and over. The Government still operates under some political restraints that were imposed by the previous regime. Under the 1980 Constitution, various national institutions--including the President, the Supreme Court, and the armed forces-dominated National Security Council--appointed an additional nine senators (beyond those elected) to 8-year terms prior to the transition to democracy. These senators, whose terms expire in 1997, were appointed by then-president Pinochet, and they join with the opposition on most matters. The legislative branch, with the exception of the institutional senators, is freely elected and independent from the executive branch.

The former military government wrote the 1980 Constitution and amended it slightly in 1989 after losing a referendum on whether General Pinochet should stay in office as president. It provides for a strong presidency and a legislative branch with limited powers. In addition, the Constitution includes provisions designed to protect the interests of the military and the rightwing political opposition.

These provisions, according to their defenders and even some critics, assured stability in the political process during the transition. Some of these provisions are characterized by critics as "authoritarian enclaves" left over from the previous regime; while advocates describe them as integral to the system of checks and balances. They include limitations on the President's right to remove military service chiefs, including chief of the army (the position General Pinochet can hold until 1998); an electoral system that gives the second place party (or coalition) in each district disproportionate representation in Congress; and the provision for nonelected institutional senators.

Women have had the right to vote in municipal elections since 1934 and in national elections since 1949, and they are active in political life at the grassroots level. Women make up a majority of registered voters and of those who actually cast ballots, but there are few women in leadership positions. There are 9 women among the 120 deputies, 3 women in the 46-seat Senate (including one of the designated senators), and 3 of 21 cabinet ministers are women. The level of female participation is not increasing. The percentage of female candidates in the 1996 municipal elections increased only slightly from 1994--to 17.7 percent from 16.7 percent.

The over 1 million indigenous people have the legal right to participate freely in the political process, although relatively few are politically active. While their participation has increased since the 1990 democratic transition, there is only one member of Congress of indigenous descent. In 1994 the Government created the National Corporation for Indigenous Development and placed it under the Planning Ministry; in 1995, indigenous people elected their representatives to this body.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

The Chilean Human Rights Commission, a nongovernmental organization (NGO), is affiliated with the International League of Human Rights and continues to gather evidence of police abuses. The CODEPU provides legal counsel to those accused of politically related crimes and to victims of human rights abuses. NGO's say that the Government has cooperated with their efforts to investigate accusations of continued human rights violations. Many international NGO's also continue to follow closely human rights issues.

The National Commission on Truth and Reconciliation (Rettig Commission) issued a report in 1991 that helped many Chileans come to terms with human rights abuses under the military government. The successor to the commission, the National Corporation for Compensation and Reconciliation, continues to investigate cases. Its mandate was extended until the end of 1996 to allow it to complete investigations of the last cases on which it has information. In August it delivered its final report, which confirmed 899 cases in addition to those documented by the Rettig Commission, bringing the total number of victims of killings and disappearance cases to 3,197. The corporation also provides compensation to family members of human rights victims.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution provides for equality before the law, but it does not specifically ban discrimination based on race, sex, religion, or social status.

Women

The public is only beginning to appreciate the extent of abuses such as wife beating. The National Women's Service (SERNAM), created in 1991 to combat discrimination against women, found in a 1992 study that 26.2 percent of women it surveyed said that they had been subjected to some form of physical violence by their husband or partner while another 33.5 percent reported some form of psychological abuse. However, only 16 percent reported such violence to the police. SERNAM is now conducting courses on the legal, medical, and psychological aspects of domestic violence for Carabineros, who are usually the first public officials to intervene in such incidents. These courses have been expanded to include judicial and municipal authorities.

The courts may order counseling for those involved in intrafamily violence. As of July 12, there were 8,147 court cases involving intrafamily violence in Santiago. The Carabineros also reported that its family affairs unit received more than 463 complaints of rape or sexual abuse during the first 8 months of the year.

Legal distinctions between the sexes still exist, despite a 1989 decision to give human rights treaties to which Chile is a party precedence over local laws. The law permits legal separation, but not divorce, so those who wish to remarry must seek annulments. Since annulment implies that a marriage never existed under the law, former spouses are left with little recourse for financial support. Although a recent law created conjugal property as an option in a marriage, some women saw this as a step backward, since the law on separate property (which still exists) gives women the right to one-half their husbands' assets but gives husbands no rights to theirs.

