

## Labor Rights Report: Chile

### I. Introduction

This report on labor rights in Chile has been prepared pursuant to section 2102(c)(8) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(8) provides that the President shall:

In connection with any trade negotiations entered into under this Act, submit to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating.

The President, by Executive Order 13277 (67 Fed. Reg. 70305), assigned his responsibilities under section 2102(c)(8) of the Trade Act to the Secretary of Labor, and provided that they be carried out in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the United States Trade Representative and the Secretary of Labor. (67 Fed. Reg. 77812)

This report relies on information obtained from the Department of State in Washington D.C. and the U.S. Embassy in Chile and from other U.S. Government reports. It also relies upon a wide variety of reports and materials originating from Chile, international organizations, and non-governmental organizations (NGOs). The report also draws on public comments regarding the labor situation in Chile received in response to a notice published in the *Federal Register* on January 28, 2003.<sup>1</sup>

### II. Background

Until 1973, when President Salvador Allende was overthrown by the military, Chile’s labor relations system was marked by the presence of strong firm-level unions and active state intervention in the determination of wages, prices, and other aspects of industrial relations. Chilean workers enjoyed numerous protections and social service benefits, most of which were paid for by employers, who in turn were permitted to pass along the costs by charging high prices in a protected market.<sup>2</sup>

During 17 years of military rule under General Augusto Pinochet, human rights, including labor rights, were sharply curtailed if not outright suspended. Trade unions were suspended; collective

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<sup>1</sup> Request for Information Concerning Labor Rights in Chile and Its Laws Governing the Worst Forms of Child Labor, *Federal Register* (February 26, 2003), p. 8928. One comment was received from the Chilean Ministry of Labor, “Report on Labor Rights in Chile and its Laws Governing Exploitive Child Labor,” Santiago, March 2003.

<sup>2</sup> Andrea Ruiz-Esquide, “Labor Democratic Transition, and Neo-Liberal Policy Environments: The Case of Chile,” University of California, Berkeley, Center for Latin American Studies, at <http://ist-socrates.berkeley.edu:7001/Events/spring2001/03-15-valenzuela/> on 21 March 2003.

bargaining agreements were terminated; and all existing arrangements pertaining to wages and benefits and the adjustment of pensions to inflation were discarded, as were provisions requiring employers to show cause in dismissing employees.<sup>3</sup> At the same time, Chile thoroughly revamped its economy from one based on “inward-led growth” to one based on “an ambitious policy of pro-market reform and export-led growth.”<sup>4</sup> The Chilean government also dismantled many legal and institutional worker protections. In 1979, a new labor code was adopted that once again allowed the formation of unions at the firm level, while permitting the extensive use of temporary workers and subcontracted work.

In 1985, the AFL-CIO filed a petition against Chile under the Generalized System of Preferences (GSP) law, asserting that the Government of Chile did not provide Chilean workers with the protections afforded to them under internationally recognized labor standards. The regular abuse of worker rights prompted the United States, in 1988, to suspend trade benefits as a result of a determination that Chile had not and was not taking steps to afford internationally recognized worker rights to workers in the country, as required by Section 502(b)(7) of the Trade Act of 1974.<sup>5</sup>

When civilian democracy was restored in 1990, Chile embarked on a decade of rapid growth combined with the restoration of worker rights. Between 1990 and 1993, real wages increased by 13.7 percent,<sup>6</sup> while unemployment dropped to under four percent. In 1991, new labor legislation was passed that restricted the number of causes for firing employees, increased the compensation that firms had to pay to lay off employees, and restricted employers' recourse to lockouts.<sup>7</sup> New social safety net programs were created for the poorest citizens, and Chile's poverty rate dropped by over half. An immediate benefit of revising the labor code was the restoration by the United States of GSP benefits in 1991.

Beginning in 1995, Chile embarked on a process of revision of its labor code to bring it into compliance with international standards and to address many of the outstanding concerns and complaints of workers. Chilean labor law had been criticized for its weak deterrence of anti-union activities, particularly the use by employers of a “needs-of-the-company clause”<sup>8</sup> that had been designed to allow companies to dismiss workers for economic reasons but which, in the view of unions, had been used primarily to dismiss union members. Workers were unable to appeal their dismissal on the grounds of anti-union bias, and the labor law did not allow reinstatement for unfair dismissals, except in cases of *fuero sindical* (protection of union officials). Employers also were seen to have an advantage during collective bargaining, as they

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<sup>3</sup> Janine Berg and Dante Contreras, “Political-Economic Regime and the Wage Curve: Evidence from Chile, 1957-1996,” Center for Economic Policy Analysis, CEPA Working Paper 2002-10, Aug 2002, at <http://www.newschool.edu/cepa/papers/archive/cepa200210.pdf> on 21 March 2003.

<sup>4</sup> Ibid.

<sup>5</sup> President George H.W. Bush, Letter to Congressional Leaders on the Reinstatement of Beneficiary Trade Status for Chile, 4 Feb 1991, at <http://bushlibrary.tamu.edu/papers/1991/91020405.html> on 21 March 2003.

<sup>6</sup> United Nations Economic Commission for Latin America, cited in *Chile: A Country Study*, U.S. Library of Congress, March 1994, chapter 3, at <http://memory.loc.gov/frd/cs/cltoc.html#cl0102> on 21 March 2003.

<sup>7</sup> *Chile: A Country Study*, U.S. Library of Congress, March 1994, chapter 3, at <http://memory.loc.gov/frd/cs/cltoc.html#cl0102> on 21 March 2003.

<sup>8</sup> Código del Trabajo [hereinafter Labor Code], Article 161, at <http://www.netchile.com/normas/codice/trabajo.htm> on 2 Jan 2003, as amended by Ley Núm. 19.759 [hereinafter Law No. 19,759].

were not required to disclose corporate information unless it was relevant to the workers' proposal.

In January 1999, Chile ratified ILO Conventions No. 87 on freedom of association and protection of the right to organize and No. 98 on the right to organize and bargain collectively.<sup>9</sup> In September 2001, after six years of discussion and debate, Chile's Senate enacted significant reforms to the Labor Code, drafted with technical assistance from the ILO. The reforms expanded protection against dismissal of union officials (*fuero sindical*), substantially increased penalties for unfair dismissals, provided for the reinstatement of trade unionists dismissed unjustly, and strengthened the laws governing disclosure of corporate information.

Trade union membership peaked at 14.1 percent of the total workforce in 1991, dropped steadily until reaching 9.8 percent in 1999, but has edged upward to over 10 percent since.<sup>10</sup> In 2001, Chile had over 15,000 trade unions with an estimated 605,000 Chilean workers, representing 10.3 percent of the country's 5.86 million workforce.<sup>11</sup> Approximately 1,024 new unions with some 37,000 members were established in 2002.<sup>12</sup>

From the perspective of worker rights, Chile's progress over the past decade has been substantial. With the ratification of ILO Convention No. 182 on the worst forms of child labor in July 2000, Chile has ratified all eight ILO core conventions. The revision of the national labor code in 2001 by the Chilean National Congress significantly improved Chile's legislation on freedom of association and the right to organize, while retaining key elements of labor market flexibility. It is too soon to evaluate Chile's application and enforcement of the new labor code provisions, but, to date, the government has made strong commitments to increase the number of

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<sup>9</sup> International Labor Organization, ILOLEX Database of International Labor Standards: Chile <http://www.ilo.org/ilolex/english/newratframeE.htm> on 21 March 2003.

