



**Economic and social  
Council**

Distr.  
GENERAL

E/1994/104/Add.26  
14 July 2003

ENGLISH  
Original : SPANISH

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Regular session of 2004

**IMPLEMENTATION OF THE INTERNATIONAL COVENANT  
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Third periodic reports submitted by States parties  
in accordance with Articles 16 and 17 of the Covenant**

**Addendum**

**CHILE \*, \*\***

[10 July 2003]

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\* The second periodic reports concerning rights covered by Articles 6 to 9 (E/1984/8/Add.1) and Articles 10 to 12 (E/1986/4/Add.18) of the Covenant were considered by the Working Group of Government Experts of the Economic and Social Council in 1984 (see documents E/1984/WG.1/Sr. 11-12) and by the Committee on Economic, Social and Cultural Rights at its second regular session of 1988 (see documents E/C.12/1988/SR.12-13 and 16).

\*\* The information submitted in accordance with the consolidated guidelines relating to the initial part of State party reports is contained in the core document HRI/CORE/1/Add.103.

GE.03-43617 (EXT)

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**THIRD REPORT OF CHILE TO THE COMMITTEE ON ECONOMIC, SOCIAL  
AND CULTURAL RIGHTS ON THE IMPLEMENTATION OF THE  
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS IN ACCORDANCE WITH ARTICLES 16  
AND 17 OF THE COVENANT**

The third periodic report of Chile on the implementation of the International Covenant on Economic, Social and Cultural Rights, submitted in accordance with Articles 16 and 17 of the Covenant, describes the progress made and the difficulties encountered by Chile in the implementation of the rights enshrined in the Covenant, which are fully in force and in course of progressive and concrete implementation in Chile. The report includes all information on the events occurring during the period 1990-2002, during which no report was submitted.

The core document on Chile (HRI/CORE/1/Add. 103) contains the background information on the political structure of Chile and the general framework of protection of human rights.

In accordance with the guidelines issued by the Committee (E/C.12/1999/1) the report is divided into two parts, the first relating to the general provisions of the Covenant and the second with the specific rights. In reporting in turn on each individual article in the Covenant we have endeavoured to structure the entire report in accordance with the order stipulated in those guidelines.

To facilitate comprehension of the text we have included an Annex 1, explaining the abbreviations used, and an Annex 2, containing a list of statistical tables and graphs.

With the same end in view, every time that figures are given in pesos (the national currency) and in development units (*unidades de fomento – UF*),<sup>1</sup> which themselves require conversion into pesos, they have been converted into United States dollars. The conversions have been effected at the exchange rates for the US dollar published by the Central Bank of Chile (website <http://bcentral.cl>).

The figures are used as follows:

- (1) where figures in pesos refer to a specific month in a specific year, the exchange rate used is the average rate observed for the month in question;
- (2) where figures in pesos refer to a whole year rather than a specific month, the rate used is the average rate observed for that year, i.e.:

Year	Rate of exchange
1990	304.90
1991	349.22
1992	362.58
1993	404.17
1994	420.18
1995	396.77

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<sup>1</sup> See annex 1 (abbreviations).

Year	Rate of exchange
1996	412.27
1997	419.31
1998	460.29
1999	508.78
2000	539.49
2001	634.94
2002	688.94

(3) where reference is made to the UF in a particular year, the figure has been converted into pesos on 31 December of that year and then converted using the average exchange rate for that month;

(4) For current data, the value of the UF on 31 December 2002 and the average exchange rate observed for that month have been used.

## INTRODUCTION

1. As the international community is aware, at the beginning of the 1990s Chile began the most important process of transition to democracy in its socio-political history during the last 30 years. On 14 December 1989 the first elections of the President of the Republic and of the members of the National Congress to take place for 19 and 16 years respectively were held. During the 1990s the Concertation of Parties for Democracy consolidated its dominant political position and has succeeded so far in forming the government coalition for three successive terms.
2. The first coalition government took office on 11 March 1990. The President of the Republic was Patricio Aylwin Azócar, who had been elected by 53.79% of the votes cast in an electoral turnout in which abstentions were few (5.30%). On the same date the National Congress began its work, the Concertation of Parties for Democracy having obtained 50.83% of the votes in the Senate and 50.55% in the Chamber of Deputies. On 28 June 1992, during the term of office of President Aylwin and thanks to a reform carried through by the government, municipal elections were held for the first time in 21 years.
3. His government was followed - elected in the same manner and for six-year terms, as stipulated in the Constitution - by that of President Ricardo Frei Ruíz-Tagle and currently, for the period 2000-2006, that of Ricardo Lagos Escobar.
4. Chile stands out in the international field on account of the institutional reforms in the areas of social insurance, education and health which it has introduced since the 1980s. These changes have already extended over a wide field and are having a direct impact on the methods of formulating and implementing public policies. In particular, the changes in focus which have marked the management of the State in these areas since the return to democracy have implied significant changes in the structures and functioning of the body of public institutions responsible for social and economic policies.
5. In contrast to the social reforms introduced within the framework of the structural adjustments carried out in the region during the 1980s, the changes in public policy carried out by the Concertation governments have been effected in the context of a development model which seeks to achieve a virtuous combination of economic growth and social justice. This has permitted to a considerable degree a return to standards of living eroded during the previous decade by means of high levels of investment directed at the expansion of universal social services.
6. Currently the indicators of well-being of the population are satisfactory in a number of areas. The averages regarding coverage by essential social services place Chile in the group of countries having achieved intermediate levels of development, i.e., countries with living standards manifestly higher than those in poor countries but showing substantial shortfalls in comparison with the indicators for developed countries.
7. Chile is a wealth-generating country, principally through exports of raw materials, such as copper, timber and fishery products, which are an extremely important element in gross domestic product (GDP). Even so, the figures for income distribution reveal a number of anomalies and inequities, in particular with regard to the persistence of poverty. Although the proportion of poor persons has fallen to under 20%, there are still critical sectors - such as the group of persons living below the extreme poverty threshold - in which improvement of the situation will be slow.

8. During the 1990s Chile maintained a relatively stable level of economic growth and became increasingly integrated into the world economy. This sustained economic growth gave rise to a significant increase in per capita income. This process was interrupted in 1999 by the repercussions of the international crisis and the implementation of a strict policy of adjustment of domestic expenditure, but was resumed in 2000, during which year a growth rate of 5.4% was achieved.

9. During the period 1990-2000 the economy attained an average annual rate of expansion of 6.3%; during the period 1989-2000 a total expansion of 96.4% was achieved. In the year 2000 GDP amounted to US\$ 70,019 million. The steady expansion of the economy implied a 66.3% increase in per capita income between 1989 and 2000. In the latter year per capita income reached US\$ 4,603.

10. The sustained growth of the economy up to 1998 was reflected in job creation; this involved both a reduction in the unemployed rate and an improvement in the quality of jobs. The check in growth experienced in 1999 gave rise to an increase in unemployment, which was partially reabsorbed in 2000, during which year GDP increased by 5.4%. Since 1990 wages, and in particular the minimum wage, have been recovering.

11. Between 1990 and 1999 the labour force grew at an annual average rate of 2%. Growth was checked in 2000, during which year the labour force contracted by 1%. During the period 1990-2000, 918,000 jobs were created. Between 1990 and 1998 employment increased at an average annual rate of 2.1%. The trend was halted in 1999 and 2000, during which years employment contracted by 0.5% and 0.4% respectively. During the period 1990-2000 unemployment varied between 5.3% (in 1997) and 8.9% (in 1999); during that period the rate of unemployment among women was consistently higher than that for men. Between 1989 and 2000 real wages increased at an average annual rate of 3.6% and the minimum wage at an average annual rate of 5.8%.

12. According to projections made by the economic authorities, the prospects for 2003 indicate a 4.0% growth in GDP and 3% inflation up to the end of the year. Domestic demand is expected to increase by 4.5%, in part due to a modest recovery in the terms of trade. A small deficit on current account is anticipated.

13. On the average, in real terms social expenditure is expected to have increased by 5.8%, and public investment expenditure by 11.1%, during the period 2001-2003. The latter is higher than the average observed during the 1990s and has been achieved by dint of considerable efforts to contain the inertial growth of other sectors of expenditure such as functioning and defence expenditure. In fact, the manifest determination of the various Concertation governments to give priority to the justice agenda has found highly concrete expression in increases in social investment, both in the extension of the coverage of programmes and services and in the expansion and diversification of those on offer.

14. It should be pointed out that during the year 2002 the Chilean economy did not escape the repercussions of events in the world economy. As ECLAC states in its annual report, the Chilean economy continued to grow at a *moderate* pace in 2000<sup>2</sup> in 2002, although in the view of the national economic authorities expectations of growth had been met satisfactorily.

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<sup>2</sup> GDP increased by 1.8%, as against 2.8% in 2001. Inflation showed seasonal variations and was affected by movements in the exchange rate and in the world price of oil and its derivatives. Ultimately inflation was of the order of 3% - in line with the government's objectives. The world economic slowdown, the regional crisis and the increase in global risk not only led to a considerable

15. The deterioration in macroeconomic conditions gave rise to a drop in tax revenue to below the level foreseen in the Budget Act. However, it must be emphasized that this did not imply any severe adjustments in planned public expenditure; the aim of guaranteeing (footnote from previous page) the financing of essential social services was met. This required a significant effort which few countries in the region have been capable of making.

16. Notwithstanding expectations of recovery in 2003, unemployment still remains the principal outstanding problem. For the first time in three years, the unemployment rate remained below 10% during the winter. To some extent unemployment was mitigated by the development of direct public employment programmes and of subsidies for private employment paid in the forms of reintegration and training allowances.

17. The improvements in the country's development indicators are not confined to those for the economic sector. In the social field the successes achieved in the campaign to overcome poverty are hitherto unmatched, both in the context of the country's development and by comparison with the other countries in the region.

18. At the end of 2000 the numbers of persons living in poverty was approximately 3,000,080 persons, or 20.6% of the total population. The number of households in that condition was approximately 643,000 - about 16.6% of all households.

19. Some 650,000 persons - 5.7% of the population - were living in a state of extreme poverty; the number of households in extreme poverty was about 178,000 - 4.6% of all households. During the decade the proportion of the population living in poverty fell from 38.6% in 1990 to approximately 20.6% in 2000. Similarly, the percentage of the population living in extreme poverty fell from 12.9 to 5.7 during the same period.

20. The percentage of poor households fell between 1990 and 2000 from 33.3 to 16.6 and that of households living in extreme poverty from 10.6 to 4.6.

21. Notwithstanding the complex economic scenario prevailing in the economy during this period, between 1998 and 2000 the downward trend in the numbers of persons living in poverty continued; the significant advances achieved by Chile during that decade were not reversed.

22. The factor which alleviated the negative effects of unemployment on the quality of life of the poorest households was the stability of social policy. During that period the country was able to maintain in force and strengthen a wide range of social programmes designed to improve the quality of life of households, and particularly poor households. This is to be attributed to the country's ability to maintain a sound economy and to save in order to maintain social policies unchanged. Concrete expression of this is to be found in the increase in budgeted social expenditure, which rose by 18.6% between 1998 and 2000.

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decline in foreign trade but in addition gave rise to a persistent worsening of the terms of trade (9% during the biennium 2001-2002) and a falling-off in capital inflows, the whole being equivalent to over five points on GDP. The country had to face one of the worst external situations since the crisis of 1982-1983 and was unable to avert the effects of external turbulence and the sharp reduction in capital flows towards emerging economies. Source: *Preliminary Overview of the Economies of Latin America and the Caribbean*, ECLAC, 2002.

23. An evaluation carried out by the Ministry of Planning and Cooperation (Mideplan) for the year 2000 demonstrates that the benefits provided by health and education programmes, together with money allowances, significantly improved the quality of life of poor households.
24. One of the significant features of the public policies implemented during these years, which has permitted the achievement of indicator levels such as those mentioned earlier, has been the move away from measures of assistance to promotional measures giving priority to the development of human capital. This explains the impetus given to reforms in the fields of education and health and the launching of measures specifically focussed on poverty - the essence of Chile's solidarity-based social protection system.
25. These efforts have found expression in the degree of emphasis laid on the active function which the State has a duty to discharge in the social sphere, together with a policy deliberately aimed at achieving coherence and complementarity between the processes of economic growth and social development.
26. The foregoing is not exclusive of the changes recently introduced on an experimental basis in the promotional practices of the governmental agencies responsible for implementing social policies with a high public impact, which originated in the recognition by the State of a "Asocial debt" towards the poor and the marginalized. Although that debt has been repaid to a substantial degree by the maintenance of an explicit political determination to maintain social expenditure, the objectively disadvantaged situation of certain particularly vulnerable groups, whose living standards contrast sharply with those of higher-income groups, is currently ensuring that the government's social agenda continues to occupy a privileged position.
27. In an awareness of the fact that social development and the elimination of poverty depend to a considerable degree on economic growth but cannot be assumed to be an inertial effect of that growth, public policies have taken on the role of a strategic fulcrum to give impetus and sustainability to the social reforms currently under way.
28. In contrast to other phases in recent social policies in Chile, the concept of universality has taken on a differential nature, fundamentally because the focalization of social services has been accepted as an instrumental method for the rationalization and efficient allocation of limited resources in highly vulnerable segments of society. In this sense universality is not merely a position in opposition to that of selectivity which governs social services; it rather reflects the need to make the necessary fiscal effort to permit the extension of the coverage of those services to the extent that they remain in a direct relationship to the minimum standards of well-being which the State has the duty to ensure for the entire population.
29. The social policies of the Concertation governments bear the distinctive stamp of a solidly ethical approach to politics. This must be emphasized, since, as a result of the increasing importance being taken on by technical elements in public management applied to social policies and programmes, the fundamental elements of the reforms appear to be becoming obscured in circumstances such that their purpose is best explained by their ethical bases. Thus the concern for the poor and the most vulnerable groups, or for those who suffer most from exclusion on account of inequalities inherent in the country's economic and social structure, is more than just declarations made in speeches by actors in government; it has found direct expression in the definition of the government's programme priorities.

30. While the prevalence of macro-economic policies and the inevitable impact which external factors have had on the local economy are not ignored, there is a concern to make the instruments of public policy into efficient tools for the achievement of the development objectives of this government. In fact, the present tendency is to make these instruments more coherent so as to bring them all within a single coordinated system of social protection.

31. In a word, the objective is one of changing social policy into an instrument for development which will be both in harmony with national macroeconomic priorities and highly sensitive to particular realities affecting different groups of persons who have neither sufficient opportunities to obtain access to the fruits of economic growth nor sufficient autonomy to meet their needs in ordinary markets. Undoubtedly this cannot be achieved without a solid and coherent basis which provides guiding principles enabling these objectives to be achieved.

32. The creation of instruments providing the major ethico-political orientations to guide measures by the State in the social field is simply working with a vision of a country committed to the need to progress with broadly inclusive efforts. The task is not only one of receiving claims advanced by organized groups identified with particular situations of marginalization or exclusion from the system; it is also one of accepting the debt as a guiding principle and a support for policy decisions which have an impact on general patterns of opportunities.

33. The foregoing calls for the formulation of a sustainable strategy with projections which will strengthen the existing body of institutions in the administration and advancement of public policies, both economic and social. However, the availability of an instrument of this kind will not by itself guarantee the achievement of the proposed aims of inclusiveness and development; these must also have as a basis the active incorporation of the concept of equity and equality of opportunity, and their concrete implementation must be effected in relation to the ranking of priorities of interests and lines of action. In fine, the task is one of ensuring that public policies comply with the fundamental ethical principles accepted for that purpose.

34. The doctrine of human rights has been taking on increasing importance in discussions on public policies. Curiously, this doctrine, from the standpoints of origin and presence, is not entirely novel; but in recent times it has gained recognition as an ethical framework with the capacity to reach beyond the range of civil and political rights and into the development sphere.

35. Thus the gradual achievement of the full enjoyment of economic, social, cultural, civil and political rights by all the citizens has gained momentum as an objective of public policies and in many cases has become the central focus of debates on the ability of the taxation system to ensure fiscal sustainability of the financing of social services. Those debates have certainly been strongly influenced by the international organizations which have promoted the adoption of principles of universal validity proclaiming that the individual should be the focal point of discussions on development.

36. Among the instruments which provide the framework for this doctrine, economic, social and cultural rights are highly relevant to social policy, since not only is their attainment an objective for the development of individual countries but in addition securing, protecting and promoting them involve commitments which have an impact on public policy decisions which governments have to take.

37. The principal contribution of this approach to social policies in Chile at this time has been the gradual emergence of a new way of envisaging development with a perspective based on rights and within which economic, social and cultural rights have been taking on the role of an ethical framework for the definition of economic and social policies. Furthermore, its contribution is tangible in the area of strategies for overcoming poverty; considered within the framework of the guarantees they offer, these strategies have modified the function of social minima, developing them into horizons for the definition of impact targets in the field of improvement of the well-being of the poorest.

38. The adoption of this approach to the design of public policies and of programmed benefits has recently been observed among those responsible for development strategies. ECLAC states that *"the value of economic, social and cultural rights lies in the fact that they establish an institutional legal order which contributes to the implantation of ethical orientations for collective proposals and thereby for the economic and political decisions through which shortcomings can be remedied and inequalities reduced"* (ECLAC, 2000). The distinctive feature of the process in Chile is precisely the form in which this framework has found active and concrete expression within the social programmes and services on offer.

39. In a similar vein, UNDP points out that the approach to development based on rights is making of human rights an integral part of development processes and policies. At national level the importance of considering development objectives and policies from a human rights perspective is every day becoming increasingly recognized (UNDP, 2000). It is precisely this linkage which has mobilized current efforts by the government to support the sectoral social reforms within a major ethical commitment under which rights constitute a challenge to the State to generate more and better citizenship within an increasingly inclusive and integrationist model.

40. In this context, within which value has been placed on the adoption of a perspective in which rights form the basis of the management of public affairs, social policy acquires a central role. In this regard ECLAC observes that such an instrument *should bring together and express the corpus of objectives, standards and systems through which society undertakes to guarantee social, economic and cultural rights and claims to create and consolidate abilities and opportunities to enable individuals to improve their lives, enjoy greater freedom and influence decisions affecting them*. In that perspective the many and significant successes accumulated during the last 10 years have brought matters to a point where new-generation policies have been progressively incorporating this approach when defining concrete commitments for the improvement of the living conditions of the population.

41. Unquestionably, in this matrix economic, social and cultural rights are closely bound up with civil and political rights. The objective of the former is to guarantee economic well-being, access to jobs, health, education and culture; the latter comprise respect for the rights and freedoms of the individual. The challenge will then be one of conducting those efforts in parallel with the gradual strengthening of a democratic institutional structure which respects diversities and is centred within a framework of sustainable governability.

42. The identification of existing anomalies in the social sphere - between sectoral and territorial groups - is not another exercise in improving the sophistication of the technical bases with which the information needed for decision-making on priorities is produced and administered. Quite on the

contrary, this exercise is now required to measure in concrete terms inequalities and disparities in the definitions of development indicators and goals - in other words, to make concrete contributions to the definition of social minima for the population as a whole and, in particular, for the low-income groups.

43. A brief review of existing programmes reveals a range of public services and social benefits on offer viewed in a context of rights in the different areas with which social policies are concerned and, in particular, in the strategies aimed at eradicating poverty.

44. Recognition of rights and the search for social equity giving rise to systems of protection and promotion of equality of opportunities require a social policy orientated towards integration through the intermediary of institutions acting in concert, and as a matter of priority, in accordance with the principles of universality, solidarity and efficiency.

## **PART OF THE REPORT RELATING TO GENERAL PROVISIONS**

### **Article 1**

#### **Right of self-determination**

##### **Freedom of determination of political status**

45. This right is enshrined in Articles 4 and 5 of the Political Constitution of the Republic of Chile. During the period of military government which began in September 1973 the right of self-determination was severely curtailed. In the dying moments of that regime, and on the basis of an agreement between various opposition forces, the rules in the Constitution which had been dictated by the military government in 1980 were accepted. In accordance with the terms thereof, on 5 October 1988 a referendum was held on the question of ratification or rejection of the appointment of Augusto Pinochet as President of the Republic during the period of transition to democracy, which, according to the Constitution, would last until 1997. The Noes - opposed to the appointment - obtained an absolute majority of 54.71% of the votes cast, while the Ayes - the supporters of General Pinochet - obtained 43.01%. The voter turnout was huge; there were only 2.47% of abstentions.

46. There then began a process of political negotiation between the military government, its supporters and opposition groups concerning the preparations for democratic elections of the public authorities and the amendment of some of the most authoritarian aspects of the 1980 Constitution. The process ended with a series of reforms to that instrument which were ratified by the citizens in a plebiscite held on 30 July 1989, which gave a favourable percentage of 85.70%.

47. On 14 December 1989 the first elections for the office of President of the Republic for 19 years, and the first elections for the members of the National Congress for 16 years, took place. On 11 March 1990 Patricio Aylwyn Azócar took office as President; he had been elected by 53.79% of the votes cast throughout the country. The rate of abstentions was low (5.30%). On the same date the National Congress began its work; the group known as the Concertation of Parties for Democracy, a coalition supporting the new government, obtained 50.83% of the votes in the Senate and 50.55% in the Chamber of Deputies. On 28 June 1992, during the term of office of President Patricio Aylwyn and thanks to a reform carried through by the government, municipal elections were held for the first time in 21 years.

48. His government was followed - elected in the same manner and for six-year terms, as stipulated in the Constitution - by that of President Ricardo Frei Ruíz-Tagle and that of Ricardo Lagos Escobar, both of whom belonged to the political coalition mentioned earlier. President Lagos took office in March 2000.

49. Notwithstanding the reforms introduced in 1989, some aspects of the institutional structure established in the 1980 Constitution still form obstacles to self-determination. These are:

(a) the electoral system contains some aspects of the binominal system, which is foreign to tradition and the multi-party realities present in Chile; it does not permit adequate proportional representation of majorities and minorities, favours the second electoral force over the first and eliminates minority groups, which have no representation in parliament unless they form part of an electoral agreement;

(b) some senators are not elected by popular vote; instead they are designated by the Supreme Court of Justice, the National Security Council and the President of the Republic. The provision in Article 45 of the Constitution providing for nine senators not elected by popular vote, together with former Presidents of the Republic, is still in force;

(c) the membership of the Constitutional Court is undemocratic in character, since some of its members are nominated by the National Security Council. In addition, the inclusion in the membership of three Supreme Court judges gives rise in practice to a duplication of functions. The conditions of eligibility for membership are such as to restrict the composition of the court. Currently the Court has seven members: three Supreme Court judges elected by the Supreme Court; two lawyers elected by the National Security Council; a lawyer appointed by the President of the Republic; and a lawyer elected by the Senate;

(d) the decision-making powers and the functioning of the National Security Council enable it to take decisions by an absolute majority, with the representatives of the armed forces (four of the eight members of the Council) having a decisive weight in the decision-making process. At present the Council is presided over by the President of the Republic; the other members are the Presidents of the Senate and the Supreme Court, the commanders-in-chief of the armed forces, the Director-General of the Carabineros (paramilitary police) and the Comptroller-General of the Republic;

(e) The commanders-in-chief of the armed forces (army, navy, air force) and the Director-General of Carabineros are immovable; they cannot be removed from their posts by the President of the Republic. Paragraph 18 of Article 32 includes among the powers of the President that of appointing and removing the military authorities mentioned above. Article 93 states that they shall be appointed or a four-year term but may not be appointed for a further term. Article 94 states that the appointments, promotions and retirements of officers of the armed forces and the paramilitary police shall be made by Supreme Decree "*in accordance with the relevant constitutional organic law, which shall be determined by the appropriate basic legal instruments*". However, the basic laws constituting the armed forces of Chile and the Carabineros also state, on the subject of the appointment, promotion and retirement of officers, that these matters shall be dealt with by Supreme Decree, but also add the requirement of "*the recommendation of the commander-in-chief of the force concerned or of the Director-General, as appropriate*". In other words, in practice this provision debar the Head of State from taking any decision in this area, since without the recommendation of the high command of the armed forces or the Carabineros he cannot exercise his constitutional power.

50. With a view to remedying these institutional shortcomings, both the government of President Patricio Aylwyn and that of Eduardo Frei submitted various proposals for constitutional reforms to Congress designed primarily to change the situation regarding the functioning, powers and membership of the National Security Council; to abolish the offices of institutional senators (i.e., those not elected by popular vote); to amend the binominal electoral system; and to amend the constitutional organic laws governing the armed forces and the Carabineros in order to give the President of the Republic the power to order the retirement of general officers without a previous recommendation from the commander-in-chief concerned. However, these reforms failed to pass, since they were not supported by the parliamentarians opposed to the government. During the term of President Lagos discussions have reopened on the above-mentioned constitutional reforms on the basis of a draft reform of the Constitution prepared by the Senate Committee on Constitution, Legislation, Justice and Regulations.

### **The right to economic development and to free disposal of natural wealth and resources**

51. In this connection it should be pointed out that there are a number of constitutional provisions in force which provide support for our right to economic development. The Constitution guarantees the right of everyone to pursue any economic activity which is not contrary to morals or deleterious to public order or national security and which complies with the laws applicable to it.<sup>3</sup>

52. The Constitution guarantees to everyone the freedom to acquire assets of all kinds except those which Nature has made the common property of all or which should belong to the entire nation and which the law states to be such.<sup>4</sup> The Constitution stipulates that property ownership is subject to the restrictions and obligations deriving from its "social function", i.e., subject to the general interests of the nation, national security, public utility and health and the preservation of the environment.<sup>5</sup> The Constitution authorizes a person to be deprived of his or her property through "expropriation" by virtue of a previously adopted general or special law authorizing expropriation on grounds of for the public benefit or the national interest, duly qualified by the legislator.

53. The State holds absolute, exclusive, inalienable and imprescriptible domain over all mines, including guano deposits, metalliferous sands, salt mines, coal and hydrocarbon deposits and other fossil substances, with the exception of surface clays.<sup>6</sup> The exploration, exploitation or development of liquid or gaseous hydrocarbons and of deposits of any kind existing in sea waters subject to national jurisdiction, and those wholly or partly situated in zones which, according to law, are deemed to be of importance for national security, may be performed directly by the State or its enterprises or by means of administrative concessions or special operation contracts, with the requirements and under the conditions which the President of the Republic may establish by supreme decree. The President of the Republic may at any time, without giving reasons and subject to appropriate indemnification, terminate administrative concessions or operating contracts relating to exploitation in zones declared to be of importance to national security.<sup>7</sup> Other mines which are

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<sup>3</sup> Article 19, section 21, of the Constitution.

<sup>4</sup> Article 19, section 23, paragraph 2.

<sup>5</sup> Article 19, section 24, paragraph 2.

<sup>6</sup> Article 19, section 24, paragraph 6.

<sup>7</sup> Idem, paragraphs 7 and 10.

State property may be explored and exploited by private individuals under concession and subject to a regime of protection (*amparo*). Such concessions are always constituted by court decision and have the duration, confer the rights and impose the obligations prescribed by a law approved by four-sevenths of the deputies and senators in office.<sup>8</sup>

54. In accordance with the third transitional provision of the Constitution, the Large Copper Mining Industry and the enterprises considered as such, nationalized by virtue of transitional provision 17 of the 1925 Political Constitution, shall continue to be governed by the constitutional norms in force on the date of the promulgation of the 1980 Constitution. This last transitional provision<sup>9</sup> was included with the aim of permitting nationalization of the large copper mining industry, which was under the control of the shareholders of multinational enterprises. Paragraph 1 of the tenth transitional provision in the previous Constitution provided that *"Since the national interest so requires, and in the exercise of the sovereign and inalienable right of the State to dispose freely of its riches and natural resources, and in accordance with the provisions of Article 10, section 10, of the present Political Constitution, the enterprises constituting the Large Copper Mining Industry being considered as such those designated by law) and the Compañía Minera Andina are nationalized and thereby declared to be incorporated in the full and exclusive domain of the nation."*

## Article 2

### **Adoption of measures (especially economic and technical measures) for the gradual achievement, by all possible means, including in particular the adoption of legislative measures, of the rights recognized in the Covenant**

55. This report describes in detail all the measures taken with a view to the progressive implementation of the rights recognized in the Covenant. These include the adoption of legislative measures and also the launching of public policies designed to give effect to those rights in the context of particular sectors of society. Without prejudice to the fundamental principles laid down in Article 1 of the Covenant, the basic political and economic freedoms of the individual are guaranteed by the Political Constitution,<sup>10</sup> which lays down the fundamental guarantees protecting the citizen. The majority of the rights recognized in the Covenant are guaranteed in the Political Constitution of the Republic of Chile.<sup>11</sup>

56. In addition to the procedural mechanisms contemplated within the legal system as a whole to ensure respect for the rights and compliance with the obligations established by law, there is a remedy expressly established in Article 20 of the Constitution known as protection. This a preventive measure which is particularly effective in cases of violations of any of these guarantees.

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<sup>8</sup> Idem, paragraph 7.

<sup>9</sup> Introduced by Act No. 17,450 to reform the Political Constitution of the State, published in the Official Gazette of 18 July 1971.

<sup>10</sup> Sections 1 - 26 of Article 19.

<sup>11</sup> Article 19 of the Constitution protects the right to health (s.9), education (s.10), freedom to work (s.16), social security (s.18), to form unions in the manner prescribed by law (s.19) and to live in a contamination-free environment (s.8). The Political Constitution also establishes equality between men and women (Articles 1 and 19 (s.2)) and the protection of the family (Article 1).

A citizen can invoke this remedy directly before the appeal court in the first instance and in the second instance before the Supreme Court. Thus the right to free choice of health-care system, freedom to work, the right to join a union and the right to live in a contamination-free environment are constitutionally protected by this remedy of protection, which applies in a manner similar to *habeas corpus*.

57. As regards the protection of the essential rights deriving from human nature, Article 5 of the Constitution provides that: "(...) *the organs of State have a duty to protect and promote the rights guaranteed by this Constitution and by the international treaties currently in force and ratified by Chile*", while Article 1 states that "*the State is at the service of the individual and its goal is to promote the common welfare ... it is the duty of the State ...to further the harmonious integration of all the sectors of the nation*".

### **Absence of guarantees of the rights enshrined in the Covenant for non-nationals and justification of existing differences<sup>12</sup>**

58. Nationality is the key element whereby the State of Chile recognizes rights to the individuals who make it up and promotes mechanisms for the protection of those rights and the freedoms deriving therefrom. It is therefore vital to establish efficient migration systems which reconcile the duty of the State to respect the inherent rights of non-nationals with the right of the State to organize the entry and residence of aliens in its territory, bearing in mind the benefit of its own citizens.

59. The regulations currently in force on the subject of aliens and migration are to be found primarily in the Aliens Act<sup>13</sup> as subsequently amended. As regards asylum, Chile is a party to the 1951 Convention on the Status of Refugees and its additional protocol of 1967. In 1996 a number of advances in this area were adopted.<sup>14</sup>

60. As regards the relationship between the norms laid down in the Aliens Act and the rights and principles laid down in the Political Constitution, the latter guarantees to everyone "*the right to personal freedom and individual security. Consequently, (a) a person has the right to reside and remain in any place in the Republic, move from one place to another and enter and leave its territory, on condition that the norms established by law are respected and provided that third parties do not suffer prejudice*".<sup>15</sup> This constitutional provision affirms the rights of residence as a guarantee under the Constitution, at the same time giving the legislator the power to regulate the requirements and conditions governing the exercise of that right. The regulation of residence derives from the need to protect or preserve not only other constitutional rights but also other assets protected under the Constitution. In this connection it must be borne in mind that, in accordance with Article 5 of the Constitution, the rights protected are extended to include those contained in international instruments ratified by Chile and in force in the country.