Another SERNAM study found that the average earnings of female heads of household are only 71 percent of those of male heads of household. Women with no schooling received a salary that was 87 percent of that of their male counterparts without schooling, while female heads of household with university training earned only 57 percent as much as their male contemporaries. SERNAM has a pilot program providing occupational training and child care in an effort to alleviate this disparity.

Children

The Government provides free education through high school (compulsory up to the eighth grade). A survey by the National Minors Service indicated that sexual abuse of minors occurs but that few cases were reported. A United Nations Children's Fund (UNICEF) report shows that 34 percent of children under 12 years of age experience serious physical violence, although only 3.2 percent of the victims of intrafamily violence reported to the Carabineros family affairs unit were below the age of 18. The 1994 Law on Intrafamily Violence was designed in part to deal with this problem. UNICEF estimates that over 100,000 children are in the work force (see Section 6.d.).

Congress enacted a law that segregates juvenile offenders from adult prisoners. Although juvenile offenders (i.e., those under the age of 18) had long received special treatment in the courts, some of them had been incarcerated with adults. The Government has reduced the number of minors in adult prisons from 6,630 in 1992 to around 300 in 1996.

People with Disabilities

Congress passed a law in 1994 to promote the integration of people with disabilities into society, and the National Fund for the Handicapped (FONDIS) has a \$1.5 million budget. The 1992 census found that 288,000 citizens said that they had some form of disability, but FONDIS estimates that the actual

number is closer to 1 million. The disabled still suffer some forms of legal discrimination; for example, blind people cannot become teachers or tutors. Although the law requires that new public buildings provide access for the disabled, the public transportation system does not make provision for wheelchair access, and a new subway line under construction provides no facilitated access for the disabled.

Indigenous People

The Mapuches from the south comprise over 90 percent of the indigenous population, but there are small Aimara, Atacamenno, Huilliche, Rapa Nui, and Kawaskhar populations in other parts of the country. A committee composed of representatives of indigenous groups participated in drafting the 1993 law that recognizes the ethnic diversity of the indigenous population and gives indigenous people a voice in decisions affecting their lands, cultures, and traditions. It provides for eventual bilingual education in schools with indigenous populations, and it replaced a statute that emphasized assimilation of indigenous people. However, out of the population that identifies itself as indigenous (nearly 1 million, according to the 1992 census), about half remain separated from the rest of society, largely because of historical, cultural, educational, and geographical factors.

In fact, the ability of indigenous people to participate in decisions affecting their lands, cultures, traditions, and the allocation of natural resources is marginal.

National/Racial/Ethnic Minorities

Chile assimilated a major European (mainly German) migration in the last century and a major Middle Eastern and Croatian migration in the early part of this century. Smaller racial and ethnic minority groups (Indians, Chileans of Asian descent, and African-Chileans) experience some societal intolerance.

Section 6 Worker Rights

a. The Right of Association

Workers have a right to form unions without prior authorization and to join existing unions; 13 percent of the work force is organized. A 1995 law provides government employee associations

with the same rights as trade unions, and implementing regulations have been adopted. Only the police and military are not allowed to form unions.

The 1992 Labor Code permits nationwide labor centrals, and the Unified Workers Central (CUT), the largest and most representative of them, legalized its status in April 1992. Unions are independent of the Government, but union leaders are usually elected from lists based on party affiliation and often receive direction from parties' headquarters.

Reforms to the Labor Code in 1990 removed many restrictions on the right to strike, although some remain. Employers may no longer fire striking workers without paying severance benefits. Employers must show cause to fire workers, but layoffs are permissible. Union leaders claim that some employers invoke this clause to fire employees who are attempting to form unions or who are active in collective bargaining. There is no specific information from union sources on particular cases where layoffs were used by employers to dismiss workers for prounion activities. Moreover, such acts and antiunion discrimination in general are illegal.