<sup>10</sup> The percentage of union membership for a given year was obtained by dividing the number of union members by the total workforce. See Central Unitaria de Trabajadores de Chile, "Evolución de la tasa de sindicalización considerando la fuerza de trabajo asalariada, años: 1986-2001," at <http://www.cutchile.cl/docs/datos.htm> on 7 Jan 2003. See also Ministerio de Planificación y Cooperación, "Fuerza de trabajo por sexo: 1986-2000," at [www.mideplan.cl/estudios/empleo.pdf](http://www.mideplan.cl/estudios/empleo.pdf) on 3 Feb 2003. Many reasons have been offered to explain the decrease of worker participation in Chilean unions in the 1990s: the lack of "closed shops" or "union shops," financial incentives offered by employers in exchange for non-affiliation, discrimination by employers against unionized workers in making promotions, dismissal of workers for participation in union activities, and intimidation by the police. See Carol Pier, "Labor Rights in Chile and NAFTA Labor Standards: Questions of Compatibility on the Eve of Free Trade," *Comparative Labor Law & Policy Journal*, 1988, vol. 19, no. 2, p. 211. According to Diego Olivares, a member of the Executive Committee of the Unitary Labor Central (CUT), the problem lay not with the government nor the employers but with "the labor movement's own inability to carry out the changes needed to act and function as it should." See David Roberts, "Labor Movement on the Rebound: May Day Celebrations Underscore Renewed Labor Unity," *Santiago Times*, 2 May 2000.

<sup>11</sup> The 2001 workforce figure was computed by adding together the workforce statistics of the four quarters (Q1: 5.79 million, Q2: 5.82 million, Q3: 5.89 million, and Q4: 5.95 million) and then dividing by four. See Instituto Nacional de Estadísticas, "Indicadores Del Mes: Empleo y Sectoriales," No. 31 (29 May 2001), p. 2; No. 33 (27 July 2001), p. 2; No. 37 (27 Nov 2001), p. 2; and No. 39 (29 Jan 2002), p. 2, at <http://www.ine.cl/27-prensa/i-boletines.htm> on 8 Jan 2003. See also Central Unitaria de Trabajadores de Chile, "Evolución de la tasa de sindicalización considerando la fuerza de trabajo asalariada, años: 1986-2001."

<sup>12</sup> Thomas D. Mittnacht, U.S. Department of State, electronic correspondence to U.S. Department of Labor Official, 31 Jan 2003 [hereinafter Mittnacht electronic correspondence, 31 Jan 2003.]

labor inspectors over the next three years and to take other steps to bolster its capabilities to properly implement the law.

### **III. Legal Framework for Labor Rights**

The Chilean Constitution provides for the fundamental rights of equal treatment under the law, guarantees every person the right to freely choose work, the right of freedom of association, the right to collective bargaining, and a prohibition against all forms of forced work, with the exception of military conscription.<sup>13</sup> The Labor Code, in turn, governs specific labor and employment issues, including:

- Conditions of employment and work, including employment contracts, the enforcement of wage, hour, and benefit laws, personnel management, and employment termination and dismissal;
- Trade union affairs;
- Collective bargaining and the right to strike, mediation, and arbitration;
- Occupational safety and health;
- Equal opportunity and non-discrimination;
- Social security, including medical care, maternity, old-age, disability, survivor benefits, workman's compensation, and unemployment;
- Employment policy and training and job placement.<sup>14</sup>

### **IV. Administration of Labor Law**

#### **A. The Ministry of Labor and Social Welfare**

The Ministry of Labor and Social Welfare is divided into two bureaus, the Bureau of Labor and the Bureau of Social Welfare, and operates twelve regional offices throughout the country.<sup>15</sup> The Bureau of Social Welfare is comprised of the Pensions and Pension Fund Administration, the Social Security Superintendent, and the Secured Lending Agency. The Pension Fund Administration assists people with necessary paperwork to obtain pensions and monitors private companies that provide pensions. The Social Security Superintendent oversees the provision of

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<sup>13</sup> Constitución Política de la República de Chile [hereinafter Constitution of the Republic of Chile], Article 19(16), at <http://www.georgetown.edu/pdba/Constitutions/Chile/chile01.html> on 2 Jan 2003.

<sup>14</sup> Labor Code, as amended by Law No. 19,759.

<sup>15</sup> Thomas D. Mittnacht, U.S. Department of State, electronic correspondence to U.S. Department of Labor Official, 4 Feb 2003 [hereinafter Mittnacht electronic correspondence, 4 Feb 2003].

unemployment benefits by private companies, and the Secured Lending Agency provides secured loans to self-employed workers and family enterprises.<sup>16</sup>

The Labor Bureau, in turn, is made up of the Labor Directorate and the National Worker Training and Employment Service. The latter service subsidizes companies that provide training to their employees, gives training scholarships, and manages a computerized job bank.<sup>17</sup>

The Labor Directorate, the most significant division in terms of scope and responsibility, has five major departments that cover union organizations, collective bargaining, and labor inspection, as well as legal and administrative matters. Its staff informs workers and employers of the labor law through education and outreach programs and provides technical support to trade unions and employers' organizations. The Labor Directorate is responsible for enforcing and monitoring compliance with labor legislation. Its staff carries out labor inspections at enterprises, makes determinations about whether various practices violate the Labor Code, and determines fines or punitive actions where relevant. The Directorate is also responsible for certifying and enforcing collective bargaining agreements and conducting conciliation and mediation. In addition, the Labor Directorate collects most labor statistics for the country. It has offices in all thirteen regions.<sup>18</sup>

The Directorate's Labor Inspectorate oversees the enforcement of labor laws, administrative procedures and sanctions.<sup>19</sup> The procedures address sanctions in general terms, beginning with the administration of fines that can be recovered through the labor court. If an employer corrects an infraction within 15 days of having been notified of a penalty, the amount of the fine is reduced by 50 percent. If a business is penalized for the same infraction in a subsequent inspection it will be fined a greater penalty but, based on commitment to correct the infraction, still has recourse to appeal for a 50 percent reduction of the applicable penalty. The Labor Code does not state specific fines for infractions; rather sanctions are assigned a certain number of units, and each unit has a monetary value.<sup>20</sup>

Labor inspectors are responsible for inspecting enterprises with respect to trade union and industrial relations issues, child labor, occupational safety and health, wages, hours worked, discrimination, and benefits. In 2000, there were approximately 381 labor inspectors nationwide, of which 279 of the 381 were field investigators, and 102 conciliated cases from their offices.<sup>21</sup> The Labor Inspectorate has stated its intention to hire approximately 300 more inspectors in the coming years. Recruitment efforts have already begun.

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<sup>16</sup> Thomas D. Mittnacht, U.S. Department of State, electronic correspondence to U.S. Department of Labor Official, 19 March 2003 [hereinafter Mittnacht electronic correspondence, 19 March 2003].

<sup>17</sup> Ibid.

<sup>18</sup> Ibid. See also Dirección del Trabajo, "Quiénes Somos," at <http://www.dt.gob.cl/index1.html> on 21 March 2003.

<sup>19</sup> Labor Code, Articles 474 and 476 through 483, as amended by Law No. 19,759.

<sup>20</sup> The current monthly tax unit is 29,360 pesos, approximately US\$40. See Thomas D. Mittnacht, U.S. Department of State, electronic correspondence to U.S. Department of Labor Official, 31 Jan 2003 [hereinafter Mittnacht electronic correspondence, 31 Jan 2003].

<sup>21</sup> Dirección del Trabajo, "Resultados Obtenidos por el Año 2000: Actividad de Fiscalización [Información Preliminar]," 2001.

By law, the Labor Directorate must respond to all complaints, and a majority of inspections are complaint driven. The Ministry also conducts unannounced inspections based on the incidence of problems in different industries. National labor laws cover roughly 600,000 businesses, of which the Labor Directorate estimates its inspectors investigate approximately 20 percent each year.<sup>22</sup> In 2000, 95,255 businesses were inspected. Fifty-nine percent of the inspections were complaint-driven; the Ministry initiated the remaining 41 percent.

## **B. The Labor Court System**

Disputes between employers and employees must be brought to the Labor Directorate for conciliation. Approximately 35 percent of cases are successfully conciliated. When conciliation fails, the case may be brought to the Labor Courts. At present, there are 20 specialized labor courts in 13 regions and 188 general tribunals that hear certain types of labor cases.<sup>23</sup> Appeals of cases heard by the labor courts are routed into the national courts of appeal, as there are no specialized labor courts of appeal; further appeals must be brought to the Supreme Court.<sup>24</sup>

Labor court judges currently handle an average of 6,000 to 8,000 cases per year, of which 75 to 80 percent involve failures by employers to make required payments into pension (social security) funds. While these cases are generally uncomplicated, their sheer volume burdens the courts and contributes to substantial delays. An average case currently takes 1.5 years to resolve.<sup>25</sup>

To deal with the court backlog, in 2001, the Ministries of Justice and Labor and Social Welfare established a Forum for Labor Justice and Social Welfare Reform, a body tasked with developing a new system of Labor Tribunals to resolve labor disputes more efficiently. The Forum was charged with developing legislative reforms to reduce delays, increase transparency, make better use of evidence, and strengthen confidence in the system.<sup>26</sup> The Forum is composed of technical advisors from the ILO, academics, private legal professionals, labor judges, representatives of the Ministries of Labor and Social Welfare and Justice, Supreme Court Justices and other public officials.