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<sup>12</sup> Taken from the document on migration policy in Chile published by the Chilean Ministry of the Interior.

<sup>13</sup> Decree-Law 1094 of 1975.

<sup>14</sup> Act 19,746 of 1996.

<sup>15</sup> Article 19, section 26 (a).

61. At the same time, however, the Constitution itself imposes restrictions on the regulatory powers of both the legislator and the administrative authorities in that it ensures to everyone *"the guarantee that the legal instruments which, as required by the Constitution, regulate or complement the guarantees established by that instrument, or restricts them where authorized to do so by it, may not affect those rights in their essence or impose conditions, taxes or requirements impeding the free enjoyment of those guarantees."* In this regard, and in accordance with the relevant legislation, the powers of the administrative authorities to grant residence and other permits will be exercised on a discretionary basis; refusals and cancellations of residence permits are based on a limited list of reasons fixed by law; the same is true of expulsion measures,

62. Generally speaking, the rules governing entering and leaving the country are in line with the contents of the "Declaration on the human rights of individuals who are not nationals of the country in which they live"<sup>16</sup> in as much as its provisions will not be interpreted as restricting the rights of States to enact laws and regulations on the entry of aliens and the duration and conditions of their stay or establishing differences between nationals and aliens. The restrictions on entry are confined to what is known as the "Atourist visa", i.e., the obligation incumbent on nationals of countries with which Chile does not enjoy diplomatic relations to register at the competent Chilean consulate before entering the country, the basis of that rule being considerations of international reciprocity. The law also contains imperative clauses relating to prohibition of entry<sup>17</sup> on grounds of internal security, public health, social security (exclusion of persons who cannot live in the country without becoming a charge on society) and exclusion of persons who have committed crimes such as drug trafficking or participation in the white slave trade. However, this article contains a range of grounds for prohibition which is excessively open and insufficiently precise, thus enabling the migration authorities to prohibit entry on purely ideological grounds, including *"being a trade unionist or having the reputation of being an agitator or activist"* preaching certain doctrines; this is unsatisfactory by both constitutional and international standards.

63. The rules governing access to residence are also imprecise;<sup>18</sup> for example, one provision allows rejection of such applications on *"grounds of convenience or usefulness to the nation"* without giving any precise parameters.

64. Between September 2001 and April 2002 an intergovernmental committee met to draw up a proposal for the modernization of the country's migration policy. The government considers that, although the maintenance in force of legislation of a permanent character such as the Aliens Act is reasonable, it is necessary to establish a set of criteria and principles concerning the decisions which the authorities have to take in that field, without prejudice to any reforms in the law which may prove desirable. These measures have been undertaken to make the powers exercised by the authorities under the Aliens Act compatible with the obligations of the State with regard to the rights of migrating individuals.

65. As regards the right to work, the Constitution guarantees to everyone *"freedom to work and protection of that freedom ..."* and prohibits *"any discrimination which is not based on personal skills or capability, although the law may require Chilean citizenship or age limits in certain*

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<sup>16</sup> General Assembly resolution 40/144 of 13 December 1985.

<sup>17</sup> Aliens Act, article 15.

<sup>18</sup> Idem, article 64.

cases".<sup>19</sup> In this connection the Labour Code provides that "At least 80% of the workers working for the same employer shall be of Chilean nationality. This provision shall not apply to employers with not more than 25 employees..."<sup>20</sup> To calculate the proportion referred to in the previous paragraph, the following rules shall be observed: 1. Account shall be taken of the total number of workers working for the employer within the territory of Chile, not including those employed separately in separate branch establishments; 2. Specialist technical personnel who cannot be replaced by national personnel shall not be counted; 3. an alien whose spouse or children are Chilean, or who is the widower or widow of a Chilean spouse, shall be deemed to be of Chilean nationality; 4. Aliens who have resided in the country for over five years, not counting unintentional absences, shall also be deemed to be of Chilean nationality." These rules are connected with that which requires the nationality of a worker to be mentioned on his employment contract.<sup>21</sup>

### Specific provisions against discrimination in national legislation

66. The Political Constitution guarantees that the rights of individuals shall be exercised without any discrimination whatsoever. Article 1 states: "Men and women are born free and equal, with equal rights ...", while Article 19 states: "The Constitution guarantees to all persons ... 2. Equality before the law. In Chile there are no privileged persons or groups ... Neither the law or any authority may establish any arbitrary differences; 3. Equal protection of the law in the exercise of their rights ... "16. Freedom to work and protection of that freedom. Every person has the right to free employment and free choice of employment against a just compensation.. "Any discrimination which is not based on personal skills or capability is prohibited,, although the law may require Chilean citizenship or age limits in certain cases... 22. No arbitrary discrimination in the treatment meted out by the State and its bodies in economic matters. Only by virtue of a law, and inasmuch as it does not imply any such discrimination, may certain direct or indirect benefits favouring any sector, activity or geographical region be authorized, or special charges affecting individuals or groups of individuals be established. In cases of franchises or indirect benefits, the estimated costs must be included annually in the Budgetary Act".

67. Article 2 of the Labour Code reads as follows: "Discriminations, exclusions or preferences based on considerations of race, colour, gender, trade union membership, religion, political opinions, nationality or social origin are contrary to the principles of labour law. Consequently no employer may make the engagement of workers subject to conditions of these kinds".

68. Article 31 of the Act on freedom of opinion and information and the exercise of the profession of journalist provides that whoever, by means of any medium of social communication, produces publications or transmissions with the aim of promoting hate or hostility towards persons or collectivities on grounds of race, gender, religion or nationality shall be punished by a fine of 25 to 100 monthly taxation units. If the offence is repeated the fine may be increased to up to 200 monthly taxation units.<sup>22</sup>

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<sup>19</sup> Article 19, s. 16.

<sup>20</sup> Article 19.

<sup>21</sup> Labour Code, article 10, section 2.

<sup>22</sup> Act No. 19,733 concerning freedoms of opinion and information and the exercise of the profession of journalist, May 2001.

69. Article 8 of the Indigenous Peoples Act<sup>23</sup> states that: “*Manifest and intentional discrimination against indigenous persons on account of their origin or culture shall be deemed to be an offence.*”

**The economic, social and cultural rights of disabled persons (General Comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights)**

70. At the beginning of the 1990s in Chile, action by the State in the field of disability was a matter of concern only in a few sectors of government such as health and education. The principal concern in that field was found in the private sector and among non-governmental organizations. In 1990, under the first Concertation government, the Chilean State began to show greater concern with the problems of the disabled, producing specific plans and programmes for that sector of the population. Particularly noteworthy in this area is Chile’s participation in the approval of the “agreements on disability” adopted by various international organizations.

71. These measures were developed into a framework for action directed at the subject of disability in the country and the improvement of the living conditions of this group of the population. The subject of disability was incorporated in the government’s “social agenda” and disabled persons, considered as a priority group in social policies, are beginning to play an important role as subjects of those policies. According to official information revealed by the Inquiry into the Socio-Economic Characteristics of the Nation (Casen), conducted in 1996,<sup>24</sup> disabled persons made up 4.3% of the population nationwide. The same inquiry, conducted in 2000, found that the group of disabled persons made up 5.3% of the population nationwide.

**Principal achievements in the field of disability in Chile during the period 1990-2000**

72. The following activities were carried out:

(a) participation in the approval by the General Assembly of the World Programme of Action concerning Disabled Persons, adopted in resolution 37/52 of 3 December 1982. The General Assembly also proclaimed the years 1983-1992 as the Decade for Disabled Persons for purposes of the implementation of the World Programme of Action concerning Disabled Persons. This offered a basis for the inclusion of the subject in Chile’s public social agenda.

(b) In 1995 Chile ratified the international labour standard on vocational rehabilitation, adopted by the International Labour Organization (ILO) on 22 June 1983. That was the date of the establishment of Convention No. 159 and Recommendations Nos. 99 and 100. These instruments provide bases for a national policy in the different countries for the rehabilitation and employment of disabled persons.

(c) Chile participated in the approval by the General Assembly of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities under resolution 48/96 of 20 December 1993. The aim of that resolution is to enable boys and girls, men and women, suffering from disabilities to have, as members of their respective societies, the same rights and obligations as other people. The State has the responsibility to eliminate all forms of discrimination against persons with disabilities and to promote their participation in society.

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<sup>23</sup> Act No. 19,253 of 10 October 1993.

<sup>24</sup> See annex 1 (abbreviations).

(d) In this international context the Act on Disability<sup>25</sup> came into force. It defined a disabled person as “any person who, as a consequence of one or more physical, psychological or sensorial deficiencies, either congenital or acquired, foreseeably of a permanent nature and independently of the causes which gave rise to those deficiencies, finds his or her capacity to receive education, to work or to integrate into society reduced by at least one third”.

73. This Act also covers the following matters:

(a) the definition and diagnosis of the disability;

(b) prevention and rehabilitation, including both measures designed to prevent the causes of the deficiencies which may cause disability and those designed to prevent its development or diversion into other disabilities; the creation of equality of opportunities of access to education and culture, information, communications, physical space and to exemption from customs duties on imports of vehicles; the National Disability Register, which is designed to assemble and keep updated the histories of persons with disabilities and of bodies mentioned in the Act (organizations of disabled persons and organizations providing support);

(c) procedures and sanctions relating to the enjoyment of the rights and benefits designed to assist disabled persons;

(d) the National Disability Fund, an autonomous body with full capacity to acquire and exercise rights and contract obligations; its purpose is to administer the resources destined for disabled persons.

74. The Act on Disability is complemented by the following regulations:

(a) Regulations concerning the National Disability Register in the Civil Status and Identification Service (the only place where disabled persons wishing to obtain a benefit provided for by law can register).<sup>26</sup> In 1999 there were 20,000 entries in the register; this total included physical and legal persons and associations of professionals concerned with disability. The officials of the Civil Registry have been authorized to provide facilities to disabled persons and to give them preferential attention;

(b) Regulations concerning evaluation and certification of disability. This is a continuing activity; it is undertaken by the Preventive Medicine and Invalidity Commission (Compin) at the request of a disabled person. The Ministry of Health has at its disposal a Rehabilitation Space, which was set up to establish a basis for the provision of that service to persons applying for it in the different public services throughout the country;<sup>27</sup>

(c) Regulations requiring collective transport services in both urban and rural areas, with the exception of hire cars, to make at least one out of 10 seats easy of access for the use of disabled persons;<sup>28</sup>

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<sup>25</sup> Act No. 19,284 of 1994.

<sup>26</sup> Supreme Decree No. 1137 of 23 November 1994 (Ministry of Justice).

<sup>27</sup> Supreme Decree No. 2505 of 7 March 1995 (Ministry of Health).

<sup>28</sup> Supreme Decree No. 141 of 2 July 1994 (Ministry of Transport and Communications).

(d) Regulations governing the procedures and conditions for the import of vehicles specially destined for the collective private transport of disabled persons. This regulation has been especially used by importers, who have created transport enterprises for disabled persons, using small vehicles. No case has been observed of use of this regulation by private operators of collective transport;<sup>29</sup>

(e) Regulations concerning the import of vehicles for crippled persons;<sup>30</sup>

(f) Regulations amending the General Ordinance on Town Planning and Construction requiring the removal of architectural obstacles in new buildings. It provides for the building of access ramps in buildings used by the public, paths at pedestrian crossings, parking spaces exclusively reserved for disabled persons, specially equipped toilets in places of recreation or attended by the public (stadia, supermarkets, etc.) and telephones, signs and protective installations specially designed for use by disabled persons;<sup>31</sup>

(g) Regulations allocating a certain number of points (10 per person) to disabled persons, or to families one of the members of which is disabled, in the normal process of application for housing within the system of State subsidies;<sup>32</sup>

(h) Regulations concerning the integration of pupils of either sex with special educational needs into the school system. There are a wide range of public and private schools which are developing the programme of integration of boys and girls with special educational needs in regular educational establishments. In addition, the National Kindergartens Board (Junji) has been implementing a programme for the integration of small children since 1994. Many of these establishments have had to make changes in their buildings. It should be mentioned that the Ministry of Education is financing programmes for the development of experiments with educational integration and the procurement of materials for use by disabled boys and girls in the process of their integration. The aim of this special education programme is to meet the educational needs of all disabled pupils within the regular system, improving in an equitable manner the basic education of all boys and girls. There are currently over 65,000 boys and girls with disabilities attending schools with integration programmes. The principle underlying this project is the achievement of equality of opportunity, since not all the establishments within the public education system enjoy the conditions necessary to respond to the special educational needs of disabled children within the intermediate educational system; this situation makes their integration into society more difficult. The project also seeks to support the processes of educational integration of disabled low-income children in intermediate education. It is currently operational in 6 regions of the country.<sup>33</sup> Resolution of the National Television Council, dated 9 July 1994, establishing rules

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<sup>29</sup> Supreme Decree No. 249 of 1 December 1994 (Ministry of Transport and Telecommunications).

<sup>30</sup> Supreme Decree No. 940 of 6 December 1994 (Ministry of Finance).

<sup>31</sup> Supreme Decree No. 40 of 20 June 1995 (Ministry of Housing and Town Planning).

<sup>32</sup> Supreme Decree No. 41 of 12 June 1995 (same Ministry).

<sup>33</sup> Supreme Decree No. 1 of 13 January 1998, Ministry of Educacion

for access to the information supplied by radio and television services by persons with hearing disabilities. This resolution is being applied by the country's open television channels by the use of teleprinters in news broadcasts. No open channel has introduced translation into sign language.

### **The right to work**

75. The international classification of impairments, disabilities and handicaps established by the World Health Organization (WHO) in 1980 is used in various aspects of national affairs, such as rehabilitation, education, statistics, demography, sociology, economics, anthropology, legislation, politics and other fields. It has been used for the incorporation of the disability variable into official instruments such as the 1992 national census, the Inquiry into the Socio-Economic Characteristics of the Nation (Casen) of 1996 and that of 2000 and the population and housing census of 2002.

76. According to the information yielded by Casen 2000, 21.5% of persons with disabilities were working. In pursuance of the principles laid down in the National Policy for the Social Integration of Persons with Disabilities promulgated in 1999, efforts to integrate disabled persons into the workforce are being increased, to which end placement and sheltered employment programmes are being drawn up for them. Disabled persons in employment do not receive any special treatment; but vacancies arise for them in the regular administrative systems of public and private entities.

77. In Chile there are no specific rules requiring public and private entities to engage disabled persons. However, as a means of promoting their recruitment, together with the promulgation of the Act on Disability, an instruction was sent out in 1994 from the President of the Republic to all public entities with the aim of giving priority to disabled persons, other things being equal with regard to qualifications for a job and fulfilment of the requirements for its performance.

### **The right to social security**

78. Social security is a right of everyone, regardless of social, economic, cultural, health or ethnic factors. The government is continually improving conditions of access to social security in order to establish a guaranteeable minimum, especially for persons suffering from disabilities of any kind and having no social security.

79. The rules concerning promotion and rest periods apply to all persons deemed to be workers, whether in public or private employment. In this regard, private enterprises are subject to the rules concerning employment accidents and occupational diseases and the pension insurance system; in the public administration the above-mentioned rules and the Administrative Statute are applicable. These matters are dealt with in detail in the paragraphs on Article 9 of the Covenant.

80. Persons most lacking in resources may apply for an assistance pension on grounds of invalidity or mental deficiency. This benefit has gradually been extended with a view to reaching more individuals with disabilities. According to information yielded by the Casen 1996 inquiry, 29.7% of persons with disabilities are receiving this benefit, which gives them access to an income and to comprehensive health care at all levels.

81. The number of persons receiving assistance pensions (Pasis) increased by 12% during the period 1994-1998. Assistance pensions payable on grounds of invalidity are paid to persons without resources and without social security. They are paid indefinitely and thus lapse on the death of the beneficiary. The distribution of assistance pensions during the period 1990-1998 is shown in the following table:

**Table 1**

**Number of assistance pensions (Pasis) liquidated annually**

**According to numbers of originating causes**

Year	1994	1995	1996	1997	1998
Invalidity	163,397	166,343	171,607	178,840	183,208

Source: Institute for Social Security Standardization (INP), 1998.

82. The Single Family Benefit (SUF) is destined for persons with mental deficiencies, without resources or social security; it is equivalent to the family allowance. As can be seen from table 2, the numbers of persons receiving this benefit increased 6.5 times during the period 1994-1998. This benefit is payable for three years and may be renewed if the socio-economic conditions which gave rise to its award have remained unchanged.

**Table 2**

**Single family benefits paid on grounds of mental deficiency**

Year	1994	1995	1996	1997	1998
Total	84	156	266	423	544

Source: Institute for Social Security Standardization (INP), 1998.

83. By means of the Pasis and SUF assistance benefits, the State is not only supplying a money income to the beneficiaries but also giving priority to disabled persons in matters of access to health care, education and social programmes furnished by the government. According to information provided by Casen, in the year 2000, 81.2% of disabled persons were receiving care from the public health care system.

**The right to an adequate level of living**

84. The right to an adequate level of living comprises every dimension in which an individual evolves. In view of its extensive character, this right will here be considered solely in relation to areas not covered in connection with other rights laid down in the Covenant.

**Minors with disabilities**

85. The National Minors' Service (Sename), through a network of cooperating institutions, is caring for over 4,900 boys, girls and adolescents suffering from psychological, physical or sensorial deficiencies. This network consists of 260 non-profit-seeking institutions, with over

800 establishments throughout the country. The Sename has four assistance systems<sup>34</sup> established to provide care for boys and girls suffering from mental deficiencies, ranging from the mildest to the most severe degree. Two of these systems provide protection.

86. Protection for persons with mild or moderate deficiencies in a residential framework of an assistance character, designed for boys and girls with intellectual levels corresponding to slight or moderate subnormality. There are 24 centres distributed throughout the country;

87. Protection for persons with severe mental deficiencies in a residential system of an assistance character. This scheme also provides treatment for physical, sensorial and psychiatric disorders existing together with the mental problems of boys, girls and adolescents with intellectual levels corresponding to severe or very severe abnormality. There are 8 centres throughout the country.

88. In addition, there are two centres of a preventive character designed to provide day care to boys, girls and in situations in which their rights are threatened in order to provide treatment appropriate to their deficiencies. These systems are:

(a) day-care centres for boys, girls and adolescents suffering from mild or moderate deficiencies. There are five cooperating establishments;

(b) day-care centres for cases of severe or very severe mental deficiencies. There are four cooperating establishments.

### **Disabled persons deprived of liberty**

89. In 1999 the Chilean gendarmerie opened the Colina penitentiary centre. The general principle underlying this strategic project for institutional development and modernization is that its policies, programmes, services and infrastructural resources and uniformed, professional and administrative personnel should be committed and trained to meet the specific needs of disabled inmates in the following fields:

(a) rehabilitation in the field of health; this is provided for disabled persons deprived of liberty who receive social assistance, diagnosis, treatment and regular controls, hospital care in the specialized centres of the Service or the external health-care network. Fifteen inmates are receiving specialized treatment in the Colina 1 prison, which has an appropriate infrastructure and specialized professional workers (social worker, nurse, paramedical assistant, occupational therapy specialist);

(b) education; provided for disabled persons deprived of liberty, who have access, within the three penitentiary systems, to the processes, programmes and levels of education available for inmates in the institution concerned;

(c) work and social security: provided for disabled persons deprived of liberty, who have access, in the three penitentiary systems, to the programmes and levels of training and employment available to inmates in the institution concerned;

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<sup>34</sup> Regulated by DFL No. 1,385 of 1981 (Ministry of Justice).

(d) technical aid; provided for disabled persons deprived of liberty who receive technical aid under the agreement concluded with the National Fund for the Disabled (Fonadis) in October 1997;

(e) removal of physical obstacles: this is to cater for disabled persons deprived of liberty, who use an appropriate infrastructure as a result of the implementation of the relevant standards and adaptations in the construction of new prisons;

(f) care in other areas of need; in addition, disabled persons deprived of liberty receive appropriate treatment as a result of the training given to the personnel of the Chilean gendarmerie in subjects relating to disability, tolerance and non-discrimination; they take part in educational, cultural and productive activities in agreement with the National Board of Assistance for Offenders (Panar) and enjoy non-discriminatory treatment thanks to the results of international cooperation.

90. The treatment of the disabled by the Chilean Gendarmerie forms part of a solidly-based institutional policy in the field of readaptation, supported on the technical and theoretical sides by what is known as the General Model for the Treatment of Inmates of Penitentiaries. The underlying principle here is that the main efforts to promote integration into society should be directed primarily towards those inmates who will shortly be able to apply for release or, while they are serving their sentences, to provide them with tools in the field of social skills and training for employment which will facilitate their reintegration and avert recidivism in the future. In this connection the Policy of Segregation of Prisoners takes on special relevance; applied in a closed environment, it involves the grouping together of inmates according to their common characteristics in order to protect their rights and their physical and psychological integrity, to improve their quality of life and to facilitate their rehabilitation and subsequent reintegration into society.

### **The right to health**

91. One of the functions of the Ministry of Health introduced for disabled persons is the issue of disability certificates. In the performance of this task it works in close cooperation with the Office of the Superintendent of Social Security, the National Health Fund (Fonasa) and the National Fund for the Disabled (Fonadis).

92. Within the programme designed for all users of the public health-care system, the Ministry of Health has a Rehabilitation Space, established to create a basis for the provision of rehabilitation services to all disabled persons using the different services for the public existing in the country. This system has health-care services all over the country - hospitals, primary care surgeries, posts and establishments providing out-patient treatment of medium- and higher-level complexity. It has also entered into agreements on diagnosis, treatment and rehabilitation with the private sector in order to increase the availability of benefits, especially in the area of prevention of disabilities.

93. The benefits available within the public system are provided through the National Health Fund (Fonasa). Care is provided free of charge to persons receiving assistance pensions (Pasis) or single family benefits (SUF); thus the health-care needs of disabled persons receiving these benefits are being met.

94. Through its basic programmes and specialized units the Ministry of Health acts to prevent and diagnose disabling diseases in the areas of children's health supervision, immunization, stimulation of psychomotor development, genetic counselling, programmes for older persons,

mental health promotion, control of transmissible diseases, etc. The Ministry is also active in the rehabilitation field, evaluating and implementing measures of a nature to reduce the levels of diseases, and the causes of deficiencies, which give rise to disabilities.

95. The Mental Health Unit is a technical body under the authority of the Ministry of Health. Its purpose is to contribute to the well-being of individuals in the field of mental health in order to meet the requirements of a solidarity-based coexistence in society making for comprehensive human development. Its tasks include stimulating among the population the promotion of individual and community health (including preventive measures), including aspects of mental health; and helping to improve access by individuals to prevention, treatment and rehabilitation services in the public and private sectors dealing with psychiatric disorders. As for promotional and preventive activities in the field of mental health, it endeavours to provide support for individuals, families and groups, promoting the development of skills acquired in interaction with other persons and with the environment and which shape a lifestyle conducive to mental health.

96. Mental health has been designated as one of the 16 priority areas in the field of health policy. Its beneficiaries receive care at three levels - primary, secondary and tertiary. A large percentage of them are in primary care or receiving treatment in the emergency care services in hospitals.

97. The Psychosocial Rehabilitation Programme for persons against whom criminal proceedings have been dropped on account of mental illness is designed to reduce the disabling symptoms and to contribute to the inculcation of new habits in the areas of work, living in society, self-care and basic subsistence in persons the criminal proceedings against whom have been dropped on grounds of mental illness. The programme was established in 1998 for an indefinite period and is operational in 28 health centres throughout the country. Four hundred persons have had criminal proceedings against them dropped by the courts on grounds of mental illness and have been admitted to treatment and psychosocial rehabilitation programmes.

98. The programme providing support for the organizational development of groups of users of mental health services and their families seeks to help the persons concerned to take on mutual assistance functions, to promote awareness and knowledge of the subject within the community, to defend the rights of users and to provide rehabilitation and social reintegration services. In 1999 there were 400 user groups receiving technical and financial support from the public health system. The programme was launched in 1993 for an indefinite period and provides nation-wide coverage through its 28 health services located throughout the country.

99. Beginning in the 1990s with the return to democracy and the beginning of efforts to develop modern mental health-care services, the groups of families of patients with severe psychiatric disorders became more active. In 1998 the National Association of Families and Friends of Persons with Psychological Disabilities (Anafadis) was founded with the support of the Ministry of Health. At the same time the Corporation of Beneficiaries of the Comprehensive Health Care Programme (Prais), and other self-help organizations formed in response to emerging problems, such as that of Alzheimer's disease, were formed. The principal tasks of these groups are:

(a) to defend the rights of patients to dignity, respectful treatment, non-discrimination, access to quality services and information and the right of consent to their treatment:

(b) to exercise social pressure for the creation of better mental health and psychiatric services, to facilitate mutual emotional support among participants, to provide education on the disease and its treatment and to resolve common problems;

(c) to promote awareness within the community and among the authorities, the communication media and other sectors concerning mental illnesses, their impact on families and their importance for society and to secure acceptance of the difference of natures.

### **Government policies to promote the exercise of the rights of disabled persons**

100. The Ministry of Planning and Cooperation is concerned with disabled persons jointly with the following services:

(a) the National Fund for the Disabled (Fonadis), an autonomous body attached to the Ministry of Planning and Cooperation. It has direct relationships with the Ministries of Health, Education, Labour, Public Works, Transport and Telecommunications, the Secretariat-General of the Interior, the Institute for Social Security Standardization, municipal authorities, governors' offices, administrative offices, civil status and identification services and the National Congress. These relationships derive directly from the situations which render the social integration of disabled persons difficult. Fonadis, by financing technical aids and projects concerned with disabled persons, contributes to their social integration, facilitating access for them to rehabilitation, education, work, culture, recreation, physical space, information, telecommunications and transport. The programme of financing technical aids is operational throughout the country; it was started in 1995 for an indefinite period. It has set itself a target of not less than 4,500 technical aids each year. To obtain access to this programme registration in the National Register for the Disabled is necessary.

(b) One of the objectives of the Solidarity and Social Investment Fund (Fosis) is to contribute to creating equality of opportunities for disabled persons in a state of poverty living in the metropolitan region by bringing them as users into the orbit of the different activities being conducted by Fosis in that region. Similar activities are being conducted in the other regions of the country. The first of these activities was financed in 1992 within the framework of the Productive Support Programme for the Disabled, the outcome of an agreement between Fosis and Fonadis.

(c) One of the objectives of the National Indigenous Development Corporation (Conadi) is the social integration of disabled members of the indigenous population by meeting their special needs deriving from both disability and ethnic status.

(d) The National Youth Service (INJ) service attached to the Ministry of Planning and Cooperation. Its purpose is to contribute to the social integration of young people with disabilities.

(e) Since the promulgation of the Act on Disability and the 1999 National Policy for the Integration of Disabled Persons the organizations of and for disabled persons have gained in strength; these organizations bring the requests of their members to the notice of the authorities. This development has made a significant contribution to the inclusion of these individuals and their needs in policies, plans, programmes and parliamentary motions. A number of specific legal, administrative and judicial measures are being devised to contribute to the full integration of the disabled into society. Effect is being given to the objectives and guiding principles of the National Policy for the Integration of Disabled Persons, which proclaims that persons with disabilities can play a role of full participation in society peculiar to them; exercise their civil rights to the full and take a place in all the institutions and services concerned with disability, and particularly those

concerned with rehabilitation, education and work, as a basis for their development; participate actively in the planning and launching of activities involving them, especially in the fields of rehabilitation and integration; enjoy the highest possible degree of mobility to enable them to use physical space and enter buildings and vehicles; and enjoy economic independence, either through the practice of a profession or job which brings them an income, or by receiving a minimum income (according to the case) through the provision of social benefits.

**The economic, social and cultural rights of older persons (General Comment No. 6 (1995) of the Committee on Economic, Social and Cultural Rights)**

101. The group of older persons in Chile does not possess any special economic, social and cultural rights or rights different from those stipulated in the Political Constitution as possessed by every citizen of the country. In the Chilean population of today, 10% are older persons, and it is estimated that by the year 2000 they will make up 16% of the population; in other words, there will be 3 million individuals over 60 years of age.

102. In 1991 the Government of Chile adopted the United Nations Principles for Older Persons. These principles provided the inspiration for the drafting and formulation of the National Policy for Older Persons, which was made official and approved by the Council of Ministers for Social Affairs in March 1996.

103. Between 1996 and 2002 a committee known as the National Committee for Older Persons coordinated the government's social policies for the "third age" group, promoting new measures and programmes benefiting them and submitting proposals to the President of the Republic.

104. In 2002, the President of the Republic promulgated Act No. 19,828, approved by the National Congress on 30 July of that year, which established the National Service for Older Persons. The new body began its work on 1 January 2003, superseding the National Committee for Older Persons. The law defines the Service as "a functionally decentralized public service, with legal personality and holding assets of its own, subject to the supervision of the President of the Republic, that supervision being exercised through the Office of the Secretary-General of the Presidency". The principal function of the service is to propose policies designed to bring about the effective integration of older persons into their families and society and solutions to the problems affecting them. The service is also considering the creation of regional committees with responsibility for taking measures to implement policies concerning older persons, to administer the sinking fund of the service and to advise administration heads on the promotion and implementation at regional level of plans and programmes. The law governing the service also envisages the establishment of a sinking fund to finance measures involving direct support for older persons. The amount of this fund is set annually in the Budgetary Act, but it may also receive donations; it will be administered by the new body. The service will transfer funds directly to the regions through regional committees, which will allocate the funds to projects submitted by organizations of older persons and bodies working with this age group.

105. Until 2002 the National Committee for Older Persons, aware of the desire of older people to go on working, made training one of the five main thrusts of its activity, seeking to provide older persons with tools which would facilitate their access to work and their reintegration into society. The fields in which training was provided include project elaboration and creation; information on vacancies in public institutions and services; care of the self in health and nutrition matters; leadership, communication and assertiveness; learning to grow old; handling of bereavement and mourning; and conflict resolution.

106. The project for the creation and expansion of a Model Training and Development Centre for Older Persons emerged from an agreement between the Government of Chile and the United Nations Development Programme (UNDP). It was executed during the period 1997-1999. During this period 1,651 older persons living in the Metropolitan, V1 and V2 regions received training in the fields mentioned in the previous paragraph. One of the successes of this project is the Model Training Centre, built in the city of Ternuco; it was financed by the Ministry of Housing and Town Planning and UNDP with contributions from Japan.

107. The following measures have been taken in the fields of training and participation:

(a) encouragement and promotion of older persons and their organization. In 1999 an organized participation of nearly 200,000 older persons, organized in clubs and unions of adults in individual communes, was achieved;

(b) encouragement and promotion of new opportunities for older persons. The State has created sinking funds for organizations of older persons through its services, ministries and institutions such as the Solidarity and Social Investment Fund (Fosis), the National Sports Institute and the Ministry of Health;

(c) encouragement and promotion in the work field. Campaigns against discrimination on grounds of age in the world of work have been conducted. In 1998 a seminar on discrimination against older persons took place, drawing attention to discrimination of this kind. Private enterprise is showing a growing interest in engaging older persons on account of their well-established reputation for responsibility and conscientiousness at work;

(d) encouragement on the path to old age; promotion of a cultural change orientated towards valuing and viewing an older person as an available human resource, especially for social work.

