

Laws Governing Exploitative Child Labor Report--Chile

I. Introduction

This report on the laws of Chile governing exploitative child labor has been prepared pursuant to section 2102(c)(9) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(9) provides that the President shall:

with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.

The President, by Executive Order 13277 (67 Fed. Reg. 70305), assigned his responsibilities under Section 2102(c)(9) 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 primarily on information from the U.S. Department of State in Washington, D.C., the U.S. Embassy in Chile, and the Government of Chile. It also relies upon a wide variety of reports and materials originating from Chile, international organizations and nongovernmental organizations (NGOs). Finally, the report also makes use of information submitted in response to a Department of Labor request for public comment published in the *Federal Register*.¹

II. Child Labor and Worst Forms of Child Labor

As defined by the International Labor Organization (ILO) Convention 138, Minimum Age for Admission to Employment, the term “child labor” is any economic activity performed by a person under the age of 15. Developing countries whose economy and educational facilities are insufficiently developed may initially specify a minimum legal working age of 14 when ratifying the convention, and may reduce from 13 to 12 years the minimum age for light work. There is no explicit definition of “light work” in Convention 138, other than it not be likely to harm the health or development of young persons, and that it not prejudice their attendance at school, their participation in vocational orientation or training programs approved by the competent authority, or their capacity to benefit from the instruction received.

Not all work performed by children is detrimental or exploitative. Child labor does not usually refer to “light work” after school or legitimate apprenticeship opportunities for young people.

¹ Request for Information Concerning Labor Rights in Chile and its Laws Governing the Worst Forms of Child Labor, 68 *Fed. Reg.* 8928 (Feb. 26, 2003). The Department received one comment, from the Government of Chile, in response to this notice.

Nor does it refer to young people helping out in the family business or on the family farm. Rather, the “child labor” of concern is generally employment that prevents effective school attendance, and which is often performed under conditions hazardous to the physical and mental health of the child.

While there is no universal definition for exploitative child labor, the ILO has defined the “worst forms” of child labor in ILO Convention 182, Worst Forms of Child Labor. Under this Convention, which applies to children under the age of 18, the worst forms are defined as follows:

- (A) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;
- (B) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic purposes;
- (C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and
- (D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

According to Convention 182, the types of work referred to under subsection (D) should be determined by national laws and/or competent authorities.²

III. Incidence and Nature of Child Labor

Estimates of the incidence of child labor in Chile range from 1 percent to 4 percent, depending upon the definition and methodology used to produce the estimate.³ Although not widespread,

² International Labor Organization, “Convention 182: Worst Forms of Child Labor, 1999,” Article 4, available from <http://ilolex.ilo.ch:1567/english/convdisp2.htm>. ILO Recommendation 190 on the worst forms of child labor provides certain guidelines countries should consider in determining what constitutes a worst form of child labor under this category. See International Labor Organization Recommendation 190 “Worst Forms of Child Labor Recommendation,” 1999; available from: <http://ilolex.ilo.ch:1567/english/convdisp2.htm>

³ World Bank, *World Development Indicators 2002* [CD-ROM], Washington, D.C., 2002. The figure for 10 to 14 year olds was gathered by the ILO and published by the World Bank. This estimate on the number of working children is 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, “hidden” forms of work, or work that is defined by ILO Convention 182 as the worst forms of child labor. In 1996, a survey conducted by the Chilean Ministry of Planning and Cooperation estimated that 1.9 percent of children ages 6 to 14 years (approximately 47,000 children) in Chile were working during the three months preceding the survey. The same survey found that approximately 78,000 children between the ages of 15 and 17 were working, which is 9.7 percent of children in that age group. See Ministry of Planning and Cooperation, *Situación del Trabajo Infantil en Chile, 1996: Resultados de la Encuesta de Caracterización Socioeconómica Nacional*, survey, Santiago, September 1997, 3, 9. According to a more recent version of this same household survey, 4 percent (64,954) of children between the ages of 12 and 17 were working in 2000. See Ricardo Solari Saavedra, “La Erradicación del Trabajo Infantil en Chile: Caracterización, Acciones del

there are credible reports of children working in agriculture, street work,⁴ lumber processing, charcoal production, meat processing, shellfish processing, fishing, ranching, shepherding, bagging groceries in supermarkets, and domestic service.⁵ Children working in the informal economy carry out most of the above activities.⁶

Education through the 12th grade is free and compulsory.⁷ In 1998, the gross primary enrollment rate was 105.8 percent⁸ and the net primary enrollment rate⁹ was 87.9 percent.¹⁰ In 2000, according to a government household survey, 1 percent of Chilean children between 7 and 13 did not attend school.¹¹ The country's rural population completes less schooling than the country's urban population.¹² The likelihood that children will engage in work instead of attend school increases as family income decreases.¹³ The Chilean government is taking steps, as described in Section V of this report, to address child labor.