The Forum has proposed three general sets of reforms: to add new judges, new administrative staff, and increase the number of labor courts; to create a new court system to handle social security cases; and to conduct proceedings in the labor courts in an adversarial and oral manner, as opposed to the current method by which the great majority of cases are determined solely by reviews of written submissions. The recommendations are currently under review by the Ministries of Labor and Justice, after which they will be submitted to the legislature.<sup>27</sup> It is anticipated that the new procedures will be in place by 2004.

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<sup>22</sup> Ibid.

<sup>23</sup> U.S. Department of Labor, Draft Report of *U.S. Labor Justice Technical Cooperation Mission to Chile*, 18 to 22 Nov 2002.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid. See also Mittnacht electronic correspondence, 19 March 2003.

<sup>27</sup> Ibid.

## V. Labor Rights and Their Application

### A. Freedom of Association

#### 1. Trade Unions and the Right to Organize

Chilean workers employed in the private sector and in state enterprises are guaranteed the freedom to unionize without prior approval.<sup>28</sup> Government employees, excluding the Ministry of National Defense, may form employee associations that function in a similar way to trade unions.<sup>29</sup> Trade union affiliation is voluntary, and workers cannot be required to join a trade union or to withdraw from a union as a condition for employment, thus banning “closed shops” and “union shops.”<sup>30</sup>

Workers may form one of four types of unions: a company-level union, an inter-company union (a union representing workers at multiple enterprises), a union of independent workers, or a temporary or seasonal workers’ union.<sup>31</sup> Company-level unions are the most numerous, followed by unions of independent workers.<sup>32</sup> Trade unions have the right to form federations, confederations, and labor centrals (national organizations representing the general interests of workers that integrate confederations, federations, unions, and government employee associations) and may affiliate with international workers’ organizations.<sup>33</sup> Chile has several federations and confederations, but the Unitary Labor Central (Central Unitaria de Trabajadores, CUT) is the only labor central, representing an estimated 79 percent of unionized employees.<sup>34</sup> The CUT is affiliated with the International Confederation of Free Trade Unions (ICFTU) and serves as the Chilean worker delegate to the ILO.<sup>35</sup>

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<sup>28</sup> Until the 2001 revision of the Labor Code, this right was denied to employees of state enterprises dependent upon the Ministry of National Defense and to other workers connected to the Ministry. See Labor Code, Articles 212 and 217, as amended by Law No. 19,759.

<sup>29</sup> Ley Núm. 19.296 [hereinafter Law No. 19,296]. See also *Country Reports on Human Rights Practices 2000 – Chile*, (Washington, DC: U.S. Department of State, 23 Feb 2001), Section 6a, at <http://www.state.gov/g/drl/rls/hrrpt/2000/wha/736.htm> on 7 Jan 2003.

<sup>30</sup> In general, the ILO is neutral on this issue, recognizing that Article 2 of ILO Convention No. 87 “leaves it to the practice and regulations of each State to decide whether it is appropriate to guarantee the rights of workers not to join an occupational organization, or on the other hand, to authorize and, where necessary to regulate the use of union security clauses in practice.” See Constitution of the Republic of Chile, Article 19(19). See also Labor Code, Articles 214 and 215. See also International Labor Conference, 81st Session, 1994, Report III (Part 4B), General Survey of the Reports on the Freedom of Association and the Right to Organize Convention (No. 87), 1948 and the Right to Organize and Collective Bargaining Convention (No. 98), 1949.

<sup>31</sup> Labor Code, Article 216, as amended by Law No. 19,759.

<sup>32</sup> Of the unions established in 2002, there were 700 company-level unions, 226 unions of independent workers, 62 unions of temporary or seasonal workers, 53 inter-company unions, and one union with no classification. See Mittnacht electronic correspondence, 31 Jan 2003. See also *Labour Legislation in Chile: In relation to the Eleven Labour Principles of the Canada-Chile Agreement on Labour Cooperation Chile*, (Ottawa: Human Resources Development Canada, July 1997), p. 17.

<sup>33</sup> Labor Code, Article 213.

<sup>34</sup> In 2001, the CUT had 475,000 members, while total union membership in Chile equaled 605,000. See Mittnacht electronic correspondence, 31 Jan 2003. See also *Labour Legislation in Chile: In relation to the Eleven Labour Principles of the Canada-Chile Agreement on Labour Cooperation Chile*, p. 18.

<sup>35</sup> International Confederation of Free Trade Unions, “ICFTU: International Confederation of Free Trade Unions,” at <http://www.icftu.org/addresslist.asp?Language=EN> on 3 Feb 2003. See also International Labor Conference, 89th Session, 2001, Supplement to the *Provisional Record: Delegations*.

To form a trade union, workers must hold an assembly with a quorum in the presence of a certifying government official and vote by secret ballot.<sup>36</sup> A quorum of eight workers is needed. To unionize a company with more than 50 employees, a quorum of 25 workers, representing at least 10 percent of all employees is required; however, if there is no existing union, a quorum of eight workers is permitted for up to one year.<sup>37</sup> A minimum of 25 workers is required for the establishment of all other types of trade unions.<sup>38</sup> After holding the union assembly, the trade union must notify the employer in writing of its formation and must register with the Labor Inspectorate.<sup>39</sup> If the Labor Inspectorate determines that the trade union's constitution or statutes are not in compliance with the labor law, the union may make corrections or appeal to a labor tribunal.<sup>40</sup>

## 2. Right to Strike

The right to strike may be exercised only by workers in regulated collective bargaining units and is legally limited to company-level unions, inter-company unions, confederations, and federations.<sup>41</sup> Strikes by public sector employees are prohibited,<sup>42</sup> though teachers, health care workers, and municipal workers have conducted strikes.<sup>43</sup>

Strikes are prohibited in public utilities and in companies whose closure could cause harm to public health, to the provisioning of essential goods to the nation,<sup>44</sup> to the economy, or to national security.<sup>45</sup> In such enterprises, compulsory arbitration is required if a settlement is not reached during collective bargaining negotiations; if an illegal strike takes place, the President of Chile has the authority to order a resumption of work.<sup>46</sup> At present, approximately 30 companies are designated as providers of essential services in which strikes are prohibited.<sup>47</sup>

To stage a strike, workers in regulated collective bargaining units must vote by secret ballot.<sup>48</sup> The decision to strike must be approved by an absolute majority of the workers of the company involved in the negotiations, and if there is no majority, the employer's last offer prevails.<sup>49</sup> The strike must commence within three days following the strike vote, although it can be postponed for up to 10 days by mutual consent. If the strike does not begin on the established date or if more than half of the workers involved in the negotiations continue to work, the strike is considered

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<sup>36</sup> Labor Code, Article 221, as amended by Law No. 19,759.

<sup>37</sup> Labor Code, Article 227, as amended by Law No. 19,759.

<sup>38</sup> Labor Code, Article 228, as amended by Law No. 19,759.

<sup>39</sup> Labor Code, Articles 222 and 225, as amended by Law No. 19,759.

<sup>40</sup> Labor Code, Article 223.

<sup>41</sup> *Seminar on Labour Legislation in Chile* (Ottawa: Human Resources Development Canada, 30 April 1998), p. 11.

<sup>42</sup> Constitution of the Republic of Chile, Article 19(16). See also Labor Code, Article 384.

<sup>43</sup> *Country Reports on Human Rights Practices 2001 – Chile*, Section 6a.