### **The right to work**

108. The right to work is a central aspiration for older persons. Studies and programmes have shown that substantial numbers of members of this group (especially men) want to go on working after reaching retirement age in order to maintain a role in society and a sense of belonging which are lost on retirement. This aspiration is strengthened by the low levels of pensions. It also appears that they want to continue making a contribution to society, but in a different form from the contributions they made during their working lives prior to retirement, and on a part-time or flex-time basis. Voluntary work is seen as an important element in reintegration into society and offering an opportunity for personal development through cultural activities, travel and recreation.

109. According to data supplied by the National Statistical Institute (INE), the rates of participation of persons aged 65 or over in the labour force during the period 1996-1999 were as follows:

**Table 3**  
**Rates of participation of persons aged 65 or over in the labour force**  
**(percentages)**

Year	1996	1997	1998	1999
Men and women	15.8	15.8	16.3	14.9
Men	27.4	27.4	28.3	25.5
Women	6.2	6.2	6.5	6.2

Source: National Statistical Institute (INE).

### **The right to equitable and satisfactory working conditions**

110. There are no investigations or information available giving evidence of any special concessions distinct from those laid down in the Labour Code for members of this age group.

### **The right to organize**

111. Not applicable to members of this age group. There are in the country groups and associations of retirees and pensioners who are continually pressing claims for their economic and social rights.

### **The right to social security**

112. In Chile the retirement age is set by law at age 60 for women and age 65 for men.

113. In 1995 a beginning was made with special adjustments, over and above the adjustments made in line with the consumer price index (CPI), to minimum widows' pensions, pensions of less than certain amounts fixed by the Ministry of Finance together with the Office of the Under-Secretary for Social Insurance in the Ministry of Labour and Social Insurance, minimum pensions for persons aged 70 and assistance pensions. Since 1997 winter bonuses have been paid to all retirees and pensioners receiving pensions of less than an amount fixed by the competent authorities each year. Since 1998 pensioners in the country have been able to become members of the Equalization Chambers<sup>35</sup> in order to obtain admission to the supplementary benefit, social credit and complementary benefit schemes. This measure is an important step towards access to social security complementary to that which the beneficiary receives under the Act.

### **The right to protection of families, mothers and children**

114. The measures taken have been directed towards emphasizing the role of the family for an older person. In 1997 a seminar on older persons and the family was held for public and private institutions, older persons generally and persons working with that group. Its aim was to disseminate knowledge of the importance of promoting the role of the family in this field.

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<sup>35</sup> Act No. 19,539 of 1997.

115. Intergenerational solidarity is part of the enriching foundations on which the National Policy for Older Persons rests. A considerable number of measures have been taken involving intergenerational activities. As part of the "Live your life" event organized in October each year since 1994, in 1997 a programme entitled "Paint your grandparents" was launched with Fundación Integra and pupils in pre-basic education in that institution, with prizes for the best entries.

## **The right to an adequate level of living**

### **Quality of life**

116. The principal objective of the National Policy for Older Persons, made official and approved by the Council of Ministers for Social Affairs in March 1996, is *"to bring about a cultural change within the entire population which will give rise to a better treatment and appreciation of older persons in our society, which implies a different perception of ageing and the attainment of better levels of quality of life for all older persons"*.

117. Under this policy the following programmes for the improvement of the quality of life of older persons have been launched:

(a) since 1995, under the auspices of the Solidarity and Social Investment Fund (Fosis), major advances have been achieved in the fields of self-management, self-esteem and participation in society on the part of older persons. The "More Life for Your Years" programme and its two branches - Provision of Services to Older People and the Projects Competition Fund - have made a substantial contribution towards improving the quality of life of older persons. Under the first of these programmes 75,000 persons received benefits, and under the second, 3,000 projects were submitted;

(b) through the intermediary of the former Directorate-General for Sports (now the National Sports Institute) a Recreational Sports Programme for Older Persons has been set up to enable older persons with few resources to engage in physical activities of a recreational and sports character. Between 1995 and 1999, 25,000 older persons participated in this programme;

(c) since 1992 the National Tourism Service (Sernatur) has been implementing a tourism programme for older persons. Under this programme 3,040 older persons qualified between 1994 and 1999. Other programmes implemented by this service were the programme of discounts for older persons offered by tourism services, in which 749 enterprises distributed throughout the country took part, and the annual tourism meetings for older persons, in which 3,200 persons took part;

(d) since January 1996 a reduced fares programme for older persons has been organized by Metro SA. In 1999, 24,332 persons were registered.

### **Food**

118. Between 1996 and 2002 (the latter year being that of the foundation of the National Service for Older Persons) the National Committee for Older Persons incorporated in all its activities the principles drawn up by the Pan-American Health Organization (PAHO) on healthy old age: self-care in health and nutrition matters, physical activity and social participation. With regard to food the following measures have been taken:

(a) the Complementary Food Programme, started in 1999, provides 2 kg of “Soup for the Golden Years” - a foodstuff rich in vitamins and protein - to persons over age 70 who keep their health monitoring up to date and to all older persons under age 70 suffering from tuberculosis. In December 1999 this programme was reaching 55,000 persons. Jointly with the Ministry of Health a recipe book of meals which can be prepared with this foodstuff has been prepared and distributed on a large scale at meetings with older persons;

(b) in 1999, together with the Institute for Nutrition and Food Technology (INTA) of the University of Chile, a nutrition card has been prepared; it is distributed at meetings and training courses both to older persons and to persons in institutions working with this age group.

## **Housing**

119. As regards housing, the following measures have been taken:

(a) in 1995, in view of the high level of demand for living space to meet the needs for the integral development of older persons, a beginning was made with the construction of community centres for older persons in the different regions of the country;

(b) since 1997, at the initiative of the National Committee for Older Persons, the Ministry of Housing and Town Planning has set aside for older persons 2% of all the basic dwellings (houses or flats) built by that ministry. There is no requirement of savings for the making of an application. When the income of the household does not exceed UF 1.5 (US\$ 36.45) the dwelling is made available rent-free; rent is payable if the household income exceeds that amount. In 1998, 860 dwellings were allocated to older persons and in 1999, 950 dwellings.;

(c) the National Committee for Older Persons has cooperated with the Ministry of Housing and Town Planning in the drafting of the Plan for the Improvement of the Social Housing Programme for Older Persons;

(d) between 1998 and 1999, approximately 100 day centres were built throughout the country for older persons.

## **The right to physical and mental health**

120. The following measures have been taken in the field of health:

(a) in 1998, at the initiative of the National Committee for Older Persons, a programme for older persons was established within the Ministry of Health incorporating the health monitoring of older persons which is effected in all the primary health centres in the country. For the first time in the history of public health in Chile, a special health-care programme targeting this age group is being implemented. For that purpose the available resources have been increased sixfold, from 1.5 billion pesos (US\$ 3,780,527) in 1995 to 9 billion (US\$ 17,689,374) in 1999. In the latter year 150,000 older persons were examined;

(b) in 1997 the Mass Anti-Influenza Vaccination Campaign was launched; it takes place in April every year and covers practically 100% of all the older persons in the country;

(c) in 1995 the Orthosis and Prosthesis Distribution Programme was launched through the intermediary of the National Health Fund (Fonasa). The free distribution of technical aids began in 1995, when 39,531 appliances were distributed; in 1999, 284,731 appliances were distributed;

(d) extremely costly diseases: in 1995, 3,234 benefits were awarded; in 1999, 33,067 older persons received benefits in this category;

(e) early treatment programme: in 1996, 1,383 surgical interventions were effected, and in 1999, 33,067;

(f) during the second half of 1999 early distribution of medicaments for high blood pressure, diabetes mellitus and depression was begun; by December of that year 156,871 persons had received treatment;

(g) in 1999 a video entitled "Care for Grief-stricken Older Persons", designed both for older persons and for persons looking after them, was made. In addition, a guide-book of exercises for older persons was published;

(h) workshops have been established at municipal level to improve the memory and self-esteem of older persons. However, it should be mentioned that measures directed towards mental health are not given the same importance as those directed towards physical health;

(i) intersectoral work is being pursued on the preparation of the contents of a guide entitled "For a Healthy Lifestyle" to promote self-care of health as a measure to be undertaken early enough to arrive at a healthy old age.

121. 90% of all older persons aged 65 or over in Chile are covered by the public health care scheme. Since May 1999 the Complementary Food Programme has been in operation; it now covers 40% of all adults over age 70.

122. Since 1995 four programmes have been operating in hospitals: Debilitating Disorders (cataract surgery, photocoagulation, pacemaker implants, hip surgery); Orthosis and Prosthesis (spectacles, hearing aids, dental prostheses, wheelchairs, walkers); Opportunities for Care in the Field of Gall-bladder Surgery; and Uterine Prolapse and Prostate.

123. Since 1998 a programme for the hospitalization of older persons with grade 3 pneumonia and for the treatment of pneumonia not requiring hospitalization have been in operation. Currently all older persons are vaccinated against influenza free of charge, irrespective of the pensions scheme to which they belong. On the prevention side initial and follow-up health examinations are conducted according to the risk factors present in the older person concerned.

### **The right to education**

124. In this area the following measures have been taken:

(a) in 1990 the Programme for the Improvement of Adult Education was launched to enable older persons to complete their basic and intermediate education and to escape from illiteracy;

(b) the inclusion in the curricula of certain universities courses on the ageing process through different possibilities offered by various universities in Chile;

(c) the inclusion in the school calendar of the International day for Older Persons, celebrated on 1 October.

### **The right to participate in cultural life**

125. In 1998 the National Committee for Older Persons worked in coordination with the Culture Division of the Ministry of Education to develop a project to consider cultural initiatives relating to different forms of artistic expression:

(a) a seminar on “ artistic creativity in the third age”, directed towards young persons, was held to study the contribution of older persons to artistic creation;

(b) a basic cine-video course for older persons was held in coordination with the National Committee for Older Persons and the National Coordinator for Older Persons;

(c) an information sheet has been prepared for older persons in museums and public libraries listing the services offered by the Directorate of Libraries, Archives and Museums.

### **Article 3**

#### **The undertaking to ensure equal right for men and women to enjoy the rights set forth in the Covenant**

126. The different Concertation governments have from their beginnings adopted a commitment to democratize every aspect of the country and, together with that, to overcome inequalities between the sexes, since the guarantee of fair access to benefits, resources and opportunities enables women to attain full citizenship.

127. This aim became manifest in 1991 with the adoption of the Act establishing the National Women’s Service (Sernam) and subsequently with the framing of the 1994-1999 Equality of Opportunities for Women Plan. With effect from 3 January 1991 (the date of the establishment of the Sernam) that body has been facilitating and promoting efforts to bring about equality of opportunity between the sexes at international as well as national level - a task accepted by all the democratically elected governments since 1990. The Sernam is a decentralized public service; its lady director has the rank of Minister of State. The Act stipulates that its task is *"to cooperate with the Executive in studying and proposing general plans and measures conducive to enabling women to enjoy equality of rights and opportunities with men in the process of political, social, economic and cultural development of the country."*

128. In 1995 the above-mentioned plan became a part of the priorities of the second democratic government. This means that problems affecting women are no longer considered as matters unconnected with the rest of society but instead are integrated into government priorities. The plan is an instrument for formulating proposals to facilitate the design of public policies benefiting women and orientating the actions of the governmental sectors involved. Its development has permitted significant advances in the condition of women and an improvement in their quality of life. Measures have been adopted developing awareness of the realities facing women in different orders, fields and sectors; progress has been made in the incorporation of the gender focus in the day-to-day activities of institutions, in the establishment of positive action benefiting women, and also in the establishment of services and programmes orientated in line with their needs and the reality of their situation.

129. In the field of modernization of the State, gender themes are gradually being incorporated into the latter's institutional structure. The existence of a culture of equality and plurality in this area is progressively finding expression in public policies, which permit a greater measure of focus and effectiveness of measures taken in ministries, public services and State enterprises.

130. This process of induction of women into the management of the State has been going on for a long time. It begins with steps to introduce the process into the primary public agenda, and subsequently into the institutional agenda, involving the establishment of institutional structures exclusively dedicated to women's affairs (such as the National Women's Service). Currently this challenge - that of enabling women to accept and widen specific commitments and responsibilities in the fields of planning and management, and thus to overcome gender-based discriminations and to make a contribution to the nation's development on a basis of full citizenship - is one facing the entire machinery of State.

131. Incorporation of the gender perspective in the processes of modernization implies the introduction of changes in some central elements of internal management in public entities. These elements must not only be technically correct but also of a nature to contribute to the process of innovation in public management generally. This has meant changes in governmental structures at a high level of decision-making. In this regard the creation of the Council of Ministers on Equality of Opportunities is a highly significant step forward. Another innovation to have taken place during this period has been the introduction of changes in specific elements of management - a forward step without precedent in the country.

132. The Council of Ministers on Equality of Opportunities<sup>36</sup> is responsible for supervising and implementing the Equality of Opportunities Plan by incorporating specific policies with gender contents in ministries and State services and enterprises. Its creation has permitted a qualitative leap forward in the incorporation of equality of opportunities policies in public entities; for the first time the gender question is being approached as a State matter. For instance, in March 2002 all the bodies which were members of the Council entered into public commitments in this area; subsequently a stock-taking of the action taken was conducted.

133. The Council was established with the following membership: the Office of the Secretary-General of the Presidency (which chairs the meetings), the Ministries of the Economy, Development and Reconstruction; Planning and Cooperation; Health; Education; Justice; the Interior; Labour and Social Insurance; and the National Women's Service (represented by its Executive Secretariat). In addition, the Budget Directorate of the Ministry of Finance and the Interministerial Coordination Division of the Office of the Secretary-General of the Presidency attend as permanent observers.

134. The changes in State management have implied a gradual process of incorporation of the gender focus. The process has been stepped up during the term of office of President Lagos through the instrumentality of four central instruments of management, by means of which the technical aspect of the gender focus has been given formal status and the basis established for its integration into the analysis of budget definitions. The instruments are:

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<sup>36</sup> Established on 24 August 2000 by Presidential Instruction No. 15.

(a) the **General Basic Investments System (SEBI)**, a planning instrument coordinated by the Ministry of Planning (Mideplan). All proposals for studies, programmes and projects destined for public financing must be submitted for technical evaluation every year by means of the SEBI file. Since 2001 the gender focus has been incorporated as an annex to the general instructions, and certain procedures have been established to incorporate the gender perspective into the identification of beneficiaries and the description and justification of programmes;

(b) the **Management Improvement Programme (PMG)**, which is coordinated by the Ministry of Finance. This is an institutional incentive programme of a financial nature benefiting public service officials who carry out programme elements or comply with specific requirements. The preparation of PMGs by the different services is effected within the framework of a set of areas for improvement of management which are common to all the institutions concerned and provide an outline plan. During 2001 it was decided to incorporate in the budgeting process for 2002 a new system or area into the PMG entitled "gender equity". Its aim is to bring institutions to introduce processes promoting and incorporating equality of opportunities between men and women in the delivery of their products. The Sernam is the institution responsible for supporting the socialization of the system, defining means of verification, providing technical advice to the institutions and giving technical certification of the aims of the process;

(c) the **2% Sinking Fund**. This instrument acts as a coordinating agent within the Ministry of Finance in the preparation of the budget. The instructions concerning the Sinking Fund for the 2001 budgetary exercise incorporated a differentiation by sex of the beneficiaries of programmes applying to that fund. The same instructions for the year 2002 incorporated the gender perspective into every stage of the drafting of a programme - analysis of the problem, identification of beneficiaries, aim and purposes of the programme, definitions of components and indicators. The implication is that the gender perspective will be present in the next innovative programmes initiated by the government;

(d) the **Follow-up on Governmental Programming System**, which was established by the Office of the Secretary-General of the Presidency, has been designed to monitor commitments in favour of equality of opportunity and action taken by the public authorities generally. The inclusion of the gender perspective within this system will permit progress in two specific areas: the inclusion of the gender perspective in the regular planning work of all the ministries; and the systematic and periodical (quarterly) monitoring of ministerial commitments within the framework of the Equality of Opportunities Plan.

135. In the present world context, in which information is a public good which makes a substantial contribution to social development, the integration of the gender perspective into that information is extremely important for purposes of decision-making by public bodies. For that reason a process of modernization of the procedures of the statistics departments in public entities, linked to gender themes, has been initiated. In some cases this has implied extra efforts on the part of the different services directed towards adapting systems to these new challenges, as regards both interpretation and processing of data. To that end a number of measures, to be implemented successively, have been taken. These are:

(a) **preparation of a national system of gender indicators**; at the beginning of 2002 a proposal was put forward concerning a system of gender indicators which would permit the systematic assessment of areas which are critical for the development of equality of opportunities in Chile. In

framing the proposal account was taken of the experience of other countries and the recommendations of international organizations specializing in that field, to which end a corpus of statistical information was requested from over 60 public bodies at central level;

(b) **disaggregation by sex in public statistics**; during 2001 an evaluation was made of the state of progress in public services in the disaggregation by sex of users/beneficiaries. This measure would permit progressive improvement in the areas in which information was most lacking and progress with the improvement and updating of the system of gender indicators;

(e) **establishment of a statistical database**; this process entailed, during the year 2001, the collection, organization and incorporation of masses of data from various public services in a central information system functioning interactively and permitting an analysis of the statistical information on men and women over the last 10 years. This will permit the forecasting of trends and decision-making concerning the scope and effects of public policies within the country. Once the information is accessible via the Internet it will be possible to improve access by public services, and also academicians and the citizens generally, to official information disaggregated by sex;

(d) **dissemination of information on men and women in the country**; during 2001, as a result of joint efforts with the National Statistical Institute (INE), a book entitled *Mujeres Chilenas: Estadísticas para el Nuevo Siglo* (Chilean Women: Statistics for the New Century) was published. In mid-2002 a space will be inaugurated in the Web page of the Sernam for the Database of Gender Indicators, which will contain national and regional statistics from the different entities of State.

136. Progress was also made in the construction of management indicators in the financial system, a task which is the responsibility of the Office of the Superintendent of Banks and Financial Institutions. On the strength of this initiative a study was published on indebtedness within the financial system, which demonstrated that women obtained access to the different types of credit with a lesser propensity to commercial indebtedness, and with a better repayment record, than men.

137. In addition, in view of the responsibility of the State to guarantee gender equality within its own institutional structures as well as in the country, progress has been made with the framing of equal opportunities plans within ministries and public services and with other measures in the field of human resources development with gender equality.

138. Another positive step was the creation in 2001 of a coordinating board consisting of the Ministry of Labour, the Sernam and the unions of public employees. The object of this measure was to implement the protocol of agreement on working conditions between the President of the Republic and public employees. The tasks which this board has assigned itself are: to analyse the lack of equity between men and women public officials by undertaking sample surveys at central and regional levels; to draw up an Equality of Opportunities Plan for public officials; and to implement that plan.

139. Another aspect of the modernization of the State is the bringing of Chile into the international context. It is important to mention the following advances in this field:

(a) Chile is an active member of the Ad-hoc Advisory Group on Gender Integration in Asia-Pacific Economic Cooperation (APEC). This group has already achieved major successes, which have found concrete expression in an increase in the participation of women in sectors such as transport, science and technology;

(b) the Santiago Declaration of the Rio Group, dated 17 August 2001, recognized the need to incorporate the gender focus in the design and implementation of public policies, in strategic tasks for economic and social development and in the strengthening of democracy. The Declaration also emphasized the importance of revaluing the role of women in every aspect of citizen life as part of the task of modernizing States;

(c) Chile is a permanent presiding officer of the Regional Conference on the Women of Latin America and the Caribbean. During 2001 the presiding officers held their third meeting, at which they invited the member States of ECLAC to approach the problem of poverty in a gender perspective and to incorporate emerging themes such as the financing and institutional mechanisms needed to strengthen dialogue between governments and civil society;

(d) the Sernam, together with the United Nations, is establishing a tripartite working party - comprising the government, United Nations bodies and civil society - to consider the different types of violence practised against women with a view to contributing, through a comprehensive approach, to the construction of a more developed, peaceful, democratic and egalitarian society.

140. In 1999, Articles 1 and 19 of the Political Constitution were amended. Article 1 previously stated: *“Men are born free and equal in dignity and rights”*; the word “men” has been replaced by “all persons”. Article 19 guarantees to all persons *“equality before the law”*; today it specifically states that *“men and women are equal before the law”*.

141. The specific advances achieved in the securing of equal enjoyment of the rights to health, work and education for men and women are described in the relevant sections of this report. Earlier information on these rights was also supplied to the Committee on the Elimination of All Forms of Discrimination against Women in the second periodic report of Chile on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/CHI/2 and CEDAW/C/CHI/3), which was considered in 1999.

#### **Article 4**

##### **Limitation of the rights guaranteed in the Covenant**

142. The domestic legal order is fully in line with this provision of the Covenant. Article 19, section 26, of the Constitution stipulates that fundamental rights can only be regulated or complemented by law, which itself is limited to cases authorized by the Constitution. The same section imposes a further limitation, namely that such laws may not affect rights in their essence nor impose conditions, taxes or requirements which may prevent their free exercise. This constitutional provision relates to that in section 4 of Article 1 of the Constitution, which provides that the State, and certainly the State as a law-making entity, *“is at the service of the individual, and its goal is to promote the common welfare. To that end it must contribute to the creation of the social conditions which permit each and every one of the members of the national community to achieve the greatest possible spiritual and material fulfilment, with full respect for the rights and guarantees established in this Constitution”*.

### Article 5

143. Although there are no provisions in the domestic legal order expressly affirming these hermeneutic principles in relation to provisions of the Covenant, the systematic application of a number of constitutional provisions (and in particular Article 1, sections 1 and 4, Articles 5, 6 and 7 and Article 19, section 26) may certainly by interpretation be considered as achieving the same end.

## PART OF THE REPORT CONCERNED WITH SPECIFIC RIGHTS

### Article 6

#### The right to work

144. The Government of Chile has ratified the following conventions under the auspices of the International Labour Organization (ILO):

(a) the **Employment Policy Convention, 1964 (No. 122)**, ratified on 20 October 1968. Four reports on this Convention have been submitted to the ILO Committee on the Application of Conventions and Recommendations, covering respectively the periods 1 July 1990 - 30 June 1992; 1 July 1992 - 30 June 1994; 1 July 1994 - 30 June 1996; and 1 July 1996 - 30 June 1998;

(b) the **Discrimination ( Employment and Occupation) Convention, 1958 (No. 111)**, ratified on 20 September 1971. Ten reports on this Convention have been submitted to the ILO Committee on the Application of Conventions and Recommendations, covering respectively the periods 1 July 1990 - 1 January 1991; 1 July 1990 - 14 February 1991; 1 July 1992 - 30 June 1993; 1 July 1993 - 30 June 1994; 1 July 1994 - 30 June 1995; 1 July 1995 - 30 September 1997; 1 July 1995 - 30 September 1997 (supplement); and 1 October 1997 - 15 October 1999.

#### Situation, levels and trends in employment, unemployment and underemployment generally and as affecting particular categories of workers

145. During the period 1995-1998 the labour force grew continually - albeit at varying rates - at an annual average rate of 2.2% - the equivalent of 1,046,000 new entrants into the labour market.

146. During the period 1999-2001 the labour force continued to increase, but more slowly. During this period the annual average rate of increase was only 0.2% (the equivalent of 34,470 new entrants into the labour market; see table 4).

**Table 4**

#### Trends in employment in Chile, 1990-2001 (thousands of persons)

Country total	1990	1995	1999	2000	2001
	October to December				
Population aged 15 and over	9,225,3	10,092,2	10,782,81	10,977,02	11,153,69
Labour force	4,888,6	5,538,2	5,933,56	5,857,04	5,948,82
Participation rate	53,0	54,9	55,0	53,4	53,3
Employed	4,525,5	5,174,4	5,404,48	5,381,46	5,479,39
Unemployed	363,1	363,8	529,08	489,42	469,43
Unemployment rate	7,4	6,6	8,9	8,3	7,9
(ages 15-19)	-	-	26,8	25,2	25,7
(ages 20-24)	-	-	18,8	18,4	17,0

Source: National Statistical Institute (INE).

147. During the period 1990-2000, 918,000 new jobs were created. Between 1990 and 1998 employment rose at an average annual rate of 2.1%. This trend was reversed in 1999 and 2000, during which years the rate fell by 0.5% and 0.4% respectively.

148. During the same period (1990-2000) the rate of participation varied to an increasing degree, between 53% in 1990-1991 and 56% in 1993-1994. The rates for men and for women differed; for men the rate varied between 77.8% and 72.9%, whereas the rate for women varied between 36.5% and 31.5%.

149. During the years 1999, 2000 and 2001 the participation rates for both men and women declined, the rate for men falling more sharply than that for women (table 5).

**Table 5**

**Participation rates by sex,\* 1990-2001 \*\* (percentages)**

Year	Men	Women	Total
1990	75,4	31,7	53,0
1991	75,6	31,5	53,0
1992	76,0	33,6	4,3
1993	77,8	35,2	56,0
1994	77,5	35,4	56,0
1995	76,2	34,5	54,9
1996	75,5	34,5	54,4
1997	74,6	35,2	54,4
1998	75,0	36,1	55,1
1999	74,4	36,5	55,0
2000	72,9	35,0	53,6

Source: National Statistical Institute (in *Indicadores Económicos y sociales 1990-2000* (Economic and Social Indicators 1889-2000), Ministry of Planning (Mideplan).

\* Labour force (in population aged 15 or over)

\*\* Figures for the mobile October-December quarter of each year.

150. Unemployment rates among young persons aged between 15 and 24 have traditionally been high. For the 20-24 age group the unemployment rate was 12.8% in 1996, 18.8% in 1999 and 17% in 2001. The rates for persons in the 15-19 age group were 26.8% in 1999 and 25.7% in 2001 (table 4).

151. A significant change, by comparison with the situation in earlier decades, is taking place in the composition of the new jobs. There is a marked tendency for job creation to move away from the primary sectors towards the service sector. According to figures produced by the National Statistical Institute (INE), between 1990 and 1998, 70% of new jobs were created in the service sector, while in 2001 that sector provided 27,000 new jobs - 63% of all jobs created in the country. In contrast, the agricultural and stock-rearing, mining and industrial sectors shed workers - a trend which was already long-established in the agricultural and mining sectors.

152. As regards the situation from the standpoint of the different regions of the country,<sup>37</sup> the majority of new jobs were created in the Metropolitan region, which surpassed the other regions overwhelmingly. During the period 1992-1998, 60% of all new jobs were created in that region; for the period 1999-2001 the proportion rose to 88%.

153. In the other regions the situation varied, in magnitude as well as in trends. Between 1999 and 2001 regions I, II, IV, VIII and XI generated employment (especially in fishing, mining, forestry and agro-industry), the increases varying between 4.9 and 0.5%; the other regions lost jobs on a scale varying between 11,600 and 670.

154. The most vulnerable or disadvantaged population groups with regard to employment were found mainly in regions V (services), VII (cultivated area with unconverted crops) and XII (economic stagnation). The most vulnerable groups at national level were young people and women who were heads of households.

155. Following the Asian crisis the rate of growth of the economy failed to return to the levels of previous years. Between 1990 and 2000 the unemployment rate varied, falling from 7.4% in 1990 to 6.6% in 1995 and 5.6% in 1997, rising again to 8.3% in 2000. Throughout this period the rate of unemployment among women was higher than that among men (table 6).

**Table 6**

**Rates of unemployment by sex, 1990-2000\* (percentages)**

Year	Men	Women	Total
1990	6,6	9,2	7,4
1991	6,1	9,4	7,1
1992	5,0	8,9	6,2
1993	5,3	8,8	6,4
1994	6,5	10,3	7,8
1995	5,5	8,9	6,6
1996	4,8	6,7	5,4
1997	4,7	6,6	5,3
1998	7,0	7,6	7,2
1999	8,2	10,3	8,9
2000	8,0	9,0	8,3

Source: National Statistical Institute (in *Indicadores Económicos y sociales 1990-2000*, Ministry of Planning (Mideplan).

\* Figures for the mobile October-December quarter of each year.

156. When disaggregated by sex, the unemployment rates differ. In 1990 the unemployment rate for men was 6.6%; it fell to 5.5% in 1995, but rose to 8.2% in the last quarter of 1999, then fell again to 7.6% during the first quarter of 2001; whereas the rate for women, which stood at 9.2% in 1990, fell to 8.9% in 1995, rose to 10.3% in 1999, then fell again to 8.6% in 2001 (table 7).

<sup>37</sup>

For political and administrative purposes the country is divided into 13 regions.

**Table 7**  
**Trends in unemployment of men and women in Chile, 1990-2001**  
**(thousands of persons)**

	1990		1995		1999		2000		2001	
	October – December									
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
Population (age >15)	4,501,8	4,723,6	4,933,7	5,158,5	5,280,3	5,502,6	5,369,0	5,591,5	5,465,6	5,688,1
Labour force	3,392,7	1,495,9	3,758,0	1,780,3	3,926,5	2,007,0	3,913,0	1,957,8	3,966,2	1,982,6
Participation	75,4	31,7	76,2	34,5	74,4	36,5	72,9	35,0	72,6	34,9
Employed	3,167,9	1,357,6	3,551,9	1,622,5	3,603,6	1,800,9	3,600,4	1,781,9	3,663,6	1,1815,8
Unemployed	224,8	138,2	206,1	157,8	322,9	206,2	312,5	176,9	302,6	166,9
Unemployment rate	6,6	9,2	5,5	8,9	8,2	10,3	8,0	9,0	7,6	8,4

Source: National Statistical Institute (INE).

### **Policies and measures designed to guarantee full employment**

157. On the subject of the measures taken in Chile in order to guarantee that work is available for all persons willing to work and seeking work, it is suggested that reference be made to the reports submitted by the Government of Chile, in accordance with the provisions of Article 22 of the ILO Constitution, on the period 1 July 1990 - 30 June 1998, which deal with the measures taken to give effect to the provisions of the Employment Policy Convention, 1964 (No. 122).

### **Productivity of labour**

158. During the period 1990-1998 productivity increased significantly in Chile. In real terms, product per worker increased by 50%. The greatest expansion took place in mining and transport, which achieved productivity increases above the national average.<sup>38</sup> Labour productivity increased by 2.7% in 2001; the greatest increases were achieved in mining, electricity, gas and water (sectors which are not labour-intensive).

159. The average productivity of labour increased by 61.5% during the period 1989-2000. This has two implications: firstly, it imposes a high rate of product growth in order to achieve a rate of job creation in line with the growth of the labour force and also keeping unemployment at acceptable levels; and secondly, increases in productivity permit adjustments in real wages without giving rise to inflationary pressures (table 8).

<sup>38</sup> See the reports of the Government of Chile to the ILO during this period.

**Table 8****Average productivity per employed person, 1989-2000**

Year	Productivity (1989 = 100)	Annual variation (%)
1989	100,0	4,6
1990	101,2	1,2
1991	107,8	6,5
1992	115,9	7,6
1993	117,2	1,1
1994	122,5	4,5
1995	134,0	9,4
1996	141,9	5,9
1997	149,2	5,1
1998	152,3	2,1
1999	153,8	1,0
2000	161,5	5,0

Source: Central Bank of Chile, National Statistical Institute, in *Indicadores Económicos y Sociales 1990-2000*, Mideplan.