IV. Child Labor Laws and Enforcement

Gobierno y Lineamientos a Futuro," *Observatorio Laboral on Line* (July 11, 2002), [cited December 16, 2002]; available from <http://www.mintrab.gob.cl/>.

⁴ U.S. Embassy- Santiago, *unclassified telegram no. 2756*, October 2001.

⁵ ILO-IPEC Regional Office for Latin America and the Caribbean, *Sistematización del Proyecto: Acción Contra el Trabajo Infantil á Través de la Educación y la Motivación*, Sistema de Información Regional sobre Trabajo Infantil, Lima, [cited December 16, 2002]; available from <http://www.colegiodeprofesores.cl/trabajoinfantil/erradicacion2.htm>.

⁶ Thomas D. Mittnacht, U.S. Department of State official, electronic correspondence to U.S. Department of Labor official, May 20, 2003. See also U.S. Department of State, *Country Reports on Human Rights Practices- 2001: Chile*, Washington, D.C., March 4, 2002, 2677-80, Section 6d; available from <http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8318.htm>.

⁷ Right to Education, *Chile: Constitutional Guarantees*, [online] [cited November 8, 2002]; available from <http://www.right-to-education.org/content/consguarant/chile.html>. See also Thomas D. Mittnacht, U.S. Department of State official, electronic correspondences to U.S. Department of Labor official, March 19, 2003 and May 20, 2003.

⁸ The gross primary enrollment ratio is the enrollment of primary students of all ages expressed as a percentage of the primary school-age population. The gross primary enrollment ratio describes the capacity of a school system in relation to the size of the official school-age population. For example, a ratio of 100 percent indicates that the number of children actually enrolled, including those outside the official age range, is equivalent to the size of the official primary school-age population. It does not mean that all children of official primary school age are actually enrolled. A ratio greater than 100 percent may indicate that children outside the official age range are enrolled in primary school.

⁹ The net primary enrollment ratio is the enrollment of primary students of the official age expressed as a percentage of the primary school-age population.

¹⁰ World Bank, *World Development Indicators 2002*.

¹¹ Ministry of Planning and Cooperation, *Situación de la Educación en Chile 2000: Informe Ejecutivo*, July 2001, 10; available from <http://www.mideplan.cl>.

¹² Ministry of Planning and Cooperation, *Análisis de la VIII Encuesta Caracterización Socioeconómica Nacional (CASEN 2000), Documento No. 7: Situación del Sector Rural en Chile 2000*, MIDEPLAN, Santiago, January 2002, 45; available from <http://www.mideplan.cl/estudios/sectorrural2000.pdf>. Indigenous children also face obstacles to school access. See UN Committee on the Rights of the Child, *Report on the Twenty-Ninth Session*, CRC/C/114, United Nations, Geneva, May 14, 2002, 101.

¹³ Ministry of Justice, *Trabajo Infantil en Chile: Ponencia de la Ministra de Justicia, Maria Soledad Alvear Valenzuela, en la Conferencia Internacional sobre Trabajo Infantil*, Oslo, October 1997, 7.

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 the proper legal authorization.¹⁴ Fifteen-year-olds are allowed to do light work if they have completed compulsory education, and if the work will not affect their health, development or attendance in education and training programs. Children ages 16 to 18 can work with the permission of their parents.¹⁵ 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.¹⁶

The Chilean Constitution and the Labor Code prohibit forced labor,¹⁷ and the prostitution of children, corruption of minors and involvement of children in pornography are prohibited under the Penal Code.¹⁸ The trafficking of children for prostitution is prohibited under the Penal Code.¹⁹ However, child prostitution is 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 10,000.²⁰

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, 2000.²¹

The Ministry of Labor's Inspection Agency enforces child labor laws in the formal sector, while the National Service for Minors within the Ministry of Justice investigates exploitative child

¹⁴ U.S. Embassy- Santiago, *unclassified telegram no. 2756*. See also Government of Chile, *Código del Trabajo, as amended in 2000*, Ley 19684, (1994), Article 16.

¹⁵ *Código del Trabajo*, Article 13.

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

¹⁷ U.S. Department of State, *Country Reports- 2001: Chile*, 2677-80, Section 6c.