<sup>44</sup> This provision covers items such as food and fuel but has not been invoked in recent times. See Mitnacht electronic correspondence, 19 March 2003.

<sup>45</sup> Labor Code, Article 384.

<sup>46</sup> Labor Code, Articles 384 and 385.

<sup>47</sup> *Country Reports on Human Rights Practices 2001 – Chile*, Section 6a.

<sup>48</sup> Labor Code, Articles 370 and 372.

<sup>49</sup> Labor Code, Article 373.



void, and the employer's last offer goes into effect.<sup>50</sup> After 48 hours of striking, any party may request the Labor Inspectorate to intercede; however, if no agreement is reached within five days, the strike may continue.<sup>51</sup> At any time during the strike, the workers' negotiating committee may call a vote to send the case to mediation or to arbitration.<sup>52</sup>

With the passage of the 2001 reform legislation, a company must wait 15 days after the beginning of a strike to hire replacement workers, unless the employer's last offer contains the same conditions as the previous collective bargaining agreement (adjusted for inflation), provides for a minimum annual adjustment of wages based on the inflation rate during the contract period, and provides a "replacement bond" equal to four times the wage of each replacement worker, which is to be divided between all the strikers.<sup>53</sup> The employer may declare a lockout (partial or total) or a temporary closing of the company if the strike affects over 50 percent of the company's employees or if it paralyzes the essential activities of the enterprise.<sup>54</sup>

Since 2000, the ILO has reviewed two complaints against the Government of Chile on the right to strike. One case concerned restricting the right to strike of workers who, while employed in companies providing essential services, do not directly contribute to these services. While the Chilean Constitution prohibits the right to strike by any worker in such enterprises in their entirety, the Chilean Government agreed to investigate how it might distinguish the different sections and duties carried out within the company so that only essential service workers would be prohibited from striking.<sup>55</sup> In the second case, which dealt with the hiring of replacement workers during strikes, the ILO suggested that the Government of Chile amend that portion of its labor code.<sup>56</sup> The reform legislation proposed by the Ministry called for a prohibition on hiring replacement workers, but this amendment was dropped by the legislature.

Chilean trade unions conducted 122 legal strikes in 2002, compared to 86 in 2001. About 10 percent of collective bargaining negotiations in 2002 resulted in strikes, with an average strike lasting approximately 15 days and involving roughly 135 workers.<sup>57</sup> Most strikes take place over wages.<sup>58</sup> Solidarity strikes or strikes demanding compliance with individual contracts or collective agreements are illegal in Chile. No such strikes appear to have occurred.<sup>59</sup>

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<sup>50</sup> Labor Code, Article 374, as amended by Law No. 19,759.

<sup>51</sup> Ibid.

<sup>52</sup> Labor Code, Article 378, as amended by Law No. 19,759.

<sup>53</sup> Labor Code, Article 381, as amended by Law No. 19,759.

<sup>54</sup> Labor Code, Articles 375 and 376.

<sup>55</sup> International Labor Organization, Reports of the Committee on Freedom of Association, Chile (Case No. 2135), Report No. 326, Vol. LXXXIV, 2001, Series B, No. 3, par. 245 to 268, at <http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?lang=EN> on 3 Feb 2003.

<sup>56</sup> It should be noted that U.S. law allows employers to hire replacement workers in some instances. See International Labor Organization, Reports of the Committee on Freedom of Association, Chile (Case No. 2141), Report No. 327, Vol. LXXXV, 2002, Series B, No. 1, par. 312 to 326, at <http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?lang=EN> on 3 Feb 2003.

<sup>57</sup> Mittnacht electronic correspondence, 31 Jan 2003.

<sup>58</sup> *Labour Legislation in Chile: In Relation to the Eleven Labour Principles of the Canada-Chile Agreement on Labour Cooperation*, p. 25.

<sup>59</sup> Mittnacht electronic correspondence, 31 Jan 2003 and 19 March 2003.

## B. Right to Organize and Bargain Collectively

### 1. Right to Organize

Chile's Labor Code provides for the legal protection of trade unions against employer interference. Employers may not obstruct the formation or operation of a trade union, meddle in union affairs, or discriminate between existing unions.<sup>60</sup> Dismissal or discrimination due to union affiliation or participation in union activities is prohibited.<sup>61</sup> *Fuero* protection (a measure prohibiting a worker's dismissal) is granted to the leaders of unions, federations, confederations, and labor centrals, from the date of their election until six months after their term expires.<sup>62</sup> The same safeguard is provided to all candidates running for union offices from the date of their announcement until the election; however, the candidates may only receive *fuero* protection twice during each calendar year.<sup>63</sup> Workers engaged in the formation of a union and workers involved in regulated collective bargaining also are accorded protection from dismissal.<sup>64</sup> The employer must receive prior authorization from a labor tribunal before dismissing a worker protected by *fuero*. If the labor tribunal does not approve the termination of the contract, the company will be ordered to immediately reinstate the employee.<sup>65</sup>

The 2001 labor reform legislation significantly enhances the legal protections given to trade unionists against unfair dismissal. Prior to the reform, Chilean employers frequently invoked the needs-of-the-company clause (Article 161) of the Labor Code to dismiss workers who participated in strikes.<sup>66</sup> While an employer may still invoke the needs-of-the-company clause of the Labor Code or cite general breach of contract obligations or misbehavior as justification for termination, an employee now has the right to file a complaint asserting anti-union bias with the labor tribunal.<sup>67</sup> The Labor Inspectorate has been given the authority to investigate incidents of anti-union practice, to transfer appropriate cases to the labor tribunal, and to act as a party in the trial.<sup>68</sup> If the labor tribunal finds in favor of the employee, he/she may be reinstated or, in lieu of reinstatement, may accept severance pay (one month's salary for every year worked, maximum 330 days pay) augmented by 3 to 11 times the worker's salary.<sup>69</sup>

The new Labor Code of 2001 provides for higher compensations for workers unfairly dismissed on grounds other than anti-union bias but not for reinstatement. Workers wrongfully terminated under the needs-of-the-company clause are to receive their severance pay plus an additional 30

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<sup>60</sup> Anti-union activities are punishable with fines between 10 and 150 monthly tax units (US\$400 to US\$6,000). See Labor Code, Articles 289 and 292, as amended by Law No. 19,759.

<sup>61</sup> Labor Code, Article 215.

<sup>62</sup> Labor Code, Article 243, as modified by Law No. 19,759. See also Labor Code, Articles 274 and 283.

<sup>63</sup> The date of the candidate's announcement should be no more than 15 days from the election. See Labor Code, Article 238, as amended by Law No. 19,759.

<sup>64</sup> Labor Code, Articles 221 and 309, as amended by Law No. 19,759. See also Labor Code, Article 310.

<sup>65</sup> Labor Code, Article 174.

<sup>66</sup> International Confederation of Free Trade Unions, *Internationally-Recognized Core Labour Standards in Chile: Report for the WTO General Council Review of the Trade Policies of Chile*, Sept 1997, at <http://www.icftu.org/displaydocument.asp?Index=990916252&Language=EN> on 3 Feb 2003.

<sup>67</sup> Labor Code, Articles 160, 161, 292, and 294, as amended by Law No. 19,759.

<sup>68</sup> Labor Code, Article 292, as amended by Law No. 19,759.