**Measures designed to guarantee free choice of employment**

160. Both the Political Constitution of the Republic of Chile and the labour laws in force in the country fully guarantee freedom of employment for the individual together with the exercise of his fundamental political and economic freedoms.

161. Article 19, section 16, of the Political Constitution of the Republic of Chile guarantees to all citizens “*freedom to work and its protection: (a) every person has the right to free employment and free choice of his work, against a just compensation; (b) any discrimination which is not based on personal skills or capability is prohibited, although the law may require Chilean citizenship or age limits in certain cases*”.

162. Article 2 of the Labour Code reads as follows:

*“The social function performed by labour and the freedom of the individual to enter into contracts and dedicate his efforts to the licit work of his choice.*

*“All discriminations, exclusions and preferences based on considerations of race, colour, sex, union affiliation, religion, political opinion, nationality or social origin are contrary to the principles of labour legislation. Consequently no employer may make the engagement of any worker conditional on any of these circumstances.”*

*“It is a duty of the State to protect the worker in his right of free choice of his work and to ensure compliance with the regulations governing the provision of services.”*

However, discriminations, exclusions or preferences based on the qualifications required for a specific job shall not be considered discriminatory. In the light of the foregoing, and without prejudice to other provisions of this code, an offer of employment made by an employer, directly or

through a third party or any medium, stipulating as a prerequisite for application any of the conditions mentioned in the second paragraph is deemed to be a discriminatory act. The provisions of the second and third paragraphs and the obligations on employers deriving from them shall be deemed to form part of all employment contracts concluded.

### **Unemployment insurance in Chile**

163. In March 2000, when President Ricardo Lagos had just assumed the leadership of the country, work began on the design of the law which governs the present-day unemployment insurance scheme. This was the first draft bill sent to the National Congress. Act No. 19,728, establishing compulsory unemployment insurance, was approved in May 2001; in other words, its passage through Congress took only 14 months. The principal reason for its speedy approval resided in the awareness among parliamentarians of the need to legislate on this subject and the consensus surrounding the proposal. Once the Act came into force, on its publication in the Official Gazette, the process began of determining the single operator (as required in the law) to which the funds of the unemployment insurance scheme would be awarded and which would administer the entire scheme.

### **Technical and vocational training programmes**

164. In 1997 a new Training and Employment Statute<sup>39</sup> was promulgated. It introduced a number of amendments and new instruments designed to modernize the Chilean vocational training system and focus it on the future. These changes in the law offered an incentive to workers and entrepreneurs to participate in training by the establishment of a National Training Board and bipartite training committees, together with regional boards operating in a decentralized context. The purpose of these instruments was: (a) to permit a wide-ranging discussion on ways and means of extending the scope of training measures to reach larger segments of the population by means of policies designed to promote social inclusion; and (b) to broaden the coverage of the national training system, targeting micro and small enterprises with the tax relief mechanism as an incentive, at the same time establishing the National Training Fund. The reliefs mentioned consist of tax exemptions and resources from the public purse for the training of workers and unemployed persons.

165. Through the National Training and Employment Fund (Sence) the Chilean State is promoting the development of the vocational skills of workers with a view to contributing to the achievement of a satisfactory level of employment, increasing the productivity of workers and enterprises and improving the quality of processes and products.

166. The instruments used by the Sence to achieve its aims are the administration of the incentive to induce demand for training from enterprises by means of tax exemptions and the coordination of training bursary programmes targeting groups in society with relatively few opportunities (such as young persons, women breadwinners, disabled persons, unemployed persons, persons receiving the minimum wage and workers in small and micro enterprises) and workers in productive sectors in decline who have become redundant. These programmes are executed through training establishments, universities, professional institutions and technical training centres.

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<sup>39</sup> Act No. 19,518.

167. In addition the Sence, together with municipal authorities, is developing intermediary activities in the labour field directed towards the promotion of the better functioning of the labour market through information, guidance, training and placement activities. The aim is to coordinate and administer a number of bodies providing intermediary services in order to promote the best possible matching of the labour skills of the workers with the types of human resources sought by employers, developing machinery for worker training designed to improve the opportunities for obtaining employment of relatively unskilled workers and to handle applications for retraining from workers in economic sectors in a state of crisis.

168. During the period 1990-1998, according to figures provided by the Sence, over 3.5 million workers participated in training activities financed and promoted by the State, while the percentage of trained workers in the total numbers of employed persons increased from 4.6% in 1990 to 9.6% in 1998.

169. In Chile there are a considerable number of institutions - universities, professional institutions and technical training centres - established in every region in the country and which provide technical and/or professional training; they open the way to higher education to over 380,000 persons annually.

170. In addition, in the field of technical training there are currently some 3,000 registered Technical Executing Agencies (OTECs) providing technical training and having access to a considerable degree to the resources which enterprises can offset in their annual tax returns. In 1999 these bodies were providing training to over 500,000 workers.

### **Difficulties in the way of achieving full, productive and freely chosen employment**

171. The quality and stability of existing jobs is of central importance from the standpoint of productivity and the situation of workers in the labour market. A considerable proportion of the new jobs are unstable, poorly protected and poorly paid. The consequence is that at all times there is a proportion of workers in precarious employment. Thus one of the fundamental concerns of labour policy has been the improvement of job quality.

172. The concept of job quality comprises factors relating to working conditions, stability of employment, social protection and remuneration. It can be defined as a set of minimum requirements which a job must meet in order to be considered acceptable. These requirements include social protection, employment protection (contract of employment), stability, working hours, income, the working environment, etc.

173. A variety of divergent trends can be observed in the labour field; some quality indicators show improvements, while with others the opposite is the case. This makes interpretation of general trends difficult. However, by recourse to certain specific indicators, one can arrive at certain conclusions for use in employment and occupational policies.

174. Two central factors affecting job quality are the absence of an employment contract and of social security protection. According to the information available, the proportion of employed wage-earners without employment contracts increased between 1990 and 1998. This situation was

encountered more frequently among the poorest employees (income quintiles<sup>40</sup> 1 and 2) and women. In 1998, 24.7% of wage earners (958,000 persons) did not have employment contracts. The overall proportion of employed persons contributing to social security schemes in 1999 was about 63%.

175. A third factor associated with job quality is the levels, trends and disparities in remuneration. Average earnings from work moved positively during the period 1990-2000, increasing in real terms at a rate of some 4.3% annually. However, disparities in rates of growth can be observed; the rates were lower in the lowest income quintiles. This situation is contributing to the widening of the gap between the different socio-economic strata, since not only are the incomes of workers in quintiles 1, 2 and 3 relatively low, but in addition they are below the national average.

176. Of particular importance for the conduct of these studies has been the creation of the Inquiry into the Socio-economic Characteristics of the Nation (Casen). This inquiry is designed to ascertain periodically the socio-economic situation of households and the population and to evaluate the degree of focus and the redistributive impact of social programmes, thus contributing to the framing and evaluation of social programme policies. It is representative of all the households in the country at national and regional levels and by urban and rural zone. It has been carried out every two years beginning in 1985, except in 1989, when it had to be conducted in 1990.

177. If average incomes are expressed in terms of poverty lines per head (LPP),<sup>41</sup> the values for quintiles 1 and 2 stood at 1.5 and 2.1 respectively in 1990 and at 2.1 and 3.0 respectively in 1998, thus rising above the threshold of 2 LPP, which is considered as a minimum level for a job not to be classified as of poor quality in terms of labour income.<sup>42</sup>

178. The distribution of employed persons by monthly income received offers a means of reaching conclusions on the degree of concentration at different levels, and in particular the situation among the lowest income groups. In 1990, 71.3% of employed persons were receiving labour incomes equal to or less than 4 LPP and 17.6% were receiving incomes of between 4 and 8 LPP, by 2000 the proportions had changed to 49.3% and 26.2% respectively; a major shift had taken place. Within the same trend, the proportion of employed persons whose incomes from work were equal to or less than 2 LPP fell significantly during the period 1990-2000, from 38.05% in 1990 to 14.7% in 2000.<sup>43</sup>

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<sup>40</sup> A quintile is a group comprising 20% of the population. Methodologically speaking, quintiles are used for the measurement of poverty. The first quintile comprises the poorest group; the other quintiles are in ascending order.

<sup>41</sup> Under the method of measuring poverty used in Chile, a person is considered poor if his income level is below a minimum level which permits him to satisfy his basic needs, and indigent if his income level does not permit him to satisfy his needs in food. The minima in question are known as the "poverty line" and the "indigence line".

<sup>42</sup> Since these are average values, there are still 14.1% of employed persons whose incomes from work are below 2 LPP (Inquiry into the Socio-economic Characteristics of the Nation (Casen), years mentioned).

<sup>43</sup> See previous note.

179. Although the indicators of distribution of labour incomes (concentration and proportion below a given level) show that there has been a substantial improvement, they also highlight the continuing existence of a significant group who have been left behind (14.1% receiving incomes of less than 2 LPP). In other words, being in employment does not guarantee an adequate income.

180. Trends in the indicators relating to job quality reveal varying situations. Some of the indicators show substantial progress; this is the case with those concerning labour incomes, even though some groups of employees (especially among the poorest) are lagging behind and the earnings spread is widening. On the other hand, the extent of legal protection of wage-earners (contracts of employment) is still falling. These diverging trends are preparing important challenges for the labour and employment policies of the future.

181. Another relevant factor is that of the difficulties arising in the country on account of extreme climatic situations which adversely affect productive capacity in large areas; in the North there are prolonged droughts, while in the South rains and temperatures damage crops and hamper the development of stock-rearing. In this context the lack of training of workers makes it difficult to find jobs for them when they are unemployed - a problem which is gaining in importance as unemployment levels rise.

182. To palliate the effects of unemployment, municipal employment programmes are being implemented, investments are being brought forward and new initiatives are being taken which will take up manpower temporarily and at the same time establish mechanisms for the placement of workers in work areas in the private sector where there is a continuing demand.

**Distinctions, exclusions, restrictions or preferences in legislation, administrative practice or concrete relationships between individuals or groups of individuals which nullify or constitute obstacles to equality of opportunity, or treatment in employment or occupation**

183. Article 1 of the Political Constitution guarantees in general terms equality of dignity and rights in the following terms: *“Men and women are born equal in dignity and rights”* and *“It is the duty of the State ... to ensure to every individual the right to participate in national life with equal opportunities”*. A further guarantee of these principles is to be found in section 2 of Article 19, which ensures *“equality before the law”* and in section 16, which prohibits *“any discrimination which is not based on personal skills or capacity”*.

184. In addition to the general prohibition of all forms of discrimination and inequality in dignity and rights laid down in the Political Constitution, the current Basic Act on the National Training and Employment Service (Sence)<sup>44</sup> prohibits more specifically, in its Article 29, *“arbitrary discrimination based on sex, age, race, social condition, religion, ideology or trade union affiliation, and in no case is it permitted to take any action to promote or proselytize such discriminations.”* A breach of this provision may give rise to sanctions ranging up to the cancellation of the authorization granted to the training body concerned.<sup>45</sup>

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<sup>44</sup> Act No. 19,518 of 14 October 1997.

<sup>45</sup> Article 77, section (c) vérifier traduction section (c).

## **The situation of women and equality of opportunities**

185. In employment practice there are various factors present which constitute obstacles to equality of opportunities for women in Chile. One group of factors relates to the type of jobs they obtain; although the rate of participation of by women rose from 31.1% in 1990 to 34.7% in 2000,<sup>46</sup> women's employment is still highly segregated. Jobs for women are concentrated in certain areas, especially in commerce and communal, social and personal services; their participation is lower in activities in manufacturing, mining and electricity and water supply and lower still in the building and transport sectors.

186. In addition, if precarity and job quality are examined, it emerges that women tend more than men to find work in the non-structured sector - a sector in which protection and average earnings are less than in the structured sector. The figures for 1998 are: women, 42.7%; men, 34%; and those for 2000 are: women, 57.4%; men, 49.4%.<sup>47</sup>

187. These phenomena correspond to a considerable degree to sexual stereotypes which assign to women activities which are perceived as extensions of their traditional role in the home, with responsibility for the care of others, as is the case in the services, health and education sectors.

188. Although Chilean legislation assumes that every worker is covered by an employment contract, whether explicit or not, there are also in existence precarious forms of wage-earning employment and a disparity to the disadvantage of women, only 72.3% of whom are covered by employment contracts as against 77.2% for men.<sup>48</sup>

189. Another of the principal forms of discrimination observed against women workers, in addition to the type of employment they obtain, is that deriving from the burden of their family responsibilities, especially when they have children or are pregnant. These factors are in practice used as arguments to justify paying less and refusing to give opportunities for promotion or training; they are even considered a factor telling against women at times of selection for a job.

190. In view of this situation the Labour Code has been amended<sup>49</sup> to prohibit the making of access to employment, mobility, promotion or retraining of women conditional on not being pregnant. Thus the law has put an end to the practice of requiring women workers to undergo a pregnancy test as a prerequisite to entering into an employment relationship.

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<sup>46</sup> In 1998 it reached a peak of 38.8%. The figures are taken from the Casen inquiry for the year 2000. See annex 1 (abbreviations).

<sup>47</sup> Casen inquiries for the years concerned. Here the term Anon-structured sector covers employers and employees in enterprises employing fewer than 6 persons, self-employed persons who are neither professional workers nor technicians, domestic servants and unpaid family members (ECLAC definition).

<sup>48</sup> Casen inquiry for the year 2000.

<sup>49</sup> (from previous page) Act No. 19,591 of 9 November 1998.

191. Another form of discrimination is sexual harassment, which, in addition to affecting seriously the dignity of women workers and the working environment, often causes them to lose their jobs or to resign.<sup>50</sup> However, such situations are not expressly covered or rendered punishable in the relevant legislation. The draft bill making sexual harassment punishable sprang from a parliamentary motion put forward in 1994. The Executive introduced suggestions, which were subsequently included in the special legislative session (September 1998 - May 1999); but the legislative process has still not been completed. As a form of response to this problem, in 1997 the Directorate of Labour laid down procedures and criteria for referral to the courts following complaints of sexual harassment and designated the officials with responsibility therefor.

### **Current situation with regard to vocational guidance and training and employment and occupation by race, colour, sex, religion and national origin**

192. Vocational guidance and training at professional level reflect the tendency for men and women to concentrate in particular sectors of the labour market. Men tend to go to areas requiring knowledge such as agronomy (60.0%), law (65.0%) and technology (78.4%), whereas women students are concentrated in the fields of health (60.2%), education (55.0%) and social sciences (54.9%).<sup>51</sup>

193. There is a Training-for-Employment Programme for Women on Low Incomes (with preference for women heads of households), functioning within the ambit of the National Training and Employment Programme (Sence). This programme envisages an apprenticeship phase, which includes training for a profession or for manual work, followed by a period of on-the-job experience. The programme is adapted to realities in the labour market in each region and includes experiments such as training for professions which by tradition are masculine (and more highly paid) and promotion of development of productive initiatives.

194. The Sence Youth Training Programme is directed towards members of the lowest income groups who are unemployed or inactive and are outside the educational system; it is directed towards men more than women. In other words, there are no legal or regulatory obstacles to admission of either men or women to these programmes; but segregation does take place in accordance with behaviour patterns of historico-social origin peculiar to the country.

### **Distinctions, exclusions or preferences due to the specific requirements of the job concerned and which are not deemed to be sex-based**

195. A comparison of the figures in the Casen inquiries for the years 1992, 1996 and 2000 on employment disaggregated by sex reveals that employed women are for the greater part concentrated in the following sectors: commerce and restaurants (23.2% in 1992, 24.5% in 1996; 37.2% in 2000), and communal, social and personal services (in the same years 45.5%, 44.9% and 32.1%).<sup>52</sup>

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<sup>50</sup> María Ester Feres, Director of Labour: a presentation entitled "Acoso sexual en el trabajo. De la impunidad a la acción" (Sexual harassment at the workplace. From impunity to action) in *Aportes al debate laboral*, No. 7, p. 4, August 1999.

<sup>51</sup> Participation by sex, according to area of knowledge (registration for degree courses). University of Chile, 1997.

<sup>52</sup> Casen inquiries for the relevant years.

196. This segregation based on sex is generally not considered discriminatory in practice in the field of labour, since the types of jobs in which women are concentrated, and especially those which require almost exclusive participation (such as pre-school education) are those viewed as extensions of the maternal/feminine role; consequently it is considered that these jobs would be better done by women. This segregation will be difficult to break down, since it implies long-term cultural changes of the nature of a process.

## **Article 7**

### **The right to just and favourable conditions of work**

#### **The minimum wage system**

##### **Methods of guaranteeing that the minimum wage does not depreciate**

197. Article 44 of the Chilean Labour Code guarantees that the actual monthly amount of remuneration may not be less than the monthly minimum wage, which is fixed by law every year.

198. Since 1990 the minimum wage in Chile has been adjusted annually with the aim of making up for the severe losses in real terms occurring in that variable during the 1980s. That decision was adopted and extended during the 1990s by the governments of the Concertation of Parties for Democracy, during the initial years in a framework of tripartite social dialogue between workers, employers and the government, and during the second half of the decade and since within that of negotiations with the principal workers' organizations in the country.

199. It is estimated that in all cases the minimum wage plays a fundamental role in the protection of workers, and particularly the most vulnerable workers, because their skill levels are low, because their ability to bargain directly with their employers on minimum wage levels is limited or because the majority of them are from low-income households.

##### **Machinery for the fixing, monitoring and adjustment of the minimum wage**

200. The mechanism established in Chile for the fixing of the amount of the minimum wage at any time takes into account three basic elements: future inflation, productivity and fairness. These three elements comply with the general principle of social policy that real incomes should increase on a sustained basis without giving rise to collateral imbalances.

201. Consideration of future inflation seeks to maintain the purchasing power of wages and, at the same time, to fix their growth with the aim of reducing inflation during the period of validity of each readjustment. This mechanism was brought into operation in 1990, the year in which the gradual restoration of the purchasing power of the minimum wage, which had been gradually eroded during the period of the military regime, was begun. The system was brought into effect through a process of social dialogue the outcome of which was the agreements on the subject concluded between workers, employers and the government during the years 1990-1994.

202. Consideration of productivity aims to link increases in real earnings to increases in the average productivity of the economy, thus avoiding undesirable effects in the labour market in the forms of either higher unemployment or an expansion of the informal sector.

203. The application of the principle of fairness seeks to favour workers whose wages are substantially lower than those of others with a view to improving their relative positions in the labour market and at the same time contributing to improvements in the well-being of the poorest households.

204. It should be mentioned that in 1998, for the first time, the readjustment of the minimum wage was fixed by negotiation between the government and the workers' organizations for a period of three years.

### **Trends in minimum wages**

205. In pursuance of an explicit policy of improvement of the minimum wage (SM) faster than the rise in the consumer price index (IPC)<sup>53</sup> and average earnings, the minimum wage was increased in real terms by 72.5% between January 1990 and January 1999. During the period 1989-2000 real earnings increased at an annual average rate of 3.6%, while the minimum wage rose at an annual average rate of 5.8% (see table 9).

206. Although the policy of readjustment of the minimum wage is linked to increases in the IPC and productivity, it is possible to establish its purchasing power in relation to a monthly basket of basic foods for an average family of 4 persons. In 1990, 1.7 times the minimum wage was required to purchase the basic monthly food basket for a household with the characteristics described above, whereas by the beginning of 1999 the figure had fallen to 0.9. From the social standpoint this indicates an improvement in real terms of the minimum wage.

### **Monitoring of the minimum wage system**

207. The monitoring of the minimum wage system is a central element in the controls exercised by the Directorate of Labour; it has been allocated extra staff for the purpose.

**Table 9**

#### **Indices in real terms of earnings and the minimum wage, 1989-2000 (base 1999 = 100)**

Year	Minimum wageIndex (real)	Annual variation(%)	EarningsIndex (real)	Annual variation(%)
1989	100,0	11,2	100,0	2,0
1990	106,8	6,8	101,9	1,9
1991	116,4	9,0	106,8	4,9
1992	121,6	4,4	111,6	4,5
1993	127,6	5,0	116,4	4,3
1994	132,3	3,7	123,9	6,5
1995	138,3	4,5	129,8	4,8
1995	144,1	4,2	135,3	4,2
1997	149,2	3,5	138,9	2,7
1998	157,92	5,86	142,2	2,4
1999	171,99	8,91	145,6	2,4
2000	184,25	7,13	147,7	1,4

Source: Central Bank, National Statistical Institute, in *Indicadores económicos y sociales 1990-2000* (Mideplan).

In April 1993 the then existing index of earnings was replaced by another, based on a new system of earnings statistics; thus the later figures are not strictly comparable with the earlier ones.

<sup>53</sup>

An index for the measurement of inflation.

### **Inequalities in pay for work of equal value, and in particular conditions of work for women less favourable than those for men**

208. For the information submitted to the ILO on equality of remuneration reference may be made to the reports of the Government of Chile on the Equal Remuneration Convention, 1951 (No. 100). The reports cover the period 1 July 1989 - 30 June 1991; 1 July 1991 - 30 June 1993; 1 July 1993 - 30 June 1996; and 1 July 1996 - 30 June 1998.

209. Although there certainly are inequalities between the remuneration of women and that of men, the percentage relationship of the average incomes of women to those of men, which was 64.5% in 1990, has risen during the past decade to reach 70.9% in 1998. The percentage differs according to educational level. The smallest differences are found when one compares the groups without any formal education (84.0% in 1990 and 72.3% in 1998). The disparities increase as the level of education rises and are greatest when one compares the remuneration of men and women with technical, higher or university education (41.7% in 1990, 65.1% in 1998).

210. There are no statistics concerning remuneration for equal work.

### **Approved methods of promoting objective evaluation of jobs on the basis of the work done**

211. In practice there is a perception that women workers cost more than their male counterparts, particularly on account of maternity costs. However, the maternity allowances paid to women workers during the prenatal and postnatal periods are paid by the State, not the employer.

212. One method of evaluating the position was the inclusion in the National Inquiry on Employment conducted by the National Statistical Institute (INE) of a module concerning labour costs disaggregated by sex. It was thus observed that maternity cost the State 1.7% of the aggregate cost of all women workers. At the same time, the cost of maternity for all women workers is the equivalent of less than one quarter of the earnings they are not paid because they are women.<sup>54</sup>

### **Income distribution in the public sector**

213. This section is concerned with public-sector employees on the single salary scale, which determines the remuneration of all such employees in the country and 88.5% of a total staff of 125,000 persons. On the basis of information supplied by the Budget Directorate of the Ministry of Finance, the following results have been obtained for 1999: average gross income in the public sector was 405,200 pesos (about US\$ 800 at 1999 exchange rate). The incomes of 64.1% of public employees were below that average. In terms of redistribution, the highest 10% of incomes paid to public employees absorbed 25% of total expenditure on remuneration, while the 40% of employees on the lowest incomes accounted for about 20% of that total.

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<sup>54</sup> A study by the Lota Group of Women Economists entitled "Igualdad de Oportunidades para la Mujer en el Trabajo" (Equality of Opportunities for Women at Work), National Women's Service (Sernam), chapter 4, page 497. On the right to Maternity Benefit see the section of this report on article 9.

### **Conditions of safety and health at work**

214. Act No. 16,744 of 1 February 1968 is the basic instrument governing the conditions of safety and hygiene which must be complied with at workplaces in accordance with Title VII (Prevention of occupational risks), Articles 65 ff.

215. The Ministry of Labour and Social Insurance has also issued regulations governing safety and health at workplaces.<sup>55</sup> In addition, the Ministry of Health has issued Regulations on Basic Sanitary and Environmental Conditions at Places of Work.<sup>56</sup>

216. The Ministry of Health and the Ministry of Labour and Social Insurance, through their competent technical bodies, are empowered to enforce these regulations. With a view to improving the quality and coverage of these inspections, in 1999 an agreement was signed between these two institutions establishing a joint nation-wide inspection programme, standardization of the instruments of inspection and training of officials in the enforcement of the regulations. This agreement is still in force.

217. Every worker has the right - implicit in his contract of employment - to provide his services in an environment free from occupational risks. To that end the worker and his employer must comply with the obligation to take all the measures necessary to achieve that aim.

218. Workers, who are both beneficiaries and subjects of occupational risk prevention, should be its key instigators and controllers. Accepting this idea, the legislator has conferred on workers an active involvement in these matters. On the one hand, they must observe the rules contained in the firm's internal health and safety regulations;<sup>57</sup> on the other, they are able to proffer any criticisms which those rules merit.

219. Furthermore, the law contemplates the possibility of workers' involvement in the joint committees which must be established in the enterprises in which they work. In view of the highly technical character of these bodies and their composition (employers and workers in equal numbers), the workers can express their concerns about the safety of the conditions in which they work, propose measures and, if appropriate, impose them on the enterprise.

220. The enterprise is the entity which is required by law to adopt all necessary measures effectively to protect the lives and health of workers; it must develop and promote health and safety rules, monitor compliance by the workforce and implement the following concrete risk prevention measures:

(a) set up joint health and safety committees, which are compulsory in enterprises with more than 25 employees;

(b) draw up internal occupational safety and health rules and keep them up to date;

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<sup>55</sup> Regulations on the Prevention of Occupational Risks, Supreme Decree No. 40 of 1969; and regulations on the Constitution and Functioning of Joint Health and Safety Committees, Supreme Decree No. 54 of 1969.

<sup>56</sup> Supreme Decree No. 594 of 1999.

<sup>57</sup> Article 67 of Act No. 16,744 and article 14 of Supreme Decree No. 40 of 1969.

(c) comprise a risk prevention department, headed by a prevention expert. This department is the enterprise's principal source of advice on compliance with its obligation to protect its workers and is compulsory for mining, industrial and commercial enterprises employing more than 100 workers;

(d) implement safety measures directly prescribed by the health services, the competent administrative entity, the risk prevention department and joint committees;

(e) provide its workers free of charge with the equipment and tools necessary for the prevention of occupational risks;

(f) provide its workers in a timely and appropriate fashion with information on the risks inherent in their work.

(g) An employer may not require or allow a worker to perform tasks deemed to be beyond his strength or which may compromise his health or safety.

221. Act No. 16,744 mentioned earlier requires employers' mutual aid societies - associations whose purpose is to grant certain benefits and allowances - to undertake continuing risk prevention activities, which should be translated into systematized measures applicable to every worker in their respective enterprises. To this end each employers' mutual aid society is required to operate a unit specializing in risk prevention with suitable and sufficient staff. These societies are required to ensure compliance with all rules and regulations in force concerning health and safety at work; to that end they may inflict fines on offending members or increase their membership fees.

222. The Directorate of Labour is responsible for monitoring compliance with labour legislation; its functions include matters relating to risk prevention. These include in particular the power of its inspectors to carry out inspection visits to workplaces and to order the immediate suspension of any work which in their opinion constitutes an imminent danger to the health of the workers.

223. The Directorate of Labour also has the following responsibilities:

(a) to monitor the establishment and functioning of the joint health and safety committees which must operate within enterprises, with the exceptions of those operating within State enterprises, institutions and organizations, which are supervised by the Office of the Superintendent of Social Security;

(b) to supervise and monitor risk prevention and industrial hygiene at all workplaces and also compliance with the norms concerning issuance of internal safety regulations, the functioning of joint committees and risk prevention departments and to sanction offending enterprises;

(c) the power to order health and safety measures in individual enterprises;

(d) the power to monitor the risk prevention activities to be conducted by both mutual aid societies and enterprises with delegated administrations;

(e) the power to pronounce on the suitability of a person to exercise the profession of expert in risk prevention (as a professional or a practitioner);

(f) the power to verify the legality or suitability of internal health and safety rules and to introduce amendments therein;

- (g) the provision of risk prevention consultancies to joint committees in enterprises.

224. The functions of the Institute of Public Health (ISP) include serving as a national and reference laboratory in the field of occupational health; the provision of technical advisory services; the conduct of activities directed to the identification and evaluation of risks of work accidents and occupational diseases and proposing preventive measures.

225. The Directorate-General for the Maritime Territory and the Merchant Marine, in its capacity as the maritime police authority, is responsible for ensuring compliance with safety measures on vessels in Chile's ports and in work at sea and on rivers and lakes.

226. The Office of the Superintendent of Social Security is the technical authority charged with the supervision of the administrative bodies of the scheme. The control exercised by this body covers medico-social, financial, actuarial, legal and administrative matters and involves the power to issue mandatory guidelines in these areas. It has the power to issue instructions concerning improvement of the system of payment of benefits to claimants and the implementation of risk prevention plans; to rule on the interpretation of the laws and regulations governing social insurance; and to require the administrative bodies to comply with those rulings.

### **Workers to whom the rules on occupational safety and health apply**

227. Employed workers, i.e., individuals who provide specific services within a relationship of subordination and dependency, irrespective of the nature of the enterprise, service or individual for whom they work, and including domestic workers and apprentices.

228. Article 21 of Act No. 16,744 provides for the inclusion of public officials among the beneficiaries of the scheme; but they were not actually brought within it until 1 March 1995 under Act No. 19,345.

229. Trade union officials are covered against accidents sustained by them on account of or in the course of their union duties.

230. Self-employed workers. The final paragraph of Act No. 16,744 empowers the President of the Republic to decide on the inclusion of workers in this category in the scheme. To date this has been done for the following groups: peasant farmers who have inherited land; newspaper vendors; owner-drivers of hire cars; professional workers concerned with the care of horses; gold-tailing scavengers; small artisan mine operators and silversmiths; owner-drivers of motor vehicles for public transport, school and goods subject to Legislative Decree No. 3,500; traders authorized to conduct their business on public thoroughfares or on beaches; small-scale independent fishermen; and general customs agents.

231. Finally, coverage includes students who: (a) are performing work for their respective establishments which constitutes a source of income for their department; and (b) belong to municipal or private establishments and sustain accidents on account of or during the course of their studies or their professional training. They are protected under Supreme Decree No. 313 of 1972 of the Ministry of Labour and Social Insurance and receive medical benefits from the health services and financial benefits from the Institute for Social Security Standardization (INP).

## **Workers not covered by the regulations on occupational safety and health**

232. The only group still not covered by the scheme is the group of self-employed or independent workers, who hitherto have not been brought within the ambit of Act No. 16,744. At present there are some 1,732,961 workers not covered by the scheme (or 31.7% of the country's active workforce). They are mainly independent workers engaged in precarious jobs, which frequently carry high levels of risk.

233. It should be mentioned that as a general rule independent workers are not allowed to contribute to this branch of insurance, since Act No. 16,744 stipulates that independent and family workers are to be covered by the law under conditions, financial and other, to be determined by the President of the Republic. Resort to this power has led to the creation of a number of legal entities which have brought specific groups of independent workers within the scheme, as indicated earlier.

## **Statistics on the number, nature and frequency of work accidents and occupational diseases**

### **Work accidents**

234. In Chilean legislation a work accident is defined as *“any injury sustained by a person on account of or in the course of work and which gives rise to incapacity or death injuries incurred while traveling directly between the home and the workplace and vice versa, and those sustained by trade union leaders on account of or in the course of their trade union duties”*.

235. The rates of work accidents occurring in enterprises affiliated to mutual aid societies (not taking into account accidents sustained while commuting) varied during the period 1990-1997 between 12.6% (268,751 accidents) and 11.1% (265,306 accidents), while during the period 1997-2001 the rate varied between 10.8% (312,683 accidents) and 7.93% (205,094 accidents). These figures reflect a fall in the rates and, therefore, a fall in the number of work accidents.