The CUT and many other labor confederations and federations maintain ties to international labor

organizations.

b. The Right to Organize and Bargain Collectively

Although the climate for collective bargaining has improved since the return to democratic government in 1990, most workers continue to negotiate individual contracts. Employers say that this is due to the worker's preference, distrust of union leaders, and to loyalty to their companies. Union leaders counter that the Labor Code--which among other things does not allow closed shops--prevents them from successfully organizing in many sectors. Employers may also include a clause in individual employment contracts that some classes of employees are not allowed to participate in collective bargaining, although this applies only to supervisory personnel. Employees may object to the inclusion of such clauses in their contracts and may appeal to the Ministry of Labor for their excision.

The Ministry is able to arbitrate about one-half of the complaints that it receives. Workers are free to take unarbitrated cases before the courts and, if they succeed in proving that they were fired unjustly, the employer must pay the discharged employees twice their normal severance payment. There are no statistics available concerning the disposition of complaints of antiunion behavior. There are allegations that employers fire workers for prounion activity and attempt to avoid a complaint by immediately paying them twice the normal severance pay.

Temporary workers--defined in the Labor Code as those in agriculture and construction, as well as port workers and entertainers--may now form unions, but their right to collective bargaining remains dependent on employers agreeing to negotiate with unions of temporary workers. The Labor Code provides sanctions for unfair bargaining practices, which protect workers from dismissal during the bargaining process, but labor leaders claim that companies invoke the needs of the company clause to fire workers after a union has signed a new contract, particularly when negotiations result in a prolonged strike.

The same labor laws apply in the duty free zones.

c. Prohibition of Forced or Compulsory Labor

The Constitution and the Labor Code prohibit forced or compulsory labor, and there is no indication that it is practiced.

d. Minimum Age for Employment of Children

The law allows children between the ages of 15 and 18 to work with the express permission of their parents or guardians. Children 14 years of age may also work legally with such permission, but in addition they must have completed their elementary education, and the work involved may not be physically strenuous or unhealthy. Additional provisions in the law protect workers under 18 years by restricting the types of work open to them (for example, they may not work in nightclubs) and by establishing special conditions of work (they may not work more than 8 hours in 1 day). Labor inspectors enforce these regulations and compliance is good in the formal economy. Many children are employed in the informal economy, however, which is difficult to regulate. UNICEF estimates that approximately 107,000 children between 12 and 19 years of age were in the work force. The majority of these were males from single parent households headed by women; these children worked more than 40 hours per week and did not attend school.

e. Acceptable Conditions of Work

The law sets minimum wages, hours of work, and occupational safety and health standards. The legal workweek is 48 hours which can be worked in either 5 or 6 days. The maximum workday length is 10 hours, but positions such as caretakers and domestic servants are exempted. All workers enjoy at least one 24-hour rest period during the workweek, except for workers at high altitudes who voluntarily exchange a workfree day each week for a number of consecutive workfree days every 2 weeks.

A tripartite committee comprising government, employer, and labor representatives normally suggests a minimum wage based on projected future inflation and increases in productivity. On May 14, the Senate approved the Government's proposal with little dissent, setting the minimum monthly wage at about \$160 (65,500 pesos), which took effect on June 1. The minimum wage is adjusted annually. This wage is designed to serve as the starting wage for an unskilled single worker entering the labor force and does not provide a family with an acceptable standard of living. Only 11 percent of salaried workers earn the minimum wage.

Occupational health and safety is protected under the law and administered by the Ministry of Health. Ministry of Labor inspectors enforce laws covering working conditions. The Government has increased resources for inspections and targeted industries guilty of the worst abuses. As a result, enforcement is improving, and voluntary compliance is fairly good. Insurance mutual funds provide workmen's compensation and occupational safety training for the private and public sectors. They reported a 24-percent decline in occupational injuries over the past 5 years, although 11 percent of the work force still submitted claims. Workers who remove themselves from situations that endanger their health and safety have their employment protected, provided that they ask a workers' delegate to bring the problem to the attention of labor inspectors. A new law entered force on December 15 that increases the number of annual occupational health and safety inspections and provides that they will be carried out by an expanded labor inspection service in the Ministry of Labor.

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