<sup>69</sup> To be eligible for regular severance pay, the worker must be employed at the company for at least one year. See Labor Code, Article 294, as amended by Law No. 19,759. See also Labor Code, Article 163.

percent, while workers improperly dismissed because of misbehavior or general breach of contract are entitled to their severance pay augmented by 80 percent.<sup>70</sup> If the court determines that the employer lacked a plausible motive for dismissal, the worker's severance pay can be increased by 100 percent.<sup>71</sup> President Lagos has asserted that, "the toughening up on job dismissals will cut out illegal practice."<sup>72</sup> Labor leaders, however, claim that employers continue to invoke the needs-of-the-company clause to improperly dismiss workers and that it remains cheaper for some employers to pay the penalty for firing workers if caught rather than pay the costs of retaining the workers.<sup>73</sup>

The Ministry of Labor reported 739 complaints of anti-union practice in 2002, in comparison with 457 such complaints in 2001. Most complaints involved the failure of employers to deduct union dues obligations; discrimination against trade union members; or obstructions to the formation or operation of trade unions. Most of the complaints in 2002 were in the industrial sector (12.7 percent), followed by the social services sector and the transportation and storage sectors. As of October 2002, 66 cases alleging anti-union bias were before the labor tribunal. Ten cases had been reviewed, with the labor tribunal finding in favor of the workers in eight cases.<sup>74</sup>

## 2. Collective Bargaining Process

The Chilean Constitution guarantees workers the right to bargain collectively with their employer, except in cases expressly denied by law.<sup>75</sup> The Labor Code bans collective bargaining by public sector employees, workers in state enterprises dependent on the Ministry of National Defense, and workers in any private sector company that had over 50 percent of its revenue provided by the State during the previous two years.<sup>76</sup> Despite the ban on public sector collective bargaining, the Government of Chile and the government employee associations hold annual negotiations on salaries and other labor issues by voluntary agreement.<sup>77</sup>

Seventy-four percent of the collective bargaining in 2002 was carried out through what is termed "the regulated" collective bargaining process, which covers private sector companies and state enterprises in which the government's stake is less than 50 percent.<sup>78</sup> Workers may be represented by a company-level union, two or more unions of distinct companies, inter-company unions, confederations, or federations; however, the latter four must receive written approval from the employer(s), and an absolute majority of the affiliated workers in the company must

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<sup>70</sup> Labor Code, Article 168, as amended by Law No. 19,759.

<sup>71</sup> Labor Code, Article 168, as amended by Law No. 19,759.

<sup>72</sup> Matthew Craze, "Labor Reform: A Step in the Right Direction?" *Amcham Journal*, at [http://www.amchamchile.cl/publicaciones/thejournal/labor\\_reform.htm](http://www.amchamchile.cl/publicaciones/thejournal/labor_reform.htm) on 29 Jan 2003.

<sup>73</sup> *Country Reports on Human Rights Practices 2001 -Chile*, Section 6b.

<sup>74</sup> Mittnacht electronic correspondence, 31 Jan 2003.

<sup>75</sup> Constitution of the Republic of Chile, Article 19(16).

<sup>76</sup> Labor Code, Article 304.

<sup>77</sup> *Labour Legislation in Chile: In Relation to the Eleven Labour Principles of the Canada-Chile Agreement on Labour Cooperation*, p. 24.

<sup>78</sup> In 2002, 1,248 collective bargaining agreements were negotiated through the regulated process, covering some 104,000 workers. In comparison, 1,294 collective agreements (57 percent) were negotiated through regulated bargaining in 2001. See Mittnacht electronic correspondence, 31 Jan 2003. See also Labor Code, Article 304.

vote by secret ballot to permit such representation.<sup>79</sup> The majority of regulated negotiations occur between a single employer and a company-level union.<sup>80</sup> Collective bargaining by inter-company unions, confederations, or federations rarely occurs, as employers will not grant permission.<sup>81</sup> The reason cited is their belief that different economic and financial conditions may hinder approval of an agreement.<sup>82</sup> —

A company must be in operation for at least one year before regulated collective bargaining can occur.<sup>83</sup> The negotiations may encompass general working conditions, remuneration, and other benefits but may not cover materials that restrict or limit an employer's ability to manage the company (management prerogatives clause).<sup>84</sup> By invoking the management prerogatives clause, employers can prevent dialogue on issues such as the terms and conditions of employment.<sup>85</sup>

Under the 2001 labor reform, employers are required to provide their union counterparts with the financial information necessary to conduct collective bargaining. Companies must share their account balances for the previous two years and any pertinent, non-confidential information affecting planned investments of the company.<sup>86</sup> Employers are further prohibited from practicing any actions of bad faith to impede the negotiation process.<sup>87</sup> Unions also are prohibited from divulging confidential material provided by the employer to a third party.<sup>88</sup> Infractions of the rules of collective bargaining are punishable with a fine of one to 10 monthly tax units (US\$40-\$400) depending on the severity and circumstances of the infraction.<sup>89</sup>

The parties may ask for mediation at any time during the negotiations,<sup>90</sup> but arbitration is compulsory in those cases in which strikes, temporary closings, and lockouts are prohibited.<sup>91</sup> Once the collective bargaining agreement is successfully negotiated, it must be approved separately in each company involved in the negotiations.<sup>92</sup> The duration of the collective bargaining agreement must be for a minimum of two years.<sup>93</sup>

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<sup>79</sup> Labor Code, Articles 315 and 334, as amended by Law No. 19,759.

<sup>80</sup> *Seminar on Labour Legislation in Chile*, p. 10.

<sup>81</sup> Carol Pier, "Labor Rights in Chile and NAFTA: Labor Standards: Questions of Compatibility on the Eve of Free Trade," p. 219.

<sup>82</sup> *Labour Legislation in Chile: In Relation to the Eleven Labour Principles of the Canada-Chile Agreement on Labour Cooperation*, p. 24.

<sup>83</sup> Labor Code, Article 308.

<sup>84</sup> Labor Code, Article 306.

<sup>85</sup> Carol Pier, "Labor Rights in Chile and NAFTA: Labor Standards: Questions of Compatibility on the Eve of Free Trade," pp. 217-218.

<sup>86</sup> For example, the company should share information on planned investments in labor saving machinery or future acquisitions that might cause layoffs during consolidation, unless, by revealing the information, the acquisition plans would be upset. See Labor Code, Articles 289 and 315, as modified by Law No. 19,759. See also Mittnacht correspondence, 19 March 2003.

<sup>87</sup> Labor Code, Article 387.

<sup>88</sup> Labor Code, Article 388.

<sup>89</sup> Labor Code, Article 389.

<sup>90</sup> Labor Code, Article 352.

<sup>91</sup> Labor Code, Article 355.

<sup>92</sup> Labor Code, Article 343.

<sup>93</sup> Labor Code, Article 347.

In 2002, an estimated 1,689 collective bargaining agreements were concluded, covering some 146,000 workers, or 8.3 percent of all salaried workers. Of these, 1,248 agreements were reached under regulated collective bargaining, encompassing roughly 103,000 workers. The highest rate of coverage occurs in enterprises with more than 50 employees.<sup>94</sup>

Temporary workers, seasonal workers, apprentices, and part-time employees may only engage in unregulated collective bargaining.<sup>95</sup> The 2001 labor reform requires employers to reply to all petitions made by the trade unions.<sup>96</sup> Unions representing seasonal agricultural workers may now present employers with a collective bargaining proposal; if the agricultural union receives a negative response from the employer, it is entitled to present a new plan the following season.<sup>97</sup> Although the provision still falls short of true collective bargaining, the requirement to conduct a dialogue has already resulted in 16 agreements, covering 590 agricultural workers. The unregulated bargaining process is not subject to the legal norms governing unfair labor and bargaining practices, and workers involved in the unregulated process do not have the right to strike.<sup>98</sup> Only issues involving remuneration and general working conditions (such as safety and health, the distribution of the work day, food, housing, and day-nurseries) may be covered by unregulated collective bargaining.<sup>99</sup> In 2001, 991 collective agreements, covering over 70,000 workers, were concluded through unregulated bargaining.<sup>100</sup> In 2002, 441 collective bargaining agreements were negotiated through the unregulated process, covering roughly 43,000 workers.

### **C. Prohibition of Forced or Compulsory Labor**

The Constitution and Labor Code prohibit forced labor, and no forms of forced labor are known to take place.<sup>101</sup> Chile ratified ILO Convention No. 29 on forced labor in 1933 and ILO Convention No. 105 on the abolition of forced labor in 1999.<sup>102</sup>

### **D. Minimum Age for Employment of Children and Effective Elimination of the Worst Forms of Child Labor**

The Chilean Labor Code sets the minimum age for employment at 15 years, although children under the age of 15 may work in theatrical productions with proper legal authorization.<sup>103</sup> Fifteen-year-olds may perform light work if they have completed compulsory education and if the work does not affect their health, development or attendance in education and training

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<sup>94</sup> *Labour Legislation in Chile: In Relation to the Eleven Labour Principles of the Canada-Chile Agreement on Labour Cooperation*, p. 24.