236. It is worth noting that the year 2000 saw a work accident rate of 7.98% (203,342 accidents), while the rate for 2001 was 7.93% (205,094 accidents). These figures require further analysis for their interpretation, since they coincide with a period of economic contraction and a rise in unemployment. The figures given are those published in the statistical bulletin of the Office of the Superintendent of Social Security and correspond to a percentage of all workers, as figures relating to the health services are not included.

237. The group of types of injury to which 85% of work accidents gave rise remained the same during the period 1992-1996. Of these, “other traumatisms” occupied first place, followed by “injuries to upper limbs”. In third place came “osteo-muscular disorders” and “lower extremity sprains”, both of which increased in number during these years. In fourth place came “foreign body in the eye”.

238. The economic activities which have consistently maintained work accident rates higher than the average for each of the years 1990-2001 are, in first place, construction, followed by industry, agriculture and transport.

### **Occupational diseases**

239. Occupational disease is defined in Chilean legislation as “*that directly caused by a person’s exercise of a profession or job and resulting in incapacity or death*”. The law<sup>58</sup> regulates the qualification and evaluation of both work accidents and occupational diseases and establishes a list of the latter. This definition restricts the incorporation of new diseases; thus we are only partially aware of the impact of work on the health of an employee.

240. Existing information on occupational diseases reveals important levels of under-diagnosis and under-reporting, in both the public and private sectors covered by Act No. 16,744 referred to earlier. Unlike work accidents, the detection of these pathological conditions requires the worker to be evaluated via a system of health monitoring corresponding to the risks he or she faces at work. At present the system has coverage limitations, with regard both to the working population monitored and to the number of occupational risks included in the legislation.

241. In 1995 the global occupational disease rate<sup>59</sup> was 2.9 per 1,000 workers (9,730 cases) and in 1996, 2.3 per 1,000 (8,828 cases). The rate of occupational diseases in mutual aid societies varied considerably during the years 1995-1999, with numbers ranging between 4 per 1,000 workers (9,411 cases) and 2.2 per 1,000 (5,829 cases). This situation shows that global rates have varied but little; in some years an increase in the diagnoses of pathological conditions has occurred in mutual aid societies. When interpreting these figures it should also be borne in mind that they are calculated on the basis of the entire working population rather than the population exposed to the specific risk which causes a disease; thus the rate indicates a lower level of risk than is actually the case.

242. The diagnoses covering over 80% of the cases remained consistent during the period 1995-1996. In first place were “osteomuscular disorders”, accounting for 26% of cases, followed by “skin and connective tissue diseases”, with 23%. In third place, depending on the year, were “toxic effects” at 15% and “respiratory diseases” at 12%.

243. The sectors of economic activity in which over 80% of cases of occupational diseases occurred during 1995 and 1996 were financial services, industry, agriculture and commerce.

### **Deaths caused by work accidents**

244. Between 1995 and 1998 the death rate among workers affiliated to mutual aid societies remained fairly constant, ranging from 12 per 1,000 workers (294 deaths) and 13 per 1,000 (326 deaths), while between 1999 and 2001 the number of deaths ranged from 12.43 per 100,000 workers (261 deaths) and 11.68 per 100,000 (302).

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<sup>58</sup> Supreme Decree No. 109 of 7 June 1968.

<sup>59</sup> All administrative organizations are included. Act No. 16,744, information supplied by the Ministry of Health (Minsal).

### **Rest, recreation, hours of work, holidays with pay**

245. Chilean labour legislation stipulates that the ordinary working week must not exceed 48 hours. Working hours in excess of this level will be classed as overtime, should be agreed in writing in the contract of employment or in a subsequent document and are to be paid at 50% above the ordinary daily rate.<sup>60</sup>

246. It is also stipulated that Sundays and days declared by law to be public holidays shall be rest days<sup>61</sup> and that workers with more than one year's service shall be entitled to 15 working days' holiday annually with full pay.<sup>62</sup> The Labour Code also provides that workers with 10 years' service, whether continuous or not, for one or more employers shall be entitled to an additional day's holiday for every additional 3 years worked.

247. In Chile, women workers are concentrated in the service and restaurant sectors, in which working hours are long; this fact, together with travelling time between home and work and the burden of domestic chores, means that they have practically no free time for rest. The legislator has increased the number of types of jobs in which workers must be given one Sunday of rest per month as an initial means of ensuring that they enjoy a minimum of rest and are able to share it with their families.<sup>63</sup> Continuous hours of business in shopping centres and other establishments which impose daily working hours in excess of the statutory 8 are affecting the full enjoyment of Sunday rest and are having an increasingly detrimental effect on working conditions.

248. Women domestic workers were excluded from general legal protection for workers until statutory working hours and minimum remuneration for women workers in private homes were set.<sup>64</sup>

249. The impact of women adding paid work to their domestic occupations has resulted in an increase in responsibility concerning the manner of dividing their time between housework and paid work and how to reorganize the workload in order to meet both responsibilities. Generally speaking, men devote more time to paid work and to rest than women, who dedicate more time to housework and fewer hours to rest or recreation. Despite the fact that both sexes spend more time on housework during weekends, women allocate twice as much time to such activities as men.<sup>65</sup>

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<sup>60</sup> Labour Code, articles 22, 29 and 32.

<sup>61</sup> Ibid, article 35.

<sup>62</sup> Ibid., article 67.

<sup>63</sup> Law No. 19,482 of 3 December 1996.

<sup>64</sup> Law No. 19,250 of 30 September 1993.

<sup>65</sup> Study by the Department of Economics, University of Chile, in Working Paper No. 68: *Habla la Gente: Trabajo y Familia: una relación compleja* (The people speak. Work and family: a complex relationship), Sernam, 1999.

## **Article 8**

### **Trade union rights**

#### **Conditions for forming and joining trade unions**

250. In order to form a trade union, the following requirements must be met:

(a) An assembly of workers must be held, subject to a minimum quorum required by law, which varies according to the type of union to be formed and according to the size of the enterprise.

(b) At this assembly, the statutes of the union must be approved and the management committee elected, all of which must be recorded in minutes.

(c) To take effect these acts require the presence of a public officer. This public officer may be a works inspector, a public notary, an official of the Civil Registry or an official of the State administration designated as such by the Labour Office, or any person designated by the trade union statutes.

(d) All votes held must be secret and personal.

(e) The original minutes of the trade union's establishment, together with two copies of its statutes certified by the appointed public officer, must be lodged with the Labour Inspectorate where the union is domiciled.

(f) These documents must be lodged within 15 consecutive days, starting from the date of the constituent assembly.

(g) As soon as the documents referred to in sub-paragraph e) above have been deposited, the trade union immediately acquires a legal personality.

(h) If the documents are not deposited within the stipulated time, a new constituent assembly must be held.

(i) Once the minutes have been deposited, the Labour Office has a period of 90 consecutive days in which to voice objections to the establishment of the trade union, either on the grounds that the due requirements for its establishment have not been met or because its statutes are not in accordance with the law.

(j) Once observations have been made regarding the establishment and/or statutes of the trade union, the latter must within 60 days, starting from the notification thereof, amend the flaws in its procedures or adjust its statutes in accordance with the observations issued or, within the same period, lodge an appeal before the appropriate Labour Tribunal, failing which its legal personality will lapse automatically.

(k) The trade union's management enjoys immunity (in the sense that it may not be dismissed without prior court authorization) from the date the constituent assembly is held. Such immunity will cease if the minutes are not deposited within the time indicated in sub-paragraph f) above.

(l) The trade union committee must furnish the management of the enterprise, or enterprises in the event of a multi-enterprise trade union, the following recorded acts and documents of the union, on the day after they take effect:

- (i) The holding of the constituent assembly and appointment of the managing committee;
- (ii) The nomination of the committee whenever it is renewed;
- (iii) The nomination of the union representative.

### **Trade union representative**

251. The trade union representative shall be elected by workers who belong to an enterprise and who are members of a provisional multi-enterprise trade union and who, numbering at least eight, have not elected a director in their particular union.

### **Quorum required for the formation of unions according to the type of union**

252. For single enterprise trade unions:

(a) For enterprises of 50 or less workers, a minimum quorum of eight if required, provided that these represent more than 50% of all workers;

(b) For enterprises of more than 50 workers, a minimum quorum of 25 is required, representing at least 10% of all workers of the enterprise;

(c) It is possible for 250 or more workers of an enterprise to form a trade union, regardless of the percentage they represent;

(d) In enterprises with more than one establishment, a union may be formed by 25 workers representing at least 40% of the workers of that establishment.

253. In the case of multi-enterprise trade unions, with casual or temporary workers, at least 25 workers must take part in forming the union. According to the law, only the participation of workers on indefinite contracts is allowed. Workers on fixed term or piece-work contracts may join the union once it is constituted. Workers affiliated to such unions may maintain their union membership even though they are not supplying services.

254. For unions of independent workers, according to the law at least 25 workers must take part in forming the union.

### **Special legal provisions governing trade unions according to specified categories**

255. Article 216 of the Labour Code recognizes the establishment of different types of trade unions, depending on the enterprise or enterprises where the workers supply services: either enterprise unions consisting of workers of a single enterprise, or multi-enterprise unions, consisting of workers who work for two or more employers.

256. Article 216 also introduces the notion of trade unions according to the nature of the services provided. Thus it recognizes the establishment of trade unions of independent workers, consisting of workers who do not depend on any single employer; and trade unions of casual or temporary workers, consisting of workers who perform services on a dependent or subordinate basis for either cyclical or intermittent periods of time.

### **Legal restrictions regarding the right to found or join trade unions**

257. There are no legal restrictions of any kind which apply to founding, joining or leaving a trade union. The Political Constitution recognizes the right to form trade unions in the cases and manner prescribed by law.<sup>66</sup> The Labour Code confirms this constitutional right, for workers of the private sector and of State enterprises, to form whatever trade unions they deem convenient without prior authorization.<sup>67</sup>

258. This rule supplements the principle of the right to organize, by stipulating that workers are free to resign from or join a union whenever they wish.<sup>68</sup> Nevertheless, it should be pointed out that according to Article 217 of the Labour Code: *“This section and the following section shall not apply to officials of State enterprises attached to the Ministry of National Defence or related to the Government through that Ministry”*.

259. When joining or resigning from a trade union, the workers concerned must abide by the rules contained in the trade union’s statutes, on the understanding that the membership and resignation requirements of members are the minimum rules which must be contained in the statutes.

### **Measures for guaranteeing the right to join federations or international trade unions**

260. According to Article 213 of the Labour Code: *“Trade unions have the right to establish federations or confederations and either to join or to resign from them”*. All such trade union organizations also *“( ... ) have the right to establish international trade union organizations, to join and to resign from them as prescribed in the relevant statutes and in the rules, usages and practices of international law”*.

261. As in the personal sphere, workers in the private sector and in State enterprises are free to establish whatever organizations they deem appropriate; these unions shall enjoy the same right to join or establish trade union federations or confederations. In turn, the latter may establish or join international trade unions of workers.

### **Freedom to organize and collective bargaining**

262. Labour legislation regarding trade union organizations is reasonably complete and advanced, since it is based on the principle of the freedom to organize. This is reflected in all rules related to the foundation of, membership of and resignation from trade unions, in trade union

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<sup>66</sup> Article 19 (19) “On Constitutional Rights and Duties.”

<sup>67</sup> Article 212 of the Labour Code.

<sup>68</sup> Article 214 of the Labour Code.

pluralism, in the right to establish federations and confederations, and in the right to legal personality, to dissolve unions by court decision only, and for unions to maintain broad autonomy in order to adopt their own statutes and administer their own property.

263. Act No. 19759 of 2001 established a series of protective measures to safeguard the right to form trade unions and the free exercise of the right to collective bargaining, while protecting workers against dismissals and other arbitrary practices which may occur at the time of the establishment of a trade union or of collective bargaining. In practical terms, no worker may be dismissed until 30 days after a trade union has been formed or a bargaining process completed. At the same time, many regulatory procedures in that respect were simplified, especially with regard to the formation of trade unions and their related obligation to register with the labour authorities.

264. It should be pointed out that in this respect Chilean law, by virtue of the aforementioned rules, has been aligned with international instruments contained in ILO Conventions Nos. 87 and 98, concerning the right to organize and collective bargaining respectively, which were ratified on 1 February 1999 and entered into effect internationally on 1 February 2000.

265. On the other hand, if the right of workers to organize is restricted in any way by certain actions on the part of employers, constituting anti-trade union practices, such actions will be drastically punished under the new legislation. Since the power to determine and to rule on such actions rests with the courts of law, however, this tends to hold up the processing and settlement of cases. As a result, workers often have the impression that their rights are not properly safeguarded, and a feeling of uncertainty and vulnerability arises from the delays of the labour tribunals.

### **Number, composition and structure of trade unions**

266. The labour law recognizes single enterprise trade unions, multi-enterprise unions, unions of independent workers and unions of casual workers. Table 10 gives statistical data concerning such organizations for the period 1990-1999.

**Table 10**

#### **Changes in the numbers of trade unions according to the type of union - 1990-1999**

Year	Single enterprise	Multi-enterprise	Independent	Casual	Total
1990	5,822	676	2,039	324	8,861
1991	6,462	746	2,314	336	9,858
1992	7,037	813	2,560	346	10,756
1993	7,408	861	2,762	358	11,389
1994	7,760	909	3,070	370	12,109
1995	8,083	949	3,037	376	12,715
1996	8,401	975	3,499	383	13,258
1997	8,693	1,004	3,705	393	13,795
1998	8,923	1,018	3,927	408	14,276
1999	9,118	1,018	4,077	415	14,652

Source: Department of Labour Relations, Labour Office

267. Table 11 shows how the numbers of trade unions and their memberships have changed over the period 1990-1999, and Table 12 gives a breakdown according to type of trade union.

**Table 11****Total number of trade unions and memberships in Chile, 1990-1999**

Year	Number of trade unions	Membership
1990	8,861	606,812
1991	9,858	701,355
1992	10,756	724,065
1993	11,389	684,361
1994	12,109	661,966
1995	12,715	637,570
1996	13,258	655,597
1997	13,795	617,761
1998	14,276	611,535
1999	14,652	579,996

Source: Department of Labour Relations, Labour Office

**Table 12****Changes in trade union membership according to the type of union in Chile, 1990-1999**

Year	Type of trade union				Total
	Single enterprise	Multi-enterprise	Independent	Casual	
1990	417,514	69,651	90,987	28,660	606,812
1991	455,871	92,757	114,639	38,088	701,355
1992	473,914	87,323	121,630	41,198	724,065
1993	460,219	75,436	115,295	33,411	684,361
1994	448,370	73,561	114,104	25,931	661,966
1995	417,796	71,166	119,476	29,132	637,570
1996	426,818	72,246	124,402	32,131	655,597
1997	405,440	68,143	116,375	27,803	617,761
1998	390,462	69,515	121,578	29,980	611,535
1999	359,368	74,560	116,925	29,143	579,996

Source: Department of Labour Relations, Labour Office

**Federations and confederations**

268. A federation consists of the union of three or more trade unions. A confederation consists of the union of five or more federations, or 20 or more trade unions. The union of 20 or more trade unions may give rise equally to a federation or to a confederation.

269. In the case of public officials, including municipal workers, the law establishes rules governing associations of officials belonging to the State administration, recognizing their right, without prior authorization, to form trade unions of officials as they deem appropriate, subject to conformity with the law and with the relevant statutes.<sup>69</sup> In 1997, there were 1,117 associations of public officials, totalling 130,873 members; in 1998, 1,241 totalling 135,596 members; and in 1999 1,335 with a total of 138,863 members.

<sup>69</sup> Act No. 19296 of 14 March 1994.

## Right to strike

### Restrictions on the right to strike

270. The law establishes two important legal rules related to the process of collective bargaining,<sup>70</sup> which apply specifically during a strike, regulating the replacement of workers involved in the strike and the individual reinstatement of those workers in their former positions.

271. With regard to the replacement of workers involved in a strike, the employer may hire replacement staff from the first day of the strike provided that the last offer made meets the following combined requirements:

- (a) The offer must be in writing;
- (b) It must be stated in writing that the offer was handed to the workers and to the negotiating committee, and that it was lodged with the Labour Inspectorate dealing with the bargaining process;
- (c) The offer must be made at least two days before the deadline allowed for the workers to vote either to accept it or to strike, and it must be lodged with the Labour Inspectorate before that deadline;
- (d) The proposals put forward must in form and in substance be the same as those contained in the contract, agreement or arbitration in effect at the time the proposal is put forward, subject to a readjustment equivalent to the full change in the Consumer Price Index<sup>71</sup> (CPI) between the date of the last adjustment and the date of expiry of the instrument;
- (e) The offer must allow for a minimum annual readjustment in accordance with the CPI, excluding the last 12 months of the contract;
- (f) It must include the payment of a bonus of four “development units”<sup>72</sup> (*Unidades de Fomento, UF*) for every worker hired as a replacement, for the benefit of the replaced workers.

272. If the last offer does not comply with the requirements set out above, the employer may replace the workers involved in the strike from the fifteenth day of the start of the strike. If there is no collective agreement in the enterprise, the employer may replace the workers involved in the strike from the first day of the strike, provided that it is ascertained that his last offer was brought to the attention of the workers involved in the bargaining process within the time limits referred to in subparagraph c) of the foregoing paragraph. The employer must also consider an annual readjustment corresponding to the change in the CPI for the duration of the contract, excluding the last 12 months.

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<sup>70</sup> Article 381 of the Labour Code.

<sup>71</sup> Index which measures the change in the cost of living from one month to another (i.e. the monthly inflation or deflation of the economy).

<sup>72</sup> Payment value for banking operations, adjusted daily in accordance with the increase in the Consumer Price Index (CPI).

273. With regard to the individual reinstatement of workers involved in the strike, the following rules apply:

(a) Individual reinstatement applies only from the fifteenth day of the start of the strike, whenever the last offer complies with the minimum conditions required by law. In the event that the last offer, while complying with the minimum requirements, is delivered after the deadline, reinstatement may become effective from the fifteenth day of the delivery of the last offer, or from the thirtieth day of the strike taking effect.

(b) In cases where there is no agreement in effect, individual restatement from the fifteenth day applies only if the last offer meets the same requirements as those stipulated for the replacement of workers.

(c) Workers who are individually reinstated must comply with the conditions laid down in the last offer, unless they negotiate better conditions with their employer.

(d) Lastly, if the employer has resorted to the possibility allowed in Article 381 of the Labour Code, including the hire of replacement staff, he may not withdraw the minimum offer referred to in that article.

274. The Labour Code establishes that some workers, even though able to bargain collectively, cannot avail themselves of the right to strike.<sup>73</sup> These are workers employed in enterprises either that provide public services, or the stoppage of which, owing to their nature, may cause serious harm to health, to public supply, to the economy of the country or to national security. In this case, it is not sufficient for the enterprise to be in one of the situations referred to in the article; there is the further requirement that the authority - in this case the Ministries of Labour and Social Security, National Defence and the Economy - should declare that those conditions apply, at least once a year, in the month of July, by means of a decision. In that event, the workers subject to this restriction must submit to compulsory arbitration.

### **Restrictions on the right to organize and the right to strike of members of the armed forces, the police or the State administration**

275. For reasons of national security, by law members of the armed forces or those responsible for order and security cannot establish unions. The same applies to officials of State enterprises attached to the Ministry of Defence or related to the Government through the latter.<sup>74</sup>

### **Changes affecting the rights protected under Article 8 of the Covenant**

276. In the last ten years, some very significant changes have been made in legislation concerning the trade union movement, which until the beginning of the 1990s was in a state of complete disarray, since it could not act beyond the limits of the enterprise. Federations and confederations were unable to sign valid legal agreements, and amalgamated unions were clandestine or de facto, so that it was as if there was a bipartite model but without the trade union side. At present, federations and confederations may, by common agreement with the employers, conclude valid collective agreements, and amalgamated unions are now part of the Labour Code.

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<sup>73</sup> Art. 384.

<sup>74</sup> Act No. 19296, art. 1(2) of 14 March 1994.

This means that all the legal conditions are met for a labour partner which is strong, representative and endowed with powers, but at the same time with responsibilities, to allow the full development of the bipartite model.

277. The Labour Code<sup>75</sup> contains regulations concerning strikes and lockouts. It may be added that the Government of Chile has ratified ILO Convention No. 151, the Labour Relations (Public Service) Convention, of 1978, and is currently engaged in the process of implementing the agreements by introducing suitable mechanisms to give them effect.

## **Article 9**

### **Right to social security**

#### **Social security branches**

278. Chile's Political Constitution guarantees the right to social security for all its inhabitants, without any distinction whatever. It stipulates that the State shall guarantee access to the enjoyment of uniform basic benefits, whether these are granted through public or private institutions and whether they are financed by subscription or not, and shall supervise the proper exercise of the right to social security.<sup>76</sup>

279. Chile runs two parallel social security systems: a) a social insurance system for all workers, public and private; and b) a system of unemployment and family benefits financed from fiscal revenues, providing assistance free of charge to persons not covered by the social insurance system referred to earlier (including the elderly, the disabled and children in a situation of poverty).

#### **Existing schemes, scope of benefits, nature and amount of benefits and methods of financing of the social security system**

##### **Medical care**

280. Since the 1980s, Chile has had a health system accessible to all, in which the user must choose between the different alternatives offered by the private sector through Health Insurance Institutions (*Isapres*) or by the State-run National Health Fund (*Fonasa*).

281. From 1990 to 1998, the majority of the population subscribed to the public health system (*Fonasa*). During that period, however, the proportion of the population subscribing to the public system fell from 67% to 61.8%, while the proportion of the population subscribing to the private system (*Isapres*) increased from 15.1% to 23.1%.<sup>77</sup>

282. The current law regulates the exercise of the constitutional right to health protection and establishes a system of health care benefits,<sup>78</sup> which is of general application, covering workmen, employees and apprentices of industrial and commercial enterprises, as well as home and domestic

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<sup>75</sup> In Title VI, articles 369 *et seq.*

<sup>76</sup> Art. 19 (18).

<sup>77</sup> 1990 and 1998 Casen surveys (see annex 1, abbreviations).

<sup>78</sup> Act No. 18,469 of 23 November 1985.

workers. According to this legislation,<sup>79</sup> the benefits of medical assistance are extended to members of the subscriber's family, if they are dependent or if they are entitled to widows' and orphans' pensions, in accordance with the terms of the law. Medical assistance begins at the start of an illness and continues so long as the effects of that illness last. According to Article 8 of the Act, medical care begins at the preventive stage, with health examinations for the early diagnosis of tuberculosis, sexually-transmitted diseases, glaucoma, cancer, diabetes, heart disease, high blood pressure, chronic kidney insufficiency and other sicknesses determined by the Ministry of Health, where early diagnosis and treatment can prevent irreversible changes. These measures then continue with curative medical assistance, including consultations, examinations, diagnostic and surgical procedures, hospitalization, obstetric care, treatment - including medicines - and whatever other health care measures are appropriate. According to Article 29 of the Act, the persons covered by the system are classified, according to their income level, in the following groups:

- (a) **Group A:** Persons who are indigent or without means, in receipt of assistance pensions<sup>80</sup> or giving rise to a family subsidy,<sup>81</sup>
- (b) **Group B:** Subscribers whose monthly income does not exceed the legal minimum wage<sup>82</sup> applicable to workers over the age of 18 and under the age of 65;
- (c) **Group C:** Subscribers whose monthly income is above the legal minimum wage but less than 1.46 times that amount, except in the event that the subscriber has three or more dependents, in which case they will be considered as belonging to Group B;
- (d) **Group D:** Subscribers whose monthly income is more than 1.46 times the legal monthly minimum wage, where they have not more than two dependents. If they have three or more, they will be considered as belonging to Group C.

283. With regard to the financing of the public health system,<sup>83</sup> active and passive workers pay in a contribution of 7% of their income or pensions. According to Article 30 of the Act, the State contributes to the funding of this medical care through Fonasa. This State contribution covers the total value of all benefits for Groups A and B, and may not be less than 75% for Group C or 50% for Group D. In any event, Fonasa's contribution to childbirth care cannot be less than 75% for Group D.

284. In the private system (Isapres), 7% of income is the minimum contribution for active workers and pensioners, with the option of subscribing a greater amount depending on the scheme run by the particular private medical insurance. Under such schemes, the State's subsidy applies only to maternity benefits (pre-natal and post-natal maternity leave or serious illness for infants under the age of one).

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<sup>79</sup> Act No. 18,469, art. 6 (b) and (c).

<sup>80</sup> Decree-Law No. 869 of 28 January 1975.

<sup>81</sup> Pursuant to Act No. 18,020 of 17 August 1981.

<sup>82</sup> See earlier notes on the "minimum wage" under article 7 of the Covenant.

<sup>83</sup> Act No. 18,469 of 23 November 1985.

285. So-called “public benefits”, that is to say, immunization, environmental health and supplementary food, are entirely paid for by the State. At present a special insurance scheme is in the course of implementation to cover high-cost so-called “catastrophic” illnesses, aimed at alleviating the economic impact of treatment.

286. Where the armed forces are concerned, the former total coverage has been replaced by a scale of “joint contributions”, which brings it more into line with the public system. Accordingly subscribers pay a percentage of the total cost of care, which is adjusted according to their income.

### **Cash benefits in the event of illness**

287. In the Chilean social security system, this benefit is known as the “work incapacity benefit”. In the case of public employees, these sickness benefits cover 100% of cash income. For private sector employees, on the other hand, the benefit is calculated on the basis of the average monthly cash income for the three months preceding the start of the sickness. In the private health system, the employee signs a 12 month contract with a private health insurance scheme (Isapre). The amount of benefits varies according to the contract, but they must be at least equivalent to those of the general public system.

288. The work incapacity benefits of private sector workers are laid down in the legislation.<sup>84</sup> Benefits are paid from the first day of the corresponding medical leave - if it is longer than ten days - or from the fourth day, in the event of a medical leave of ten days or less. The benefits continue until the end of the corresponding leave, even in cases when the employment contract has been terminated. Entitlement to benefits requires a minimum of six months’ membership of the scheme and three months’ subscriptions within the six months preceding the starting date of the corresponding medical leave.<sup>85</sup> In order to receive benefits, dependent workers contracted daily, on either a shift or a daily wage basis, are required, in addition to the minimum period of membership of the scheme mentioned earlier, to have made at least one month of contributions within the six months preceding the starting date of the corresponding leave. If the work incapacity is due to accident, neither the general nor the special periods indicated above apply.<sup>86</sup>

### **Maternity benefits**

289. According to current legislation, women workers are entitled to pre-natal maternity leave of six weeks and post-natal maternity leave of 12 weeks.<sup>87</sup> These rights are not renounceable, and during the rest period women are not allowed to work just preceding or following childbirth. In addition, their jobs or positions must be maintained during those periods.

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<sup>84</sup> Articles 14 and 15 of Legislative Decree No. 44 of 1978 of the Ministry of Labour and Social Insurance.

<sup>85</sup> Ibid, arts. 4 and 6.

<sup>86</sup> Ibid, art. 6.

<sup>87</sup> Labour Code, art. 195.

290. When both parents are employed, either of the two, by decision taken by the mother, may be allowed leave and the necessary allowance to care for infants under the age of one, if these are seriously ill.<sup>88</sup> The father will be entitled to this leave if the mother has died or if he has been given custody of the child by court decision.<sup>89</sup> Any worker, whether male or female, responsible for an infant below the age of one, who has been given custody or personal care of the infant as a protective measure by the court, is entitled to both the leave and the allowance.<sup>90</sup> It is furthermore established that in the event of the birth or death of a child, or of the death of the spouse, a worker may, in the three days following the birth or death, avail himself of one day of paid leave, in addition to his holiday.<sup>91</sup>

291. According to the law, in the event that the state of health of a child under 18 requires the personal attention of his parents on account of a serious accident, a terminal sickness in its final phase or a serious or acute illness likely to lead to death, the female worker will be entitled to leave of absence from her work for a number of hours totalling the equivalent to ten ordinary working days.<sup>92</sup> If both parents are employed workers, either of them, as decided by the mother, may enjoy the benefit. On the other hand, the father will be entitled to the leave if he has custody of the child by court decision, or if the mother has died or if she is unable to make use of the leave for any reason whatever. Failing both parents, whoever has the custody or care of the child will be entitled to the benefit. The time used for such leave must be made up to the employer by the loss of equivalent time from the next annual holiday, by working overtime, or in any other manner agreed by the parties.

292. Private sector workers claiming leave for pre-natal, post-natal or supplementary leave or for reasons of the health of an infant less than one year old, may be paid an allowance calculated in accordance with the average of their net monthly remuneration, or of the benefit, or both, accrued in the three calendar months closest to the month when the leave begins. Only social insurance charges and the corresponding legal dues will be deducted from the allowance.<sup>93</sup>

293. In the case of independent female workers, the pension for which they have contributed is considered instead of the taxable remunerations. Social insurance contributions and the corresponding taxes will be deducted from taxable remuneration or pensions.

294. According to the legislation, maternity leave benefits shall be payable by the Single Fund for Family Benefits and Redundancy Benefits,<sup>94</sup> established by the Ministry of Labour and Social Insurance.<sup>95</sup>

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<sup>88</sup> Ibid, article 199.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Art. 66 of the Labour Code.

<sup>92</sup> Act No. 19,505 of 25 July 1997, which added an article 199*bis* to the Labour Code.

<sup>93</sup> Art. 198 of the Labour Code.

<sup>94</sup> Act No. 18418 of 11 July 1985, art. 1.

<sup>95</sup> Legislative Decree No. 150 of 1981.

295. In other respects, a new final paragraph has been added to Article 194 of the Labour Code, in which it is established that employers may not make the continuation of employment conditional on the existence or otherwise of pregnancy, nor may they demand either a certificate or any examination to ascertain whether a female worker is pregnant or not.<sup>96</sup>

296. The Labour Code lays down the obligation, for establishments employing 20 or more female workers of any age or civil status, to make available restrooms independent of the workplace, where the women may feed their children under the age of two and may leave them whilst they are at work.<sup>97</sup> According to the Labour Code, female workers are entitled, in order to feed their children, to take off two periods which together do not exceed one hour per day, which will be considered as having been effectively worked for the purposes of wage payments, regardless of the system of remuneration applied.<sup>98</sup>

297. Under the public health service, pregnant women are entitled to health benefits, even if they have not subscribed to the social security system.<sup>99</sup> The benefits are granted not only during the six-week pre-natal period and the 12-week post-natal period, but also throughout the pregnancy, that is, for nine months, and for six months after the birth of the child.<sup>100</sup> Up to six months of age, the newborn child is also entitled to health protection and supervision by the State. Health benefits during pregnancy and until the sixth month after delivery, including pregnancy and post-natal checks by a doctor or a midwife, are therefore completely free of charge.

298. Through the National Health Fund (Fonasa), the State's contribution to the payment of medical benefits<sup>101</sup> will amount to 75% of delivery care for Groups C and D, and to 100% of delivery care for Groups A and B. This means that delivery care is completely free of charge for Groups A and B, which are made up of indigent persons of low economic means. For subscribers in Groups C and D, consisting of economically better-off persons, 75% of the cost of delivery care is free of charge, so that contributors only need to fund the remaining 25%.

### **Old age benefits**

299. In order to determine the scope of the benefits, it has to be borne in mind that Chile has two pension systems covering the civilian population: the old public pensions system, which is an insurance system based on a distributive method, administered by social security authorities currently merged into a single body, the Social Security Standardization Institute (*Instituto de Normalización Previsional* or INP); and the new pensions system,<sup>102</sup> which is based on a system of individual capitalization run by the Pension Fund Administrators (AFP), and which covers all persons who entered the labour market after 1 January 1983, regardless of the type of work they perform or the sector of activity to which they belong.