¹⁸ U.S. Embassy- Santiago, *unclassified telegram no. 2756*. See also Interpol, *Legislation of Interpol Member States on Sexual Offenses against Children: Chile*, [online] [cited August 13, 2002]; available from <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaChile.asp>.

¹⁹ Interpol, *Legislation of Interpol Member States*.

²⁰ 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. 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*.

²¹ ILO, *Ratifications by Country*, in ILOLEX, [database online] [cited September 30, 2002]; available from <http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

labor related to pornography, the sale of drugs,²² and other related criminal activities.²³ Child labor inspections by the Ministry of Labor's Inspection Agency are infrequent, and are usually initiated only after a specific complaint.²⁴ In 2002, the Ministry of Labor found less than 1 percent of employers to be out of compliance with child labor laws.²⁵ In the informal economy, however, child labor is reportedly more prevalent.²⁶ The UN Committee on the Rights of the Child has reported that cases of commercial sexual exploitation of children often are not investigated and prosecuted and victim assistance services are lacking.²⁷

V. Government Policies and Programs to Eliminate the Worst Forms of Child Labor

The Government of Chile is taking steps to address the worst forms of child labor. The government has been a member of ILO-IPEC since 1996²⁸ and has established a National Advisory Committee to Eradicate Child Labor.²⁹ In 2001, the committee developed a National Plan of Action,³⁰ which aims to ensure that the rights of children are fully protected by the year 2010.³¹ The plan has five focus areas: nation-wide awareness-raising; data collection;³² promotion of legislative reform in compliance with ILO conventions; development of age-specific targeted intervention programs; and ongoing monitoring and evaluation.³³ With support

²² ILO-IPEC Regional Office for Latin America and the Caribbean, *Sistematización del Proyecto: Acción Contra el Trabajo Infantil á Través de la Educación y la Motivación*, Sistema de Información Regional sobre Trabajo Infantil, Lima, [cited December 16, 2002]; available from <http://www.colegiodeprofesores.cl/trabajoinfantil/erradicacion2.htm>.

²³ U.S. Embassy- Santiago, *unclassified telegram no. 2756*.

²⁴ *Ibid.*

²⁵ 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.

²⁶ U.S. Department of State, *Country Reports- 2001: Chile*, 2675-77, Section 5.

²⁷ 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, United Nations, Geneva, February 1, 2002, 13 [cited December 16, 2002]; available from <http://www.unhcr.ch/tbs/doc.nsf/Documentsfrset?OpenFrameSet>.

²⁸ ILO-IPEC, *All About IPEC: Programme Countries*, [online] August 13, 2001 [cited September 30, 2002]; available from http://www.ilo.org/public/english/standards/ipec/about/countries/t_country.htm.

²⁹ 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, 4; available from <http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipec/doc/fichas/planchi.doc>.

³⁰ Andrés Bianchi, facsimile communication to USDOL official in response to request for information, September 6, 2002.

³¹ National Commission for the Eradication of Child Labor- Chile, *Plan de Prevención*, 3.

³² Preparatory activities for a SIMPOC national child labor survey were initiated in 2002. See ILO-IPEC, *IPEC Action Against Child Labour: Highlights 2002*, Geneva, October 2002, 76. The planned completion date for the survey is December 2003. See 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>.

³³ National Commission for the Eradication of Child Labor- Chile, *Plan de Prevención*, 2, 12-20, 28. Other focus areas include education, health services for children and the promotion of adequate adult employment and services.

from ILO-IPEC, the committee has designed programs for working children in different regions of Chile, such as Río Cachapoal, El Olivar, Temuco and the suburbs of Santiago.³⁴ In 2002, ILO-IPEC began working with the government on a project to support the prevention and eradication of commercial sexual exploitation of children, and also on a project to establish a national register on the worst forms of child labor.³⁵ To date, a number of activities have been characterized as worst forms of child labor in the national register, including: 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. The Ministry of Labor, the Chilean Police and the National Service for Minors are collecting information to track the incidence of these activities.³⁶

With the support of ILO-IPEC, the Chilean government is collaborating with the Mercosur countries to gather more adequate statistics on child labor under ILO-IPEC's Statistical Information and Monitoring Program on Child Labor (SIMPOC), to create and exchange best practices on child labor inspection systems, to promote legislation in line with ILO Conventions 138 and 182 throughout the region, to strengthen civil society partners, to incorporate child labor themes into national and regional policies, and to remove children from and prevent children from entering child labor.³⁷ Also with assistance from ILO-IPEC, Chile is participating in the development of a coordinated information system on child labor throughout South America.³⁸ In addition to collaborative efforts with ILO-IPEC, the Chilean government is establishing a system to ensure that assessments of child labor law compliance become a regular part of all labor inspections.³⁹

See ILO-IPEC, *Chile: Plan Nacional de Erradicación del Trabajo Infantil*, Lima, 2002, [cited December 16, 2002]; available from <http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipecc/chile.php#t2>.