<sup>95</sup> Labor Code, Articles 314 and 315, as amended by Law No. 19,759. See also Labor Code, Article 305.

<sup>96</sup> Labor Code, Article 314, as amended by Law No. 19,759.

<sup>97</sup> *Ibid.*

<sup>98</sup> Carol Pier, "Labor Rights in Chile and NAFTA: Labor Standards: Questions of Compatibility on the Eve of Free Trade," p. 216. See also *Seminar on Labour Legislation in Chile*, p. 9.

<sup>99</sup> Labor Code, Article 314, as amended by Law No. 19,759.

<sup>100</sup> Mittnacht electronic correspondence, 31 Jan 2003.

<sup>101</sup> *Ibid.*, Section 6c.

<sup>102</sup> ILOLEX Database of International Labor Standards: Chile.

<sup>103</sup> U.S. Embassy-Santiago, *unclassified telegram no. 2756*, Oct 2001. See also Labor Code, Article 16.

programs. Children ages 16 to 18 can work with the permission of their parents.<sup>104</sup> Children under the age of 18 are prohibited from working at night between the hours of 10 p.m. and 7 a.m. (outside a family business), underground, in nightclubs or similar establishments in which alcohol is consumed, or in activities that endanger their health, safety or morality.<sup>105</sup> The prostitution of children, corruption of minors and involvement of children in pornography are prohibited under the Penal Code.<sup>106</sup> The trafficking of children for prostitution is prohibited under the Penal Code.<sup>107</sup> The Government of Chile ratified ILO Convention 138, Minimum Age for Admission to Employment, on February 1, 1999 and ILO Convention 182, Worst Forms of Child Labor, on July 17, 2000.<sup>108</sup> Education through the 12<sup>th</sup> grade is free and compulsory.<sup>109</sup> In 2000, according to a government survey, only 1 percent of Chilean children between 7 and 13 did not attend school.<sup>110</sup>

The Ministry of Labor's Inspection Agency enforces child labor laws in the formal sector.<sup>111</sup> Child labor inspections by the Ministry of Labor's Inspection Agency are infrequent and are usually initiated only after a specific complaint.<sup>112</sup> In 2002, the Ministry of Labor found less than 1 percent of employers to be out of compliance with child labor laws.<sup>113</sup> In 2000, the ILO estimated that less than 1 percent of children between the ages of 10 and 14 in Chile work.<sup>114</sup> Children work in agriculture, street work,<sup>115</sup> lumber processing, charcoal production, meat and shellfish processing, fishing, ranching, shepherding, bagging groceries in supermarkets, and domestic service.

Children working in the informal economy,<sup>116</sup> where no system of labor inspection exists,<sup>117</sup> carry out the above activities. Children have been known to engage in the sale of drugs.<sup>118</sup> Child

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<sup>104</sup> Labor Code, Article 13.

<sup>105</sup> Boys between the ages of 16 and 18 are excepted from this regulation in certain industries. See *Ibid*, Articles 14, 15, and 18. See also U.S. Embassy-Santiago, *unclassified telegram no. 2756*.

<sup>106</sup> U.S. Embassy-Santiago, *unclassified telegram no. 2756*. See also Interpol, *Legislation of Interpol Member States on Sexual Offenses against Children: Chile*, <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaChile.asp> on 13 Aug 2002.

<sup>107</sup> Interpol, *Legislation of Interpol Member States*.

<sup>108</sup> ILO, *Ratifications by Country*, in ILOLEX [database online] [cited September 30, 2002]; available from <http://www.ilo.org/ilolex/english/newcountryframeE.htm>

<sup>109</sup> Right to Education, *Chile: Constitutional Guarantees*, at <http://www.right-to-education.org/content/consguarant/chile.html> on 8 Nov 2002. See also Mittnacht correspondences of March 19, 2003 and May 20, 2003..

<sup>110</sup> Ministerio de Planificación y Cooperación, *Situación de la Educación en Chile 2000: Informe Ejecutivo*, July 2001, p. 10, at <http://www.mideplan.cl/estudios/informeeducacion2000.pdf> on 21 March 2003.

<sup>111</sup> *Country Reports on Human Rights Practices 2001 –Chile*, Section 6d.

<sup>112</sup> *Ibid*.

<sup>113</sup> These infractions were discovered during approximately 189,000 inspections conducted by the Labor Ministry in 2002. See Chilean Ministry of Labor, *Report on Labor Rights in Chile and its Laws Governing Exploitative Child Labor*, submitted in response to Federal Register Notice Request for Information dated February 26, 2003, Santiago, March 2003, 9-10.

<sup>114</sup> Estimates on the number of working children from these sources are generally based on the definition of the “economically active population” which restricts the labor force activity of children to “paid” or “unpaid” employment, military personnel, and the unemployed. The definition does not include children in informal work settings, non-economic activities, or “hidden” forms of work such as domestic service, prostitution, or armed conflict. See World Bank, *World Development Indicators 2002* [CD-ROM], Washington, D.C., 2002.

<sup>115</sup> U.S. Embassy-Santiago, *unclassified telegram no. 2756*.

<sup>116</sup> Mittnacht electronic correspondence, May 20, 2003.

prostitution is also an issue; the Government of Chile and other sources have estimated that the number of child prostitutes under the age of 18 in 1999 ranged from 3,500 to 10,000.<sup>119</sup>

Investigations dealing with exploitative child labor related to pornography, the sale of drugs, and other related criminal activities are conducted by the National Service for Minors (SENAME), a division of the Ministry of Justice.<sup>120</sup> The UN Committee on the Rights of the Child reports that for the most part, cases of commercial sexual exploitation of children are not investigated or prosecuted, and victim assistance services are lacking.<sup>121</sup>

The Government of Chile is taking steps to address the worst forms of child labor. Chile has been a member of ILO-IPEC since 1996,<sup>122</sup> and established a National Advisory Committee to Eradicate Child Labor.<sup>123</sup> In 2001 the committee developed a National Plan of Action,<sup>124</sup> which, among other efforts, involves the collection of data on working children in Chile.<sup>125</sup> The

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<sup>117</sup> *Country Reports on Human Rights Practices 2001 –Chile*, Section 6d.

<sup>118</sup> ILO-IPEC Regional Office for Latin America and the Caribbean, *Sistematización del Proyecto: Acción Contra el Trabajo Infantil a Través de la Educación y la Motivación*, Sistema de Información Regional sobre Trabajo Infantil, Lima, <http://www.colegiodeprofesores.cl/trabajoinfantil/erradicacion2.htm> on 16 Dec 2002.

<sup>119</sup> The Government of Chile stated that 3,500 children under the age of 18 worked in prostitution and pornography in 1999. See Alejandra Muñoz, “3,500 menores ejercieron la prostitución el 99,” *La Tercera* (Santiago), 23 June 23 2000, at <http://www.tercera.cl>. UNICEF reported that in 1999 there were approximately 10,000 child prostitutes between the ages of 6 and 18. See *Country Reports on Human Rights Practices 2001 –Chile*, Section 5. See also ECPAT International, *Chile*, in ECPAT International, [database online] 2002 [cited December 4, 2002]; available from [http://www.ecpat.net/eng/Ecpat\\_inter/projects/monitoring/online\\_database/index.asp](http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/online_database/index.asp). There have been reports that the prostitution of boys is increasing. See UN Committee on the Rights of the Child, *Report on the Twenty-Ninth Session*, CRC/C/114, United Nations, Geneva, May 14, 2002. See also Swedish International Development Agency, *Looking Back Thinking Forward: The Fourth Report on the Implementation of the Agenda for Action Adopted at the First World Congress Against Commercial Sexual Exploitation of Children in Stockholm, Sweden, 28 August 1996*, Stockholm, 2000, Section 4.3. There is limited information available on other forms of commercial sexual exploitation of children in Chile. There have been reports that girls are trafficked from Chile to Brazil’s Pantanal region. See Swedish International Development Agency, *Looking Back Thinking Forward*, Section 4.3. There have been a few reports of children engaged in pornography in Chile. See Muñoz, “3,500 menores ejercieron la prostitución.” See also ECPAT International, *Chile*.