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<sup>96</sup> Act No. 19,591 of 9 November 1998.

<sup>97</sup> Labour Code, art. 203.

<sup>98</sup> Ibid, art. 206.

<sup>99</sup> Act No. 18,469, art. 6 d).

<sup>100</sup> Ibid. art. 9.

<sup>101</sup> Act No. 18,469, art. 30.

<sup>102</sup> Introduced by Decree-Law No. 3,500 of 1980.

300. Workers affiliated to the old system can opt to switch to the new pension system at any time; on the other hand, all those entering the labour market after the above-mentioned date are obliged to join the new system, according to the law.<sup>103</sup>

### **Old age pensions in the old and the new pensions systems**

301. In the case of employed workers, the former type of old age insurance covers: manual workers and workmen;<sup>104</sup> domestic workers and applicant workers or apprentices in any kind of job, industry or occupation; home workers; paid working members of employers' families; employees receiving insurance benefits through the former Provident Fund for Private Employees and auxiliary agencies, and through the former National Horse Racing Provident Fund, now merged in the INP, as indicated above; and lastly employed professionals.

302. In the case of independent workers, the former Social Insurance Service covers all categories of manual workers referred to in the Act,<sup>105</sup> provided that the workers' total annual income is not greater than three times the annual minimum wage.

303. The former Provident Fund for Private Employees covers old age benefits for artists<sup>106</sup> and owner-drivers of vehicles for hire.<sup>107</sup> The National Fund for Public Employees and Journalists receives the subscriptions of independent lawyers, which have joined the fund as such.

304. Any person meeting the legal requirements can join a Pension Fund Administrator (AFP), a possibility offered under the new pensions system. In this system, the only distinction drawn is between employed workers and independent workers. In the case of the former, the law stipulates that: "*when they begin work all non-affiliated workers must automatically join the system and must contribute to a Pension Fund Administrator.*"<sup>108</sup> In the case of independent workers, it is stated that: "*all natural persons who do not work for an employer but exercise an activity from which they obtain an income may join the system under this Act.*"<sup>109</sup> In other words, for independent workers joining the system is voluntary, unlike the case of employed workers.

305. The new pension scheme covers a large proportion of the workforce, compared with the old system. It excludes subscribers belonging to the armed forces and security staff, who have their own provident funds.

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<sup>103</sup> Decree-Law No. 3,500 of 1980, transitional article 1.

<sup>104</sup> Mainly under the provisions of Act No. 10,383 of 8 August 1952, which makes it compulsory for all persons earning a salary.

<sup>105</sup> Act No. 10,383, article 2 (3).

<sup>106</sup> Incorporated under Act No. 15,478 of 4 February 1964.

<sup>107</sup> Incorporated under Act No. 15,722 of 26 October 1964.

<sup>108</sup> Decree Law No. 3,500 of 1980, art. 2.

<sup>109</sup> Ibid, art. 89.

## Contributions and amount of pensions

306. With regard to the amount of contributions workers have to pay in to the pension fund, under the old system this amounts to 19.1% of salaries in the case of workmen, while for employees it averages 20.7%.

307. In the new system, contributors pay in 10% of their income for their pensions; in addition, to cover administrative expenses and the cost of disability and survivor's insurance, they must pay between 2.09 and 2.55% of their income, plus a fixed commission ranging from 0 to 1,000 pesos (equivalent to US\$ 0-1.34), depending on the AFP scheme concerned. The maximum income subject to contribution in the old system is set at 60 Development Units (UFs), equivalent to 1,001,016 pesos (US\$ 1,343). The minimum basis for contributions is the amount of the legal minimum wage, that is, US\$ 149 as from 1 June 2002.

308. In the new system, a distinction is drawn between compulsory contributions and voluntary contributions.<sup>110</sup> In the case of compulsory contributions, the law stipulates that workers affiliated to the system are obliged to contribute 10% of their taxable remuneration and income,<sup>111</sup> up to an amount<sup>112</sup> of 60 UF, equivalent to 1,004,647 pesos (US\$ 1,431) on the last day of the month preceding the payment. The minimum basis for contributions is the same as under the old system. In the case of voluntary contributions, Article 18 provides that workers may, in their personal capitalization account, pay in additional voluntary contributions of up to 50 UF a month, equivalent to 837,062 pesos (US\$ 1,192), or 600 UF per year, equivalent to 10,044,745 pesos (US\$ 14,309). In the case of independent workers, Article 90 stipulates that the monthly income subject to contribution will be the same as the contributor reports each month to the AFP to which he belongs, but not less than a minimum wage, nor greater than 60 UF, equivalent to 1,004,647 pesos (US\$ 1,431).

309. In the old system the maximum amount of pension comes to 688,786 pesos (US\$ 1,279) on 1 December 1999. The minimum amount of pension has been 72,361.62 pesos (US\$ 108) as from December 2001 for pensioners under the age of 70, and 79,121.84 pesos (US\$ 118) from the same date for pensioners over the age of 70.

310. Between 1989 and 1999, the average monthly value of pensions paid by pension funds under the old public insurance system increased by 40.4%. In 1990, one million monthly pensions were paid on average, with an average monthly value of 86,500 pesos (US\$ 283). In 1999, on average 990,000 monthly pensions were paid, with an average monthly value of 122,000 pesos (US\$ 239) as from December 1999.<sup>113</sup>

311. In the new pensions system, it is impossible to know in advance the maximum amount of possible benefits for the following reasons: because the system is based on the principle of personal capitalization; because it is an administrative system which obliges the administrators in charge to

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<sup>110</sup> Decree-Law No. 3,500 of 1980, arts. 16 et seq.

<sup>111</sup> Ibid, art. 17.

<sup>112</sup> Stipulated in article 16 of the above-mentioned Decree-Law.

<sup>113</sup> Social Security Supervisory Authority and Social Security Standardization Institute (INP) in *Economic and Social Indicators 1990-2000*, Mideplan.

ensure that the pension funds are profitable; and because users are entitled to obtain their pensions by taking out insurance for a life annuity or on the basis of a temporary annuity with deferred life annuity or programmed retirement annuity.<sup>114</sup>

312. Lastly, by law the State must guarantee minimum old age pensions for persons affiliated to the new system whose funds run out and who fulfil all legal requirements,<sup>115</sup> relating to years of work and to years of contribution.

313. The proportion of contributors in the private system has continued to increase during the decade, from 87.8% in 1990 to 91.3% in 1999. With regard to coverage of the system, from 1990 to 1999 the ratio of contributors to total employed persons rose from 58.7% to 64.8%; while the ratio of contributors to total workforce rose from 54.4% to 59.1%. By 1999, there were 3.5 million contributors.<sup>116</sup>

### **Disability pensions under the old and the new pension systems**

314. It should be explained in the first place that what was said previously regarding the existence of two old age pension systems applies fully to disability benefits. The criteria determining the degree of disability which gives entitlement to a pension also differ from one system to the other.

315. Under the old system,<sup>117</sup> the concept of disability includes the incapacity to exercise any professional activity generally, or more specifically in relation to the job performed at the time of the accident or to the loss of a particular degree of earning capacity. In this system, for workmen and manual workers, a distinction has to be drawn between total disability and partial disability. Total disability is deemed to occur when the insured person is unable, through his work, to obtain remuneration equivalent to at least 30% of the normal salary earned by a healthy worker in similar conditions of work and in the same locality. Partial disability is deemed to occur if the incapacity allows the insured person to earn more than 30% but less than 60% of that normal salary, provided that the loss of capacity originates in disorders of the nervous system (including the sensory organs), or the circulatory, broncho-pulmonary or myo-osteo-articular systems. Salaried contributors are considered disabled if, as a result of sickness or loss of their physical or mental abilities, they lose at least two-thirds of their work capacity. Pensions may be granted definitively or provisionally. Definitive pensions will be granted to contributors suffering from an illness which incapacitates them totally and definitively for any form of work.

316. Under the new system,<sup>118</sup> the entitlement to total disability pension is granted to contributors who, while not fulfilling the requirements for obtaining an old age pension, permanently lose at least two-thirds of their work capacity, as a result of sickness or loss of their physical or mental abilities. Under the same provision, a partial disability pension is payable to contributors who

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<sup>114</sup> Decree-Law No. 3,500 of 1980, art. 61.

<sup>115</sup> *Ibid*, arts. 73 *et seq*.

<sup>116</sup> Social Security Supervisory Authority and Social Security Standardization Institute in *Economic and Social Indicators 1990-2000*, Mideplan.

<sup>117</sup> Act No. 10,383.

<sup>118</sup> Decree-Law No. 3,500 of 1980, art. 4.

experience a loss of their work capacity of 50% or more but less than two-thirds. The provision adds that the contributor's condition must be ascertained by a committee of three surgeons for each region, which will be appointed by the Superintendent of Pension Fund Administrators (AFPs) as prescribed in the regulations.<sup>119</sup>

317. Under the old system, according to the provisions of the former Social Security Service,<sup>120</sup> 50 weeks of contributions are required, subject to combined density requirements, or 400 weeks without such requirements, and the contributor must be under 65 years of age at the start of the disability. In order to obtain a disability pension, besides a minimum contribution period of 50 weeks, the person must have had not less than 40% of contributions in the course of the basic period, or less than 50% in the total period of affiliation. This last percentage is required only of male contributors, and the requirement is waived if the person has completed more than 40 weeks of contributions.

318. Under the old system, the total disability pension consists of a basic amount equal to 50% of the basic salary, plus 1% of that salary for every 50 weeks of contributions over and above the first 500 weeks of contributions, up to a maximum limit of 70% of the basic monthly salary, plus an allowance of 10% of the average salary for every legitimate, non-matrimonial or adopted child under the age of 15, or for every disabled person of any age belonging to the family household who is not in receipt of a pension. The partial disability pension amounts to 50% of the above.

319. The former Provident Fund for Private Employees under the old system requires that the contributor should be employed when the event occurs that produces the disability, and he must have registered at least three years of contributions. These conditions are maintained for two years after the person has stopped contributing.<sup>121</sup> In addition, the contributor must be under the age of 65 at the start of the disability. The disability pension amounts to the equivalent of 70% of the basic salary, plus 2% of the latter for every year of service over and above the first 20, up to a limit equivalent to the basic salary.

320. With the new system, it is not possible to determine beforehand the maximum amount of benefit, since it will depend on a series of variable factors. Nevertheless, according to the established rules,<sup>122</sup> the amount of disability pension for employed workers cannot be less than 70% of basic income, corresponding to the average of pay received and declared income over the ten years preceding the month in which the incapacity is declared, at current values. For special cases that meet the requirements established in the law,<sup>123</sup> minimum disability pensions must amount to the same as those paid to pensioners under the old system.

321. Cash benefits aimed at preventing, delaying, alleviating or curing the disability of persons who, on account of that disability, either receive a pension or may be entitled to receive one, are paid according to the terms stipulated in Act No. 18469.

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<sup>119</sup> Ibid, art. 11.

<sup>120</sup> Act No. 10,383, art. 34.

<sup>121</sup> Act No. 10,475 of 8 September 1952, art. 21.

<sup>122</sup> Decree-Law No. 3,500 of 1980, Title V.

<sup>123</sup> Decree-Law No. 3,500 of 1980, Title VII.

**Assistance pensions** (*pensiones asistenciales - Pasis*)

322. The aim of assistance Pensions (Pasis) was to establish a system of pensions for all elderly and disabled people of limited means, who for various reasons have been unable to obtain this benefit under an insurance scheme, in order to guarantee them a minimum level of subsistence. Disabled persons and those over 65 years of age of limited means are entitled to receive this type of pension, in accordance with the provisions of Decree-Law No. 869 of 1975 and later amendments, provided that they have been residing in the country for at least three years.

323. A person over the age of 18 is considered disabled if, on a presumably permanent basis, he is unable to perform normal work, or has suffered a loss of his work capacity which prevents him from being able to satisfy his subsistence needs, and who is not entitled to receive a pension due to the work accident or arising from any other system of social security. The declaration of disability has to be made to the National Health Service.

324. Persons are deemed to be of limited means if they have no income of their own or, if they have, such income is less than 50% of the minimum pension established by law,<sup>124</sup> which in 1999 averaged 33,200 pesos (US\$ 65), and provided that, in either case, the average income of the family household is also below that percentage. This average is determined by dividing the total income of the household by the number of persons within it. For the same effect, the household is considered to be made up of persons who, whether connected or not by family ties, reside permanently under the same roof.

325. From 1989 to 1999, the average monthly value of assistance pensions increased by 61.8%. In 1999, 350,000 monthly pensions were granted on average, with an average monthly value of the amount indicated in the foregoing paragraph.

**Survivor benefits under the old and the new pensions systems**

326. The same comments concerning the two concurrent pension systems apply in this case as well, while it may be noted that the insurance scheme for accidents at work and occupational illnesses includes its own survivor benefits. Under the old system - in the case of the former Social Insurance Service - in order to give rise to a survivor pension, the insured person must either be a pensioner or have at least 50 weeks of subscriptions, of which 40% of the weeks must fall in the last five years, and 50% during the whole affiliation period. In the case of employees, the person giving rise to a survival pension must either be a pensioner or have three years of subscriptions.

327. In the former Social Insurance Service, a widow of any age, or a disabled dependent widower, will receive a benefit amounting to the equivalent of 50% of the basic salary or pension of the person insured. An orphan under the age of 18, or 24 if engaged in study, or without age limit in the event of disability, will obtain a pension amounting to the equivalent of 20% of the basic salary or average pension corresponding to the year preceding the death of the insured person. The mother of non-matrimonial children of the insured person will receive a benefit equivalent to 60% of the pension which she would have received if she had been a spouse.

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<sup>124</sup> Act No. 15,386 of January 1975, article 26 (2).

328. In the case of employees under the old system, the widow or disabled widower who is dependent on the insured person will receive a benefit amounting to the equivalent of 50% of the pension or basic salary of the insured person who has died at work. Every orphan under the age of 18 (or under the age of 24 if engaged in study or of any age in the event of disability), as well as parents without income who have been living at the expense of the deceased, will receive a benefit amounting to the equivalent of 15% of the pension or basic salary of the insured person.

329. Under the old system, maximum survivor pensions were equivalent to 100% of the pension or basic salary of the insured person, depending on the supplements arising as a result of the absence of one or more beneficiaries.

330. In the new system, on the other hand, widows and orphans have been combined under the common denomination of survivor pensions. The following are entitled:

(a) A surviving spouse who married the insured person within six months of his decease, or within three years if the insured person was a pensioner; such time limits do not apply if at the time of the decease the spouse was pregnant or if they had common offspring;<sup>125</sup>

(b) A disabled widower, subject to the limits referred to under (a);<sup>126</sup>

(c) Unmarried children, under the age of 18, or under the age of 24 if engaged in study, or of any age in the event of disability;<sup>127</sup>

(d) The mother of non-matrimonial children of the insured person, provided that she was unmarried or a widow at the time of the decease and had been living at the expense of the insured person;<sup>128</sup> and

(e) Failing any of the above, parents who at the death of the insured person were entitled to a family allowance.

331. In the new system, the survivor pension will be equivalent to the following percentages of the reference pension of the person entitled:<sup>129</sup>

(a) 60% for a spouse suffering total disability, and 43% in the event of partial disability;

(b) 50% for a spouse suffering total disability, and 36% in the event of partial disability, if the spouses have common offspring with pension entitlements;

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<sup>125</sup> Decree-Law No. 3,500 of 1980, art. 6.

<sup>126</sup> Ibid, art. 7.

<sup>127</sup> Ibid, art. 8.

<sup>128</sup> Ibid, art. 9.

<sup>129</sup> Ibid, art. 58.

(c) 36% for the mother of non-matrimonial children of the insured person, which is reduced to 30% if they have common offspring with pension entitlement;

(d) 15% for each child provided that requirements are met. This percentage is reduced to 11% for children declared to be partially disabled when they reach the age of 24;

(e) 50% for the parents of the insured person, in the absence of other beneficiaries.

### **Benefits for accidents at work**

332. This system of benefits is set out in the Act establishing Social Security against Accidents at Work and Occupational Illnesses.<sup>130</sup> The benefits are payable to employed workers, trade union leaders suffering an accident because of or on the occasion of the performance of their union duties, independent workers and students.<sup>131</sup> Coverage of the benefits was extended to public officials as from 1 March 1995.<sup>132</sup> With regard to independent workers, the law allowed the President of the Republic the option of deciding whether to include them in the same insurance.<sup>133</sup> So far coverage has been extended to peasants in receipt of land allocations, newsboys, independent horse racing professionals, car-hire owner-drivers, independent miners, craft miners and silversmiths, owner-drivers of motorized vehicles used for public transport, school transport or haulage under Decree Law No. 3,500 of 1980, traders allowed to sell goods on highways or beaches, independent small-scale fishermen and general customs agents.

333. The system is financed from contributions paid by the employer, since the insurance covers risks which are essentially the employer's responsibility. Subscriptions may be of two kinds: either basic or supplementary. The basic subscription applies generally and must be paid by all employers, amounting to 0.9% of taxable remuneration paid to their workers, plus 0.05% of supplementary contribution in effect until 31 August 2004. The supplementary contribution depends on the activity and risk of the enterprise, and varies between 0 and 3.4%. In order to encourage the prevention of risks in the workplace, the law established a system of exemption, discounts and surcharges affecting the supplementary subscription rate, which vary according to the effectiveness of the prevention measures activated by the enterprise.<sup>134</sup>

334. The benefits available under this insurance are of two kinds: medical and financial. Medical benefits are granted free of charge from the day of the accident or as soon as the sickness has been diagnosed, until complete recovery or for so long as the consequences of the accident or sickness persist. These benefits include: medical, surgical and dental care; hospitalization, where necessary;

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<sup>130</sup> Act No. 16,744 of 1968.

<sup>131</sup> Ibid, art. 2.

<sup>132</sup> Act No. 19,345.

<sup>133</sup> Act No. 16,744, art. 2, last subparagraph.

<sup>134</sup> Act No. 16,744. The procedure for exemptions, discounts and surcharges applied to supplementary contributions was established in Supreme Decree No. 6 of 1999, issued by the Ministry of Labour and Social Security, published in the Official Bulletin of 7 March 2000.

medicines and pharmaceutical products; prostheses and orthopaedic appliances; physical rehabilitation and vocational re-education; transfer costs and any other expense required for the provision of the benefits.

335. Financial benefits arise in the case of temporary incapacity, disability or death. Temporary incapacity may be due to an accident at work or an occupational sickness which is temporary in its nature or effects, and which allows the recovery of the worker and his return to normal work. The financial benefit for temporary disability consists in the payment of allowances, which replace the remuneration forfeited by the worker during the time of his incapacity. The allowance is paid from the day of the event until the worker has recovered or has been declared disabled. In any event, its maximum duration is 52 weeks, renewable for a similar period.

336. Disability consists in a condition of incapacity which is presumed to be permanent and irreversible, even though the worker may preserve a residual working capacity sufficient to allow him to continue working. In this case, his condition becomes one of partial disability, which arises for persons who have lost 15% or more, but less than 70% of their earning capacity. If their residual earning capacity is 15% or more but less than 40%, they are entitled to an allowance. If their earning capacity is 40% or more but less than 70%, they are entitled to a pension. Total disability, which means a loss of earning capacity of 70% or more, allows entitlement to a pension. Lastly, there is the condition of major disability, in the case of invalids who require the assistance of other persons to perform basic daily acts, which entitles them to a supplementary pension.

337. Benefits for the death of the insured person give rise to a survivor's pension for the spouse, legitimate, non-matrimonial or adoptive children, the mother of non-matrimonial children of the insured person, and, failing any of the above, any other ascendants or descendants entitled to a family allowance.

### **Unemployment benefits**

338. The redundancy benefit is a cash benefit aimed at protecting unemployed workers, by providing them with financial support while their unemployment lasts, for a maximum period established by law.<sup>135</sup>

339. Salaried workers in the public and private sectors are eligible for the benefit, as well as independent workers who were entitled to the benefit from 1 August 1974, or who, when they were admitted to the new pensions scheme, had been contributing to a provident scheme allowing them a family allowance or a redundancy benefit, while they were engaged in the activity which qualified them as contributors under that provident scheme.<sup>136</sup>

340. The conditions for receiving the benefit are as follows:

(a) Being redundant, which means a condition applying to workers who have been dismissed for reasons beyond their control;

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<sup>135</sup> The rules governing this system of redundancy benefits for workers in the public and private sectors were redrafted, coordinated and systematized in Legislative Decree No. 150 of 1981, issued by the Ministry of Labour and Social Security.

<sup>136</sup> According to the terms of Decree-Law No. 3,500 of 1980, art. 91.

(b) Having at least 52 weeks of contributions within the two years preceding the date of redundancy, either continuous or not, and under any provident scheme;

(c) Being registered in the Redundancy Register of the municipality of the worker's residence, a register whose purpose is to assign assistance tasks for the benefit of the community.

341. The benefit is payable from the date the application is made, for every day the worker remains redundant, for partial periods equivalent to 90 days per year, up to a maximum of four consecutive periods. According to the law, moreover, the fact that the employer may be late in paying his contributions does not prevent entitlement to the benefit, which must be paid by the administering bodies subject to recovering outstanding contributions from the employer as appropriate.<sup>137</sup>

342. As from 1 January 1996,<sup>138</sup> the amount of the benefit became degressive, being valued for 1999 at 17,338 pesos (US\$ 34) per month for the first 90 days, 11,560 pesos (US\$ 22) per month for the next 90 days, and 8,669 pesos (US\$ 17) per month for the following 180 days. From 1990 to 1999, the average monthly value of the redundancy benefit increased by 13.3%. In 1999, an average of 49,000 monthly benefits were granted, with an average monthly value of 11,403 pesos (US\$ 22).<sup>139</sup>

343. This benefit is financed from fiscal revenues, contained in the Single Family Allowance and Redundancy Benefit Fund.<sup>140</sup>

### **Family benefits**

344. There are two family benefits which should be noted in the Chilean social security system: the family allowance as such (*asignación familiar*), which is a form of insurance, and the family subsidy for persons of limited resources (*subsidio familiar*), which is a form of assistance.

### **Family allowance**

345. This is a cash benefit which the community pays at regular intervals to families, and which is intended for dependents (family members) living at the expense of the head of household and dependent on his income. It is regulated under the Single Family Benefit System.<sup>141</sup>

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<sup>137</sup> Ibid, art. 6.

<sup>138</sup> According to the terms of Act No. 19,429.

<sup>139</sup> Office of the Superintendent for Social Security in *Economic and Social Indicators 1990-2000*, Mideplan.

<sup>140</sup> Legislative Decree No. 150 of 1981, arts. 20 et seq.

<sup>141</sup> The rules governing this system were redrafted, coordinated and systematized in Decree-Law No. 307 of 1974, established by Legislative Decree No. 150 of 1981, issued by the Ministry of Labour and Social Security.

346. The beneficiaries of family allowances include:

- (a) All employed workers, both in the private sector and in the public sector;
- (b) Workers already entitled to a benefit, whether for redundancy, work incapacity, accident at work or occupational sickness;
- (c) Pensioners of any insurance scheme, even if they were not entitled to the benefit under that scheme;
- (d) Recipients of a widow's pension and the mother of non-matrimonial children of the worker or pensioner benefiting from the special pension referred to in the legislation.<sup>142</sup> These beneficiaries are entitled to family allowances only on the grounds of dependents on account of whom the original beneficiary of the pension was entitled to that benefit;
- (e) Independent workers, affiliated to any insurance scheme, who, prior to 1 January 1974, were entitled to the family allowance benefit. According to the law, independent workers affiliated to a Pension Fund Administrator (AFP) continue to belong to the Single Family Benefit System, if at the time they were admitted to this new pension system they were affiliated to an insurance scheme which already allowed them a family allowance benefit.<sup>143</sup> The entitlement is maintained only so long as the person is still engaged in the specific independent activity which entitled him to be a contributor to the insurance scheme from which he derived his entitlement;
- (f) State-run or State-approved institutions which are responsible for the upbringing and maintenance of orphaned or abandoned children and disabled persons.

347. The persons giving rise to the benefit are as follows:

- (a) A spouse (male or female) who has been declared disabled by the Preventive Medicine and Disability Committee of the appropriate Health Service. The condition of disability pertains to any person who has lost or lacks, on a presumably permanent basis, two-thirds of earning capacity either for hereditary or for acquired reasons;
- (b) Children and adopted children who are unmarried and under 18 years of age. If they are older than 18 but under the age of 24, they still receive the benefit if they follow regular courses of intermediate, teacher training, technical, specialized or advanced education, in State-run institutions or institutions approved for the purpose of the benefit. Disabled children and adopted children always give rise to the benefit.
- (c) Grandchildren and great-grandchildren, who have either lost or been abandoned by their father and mother;
- (d) The widowed mother;
- (e) Ascendants over the age of 65, or of any age in the event of disability;

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<sup>142</sup> Act No. 15,386 of 11 December 1963, art. 24; Decree-Law No. 3,500 of 1980, art. 5; Accidents at Work and Occupational Illnesses Act, art. 45.

<sup>143</sup> Act No. 18,225 of 28 June 1983.

f) Orphaned or abandoned children, and disabled persons who are dependent on relatives or on the State in State-approved establishments, who may claim the benefit from the Social Security Standardization Institute (INP).

348. In order to receive the benefit, the persons giving rise to it must be living at the expense of the claimant, and must not be in receipt of an income equivalent to or greater than 50% of the monthly minimum wage stipulated by law.<sup>144</sup> Nevertheless, orphans' pensions are not considered as income for the purpose of determining the above condition.<sup>145</sup> It is also stipulated in the law that claimants do not cease to be considered as such for legal effects even though they may be performing paid work, so long as they do not do so for a period longer than three months in each calendar year, the intention being in this way to benefit workers engaged in remunerated work for brief periods.<sup>146</sup>

349. As of July 2000, the benefit amounted to:

(a) 3,607 pesos (US\$ 6.6) per dependent for beneficiaries with a monthly income not exceeding 108,833 pesos (US\$ 200);

(b) 3,509 pesos (US\$ 6.4) per dependent for beneficiaries whose income exceeded 108,833 pesos (US\$ 200) but was not greater than 219,921 pesos (US\$ 405);

(c) 1,143 pesos (US\$ 2.1) per dependent for beneficiaries whose income exceeded 219,921 pesos (US\$ 405) but was not greater than 343,002 pesos (US\$ 631);

(d) Persons in receipt of incomes exceeding 343,002 pesos (US\$ 631) were not entitled to the allowances.

350. Persons giving rise to the benefit on grounds of disability are entitled to receive double the allowance.<sup>147</sup> The allowance is paid to the beneficiary at whose expense the person is living.<sup>148</sup> Nevertheless, allowances arising on account of underage children must be paid directly to the mother with whom they are living, if she so wishes.

351. Payment is made by the employer at the time the remuneration is terminated, at the same time as he offsets the cost with the contributions he is supposed to pay to the appropriate insurance scheme. If following this operation there is a credit balance in his favour, the insurance scheme must refund the extra expense he has incurred.<sup>149</sup> Independent workers deduct the amount they are supposed to receive from the contributions they pay each month. In the case of private sector

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<sup>144</sup> Act No. 18,806 of 19 June 1989, art. 4 (1).

<sup>145</sup> Ibid, art. 5.

<sup>146</sup> Act No. 18,987 of 11 July 1990, art. 2, last paragraph.

<sup>147</sup> Ibid, art. 14.

<sup>148</sup> Ibid, art. 67.

<sup>149</sup> Act No. 18,987, art. 30.

workers, these must show evidence of family dependents and of the payment authorization issued by the insurance scheme administering the benefit. For employees in the public sector, the entitlement must be recognized by the employing service.

352. Family allowances are financed from a single fund, known as the Single Family Benefits and Redundancy Benefits Fund, which is made up exclusively of fiscal revenues allocated under the Budget Act.<sup>150</sup>

353. From 1989 to 1999, the average monthly amount paid for family allowances increased by 40%. In 1999, 2.9 million monthly family allowances were granted on average, with an average monthly value of 2,382 pesos (US\$ 4.6).<sup>151</sup>

#### **Family subsidy for persons with limited resources<sup>152</sup>**

354. This is a cash benefit in the form of assistance, which is intended to provide families in situations of extreme poverty with a benefit similar to the family allowance established in the Single Family Benefit System, from which they are excluded.

355. The following persons give rise to this family subsidy:<sup>153</sup>

(a) Children under the age of 18 and disabled persons of any age living at the expense of the beneficiary, who until the age of eight have been registered with the health programmes established by the Ministry of Health for the purposes of child care and who are not in receipt of income of a value equal to or greater than the family subsidy, regardless of its origin or source. An orphan's pension is not considered as an income in this respect. In the case of children over the age of six, it must also be shown that they are attending primary, secondary, advanced or other equivalent forms of education on a regular basis, in State-run or State-approved establishments, unless they are disabled;

(b) The mothers of minors living at their expense and for whom they receive the family subsidy. In this case, the subsidy is payable to the mother herself;

(c) Pregnant women who apply to the municipality in writing at their place of residence;

(d) Mentally deficient persons of any age as stipulated by law,<sup>154</sup> who are not entitled to the State pension as established in Decree-Law No. 869 of 1975.

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<sup>150</sup> Ibid, arts. 20 and 21.

<sup>151</sup> Office of the Superintendent for Social Security in *Economic and Social Indicators 1990-2000*, Mideplan.

<sup>152</sup> Established in Act No. 18,020 of 17 August 1981, and regulated by Supreme Decree No. 368 of 1987, of the Ministry of the Economy, and by Act No. 18,611 of 23 April 1987, which regionalized the budgets for family subsidies and State pensions.

<sup>153</sup> Act No. 18,020, art. 2.

<sup>154</sup> Act No. 18,600 of 19 February 1987.

356. The following receive the family subsidy on behalf of the minor living at their expense, in the following order:<sup>155</sup> the mother or, failing her, the father, the guardians or persons who have had custody of the minor; and any natural persons responsible for the care of mentally deficient persons of any age.

357. In order to qualify for the family subsidy, beneficiaries must apply in writing to the municipality at their place of residence, and must not be in a position either on their own, or with the help of the family group, to ensure the maintenance and upbringing of the person giving rise to the benefit.

358. For smaller incomes the family subsidy amounts to the same as the family allowance. In the case of subsidies arising on behalf of disabled or mentally deficient persons, the amount is doubled. The benefit is paid by the Social Security Standardization Institute (INP).

359. From 1989 to 1999, the average monthly value of the family subsidy increased by 42%. In 1999, 932,000 monthly benefits were granted on average, with an average monthly value of 3,055 pesos (US\$ 6).<sup>156</sup>

360. Family subsidy claims must be submitted to the municipality at the claimant's place of residence, giving evidence of the entitlement and of the fact that the requirements mentioned earlier have been met. The family subsidy is payable for three years.<sup>157</sup> Until the person giving rise to the subsidy completes eight years of age, the beneficiary must provide evidence each year that the child is benefiting from child care health programmes run by the Ministry of Health. The persons entitled to the subsidy may receive the medical care (preventive and curative) and dental care referred to in Act No. 18469 free of charge.

361. The family subsidies allowed under the Act<sup>158</sup> are paid from the National Family Subsidy Fund.<sup>159</sup> This fund is financed from fiscal contributions established each year in the Budget Act.