³⁴ U.S. Embassy- Santiago, *unclassified telegram no. 2756*.

³⁵ ILO-IPEC official, electronic communication with USDOL official on Proniño and ILO-IPEC projects, October 1, 2002. As part of this project, a working group has been established to prepare a plan of action against the commercial sexual exploitation of children. See UN Committee on the Rights of the Child, *Report on the Twenty-Ninth Session*, 102. Chilean unions have also received training on child labor issues under a regional union education campaign conducted by ILO-IPEC and small and medium sized-business owners have been sensitized through outreach seminars. See ILO-IPEC Regional Office for Latin America and the Caribbean, *Fortalecimiento de las Organizaciones Sindicales para la Prevención y Erradicación de las peores formas del Trabajo Infantil*, Lima, July 22, 2002, [cited December 16, 2002]; available from <http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipecc/ficchiinst.php#ch1>. See also 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, 10 [cited December 16, 2002]; available from <http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipecc/doc/documentos/folletomercosur.doc>.

³⁶ Chilean Ministry of Labor, *Report on Labor Rights in Chile*, Annex.

³⁷ ILO-IPEC Regional Office for Latin America and the Caribbean, *Plan Subregional para la Erradicación del Trabajo Infantil*, 5, 17-19. The plan is designed to be carried out between 2002 and 2004. See ILO-IPEC Regional Office for Latin America and the Caribbean, *Países IPEC en Sudamérica*.

³⁸ ILO-IPEC Regional Office for Latin America and the Caribbean, *Los Proyectos IPEC en breve: Proyecto Sistema de Información de la Marcha Global*, Lima, 2002, [cited December 16, 2002]; available from http://www.oit.org.pe/spanish/260ameri/oitreg/activid/proyectos/ipecc/doc/fichas/ficha_mglobal.doc.

³⁹ Chilean Ministry of Labor, *Report on Labor Rights in Chile*, 16.

The Chilean Ministry of Education has initiated reforms to improve the quality, equity and efficiency of the country's educational system.⁴⁰ The government operates a family income support program (Subsidio Unico Familiar) through which families living below the poverty line receive direct money transfers if they can demonstrate, among other requirements, that family members between 6 and 18 years of age are registered in school. The government also provides support for scholarship and school meal programs.⁴¹ There has been a significant increase in the number of schools covered by the Program of 900 Schools (P-900), initially launched in 1990, which provides funding for teaching assistants for a number of basic education classrooms.⁴² The government's Rural Basic Education Program provides additional funding and targeted programs for rural students and teachers.⁴³ In 1996, the government implemented the Full School Day Reform, which extended the school day, provided a new curriculum framework, implemented incentives for teacher professionalism and initiated a network to model and disseminate innovative teaching, learning and managerial practices at the secondary level.⁴⁴

⁴⁰ Francoise Delannoy, "Education Reforms in Chile, 1980-1998: A Lesson in Pragmatism," *The Education Reform and Management Publication Series* 1, no. 1 (June 2000), 61.

⁴¹ Andrés Bianchi, facsimile communication, September 6, 2002.

⁴² Gobierno de Chile Ministerio de Educación, *Sentidos y Propósitos: Programa de las 900 Escuelas (P-900)*, [online] 2002 [cited August 12, 2002]; available from <http://www.mineduc.cl/basica/p900/N2002052411352223165.html>.

⁴³ Gobierno de Chile Ministerio de Educación, *Objetivos del Programa de Educación Rural*, [online] 2002 [cited August 12, 2002]; available from <http://www.mineduc.cl/basica/rural/N2002052417080024790.html>.

⁴⁴ Delannoy, "Education Reforms in Chile," 26-27. In addition, the Ministry of Education has promoted a national debate on a proposal to require 12 years of schooling in Chile. See Gobierno de Chile Ministerio de Educación, *Seminario, 12 Años de Escolaridad: Un Requisito para la Equidad*, [online] 2002 [cited August 2, 2002]; available from http://www.mineduc.cl/destacados_web/seminario12/index.htm.