<sup>120</sup> See U.S. Embassy-Santiago, *unclassified telegram no. 2756*.

<sup>121</sup> SENAME services are not available for non-street children involved in prostitution; there is reportedly no institutional support for such children. See UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention on the Rights of the Child: Concluding Observations of the Committee on the Rights of the Child: Chile*, CRC/C/15/Add. 173, (Geneva: United Nations, 1 Feb 2003) at <http://www.unhcr.ch/tbs/doc.nsf/Documentsfrset?OpenFrameSet> on 16 Dec 2002. See also ECPAT International, *Chile*.

<sup>122</sup> ILO-IPEC, “All About IPEC: Programme Countries,” 13 Aug 2001, at [http://www.ilo.org/public/english/standards/ipec/about/countries/t\\_country.htm](http://www.ilo.org/public/english/standards/ipec/about/countries/t_country.htm) on 30 Sept 2002.

<sup>123</sup> This Committee is coordinated by the Ministry of Labor and includes UNICEF, ILO-IPEC, NGOs, business leaders, legislators, labor unions, churches, and other public and private entities. See U.S. Embassy-Santiago, *unclassified telegram no. 2756*. See also National Commission for the Eradication of Child Labor – Chile, *Plan de Prevención y Erradicación Progresiva del Trabajo Infantil y Adolescente en Chile*, ILO-IPEC Regional Office for Latin America and the Caribbean, Lima, 2001, p. 4, at <http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipec/doc/fichas/planchi.doc> on 21 March 2003.

<sup>124</sup> Andrés Bianchi, Ambassador, facsimile, communication to USDOL official in response to request for information, 6 Sept 2002.

<sup>125</sup> Preparatory activities for a SIMPOC national child labor survey were initiated in 2002. ILO-IPC, *IPEC Action Against Child Labour: Highlights 2002*, Geneva, October 2002, 76. The planned completion date for the survey is

government also has recently begun a project aimed to prevent and eradicate the commercial sexual exploitation of children and is currently compiling a national register on the worst forms of child labor.<sup>126</sup> To date, a number of activities have been characterized as worst forms of child labor in the register, and the Ministry of Labor, the Chilean Police and the National Service for Minors (SENAME) are collecting information to track the incidence of these activities.<sup>127</sup> With ILO-IPEC support, Chile is collaborating with the Mercosur countries (Argentina, Brazil, Paraguay, and Uruguay), on child labor elimination efforts, such as the compilation of more adequate statistics on child labor under ILO-IPEC's Statistical Information and Monitoring Program on Child Labor (SIMPOC), and the exchange of best practices on child labor inspection systems.<sup>128</sup>

## **E. Acceptable Conditions of Work**

### **1. Minimum Wage**

Chile has a monthly minimum income (*Ingreso Minimo Mensual* or IMM), based on a 192-hour work-month, or four 48-hour workweeks. While remuneration may be paid on an hourly, daily, weekly, or monthly basis, by the piece-rate or by project, the minimum amount paid must be at least equal to the IMM.<sup>129</sup>

The IMM was originally supposed to be determined in a tripartite manner by a committee of labor, business, and government representatives.<sup>130</sup> Disputes among the parties concerning statistics, however, resulted in the labor and business representatives withdrawing from the committee.<sup>131</sup> Since that time, the government, while consulting with the representatives of labor and business who share opposing views, adjusts the IMM unilaterally based on growth, increased productivity, projected inflation, and unemployment.<sup>132</sup>

The IMM is considered to be an entry-level wage that is reviewed and adjusted annually.<sup>133</sup> In December 2002, the IMM was 111,200 pesos (US\$150).<sup>134</sup> Between June 2000 and June 2001,

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December 2003. ILO- IPEC Regional Office for Latin America and the Caribbean, *Países IPEC en Sudamérica: Chile*, ILO-IPEC, [online] [cited December 24, 2002]; available from <http://www.oit.org.pe/ipec/chile.php#t9>

<sup>126</sup> See ILO-IPEC official, electronic communication with USDOL official on Proniño and ILO-IPEC projects, October 1, 2002.

<sup>127</sup> Activities characterized as worst forms of child labor in the register include child prostitution, child pornography, trafficking of children for the purpose of commercial sexual exploitation, drug use and production, underground work, and work with toxic substances. See Chilean Ministry of Labor, *Report on Labor Rights in Chile, Annex*.

<sup>128</sup> ILO-IPEC Regional Office for Latin America and the Caribbean, *Plan Subregional para la Erradicación del Trabajo Infantil en los Países del Mercosur y Chile*, Lima, 5, 17-19; available from <http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipec/doc/documentos/folletomercosur.doc>

<sup>129</sup> Labor Code, Article 44.

<sup>130</sup> The Government is represented by the Ministries of Labor, Finance and Economy; the employers by the Confederation of Production and Trade (CPC) and the Confederation of Small and Medium Sized Industries (CONUPIA); and labor by the CUT.

<sup>131</sup> Carol Pier, "Labor Rights in Chile and NAFTA labor Standards: Questions of Compatibility on the Eve of Free Trade," pp. 248-249.

<sup>132</sup> Mittnacht, electronic correspondence, 4 Feb 2003 and 19 March 2003.

<sup>133</sup> Electronic correspondence from Mr. German Acevedo, Chief of Policy and Planning, Chilean Ministry of Labor to U.S. Department of Labor official, 7 Feb 2001.

<sup>134</sup> *Country Reports on Human Rights Practices 2001 – Chile*, Section 6e.



the IMM was 100,000 pesos (US\$192) for persons 18 to 65 years of age and 77,404 pesos (US\$149) for any person under the age of 18 or over the age of 65.<sup>135</sup> In 2000, the National Statistical Institute released figures indicating that 13.1 percent of the workforce receives the minimum wage.<sup>136</sup> Approximately 43 percent of the workers earning the IMM are between the ages of 15 to 19.<sup>137</sup>

There are several exceptions to the IMM. It does not apply to apprentices that are defined as under the age of 21 and not working in a single trade for more than two years<sup>138</sup> or to workers in the agriculture sector. The Labor Code permits for up to 50 percent of an agricultural worker's wages to be paid in the form of a fringe benefit, such as a plot of land, grazing rights, or a clean dwelling.<sup>139</sup> Domestic workers are entitled to 75 percent of the minimum wage.<sup>140</sup>

Penalties for violating the IMM are determined according to the scope and severity of the infraction and may range from approximately US\$40 to US\$800.<sup>141</sup>

Chile ratified ILO Convention No. 26 on minimum wage-fixing machinery and, in 1999, ratified ILO Convention No. 131 on minimum wage fixing.<sup>142</sup> There have been no published comments by the ILO Committee of Experts on Chile's application of these conventions.

## 2. Hours of Work

The maximum permissible workweek is currently 48 hours per week but, as stipulated in the labor reform bill of 2001, will be shortened in January 2005 to 45 hours.<sup>143</sup> The IMM will not be raised or lowered based on the enactment of the new legislation, but will continue to be adjusted annually.<sup>144</sup>

The workweek may be worked in five or six days, with the maximum workday set at 10 hours per day, including a one half-hour rest period.<sup>145</sup> All workers are entitled to at least one 24-hour rest period during the workweek. Employees working at high altitudes are exempt from this 24-hour rest period and may instead take several days off after two weeks of consecutive work.<sup>146</sup>

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<sup>135</sup> Electronic correspondence from the Chilean Ministry of Labor to the U.S. Department of Labor, February 8, 2001.

<sup>136</sup> Mittnacht correspondence, 19 March 2003.

<sup>137</sup> *Country Reports on Human Rights Practices 2001 –Chile*, Section, 6e.

<sup>138</sup> Labor Code, Articles 81 to 84.

<sup>139</sup> Labor Code, Article 191.

<sup>140</sup> *Labor Legislation in Chile; In Relation to the Eleven Labour Principles of the Canada-Chile Agreement on Labour Cooperation*, p. 26.