362. As from 2002, new rules have come into effect,<sup>160</sup> establishing a new system of unemployment benefits on the basis of a personal account for each worker. Funds accumulate in this account with the intention of providing more efficient support than that available under the scheme described earlier. The Act makes provision for a Redundancy Insurance, which is financed by a monthly contribution by the employer amounting to 2.4% of the worker's taxable remuneration. These funds then become the worker's own property, who can make use of them through a system of monthly transfers, up to a maximum of five transfers. The State for its part must set up a solidarity fund for the joint funding of workers who, owing to their limited means, are unable to accumulate minimum amounts decreed by law in their accounts.

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<sup>155</sup> Ibid, art. 3.

<sup>156</sup> Office of the Superintendent for Social Security in *Economic and Social Indicators 1990-2000*, Mideplan.

<sup>157</sup> Act No. 18,020, art. 5 (2).

<sup>158</sup> Act No. 18,020.

<sup>159</sup> Set up under the terms of Act No. 18,611, art. 1.

<sup>160</sup> Act No. 19,728.

**Percentage of the gross national product and the national budget devoted to social security**

363. Since 1990, expenditure on social security has grown significantly. Nevertheless, owing to the priorities given to social investment in education, health and housing, it has grown less than average, so that its share of total social expenditure has fallen. From 1989 to 2000, fiscal expenditure on social security increased by 129% and public expenditure by 84.8%. In 2000, public expenditure on social security came to US\$ 4,818 million, equivalent to 6.9% of the gross domestic product (GDP), while fiscal expenditure came to US\$ 4,332 million, equivalent to 6.2% of GDP (see Table 13).

**Table 13**  
**Estimated public and fiscal expenditure, 1987-2000**  
**(million pesos at 2000 rates)**

	Public expenditure	Annual change (%)	Fiscal expenditure	Annual change (%)
Year	1,406,883 (US\$ 2,607,801,813)	2.9	1,020,798 (US\$ 1,892,153,701)	-10.9
1990	1,432,253 (US\$ 2,654,827,708)	1.8	1,174,184 (US\$ 2,176,470,370)	15.0
1991	1,488,927 (US\$ 2,759,878,774)	4.0	1,240,429 (US\$ 2,299,262,266)	5.6
1992	1,579,163 (US\$ 2,927,140,447)	6.1	1,324,355 (US\$ 2,454,827,708)	6.8
1993	1,712,193 (US\$ 3,173,725,185)	8.4	1,448,392 (US\$ 2,684,742,998)	9.4
1994	1,770,959 (US\$ 3,282,653,988)	3.4	1,515,530 (US\$ 2,809,190,161)	4.6
1995	1,877,307 (US\$ 3,479,780,904)	6.0	1,617,640 (US\$ 2,998,461,510)	6.7
1996	2,021,633 (US\$ 3,747,303,935)	7.7	1,758,754 (US\$ 3,260,030,770)	8.7
1997	2,115,043 (US\$ 3,920,448,943)	4.6	1,816,791 (US\$ 3,367,608,297)	3.3
1998	2,242,578 (US\$ 4,156,848,134)	6.0	1,907,651 (US\$ 3,536,026,618)	5.0
1999	2,476,705 (US\$ 4,590,826,521)	10.4	2,153,621 (US\$ 3,991,957,219)	12.9
2000	2,599,641 (US\$ 4,818,700,995)	5.0	2,337,152 (US\$ 4,332,150,735)	8.5
Average annual growth (%)		5.7		7.8
Growth 1989-2000 (%)		84.8		129.0

Source: Ministry of Economy, in *Economic and Social Indicators 1990-2000*, Mideplan.

364. The contribution of fiscal expenditure to public expenditure on social security increased from 82% in 1990 to 86.2% in 1995 and 89.9% in 2000. During the same period, the proportion spent on social security in public social expenditure fell from 49% to 41.5%, while its share of fiscal social expenditure varied between 44.2% and 42.4%.<sup>161</sup>

365. Between 1990 and 2000, the proportion of public expenditure on social security in the GDP rose from 6.3 to 6.9%. In the same period, the proportion of fiscal social security expenditure in the GDP increased from 5.2 to 6.2%. Those percentages include pension schemes and death benefits, family allowances, and benefits for sickness, compensation, dismissal and refunds, accidents at work and occupational illnesses, and redundancy.

366. The increase in the proportion of GDP spent on social security is due to the strong rise in welfare benefits, the value of which was brought up to date after trailing considerably in the 1980s. On the other hand, improvements in the levels of investment and in the emoluments of health professionals caused a substantial increase in expenditure on medical services.

### **Groups that are completely or substantially denied the right to social security**

367. The Political Constitution guarantees for all inhabitants of the Republic the right to social security, which is among the Constitutional Guarantees. As explained earlier, health care free of charge is provided for people with no resources or with very limited resources, while State pensions are paid to those over the age of 65 who are destitute and for disabled people of any age; family benefits are paid for destitute minors, etc.

368. According to information provided by the National Socioeconomic Survey (Casen),<sup>162</sup> in 1998, 4.7% of Chilean households (173,900 households) were considered destitute, that is, their financial income was not sufficient to pay for the basic food basket. This means that in Chile as a whole some 5.6% of the population (approximately 820,000 persons) were in that situation. Until 2000, 4.6% of all households (177,600 households) were under the poverty line. This means that, in that year, the condition applied to some 5.7% of the population of the country as a whole (849,169 persons). It should be added that the characteristics of poverty have changed, since those experiencing the condition nowadays are more vulnerable than ten years ago. This means that a "hard core" of poverty is maintained, which is not amenable to conventional welfare programmes or to the public social strategies available in Chile, to which should be added the lack of specific data regarding those people's access to social security benefits.

### **Situation of independent workers with regard to social security**

369. Generally speaking, independent workers are excluded from two of the benefit schemes described earlier: insurance for accidents at work and occupational illnesses, and family benefits. There is general agreement that more independent workers need to be brought under the umbrella of social insurance,<sup>163</sup> but at present their incorporation in practice has come up against a judgement by the Constitutional Court,<sup>164</sup> which invalidated the powers the President of the Republic was

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<sup>161</sup> Ministry of Economy, in *Economic and Social Indicators 1990-2000*, Mideplan.

<sup>162</sup> See Annex 1, abbreviations.

<sup>163</sup> Envisaged in Act No. 16,744.

<sup>164</sup> Published in the Official Bulletin of 21 March 1996.

relying on to bring this about.<sup>165</sup> These powers had been used in the past to bring a number of sectors of independent workers under social insurance cover. As things stand at present, the only way of increasing coverage for independent workers would be by passing a law to incorporate them expressly, as was done for public servants. Under current rules, the great majority of independent workers who contribute to the new pensions system are excluded from family allowance benefits.

370. With regard to both these aspects, insurance cover for accidents at work and occupational illnesses and family benefits, the Government is currently studying amendments to the legislation which would extend social security benefits to all independent workers.

### **Situation of women as regards the right to social security**

371. Enjoyment of the right to social security is directly related to the existence of a contractual relation of employment, as far as the most important benefits are concerned, such as health and old age.

372. This right is completely denied to so-called “housewives”, who stay at home in charge of the family and reproductive and domestic tasks. The rights are reserved for the heads of household, provided that they are formally employed. According to the Casen survey, in 1998, only 35% of women worked, compared with 74.6% of men, which gives an idea of the magnitude of the problem. Moreover, while 73% of salaried women work under contract, 77% of salaried men have contracted employment. Out of all working people, 64% of women and 65% of men belong to some kind of social security system.

373. Women with limited means have less access to the right to social security, and among them those most affected are the heads of household, since their own dependents (children, parents or other) are also affected. These women mostly work in informal sectors of the economy, which restricts their possibility of obtaining social security. According to data of the 1996 Casen survey, in 20% of the poorest households 38% of working women contribute to some social security scheme, while the same figure for men came to 55%.

### **Women in the new pensions system of the Pension Fund Administrators**

374. The Pension Fund Administrator (AFP) system, which consists of personal capitalization as a form of provident savings, was basically intended for workers employed on permanent or indefinite contracts, who would be able to contribute continuously throughout their working life. As a result, temporary, provisional or informal occupations, in which a high percentage of women are employed, do not provide access to sufficient social insurance coverage.

375. Every member of an AFP has his own capitalization account. The system covers all persons who subscribed at any time, even though they are no longer active subscribers. In March 1996, 61% of women members and 50% of men belonging to an AFP were not contributing. These proportions had not changed much by 2000, which shows that interruptions in working life continue to affect women more than men. This is further illustrated in a study called “Inequalities in the Sernam (National Women’s Service) figures”. The implication in this study is that from the point of view of

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<sup>165</sup> Act No. 16,744, art. 2, last paragraph.

size social insurance savings in the capitalization accounts are unfavourable to women. In March 2002, a little over 45% of women members had a capital of less than 500,000 pesos (US\$ 762.3), compared with only 25% of men.

376. Since the drafting and entry into force of Decree-Law No. 3500, regulating the new pensions scheme, it has been clearly shown that the system of personal capitalization is unfavourable to women, since they occupy lower paid jobs and contribute for shorter periods than men.

377. A high proportion of workers occupy temporary jobs, especially among the low paid. According to the 1996 Casen survey of socioeconomic data, among employed persons belonging to the poorest 20% of homes, 33% of women are temporary workers and 32% of men. The intervening periods of redundancy, alternating with seasonal periods of temporary work, prevent women workers in this situation from accumulating the minimum number of years of contribution required for entitlement to minimum old age pensions. The shortcomings of the privately run social security system are due not only to the inequalities affecting the employment of women; in addition, the actual rules under which the system operates in part prevent women from gaining access to the same social security benefits as men on equal terms.

378. It is possible in this private social security system to pick out rules showing how beneficiaries can be treated differently according to gender:

(a) With regard to access to survivors' pensions, in determining the beneficiary of the pension, the law defines the family group in such a way that it favours women who are dependent on a man, which discriminates against working women;

(b) The retirement of women five years earlier than men implies that less time is available to accumulate funds in the social security savings account and extends the period out of work. Thus women's pensions have less funds to finance a longer period out of work;

(c) The old age pensions are calculated on the basis of different life expectancy figures for men and women; this penalizes the amount of pension to which women subscribers are eventually entitled compared to that of men, due to the fact that women's life expectancy on average is considered to be greater than men's;

(d) The social security costs of child-bearing women taking pre-natal and post-natal maternity leave give rise to benefits that are usually less than the amount of pay received before the start of the maternity leave. The social security contribution during the period of pre- and post-natal maternity leave is calculated on the basis of the amount of that benefit, which usually implies a lesser input to the mother's social security savings account;

(e) Every time a woman leaves work in order to look after a child, she stops contributing, which also leads to smaller social security contributions made by women.

### **Women in the private health system**

379. The private system is beset with obstacles and limitations impeding women's access to healthcare coverage and thereby detracts from the principle of equal opportunities for men and women. In 1998, a study was carried out<sup>166</sup> to analyze the coverage available to women in the social security healthcare system, especially with respect to the difficulties and limitations affecting the coverage of the private system provided by Health Insurance Institutions (*Isapres*). This report concluded that the system was designed and structured in such a way that it operated as a private health insurance system, which increased premiums according to increases in the risk covered. According to this premise, women's coverage in the system turns out to be more expensive owing to their morbidity profile (on average women tend to require more medical attention than men), their longer life expectancy compared with men (which prolongs the period of coverage financed by the health insurance) and, above all, owing to the fact that all the costs related to reproduction are entirely borne by women (including pregnancy, childbirth, maternity and child care).

### **Legislative amendments in the field of social security**

380. Between 1990 and 1999, a series of changes were introduced in the field of Chilean social security. The main legislative amendments have been as follows:

(a) Act No. 19,200 of 18 January 1993, which changed the method used for calculating pensions by stipulating that the real remuneration received by the worker should be taken into account, and not only the basic salary and two-year increments as had been the case until then. According to Article 1 of the Act, the amount of pensions paid by the Social Security Standardization Institute (INP) and by the mutual funds of Act No. 16744 is to be determined on the basis of the amount of remunerations from which contributions were effectively made during the corresponding period;

(b) Act No. 19,234 of 12 August 1993, which granted social security benefits as a favour for persons exonerated for political reasons between 11 September 1973 and 10 March 1990;

(c) Act No. 19,260 of 4 December 1993, which in Article 4 removed the time limit on the right to pensions granted by the INP and under the terms of the Accidents at Work and Occupational Illnesses Act;

(d) Act No. 19,345 of 7 November 1994, which extended the applicability of the above-mentioned Act No. 16,744 to certain public sector workers;

(e) Act No. 19,350 of 14 November 1994, which in Article 6 amended Article 37.1 c) of Act No. 10,383, in order to remove the contribution density requirement from insured persons with at least 1,040 weeks of contributions to their credit. In Article 7, the Act also amended Article 23.1 c) of Act No. 10,662 (Crewmen and Ship Operator Section of the Provident Fund of the National Merchant Navy), removing the contribution density requirement for insured persons also having at least 1,040 weeks of contributions to their credit. Similarly, Article 8 of the Act amended Article 55 c) of Supreme Decree No. 68 of 1965, of the Ministry of Labour and Social Security, removing the contribution density requirement from women contributors and contributors of the former Provident Fund of Municipal Workers of the Republic having already paid 1,040 weeks of contributions;

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<sup>166</sup> Sernam, Working Documents No. 61, December 1998.

(f) Act No. 19,398 of 4 August 1995, which in Articles 6, 7 and 8 granted a special increment of 10% for certain pensions, paid for by the increase in fuel and tobacco taxes, for pensions not exceeding 100,000 pesos (US\$ 178.5);

(g) Act No. 19,403 of 21 August 1995, which granted a special increase to minimum widows' pensions and certain others. The increase took the form of bonuses varying in percentage according to the type of pension;

(h) Act No. 19,404 of 21 August 1995, which extended the age reduction for entitlement to old age pension, for hardship occupations, applying to all pension schemes administered by the INP, and amended Decree-Law No. 3,500 of 1980, adding a similar age reduction for hardship occupations;

(i) Act No. 19,454 of 8 May 1996, which granted a special readjustment for pensions, established the payment of widows' pensions until the last day of the month in which the insured person died, and introduced a standard age for entitlement to orphans' pensions in all the different provident institutions. In Article 3, the Act awarded a special increase of 5% to minimum pensions under Act No. 15,386, for pensioners aged 70 or over. In Article 6, the Act stipulates that the INP and mutual funds must pay pensions, excluding survivors' pensions, until the last day of the month in which the death of the insured person takes place. Survivors' pensions are payable as from the first day of the month following the demise of the insured person. In Article 7, the Act grants entitlement to orphans' pensions, in schemes administered by the INP, for minors under the age of 18, or youngsters over the age of 18 and under 24 in the case of students attending regular courses of primary, secondary, technical or advanced education. The right extends to disabled children of any age, though without removing the need to meet other legal requirements laid down for each scheme. In its transitional Article 2, the Act establishes that persons who, at the time the Act takes effect, are not entitled to orphans' pensions because they are over the age limits of their particular schemes, but fall within the new age requirements, will be entitled to apply for the benefit, provided they meet other legal requirements. The pension will be payable only when the Act comes into effect;

(j) Act No. 19,539 of 1 December 1997, which extended coverage to pensioners of the Family Allowance Compensation Funds, which at present serve a similar purpose to the welfare services available in the public administration. In Article 1, the Act grants an additional increase of 5% in minimum pensions. In Articles 2 to 10, it allows a monthly increment in the minimum pensions of widows and survivors, for mothers of natural children and widows, with increases of 17% to 19% in the amount of pensions. In Article 16, the Act decrees that in order to gain entitlement to the benefits of the Additional Benefits, Social Credit and Complementary Benefits Schemes, pensioners registered under any scheme may enrol with a Family Allowance Compensation Fund;

(k) Act No. 19,578 of 26 July 1998, which increased pensions to be financed by changes in the tax rules. In Article 10, the Act increases certain minimum pensions by 8,000 pesos (US\$ 14.2) as from 1 January 1999. In Article 11, it increases the amount of minimum survivors' pensions, by a variable amount according to the type of pension, also from 1 January 1999. In Article 12, the Act also increases the amount of certain pensions other than minimum pensions, by an amount that varies according to the type of pension, as from 1 October 1999;

(l) Act No. 19,582 of 31 August 1998, amending Act No. 19,234, which establishes social security benefits for politically exempted persons;

(m) Act No. 19,591 of 9 November 1998, which amended Article 194 of the Labour Code and established that no employer could make a woman's recruitment or continued employment conditional on pregnancy tests;

(n) Act No. 19,631 of 18 September 1999, which made the termination of an employment by an employer conditional on the payment of all outstanding social security contributions by the employer;

(o) Act No. 19,650 of 24 December 1999, which improved a number of provisions regarding health, including some of the rules of Act No. 18,469, of Decree-Law No. 3,753 of 1979 (establishing the National Health Service System) and of Act No. 18933, regulating the Health Insurance Institutions. These amendments were aimed at facilitating beneficiaries' access to the medical services which have to be provided by public and private health institutions;

(p) Act No. 19,720 of 7 April 2001, which contains a single authorization for social security institutions to conclude payment agreements for the social security contributions owed by employers;

(q) Act No. 19,728 of 14 May 2001, which establishes unemployment insurance and sets up a system aimed at protecting workers affected by a period of redundancy through the establishment of a personal account, owned by the worker, in which monthly contributions paid in by the employer and by the worker accumulate. These funds may be transferred during the first five months of the period of redundancy. For low income workers, the State provides a Solidarity Fund to complement the worker's savings, if these are not sufficient to cover the monthly transfer to which he is entitled;

(r) Act No. 19,729 of 31 May 2001, which adjusts the amount of the monthly minimum wage, establishing it at 105,500 pesos (US\$ 174) until 1 June 2002 for workers aged 18 or more. Exceptionally, workers under 18 and over 65 years of age will receive a minimum income of 81,661 pesos (US\$ 135). The amount of monthly income which is not used for remuneration purposes was increased to 70,562 pesos (US\$ 116);

(s) Act No. 19,732 of 6 June 2001, whose single article annuls subscriptions to pension funds payable by pensioners, referred to in Article 2 of Act No. 18,754;

(t) Act No. 19,768 of 7 November 2001, which makes the voluntary provident savings mechanism more flexible. This Act allows access to provident savings schemes, in addition to legal contributions, in other institutions apart from Pension Fund Administrators (AFPs), such as insurance companies and banks, in order to allow for better returns and thus increase subscribers' pensions.

(u) Act No. 19,775 of 30 November 2001, which grants an increase in payments to public sector workers, introduces bonuses, adjusts family and maternity allowances and grants certain other benefits.

## Article 10

### Protection of the family, mothers and children

#### Concept of the family

381. In the 1990s, Chilean society began a far-reaching debate regarding the need to define the different types of family coexisting in Chilean society. Under the Government of Mr. Patricio Aylwin, a National Commission on the Family was set up in 1990, with the aim of undertaking a real, comprehensive and pluralistic study of the family. The Commission arrived at the following concept of a family: “*The Family is a social group united by ties of consanguinity, filiation (biological or adoptive) and alliance, including de facto unions if stable*”.<sup>167</sup> The Political Constitution does not establish a concept of the family as such, although in Article 1, paragraph 2, it states that “*The family is the fundamental unit of society*”. The last paragraph of the same article calls on the State to protect, foster and strengthen the family. The family is also protected indirectly through the recognition and protection of other fundamental rights. For instance, Article 19 of the Political Constitution, in paragraph 4, guarantees the right of persons to respect for and protection of their honour and their families, while paragraph 5 enshrines the right of persons to inviolability of the home.

382. Before the Filiation Act was amended in December 1998, the filiation system established in the Civil Code was based on the notion that children were conceived in wedlock, thereby giving rise to the category of legitimate children. Children conceived out of wedlock constituted illegitimate descent, giving rise to the category of natural children and illegitimate children, who enjoyed less rights than legitimate children. Under the new Act, filiation is considered to be natural, and may be either matrimonial or non-matrimonial. All children, whether born of a marriage or not, have equal rights.

383. It is worth mentioning the rules governing procedures and penalties related to acts of violence in the family.<sup>168</sup> These rules extend the definition of the family to include unions initiated through cohabitation. Acts of violence are deemed to affect two main groups of persons, those who, “*having attained the age of majority, are in the position of ascendants, spouses or cohabitants, and those who, not having reached the age of majority or being disabled, are in the position of being descendants, adopted, wards, blood relations up to and including the fourth degree, or who are placed in the care or dependence of any of the members of the family group or who live under the same roof.*”

#### Characteristics of the family in Chile

384. The characteristics of families described in the report of the National Commission on the Family provided a set of data on the basis of which it was possible to draft legislative amendments and to initiate policies with respect to the family. Among its more interesting features, the report found that 83.5% of families are constituted on the basis of a legal tie and 16% without a legal tie; 28.8% of *de facto* unions are made up of couples between the ages of 18 and 24; 53% consist of simple nuclear households, and more than 40% arise within the framework of the so-called extended family. Almost 9% consist of single-person households. One out of every five households

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<sup>167</sup> Sernam CEF, report of the National Commission on the Family.

<sup>168</sup> Act No. 19,325 of 27 August 1995, art. 1.

is headed by a woman, and in 25% of homes at least one of the spouses is absent. The number of marriages has diminished and cohabitation has increased. The proportion of children born out of wedlock increased from 16% in 1960 to 39% in 1994. Out of this percentage, 14.2% are the children of teenage mothers. Table 14 below shows some of the changes which have occurred in the last decade in family relationships.

**Table 14**

**Changes in Civil Registry and Identification Entries, 1990, 1995 and 2000**

Events	1990	1995	2000
Births	311,814	274,980	230,475
(of which births abroad)	4,749	5,028	3,698
Change		-3.56%	-7.59%
Marriages	99,759	88,303	67,397
(of which marriages abroad)	-	1,103	797
Change		-4.95%	-4.83%
Deaths	78,091	80,090	73,120
(including presumed deaths and deaths abroad)	-	117	105
Change		4.12%	-11.38%
Marriage annulments	6,781	5,765	6,654
Change		0.33%	7.10%

Source: Civil Registry and Identification

**The age of majority**

385. The Chilean legal system, in its constitutional and civil expression, has determined the age of majority as being 18. According to Article 13 of the Political Constitution, “*are deemed to be citizens all Chileans who have completed 18 years of age and have not been found guilty of a serious offence*”. Citizenship brings with it the right to vote, to stand for popular election and all other rights conferred by the Constitution and the law. According to Article 26 of the Civil Code,<sup>169</sup> persons are considered “*to be of age if they have completed 18 years, and under-age, or minors, if they have not yet completed 18 years*”.

**The effects of majority on the right to food**

386. The law establishes special rules in relation to the right to food. According to Article 332 of the Civil Code, food must be provided to descendants and siblings until they have reached the age of 21, unless they are studying for a profession or occupation, in which case the age limit is raised to 28. If they are affected by a physical or mental disability which prevents them from catering for their own needs, or if owing to particular circumstances the judge considers the supply of food to be indispensable for their survival, the judge will decide what shall be the amount and duration of the supply.

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<sup>169</sup> Amended by Act No. 19,221 of 1993.

### **The effects of majority on employment**

387. According to Article 13 of the Labour Code, for all effects arising under the labour laws, the age of majority, at which persons may freely enter into contracts for the supply of their services, shall be 18 years. Persons under 18 but over 15 years of age may enter into employment contracts provided they have the express authorization of the father or mother. Failing that, they need the authorization of the paternal or maternal grandfather, or of the guardians, persons or institutions who have custody of the minor. Failing all those, the appropriate labour inspector may deliver the required authorization. Minors are not, however, allowed to work underground, on tasks requiring excessive force, or in any activities which may prove dangerous for their health, security or morality. In no event may they work more than eight hours a day, and their work time may not be extended through overtime.

388. Children under the age of 15 but over the age of 14 may enter into contracts to supply their services provided that they have been duly authorized as indicated in the foregoing paragraph and that they have completed their compulsory schooling. They may only undertake light work which is not prejudicial to their health and development, and which does not prevent them attending school or taking part in educational or training programmes. In no event may they work more than eight hours a day (Articles 13 and 14 of the Labour Code). Youngsters over the age of 18 but under the age of 21 may not be required to undertake any work underground unless they have been subjected to an aptitude test. Any employer contravening that rule will be liable to a fine. Under Article 15 of the Labour Code, children under the age of 18 cannot be employed in cabarets or similar establishments, or places where alcoholic drinks are sold for consumption on the premises. In certain specific cases, with the authorization of their legal representative or a juvenile judge, children under the age of 15 may be permitted to undertake a contract of employment, except in cases where only family members are employed under the authority of one of the members. This exclusion rule does not apply to boys over the age of 16, who may work in industrial or commercial occupations between the hours of 10 p.m. and 7 a.m., provided that it is with other members of the family and under the authority of one of those members.

### **The criminal effects of majority**

389. The Penal Code distinguishes between two situations: a) total exemption from criminal responsibility for children under 16 years of age.<sup>170</sup> According to the law,<sup>171</sup> any prosecution brought against a person in this situation must be definitively dismissed, subject to the possibility of transferring the case to a Juvenile Court, which can adopt whatever custodial measures are prescribed by law;<sup>172</sup> b) conditional exemption from criminal responsibility of persons over 16 but under 18. Such persons are generally speaking exempt from criminal responsibility,<sup>173</sup> unless they

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<sup>170</sup> Penal Code, art. 10 (2).

<sup>171</sup> Code of Penal Procedure, art. 408 (4) and Code of Trial Procedure, art. 250 c).

<sup>172</sup> Act No. 16,618 of October 1967.

<sup>173</sup> Article 10 (3) of the Penal Code.

are found to have acted with due discernment by the Juvenile Court. If on the other hand they are found to have acted without due discernment,<sup>174</sup> the case must be definitively dismissed, subject to the same rules being applied as for persons under the age of 16.

## **Forms of assistance and protection for the family**

### **The right to enter into marriage with free and full consent**

390. Marriage in Chile is based on the principle of the free consent of the contracting parties. This principle is enshrined in the Civil Code and contained in the International Covenant on Civil and Political Rights<sup>175</sup> and in the American Convention on Human Rights,<sup>176</sup> both of which are applicable in Chile.

### **The right to found a family**

391. This right is expressed in the Constitution, which considers the family as the fundamental unit of society.<sup>177</sup> This constitutional rule calls on the State to “*protect, foster and strengthen the family.*”<sup>178</sup> The same text establishes a set of precepts aimed at protecting and strengthening the family. It protects the honour of the individual and his family;<sup>179</sup> it relieves an accused person of the obligation to give evidence under oath against his immediate relatives;<sup>180</sup> it allows parents a preferential right to educate their children,<sup>181</sup> and guarantees their right to choose their children’s school.<sup>182</sup>

392. Throughout the decade of the 1990s, a series of legislative texts were drafted,<sup>183</sup> in order to bring Chilean legislation on children and the family into line with international rules, especially the Convention on the Rights of the Child, which has been in force in Chile since 27 September 1990.

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<sup>174</sup> According to the provisions of article 408 (4) of the Code of Penal Procedure, or article 250 c) of the Code of Trial Procedure.

<sup>175</sup> Article 23.3.

<sup>176</sup> Article 17.3.

<sup>177</sup> Political Constitution, art. 1 (2).

<sup>178</sup> Ibid, art. 1 (4).

<sup>179</sup> Ibid, art. 19.4.

<sup>180</sup> Ibid, art. 19.7 (f).

<sup>181</sup> Ibid, art. 19.10, subparagraph 3.

<sup>182</sup> Ibid, article 19.11, subparagraph 4.

<sup>183</sup> Mideplan, Interministerial Working Group on Children, 1999.

## **Measures facilitating the foundation of a family, and its maintenance, strengthening and protection**

### **Parents' responsibility for the upbringing and education of children**

393. According to Article 18 of the Convention on the Rights of the Child, States parties must use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. A duty arising from this obligation is that it imposes on States the need to take effective measures to ensure the economic protection of the family, with special consideration for the interests of the children concerned. The right of children to be provided for under our legislation was further strengthened with the approval of the law that establishes and regulates the rights and duties of parents with regard to the ownership of property and establishes the notion of family property.<sup>184</sup>

### **Recognition of the exercise of social rights by parents and children in full equality and without discrimination**

394. The Filiation Act mentioned earlier introduced significant changes in the existing legislation regarding filiation, and introduced the recognition of major social rights for parents and children. The new law recognized the obligations of parents towards their children<sup>185</sup> and the equality of children in the exercise of their rights and with respect to parental responsibilities, while it established the social duty to protect all children, without any distinction due to the children's legitimacy. The main purpose of the law was to make children equal with regard to filiation rights, putting an end to differences between legitimate and illegitimate children, and establishing a more expeditious system of recognition of paternity based on the principle of free investigation, allowing the use of any type of evidence which might meet with a court's approval. The Act also introduced substantial changes in the system of parental authority, in order to overcome difficulties which arose in the family from discrepancies between the rights of custody, which were usually exercised by the mother, and those of parental authority, which pertained exclusively to the father. Nowadays, the general rule is that parental authority is a right which must be shared by both parents.

### **Children's right to a family**

#### **Adoption Act**

395. The Convention on the Rights of the Child came into force in Chile on 27 August 1990. One of its requirements was that domestic legislation on children had to be brought into line with the Convention. In 1999, a law was passed in Chile to regulate all adoption procedures in the

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<sup>184</sup> Act No. 19,335 of September 1994, concerning the sharing of acquired property. According to this law, either of the spouses may apply to a court to declare the building used by the family as its main residence and the furniture it contains as "family property". In such a case, the spouse who owns the property cannot sell or let it without the consent of the other spouse.

<sup>185</sup> This right is enshrined in the Convention on the Rights of the Child, art. 18, and in the International Covenant on Civil and Political Rights, art. 24.1, in the following terms: "*Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State*".

country.<sup>186</sup> This law incorporates all the fundamental principles established in the Convention, such as the best interests of the child,<sup>187</sup> the rights of children to express their views,<sup>188</sup> and due considerations regarding the family, both adoptive and natural.<sup>189</sup> It reiterates the full content of Article 21 of the Convention, especially the principle whereby the adoption of a child is authorized only by competent authorities, in the case of Chile, the courts of law, subject to current legislation.<sup>190</sup>

396. The new legislation has put an end to the different categories of adoption. Now there is only simple adoption, which follows a complex procedure in two stages, but the main effect of which is to give children the condition of offspring, with all that that implies. It may be recalled that the previous system<sup>191</sup> recognized two types of adoption: simple and full. Only the latter form of adoption gave children the status of offspring, as under current legislation. This change is part of the trend in Chile to eliminate any cause of arbitrary discrimination in the law between persons, and especially with regard to children. Since the new legislation has come into effect, there has been no more legal difference between biological children and adopted children. Every procedure of adoption must go through two different stages. The procedure preceding adoption is conducted before a Juvenile Court with protective authority, and leads to a decision by the court as to whether a child is suitable for adoption or not. At this stage of the procedure, such problems as possible incapacities attached to the family of origin, or established situations of abandonment, have to be resolved. The second stage of the procedure, which can begin only once the first stage has been completely settled, consists in the actual application for adoption. It must be conducted before a Juvenile Court which is competent in matters of guardianship. The procedure is not contentious and is aimed at completing the adoption process by means of a final ruling, by which the applicant parents and the child who has been declared suitable for adoption become one family.