<sup>141</sup> Electronic correspondence from the Chilean Ministry of Labor to the U.S. Department of Labor, February 8, 2001.

<sup>142</sup> ILOLEX Database of International Labor Standards.

<sup>143</sup> Labor Code, Article 22, as amended by Law No. 19,759. See also Society for Human Resources Management, "News from Chile: Chilean Labor Code Reform," *The Global Employer*, at <http://www.shrmglobal.org/publications/baker/0102glob/docs/chile.htm> on 2 Jan 2003.

<sup>144</sup> Mittnacht electronic correspondence, 19 March 2003.

<sup>145</sup> Labor Code, Article 28.

<sup>146</sup> Country Report 2001-Chile, Section, 6e.

The overtime pay rate is 150 percent of the normal hourly wage and must be paid when work exceeds eight hours per day or 48 hours per week. This will be altered to eight hours per day or 45 hours per week in January 2005.<sup>147</sup> Workers may only work two hours of overtime per day; the total number of hours worked per day, including overtime, may not exceed 10 hours. Agricultural sector employees may work more than eight hours per day without overtime compensation if their yearly average does not exceed eight hours per day.<sup>148</sup>

In 1925, Chile ratified ILO Convention No. 1 on hours of work in industry and No. 14 on weekly rest in industry, and in 1935, Convention No. 30 on hours of work in commerce and offices.<sup>149</sup> The ILO Committee of Experts has for many years, most recently in its 2000 annual report, expressed concern that provisions of the Chilean Labor Code regarding exceptions to normal daily hours of work lack sufficient restrictions and safeguards to be in compliance with Conventions 1 and 30.<sup>150</sup> Chile is scheduled to submit new reports on implementation of the conventions by September 2003.<sup>151</sup> The ILO Committee of Experts has not commented on Chile's application of Convention 14.

Most infractions and abuses of the laws on work hours, rest periods, and overtime provisions take place in industries where remuneration is determined by contract, project or productivity or where market fluctuations make the demand for work highly volatile.

Garment industry workers, who work on a piece rate basis or are paid per item produced, generally work more than the limit of 48-hours per week. According to a 1996 apparel sector study, 63 percent of employees worked over 48 hours in a week, and 26 percent worked over 54 hours in a week.<sup>152</sup> Home workers in the garment sector often work more hours than workers in the factories due to high pressure of quota deadlines set by their employers. These home workers average between 60 and 72 hours per week in order to return the finished goods within the stringent deadlines set by the employer.<sup>153</sup>

Construction workers, who are often paid by the job, often work long hours so that they can work more jobs, and thus increase their earnings. In the agriculture sector, where payment is based on harvest, work often exceeds 60 hours per week. Workers in agro-industry packing plants frequently are required to work 10-16 hours per day and often must do so on Sundays and holidays.<sup>154</sup> In the service sector, the most common infraction is noncompliance with adequate

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<sup>147</sup> Labor Code, Article 32. See also Mittnacht electronic correspondence, 4 Feb 2003.

<sup>148</sup> Labor Code, Article 88.

<sup>149</sup> ILOLEX Database on International Labor Standards.

<sup>150</sup> International Labor Conference, 88<sup>th</sup> Session, 2000, Report III (part IA), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp 50-51 and 125.

<sup>151</sup> International Labor Organization, "Regular Reporting Schedule," ILOLEX Database of International Labor Standards, at <http://webfusion.ilo.org/public/db/standards/normes/schedule/index.cfm.cfm?lang=EN> on 20 March 2003.

<sup>152</sup> Carol Pier, "Labor Rights in Chile and NAFTA Labor Standards: Questions of Compatibility on the Eve of Free Trade," p. 253.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

rest periods during the workday and at the end of the workweek.<sup>155</sup> Infractions are most common during holidays and during the tourist season.<sup>156</sup>

### 3. Occupational Safety and Health

Article 184 of Chile's Labor Code stipulates that the employer is obligated to take all measures necessary to effectively protect the lives and health of workers, maintain adequate safety and health conditions, and provide the necessary tools to prevent occupational accidents and diseases. Decree No. 40 (1969) established the "Right to Know" principle, which states that employers must inform workers about any risks affiliated with their jobs, preventative measures, and correct work methods to address known hazards.<sup>157</sup> The Labor Code permits workers to cease work under imminent danger and a firm's operation can be suspended for up to 10 days for recurrences.<sup>158</sup> In 2002, safety and health inspections resulted in 3,895 fines for safety and health violations.<sup>159</sup>

Exposure to pesticides has been a source of health problems to some agricultural workers, especially in the apple and pear industry where fruit is picked, sorted and packed by hand.<sup>160</sup> In 1999, approximately 1,000 types of pesticides were used in Chile and, according to Chile's Ministry of Health, about 500,000 workers were exposed to pesticides.<sup>161</sup> While Chile has banned many pesticides and set numerous regulations governing their use, many pesticides continue to be used, both legally and illegally.<sup>162</sup>

The Agriculture and Livestock Service (SAG) of the Ministry of Agriculture oversees the production, importation, distribution, sale and application of agricultural pesticides; the Ministry of Health is responsible for monitoring the use of pesticides;<sup>163</sup> and the Ministry of Health's

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<sup>155</sup> Electronic correspondence from the Chilean Ministry of Labor to the U.S. Department of Labor, February 8, 2001.

<sup>156</sup> Telephone interview with an Official of the Chilean Ministry of Labor by U.S. Department of Labor Official, February 21, 2001.

<sup>157</sup> Chilean Ministry of Labor, "Report on Labor Rights in Chile and its Laws Governing Exploitive Child Labor," Santiago, March 2003, p. 15.

<sup>158</sup> *Country Reports on Human Rights Practices 2001 – Chile*, Section 6e.

<sup>159</sup> Chilean Ministry of Labor, "Report on Labor Rights in Chile and its Laws Governing Exploitive Child Labor," Santiago, March 2003, pp. 15-16.

<sup>160</sup> Jane Newbold, "Chile Pays the Price for Exports," Internet reprint of article originally published in the Pesticide News, Pesticides News No. 37, September 1997, page 8, at <http://www.pan-uk.org/pestnews/pn37/pn37p8.htm> on April 23, 2003.

<sup>161</sup> James Langman, Latin America Struggles to Reduce Illegal Pesticide Use. *Christian Science Monitor*, September 8, 1999.

<sup>162</sup> Most of the 12 compounds identified by the World Health Organization as persistent organic pollutants (POPs) have been utilized in Chilean agriculture for several years, though the importation, manufacture, sale, distribution of five of them -- DDT, aldrin, and chlordane, dieldrin, endrin, and heptachlor -- has been prohibited since the 1980s. Claudia Paratori, Persistent Organic Pollutants, Chile: Current Situation, Lindane Research and Education Network, [http://www.headlice.org/lindane/world/countries/current\\_situation.htm](http://www.headlice.org/lindane/world/countries/current_situation.htm) on April 23, 2003.

<sup>163</sup> Environment Canada, Canadian National Secretariat, "Environmental Management In Chile - Report November 1996," at [http://can-chil.gc.ca/English/Resource/Reports/ChileEM/ChileEM\\_4b.cfm](http://can-chil.gc.ca/English/Resource/Reports/ChileEM/ChileEM_4b.cfm) on April 23, 2003.

Department of Programs for the Environment provides Occupational Health Units to monitor health and safety conditions of workers at risk of pesticide exposure.<sup>164</sup>

Safety and health violations tend to be more common in sectors that employ contract workers and temporary workers, such as in the agriculture, fishing, forestry, and mining sectors and in some manufacturing operations.<sup>165</sup> Most industrial accidents occur in firms with less than 25 employees.<sup>166</sup>

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<sup>164</sup> Carol Pier, "Labor Rights in Chile and NAFTA: Labor Standards: Questions of Compatibility on the Eve of Free Trade," pp. 260-261.

<sup>165</sup> Carol Pier, "Labor Rights in Chile and NAFTA Labor Standards: Questions of Compatibility on the Eve of Free Trade," p. 257.

<sup>166</sup> Jaime Ensignia y Gerardo Castillo, "Diálogo Social y Políticas de Seguridad Social en Chile," p. 104.