397. Another important change which has been introduced is the treatment of "international adoptions". In the previous system, adoption procedures conducted in Chile concerned only persons residing in the country, and who would continue to reside in the country after the adoption. For children who were not to remain in Chile, the law considered that it was sufficient to obtain custody in order to leave the country, subject to subsequent authorization for purposes of adoption (both by court ruling). The adoption proper took place in the country of destination. Prior to the reform, this type of adoption took place completely abroad, often without any reliable information being obtained regarding the outcome of the adoption procedures. The present system now distinguishes between applicants (future adoptive parents) residing in Chile, and applicants residing in another country. In both cases, a prior declaration of suitability for adoption is required, and the adoption procedure itself is conducted and concluded in Chile. This means to say that persons residing abroad assume the status of parents of the adopted child in Chile by court decision, after which a

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<sup>186</sup> Act No. 19,620.

<sup>187</sup> Articles 1, 3, 19, 24, 30 and 45.

<sup>188</sup> Article 3.

<sup>189</sup> Articles 1 and 7, amongst others.

<sup>190</sup> Act No. 19,620, the regulations thereto and the Hague Convention on International Adoption.

<sup>191</sup> Regulated by Act No. 18,703 of 1988, and Act No. 7,613 of 1945.

new entry is made in the Civil Register identifying the child in relation to the adoption procedure. It is important to point out that the criterion according to which one or other of these forms of adoption procedures applies is the place of residence of the applicants and not their nationality.

398. Since 1 November 1989, Chile has adopted the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, the purpose of which is to coordinate adoption procedures between the different countries subscribing to the Convention, in order to prevent child trafficking and to provide the best and most complete guarantees for adoption procedures. The National Minors' Service (Sename) is the State body responsible for national adoptions and the central authority for international adoptions.

399. Another aspect of the Adoption Act is that it provided multi-professional technical support for adoption procedures. In the new legislation on children (which considers children as entitled to rights and not subject to protection), it was established that the purpose of any adoption is to seek a suitable family for the child, and not the other way round. Sename and the bodies attached to it were made responsible for Adoption Programmes, according to which advice is given to the families of origin of the children who are to be adopted, as well as to the future adoptive families and to the children themselves. One of the main objectives of these programmes is to assess the persons who apply for adoption, in order to determine whether they are suitable as future parents. This assessment requires consideration of mental, physical, moral and psychological aspects of the future parents, which are analyzed professionally by a team of lawyers, psychologists and social workers.

### **Family courts**

400. In recent years, the family has undergone significant changes in its makeup. And yet family legislation in Chile has failed to keep up, and is considered to "regulate the family of a century ago". For this reason it was concluded that there was a need to set up Family Courts, as a means of discharging the responsibility of the State and society for resolving problems affecting the family.

401. Family Courts serve two major objectives: a) those pertaining to family jurisdiction (appeasement, specialization and completeness in the treatment of conflict); and b) innovations designed to facilitate the administration of justice. In a preliminary stage, it is proposed gradually to adapt the existing Juvenile Courts, by introducing procedures which are oral, flexible, concentrated and based on the principle of mediation. These courts will be competent to deal with all matters affecting families, in order to ensure that different procedures are not initiated in different courts. Preference will be given to non-contentious solutions to family problems, by encouraging harmony within the family group. Mediation - as a means of resolving conflict - has been introduced in the proceedings which the court must apply. The new institution will be regulated by special legislation concerning the mediation system, which will be annexed to the legislation on family courts. In order to set up these courts, two further draft laws need to be approved: one proposed constitutional Organizational Act governing the organization and powers of Family Courts; and one bill concerning the status of children and young persons, which implies a thorough overhaul of children's law in Chile.

### **Units for the Care of Victims of Violent Offences**

402. The Units for the Care of Victims of Violent Offences run by the Ministry of Justice are a community programme, entirely free of charge, for the benefit of persons of limited resources and their families who have been the victims of violent offences. These units respond to the need to protect the victims of serious offences characterized as violent, since in the past when such offences

occurred there was no service able to offer compensation to the victims. The units are established on the basis of agreements signed with municipalities. In December 1994, the first unit was set up in the municipality of La Pintana, situated in the metropolitan region of Santiago. In the light of its activities and of the interest shown by other municipalities, units were installed in four more municipalities of the region: in El Bosque (26 December 1996), Cerro Navia (1 April 1997), Peñalolén (13 April 1998) and La Granja (15 March 1999). These units perform a number of activities of interest to the community: they set up and maintain networks of support for victims; they participate in primary and secondary prevention initiatives, and they try to create awareness and encourage the community to deal with common problems. The main types of offences dealt with include: robbery with violence, homicide, assault, sexual aggression (rape, incest and dishonest abuse), violence in the family and ill treatment of children, acts constituting offences, quasi-offences of assault and quasi-offences of homicide. The establishment of these units for the care of victims reflects the State's concern in relation to the community for the situation of victims. In this respect there has been a change in the official response to public insecurity. The approach is different and looks at problems in psycho-social rather than purely political or judicial terms, while trying to offer support and protection for the victims of offences.

### **Maternity protection**

403. General health and maternity indicators have been satisfactory, thanks to the effort made, since before the 1990s, to reduce maternal and infant mortality. There has always been a tradition in Chile of providing health care through hospitals, which nowadays takes the form of the primary healthcare programme. Throughout the decade, indicators related to maternity have continued to improve.<sup>192</sup>

### **Scope of rules governing the protection of maternity**

404. Current legislation contains a set of rules for the protection of maternity.<sup>193</sup> The objectives of these rules are as follows: a) to defend working persons, in this case women, and through them to protect family life, and indirectly society as a whole; b) as far as possible to ensure an equal choice of work for women and men; and c) to defend the rights of unborn and newborn children, for what they mean in themselves and as a natural projection of the right to procreate and to feed and educate children.

405. The universe covered by national laws on the protection of maternity covers "*all women workers*", with an explicit mention for workers engaged in domestic service. According to the Labour Code,<sup>194</sup> the rules governing the protection of maternity apply to the services of the public administration, to semi-public services, to all industrial services, establishments, cooperatives or enterprises, and to mining, agricultural and commercial services (either State-owned, semi-State-owned under independent management, municipal or private or belonging to a public or private corporation).

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<sup>192</sup> See Health Indicators, Table 35, in the background given in this report concerning Article 12 of the Covenant.

<sup>193</sup> Labour Code, Book 2, Title 2, articles 194-208.

<sup>194</sup> Ibid, art. 194.

### **Women's right to physical integrity during pregnancy**

406. According to Article 202 of the Labour Code, during the period of pregnancy, women workers normally employed on tasks considered by the authorities as harmful for their health must be transferred to other tasks which are not harmful to their condition, without incurring any loss of pay. The article describes tasks which are especially harmful for the health of pregnant women as those requiring the lifting, dragging or pushing of heavy objects; those requiring a physical effort, including the need to remain standing for long periods; night work; overtime work and any other tasks deemed by the competent authority to be unsuitable for the condition of pregnancy.

### **Right not to be discriminated against during pregnancy**

407. A new paragraph was added to Article 194 of the Labour Code,<sup>195</sup> according to which no employer may make the recruitment of women workers, their continued employment or the renewal of their contract, or their promotion or mobility of employment, conditional on their state of pregnancy or otherwise, or require for such purposes any certificate or examination to check whether a female worker is pregnant or not.

### **Maternity leave**

408. Maternity leave, which is enshrined in the Labour Code,<sup>196</sup> consists in the non-renounceable right of women workers to take leave from work before and after delivery of their child, for a specific period of time. During such leave, the women receive an allowance equal to their normal pay and they must retain their jobs. This leave period, better known as pre-natal and post-natal maternity leave, extends for six weeks prior to delivery and 12 weeks after delivery, respectively, subject to the proviso that in some cases the two periods of leave and their corresponding allowance may be complementary:

(a) Before delivery

- (i) If a pregnancy-related illness occurs during pregnancy, which may be at any time from conception to the beginning of the pre-natal period, the woman concerned shall be entitled to additional pre-natal leave, the duration of which shall be determined by the services responsible for giving her prophylactic or curative medical treatment.<sup>197</sup>
- (ii) If delivery is delayed, the period of pre-natal leave shall be extended until childbirth.<sup>198</sup>

(b) If the worker falls ill after delivery as a result of the childbirth, her post-natal leave will be extended for a period determined by the service responsible for her prophylactic or curative medical treatment.<sup>199</sup>

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<sup>195</sup> Amendment to Act No. 19,591 of November 1998.

<sup>196</sup> Labour Code, art. 195.

<sup>197</sup> Ibid, art. 196.

<sup>198</sup> Ibid, subparagraph 2.

<sup>199</sup> Ibid, subparagraph 3.

409. A woman taking maternity leave, or additional or extended maternity leave, as provided for in the Labour Code, is entitled to receive an allowance equivalent to the whole of the remuneration and benefits which she normally receives, subject only to deduction of social security contributions and other applicable legal charges.<sup>200</sup> The entitlement to post-natal leave was extended by law<sup>201</sup> to the father of the child, in the sense that if the mother dies at the time of delivery or during the period of post-natal leave, this leave, or the remainder of the leave intended for care of the child, will be transferred to the father, who will also be entitled to receive an allowance on the same terms as the biological mother.<sup>202</sup> The same law, through Article 200 of the Labour Code, allows the female worker or male worker caring for a child aged less than six months, to take leave of 12 weeks with paid allowance, in cases where they have been awarded custody of the minor by a court or where the child has been placed in their personal care as a measure of protection.

### **Cash, medical and other social security benefits during maternity leave**

410. The health benefits to which pregnant women are entitled, either those in Groups A and B (free care) of the National Health Fund (Fonasa), or those in Fonasa Groups C and D (subject to a charge of between 10 and 20%) are as follows: pre-natal checks, delivery care, post-natal checks and supply of food (through the Supplementary Food Programme, which supplies food to children under the age of six and to pregnant women).

411. Chile allows the longest maternity leave of all countries in the region: 18 weeks, of which 12 have to be taken in the period following delivery. Extra leave is allowed, however, in the case of pregnancy- or delivery-related illnesses. During this period, the woman concerned receives cash benefits equivalent to 100% of her current remuneration, which is paid by the social security, subject only to deduction of social security contributions and other applicable legal charges.

412. As mentioned earlier, while they are nursing, women are allowed two daily rest periods totalling up to one hour, during the working day, in order to feed their children. These nursing periods are counted as working time and paid as such, as well as the time required to go to and from the nursery.

413. In the event of the mother's death, the post-natal leave will be transferred to the father, with allowance but without maternal entitlement. Maternity leave is also allowed for adoptive mothers. Similarly, any workers, female or male, caring for an infant aged less than six months because they have been awarded custody by a court or the child has been placed in their personal care as a measure of protection, are entitled to receive the allowance for 12 weeks.<sup>203</sup> During the period of leave granted to the working mother or to the father, as appropriate, or to the male or female worker caring for a child in accordance with the terms indicated in the foregoing paragraph, these persons are entitled to an allowance during the period of leave granted under the Labour Code in the event of the serious illness of a child under the age of one year.

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<sup>200</sup> Labour Code, art. 198.

<sup>201</sup> Act No. 19,250 of September 1993.

<sup>202</sup> Labour Code, art. 201.

<sup>203</sup> Ibid, art. 200.

414. The allowances referred to in the preceding five paragraphs are calculated in the same way as other allowances for work incapacity, and the terms on which they are granted are governed by specific rules.<sup>204</sup>

415. In the case of employed workers, the allowances shall be calculated on the basis of remunerations and benefits paid in the three months nearest to the month when the leave begins.<sup>205</sup> In the case of independent workers, the allowance will take account of the income and benefits for which contributions were paid in the six months prior to the month when the leave begins.<sup>206</sup>

416. With regard to independent female workers,<sup>207</sup> according to the law, the daily amount of allowances cannot exceed the equivalent of taxable income, less social security contributions and benefits, for which contributions were paid in the three months before the eighth calendar month preceding the beginning of the leave divided by 90, plus the full amount of the rise in the Consumer Price Index in the period of eight months preceding the month when the leave began, plus 10%. A further clause stipulates that the three previous months to be considered when calculating the daily ceiling of allowances, must be included within the six months immediately preceding the seventh or eighth calendar month before the month in which the leave begins, according to whether the workers are employed or independent; the months do not have to be in sequence, but in any case must be the most recent.

417. The existing legislation makes provision for the constitutional right to the protection of health and establishes a system of health benefits, whereby every pregnant woman is entitled to the State's protection during her pregnancy and until the sixth month following the birth of her child. This protection will include medical checks during pregnancy and after delivery. The newborn child will be entitled to health care from the State until he reaches six years of age.<sup>208</sup>

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<sup>204</sup> These subsidies are granted under the terms of Legislative Decree No. 44, of 1978, of the Ministry of Labour and Social Security. This Decree was amended by Acts Nos. 19,299 of 12 March 1994, 18,418 of 11 July 1985 and 18,469 of 23 November 1985.

<sup>205</sup> Legislative Decree No. 44, art. 8.

<sup>206</sup> Act No. 18,469 of 1985, art. 21. In accordance with the new paragraph 4 of article 8 of Legislative Decree No. 44, supplemented by Act No. 19,299, solely for the purpose of calculating allowances for pre-natal and post-natal maternity leave and for the extension of pre-natal leave, as referred to in articles 195.1 and 196.2 of the Labour Code, different medical allowances granted continuously and without interruption shall be considered as a single allowance. Notwithstanding the foregoing, Act No. 19,299 of 1994, amended by article 8 of Legislative Decree No. 44, established a ceiling for the benefits referred to in article 195.1 (pre-natal and post-natal leave) and article 196.2 of the Labour Code (extended pre-natal leave), by stipulating that the daily amount of these benefits, for employed workers, may not exceed the equivalent of the net monthly remuneration and allowances payable in the three previous months closest to the seventh calendar month preceding the beginning of the leave, divided by 90, and increased by the full amount of the rise which occurred in the Consumer Price Index (CPI) during the period included in the seven months before the month preceding the beginning of the leave, plus 10%.

<sup>207</sup> Act No. 18,469, Art. 2, amended by Act No. 19299.

<sup>208</sup> Act No. 18,469, art. 9.

418. The rules described above do not apply, or apply only partially, to some types of female workers, such as those who work on temporary contracts, those who work in very small enterprises and those who work in private homes. The insecure nature of much of women's employment means that many women do not have access to these benefits.

### **Right to job protection**

419. According to the terms of Article 201 of the Labour Code, throughout the period of pregnancy and up to one year after the expiry of maternity leave, all female workers enjoy this right, which guarantees the employment security of workers, ensuring that they have sufficient income to enable them to feed and bring up their child. According to this right, an employer cannot terminate a contract of employment without prior authorization from a magistrate, who may grant such authorization on the grounds set out in Article 160 of the Labour Code, and in Article 159, paragraphs 4 and 5, of that Code.

420. According to the law, if an employer, unaware of the pregnancy of an employee covered by maternity protection, terminates her contract of employment without the required prior authorization from a judge, he must reinstate her in her job and pay her all salaries due for the period of absence. In order to obtain this, the worker only needs to submit a certificate issued by a doctor or midwife.

421. According to an amendment to Article 201 of the Labour Code,<sup>209</sup> work protection is transferred to the father of the child in the event of the mother's demise, from the date of her death until one year after the post-natal leave she would have been entitled to; the transfer of this right to the father is expressly provided for in Article 195, paragraph 2, of the Labour Code. The right is lost if the father is deprived of custody of the child by a court decision.

422. Also under the above law, this work protection is extended to women and men, either unmarried or widowers, who have applied to a magistrate to adopt a child in accordance with the new Adoption Act referred to earlier, provided that they have been given the custody or personal care of a child by a competent court. This entitlement will cease whenever, by enforceable court decision, the personal care of the child is terminated, the application for adoption is rejected or the ruling granting the adoption remains without effect.

423. New job protection beneficiaries cannot be dismissed without prior authorization of a court. If their employment contract has been terminated without such authorization, because it was not known at the time that they had been given the custody or personal care of a child by the judge, the dismissal shall remain without effect, and the person concerned must be reinstated.

### **Right to nursery facilities**

424. The Labour Code makes it compulsory for any enterprise employing 20 or more female workers of any age or civil status to provide nursery facilities where the employees can feed their children under two years of age and leave them while they are working.<sup>210</sup> In order to extend the

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<sup>209</sup> Act No. 19,670 of 15 April 2000.

<sup>210</sup> Labour Code, art. 203.

coverage of this benefit, the law has made it compulsory to provide such facilities in shopping centres or complexes, administered under the same company name or belonging to the same legal entity, where at least 20 or more female workers are employed.<sup>211</sup>

425. Until November 1998, the obligation to provide nursery facilities was restricted to any enterprise employing 20 or more women. When the law was amended at that date,<sup>212</sup> the obligation was extended to shopping centres or complexes managed under the same company name or by the same legal entity, where at least 20 or more women are employed.<sup>213</sup>

### **Right of women to feed their children at work**

426. The Labour Code allows female workers the right to two periods of time off from work, not exceeding a total of one hour in the day, to feed their children under two years of age.<sup>214</sup> This time is considered to have been worked for the purposes of pay, regardless of the system of remuneration applied. The time off work must be extended to allow for the mother to travel to the nursery and back to feed her child, as expressly provided for in the Labour Code.<sup>215</sup> The employer also has an obligation to pay the cost of transport for the child to travel to and from the nursery, as well as the cost of transport which the mother has to use to go and feed her child in the nursery.<sup>216</sup>

### **Right to leave with payment of allowance in the event of the serious illness of a child under one year of age**

427. According to Article 199 of the Labour Code, if a child under one year of age needs to be cared for at home because of a serious illness, the mother will be entitled to leave and to the receipt of an allowance, which will be equivalent to all the remunerations and allowances she is currently receiving, less the social security dues and corresponding legal charges. The same right is extended to the father of the child: a) in cases where the mother had died; b) if the father has been given custody of the child by court decision; and c) if the mother decides that the leave should be used by the father, so long as both are employed.<sup>217</sup> The same law also extends the right to any male or female worker in whose care the child has been placed as a measure of protection, and the benefit may be extended to the worker's spouse where appropriate.

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<sup>211</sup> Act No. 19,408 of 1995.

<sup>212</sup> Act No. 19,591.

<sup>213</sup> Labour Code, art. 203.

<sup>214</sup> Ibid, art. 206.

<sup>215</sup> Ibid, art. 203.

<sup>216</sup> Ibid, last paragraph.

<sup>217</sup> Ibid, last paragraph.

## **Measures of protection and assistance for children and young persons under the age of 18**

428. The National Minors' Service<sup>218</sup> (Sename), attached to the Ministry of Justice, is an administrative body with responsibility for providing care and protection for children and young persons whose rights have been violated, for promoting these rights and for assisting the social resettlement of young persons who have committed offences. This work is carried out through specialized programmes in coordination with various public and private partners.

429. The system of assistance and special protection is based on the doctrine of the irregular situation, according to which the State plays the role of guardian. The policy of caring for children whose rights have been violated rests on the powers of the State to ensure the welfare of and protect children who find themselves in an irregular situation. These State powers are exercised through juvenile courts, the police and administrative bodies responsible for affording the children assistance and protection, and presupposes interference in the private life of the child and in his family relationships.

430. The present legislation on children, with its emphasis on personal care for the upbringing and education of children within the family, allows ample opportunities for the State to intervene through the specialized courts, which are empowered to remove a child from the care of his parents and to provide him with protection, on the basis of legal provisions which have given rise to broad interpretations, without any clear procedure governing those interpretations. In order to meet the requirements of the Convention on the Rights of the Child and of the reform of the progressive children's care system, the Ministry of Justice and Sename are currently engaged in preparing draft legislation for the protection of the rights of children and young persons and on the responsibility of young persons, as well as on reforms of the institutional rules governing the two bodies. The aim is to arrive at modern, protective legislation, in order to promote and secure the rights of children and young persons already recognized through the ratification of the Convention on the Rights of the Child.

### **Children and young persons subject to protection under the law**

431. The State exercises a role of guardian with regard to children and young persons who are considered to be in an irregular situation, according to the following criteria:

- (a) Children who are not in a position to seek care, because their parents lack the capacity to exercise custody, or because they are orphans or abandoned;
- (b) Children for whom the normal exercise of guardianship constitutes a risk or a danger for them (wrongful custody) because they are the victims of ill treatment, or are placed in physical or moral danger;
- (c) Children displaying disturbed conduct which does not infringe the penal law, or who are placed in a situation of social risk;
- (d) Young offenders under the age of 16, or those who, aged between 16 and 18 years, are declared to be lacking in discernment and therefore are not chargeable.

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<sup>218</sup> Set up under Decree-Law No. 2,465 of January 1979.

### **Measures of protection**

432. The protection of children<sup>219</sup> rests mainly on the action of the juvenile courts, which decide on the future of children in an irregular situation. The following measures are available to the magistrates:

- (a) Returning the minor to his parents, guardians or persons caring for him, with a warning;
- (b) Releasing the minor under supervision;
- (c) Placing him for as long as is necessary in special educational establishments provided by law;
- (d) Leaving the child in the care of a willing person, whom the judge considers able to look after his education, in order to ensure that he may continue living with his family.

433. The Act has established a special body, within the Directorate General of *Carabineros* (uniformed police), in order to act in a role of guardianship and protection with regard to the children and young persons who need assistance. This body is known as the Juvenile Police. Since the system implies that the rights of the assisted children need to be restricted, the Act also establishes strict limits on what the police may or may not do in this respect. These limits take the following form:

- (a) Children and young people may not be held on premises not authorized by law;
- (b) The police must bring detainees immediately before the competent courts, or within not more than 24 hours if they cannot appear immediately;
- (c) The Juvenile Police must do no more than summon the minor and release him immediately, if he was arrested on the charge of a minor offence and is of known abode, if he exercises a verifiable activity, or if he offers a security to the effect that he undertakes to appear at the next court hearing.

434. In the case of children requiring protection, the parents or guardians are notified and the child is returned to them. Only in the event that the child has no parents or guardians, he is brought before the judge, who will rule on a measure of protection. Lastly, it is expressly forbidden for the Juvenile Police to detain children or young persons under the age of 18 together with other detainees or prisoners over that age.

### **Implementation of protective measures**

435. The Sename (National Minors' Service) is responsible for implementing whatever measures are necessary to assist and protect minors in an irregular situation. It carries out this task through public and private bodies, with respect to which it performs specific functions, such as financing, supervising, monitoring, encouraging, guiding and technically coordinating their work.

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Minors' Act No. 16,618 of March 1967.

436. Since 1990, Sename has made considerable efforts to implement the Convention on the Rights of the Child. It has redefined its mission on the basis of the principles contained in that international treaty, with the aim of ensuring that the Convention's principles are adopted in Chilean society. Sename's role is to coordinate its activities with public and private bodies in order to establish and develop policies intended for the protection of children and young persons; in fulfilling this role, its objective is to provide the necessary guidance for the activities undertaken. In addition, it initiates programmes in consultation with the community, offering a series of opportunities through its network of facilities.

437. Sename's relations with the institutions that assist its work are regulated by law.<sup>220</sup> The Decree lays down the type of assistance the various establishments have to provide and how much subsidy they will receive for every child they assist. According to this approach, the State should play a subsidiary role, insofar as it does not directly take charge of the persons concerned, but rather provides support to individuals who do so.

### **Assistance Systems**

438. The purpose of these systems is to provide alternatives to the juvenile courts for the enforcement of measures prescribed by law.<sup>221</sup> The systems, which are intended to deal with children and young persons who require the special protection of the State, may be classified into four lines of action:

(a) Observation and Diagnosis Line, consisting of transit and distribution centres for nursing infants, preschool children and school children;

(b) Protection Line, which deals with boarding premises offering simple protection, family placement, establishments for children who are slightly or moderately retarded and establishments for children who are severely retarded;

(c) Behavioural Rehabilitation;

(d) Prevention Line, which deals with day care centres, community centres and youth clubs.

439. Starting in 1991, Sename has initiated and financed a number of specialized programmes, chiefly in ambulatory and community services, thereby extending the range of programmes in favour of children whose rights have been violated. These programmes have been developed in areas such as: ambulatory diagnosis, serious ill treatment and sexual abuse, drug addiction, commercial sexual exploitation of children and street children, amongst others. It has also set up the Offices for the Protection of Children's Rights (OPDs).

440. These OPDs operate locally, undertaking activities aimed at ensuring full protection for the rights of boys and girls who find themselves in situations of social exclusion or loss of rights. The objectives of the OPD programme include trying to remove children's problems from the courts,

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<sup>220</sup> Legislative Decree No. 1,385 of 6 November 1980.

<sup>221</sup> Ibid.

improving the conditions of internment of children whose rights have been violated, and strengthening families, social networks and communal services to improve the protection of children's rights.

### **Observation and Diagnosis System**

441. This system provides the general entry point to assistance for children in an irregular situation, and must deal with all minors referred to it by the courts. The system is subdivided into:

(a) Observation and Diagnosis Centres, which take in minors convicted of acts constituting crimes or minor offences, who will be kept in the centre until the court adopts a ruling in their case or takes a decision with regard to their capacity for discernment;

(b) Transit and Distribution Centres, designed to look after youngsters in need of diagnosis, assistance and protection, until such time as the court decides on an appropriate measure. The centres also deal with young persons who have infringed the law but do not need to be detained. The centres operate as boarding establishments.

442. In this system, Sename has direct administrative responsibility for the Observation and Diagnosis Centres. As a result, in 1999, Sename was administering a total of 24 establishments providing diagnosis and behavioural rehabilitation, both for young offenders and for children requiring assistance and protection, offering a total of 1,830 places. One fundamental objective is eliminating the presence of minors altogether in adult prisons, for which a plan has been launched to develop appropriate infrastructure. The main aim has been to be able to establish a diagnosis without removing the children from their environment unnecessarily. For this purpose Ambulatory Diagnosis Centres have been set up throughout the country.

443. With its system of diagnosis, especially through the Transit and Distribution Centres, Sename has made an effort to separate diagnosis from residence, the latter being considered as a last resort to be used only exceptionally, so that the diagnosis facility is run on an ambulatory or external basis. The objective of diagnosis has also been reviewed, with greater emphasis being placed on identifying how and to what degree the rights of individual children have been violated.

### **Protection System**

444. This system deals with children up to the age of 18, extending the age limit to 24 if the young persons are attending higher studies, if they are severely intellectually retarded, if they have suffered serious violations of their rights, or if their families are either absent or incapacitated (i.e. they are without care or with inappropriate care). The protection system is implemented through four subsystems:

- (a) Boarding establishment offering simple protection;
- (b) Family placement;
- (c) Boarding establishment for the protection of slightly and moderately retarded children;
- (d) Boarding establishment for severely retarded children.

445. These facilities make up the system of residential protection available for children having suffered serious violations of their rights who need to be separated from their family environment. The facilities, which are laid down by law,<sup>222</sup> are aimed at ensuring the welfare of the children concerned and protecting their basic rights to sustenance and participation, as well as restoring their rights to grow up and develop within a family environment as soon as possible.

446. Within the framework of the reform which has been undertaken of the existing system for the protection of children, Senegal has started to rationalize its residential protection facilities, by reducing the number of residential places, while at the same time offering alternative ambulatory services aimed at strengthening the family background, so as to help children remain within their family and their community.

### **Rehabilitation System**

447. This system deals with children and youngsters who have broken the law but cannot be charged or who display serious behavioural disorders. It operates through three subsystems:

- (a) Internment for behavioural rehabilitation;
- (b) Release subject to supervision;
- (c) Day behavioural rehabilitation.

The aim of the system is to facilitate, guide and support the social resettlement of youngsters charged with breaches of the criminal law, who have been referred by the competent courts.

### **Prevention System**

448. This system is intended to help youngsters up to the age of 18 whose rights have been violated, as well as their families. Prevention takes the following forms: day-care centres, community centres, youth clubs, day-care centres for slightly or moderately retarded children, and day-care centres for seriously retarded children.<sup>223</sup>

449. Community centres have been created and developed for children and young persons, placing the emphasis on promoting the children's rights within the community and providing technical facilities for the children, young persons and their families, often originating from areas where they are exposed to very unfavourable conditions and opportunities. Alternative approaches are currently being studied to provide daily care for children whose rights have been violated.

### **Support programmes**

450. Since 1991, Senegal has been running a support programme, favouring the implementation of new types of projects specializing in rehabilitation work, dealing mainly with problems such as serious ill treatment, child sex abuse, drug consumption, commercial sexual exploitation of children, street children and working children.

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<sup>222</sup> Legislative Decree No. 1,385.

<sup>223</sup> Legislative Decree No. 1,385.

451. It is also worth mentioning that there is an adoption programme (international and national) for abandoned children, which was dealt with in earlier paragraphs.

### **Child labour**

452. The Labour Code refers to “*the capacity to enter into contracts and other rules governing the work of women and minors*”.<sup>224</sup> The code regulates apprenticeship contracts for young persons under the age of 18.<sup>225</sup> There are a great many children, however, who are engaged in informal work, such as street vendors, paper collectors and similar activities, who are left with no legal protection. A study of the Labour Directorate, carried out in 1998 among 300 school children between the ages of 8 and 18, in the Metropolitan Region, found that 40.9% of the children performed some kind of work.<sup>226</sup> Data obtained by the Casen survey in 1996 indicated that approximately 47,000 children between the ages of 6 and 14 worked in the three months preceding the survey, which is equivalent to 1.9% of the population in that age group.

453. The statistics concerning the work of children, as an admission variable to the Sename network, provide enlightening but insufficient information, since they describe the situation of children undertaking work, but only under the heading of “premature work” or “street trade”. While such children are admitted to Sename’s regular programmes (line of assistance and support programme), there are no specific programmes for dealing with child labour, and protective measures are very general in scope.

454. The tendency has been for children admitted to Sename’s network under the heading of “premature work” to diminish (from 3,657 children in 1997 to 1,821 in 1999). The situation as regards children in the “street trade” category, however, has worsened, with the number of cases rising from 32 in 1997 to 236 in 1999. The breakdown by gender for street work is 18.9% female and 81.1% male in 1999. There has been a slight increase in the number of girls involved in premature work (a rise of close to 4% since 1997), although the number of admissions to Sename’s network of girls and young women under this heading has tended to diminish. When the trends are compared, it is found that “street trade” has been increasing, while “premature work” has been decreasing. Young people involved in premature work tend to be concentrated in the over-16 age group (38% in 1999), although there has been a tendency for this type of work to increase in younger age groups, that is to say, in the 10-12 and 13-15 age groups.

### **Information and dissemination with regard to children’s rights**

455. There are joint campaigns for the dissemination of the Convention on the Rights of the Child, run mainly by the Ministry of Justice and the Ministry of Education. These campaigns are aimed at creating awareness among the public about the rights of children and young persons. The initiatives include:

- (a) The promulgation by the Ministry of Education of a decree regulating the functioning of student centres, with democratically elected representatives;
- (b) The Schoolchildren’s Ombudsman, which began operations in 1994;

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<sup>224</sup> Labour Code, Book 1, Chapter 2, Title 1.

<sup>225</sup> Ibid, Chapter 1, Title 1.

<sup>226</sup> Labour Directorate, Exploratory Study on Child Labour, 1999.

(c) The Filiation Project, which recognizes the views of the child “*who possesses sufficient discernment*” in decisions concerning the child’s custody;

(d) Approval of the regulations on Children’s Homes and welfare institutions, establishing the right of the children concerned freely to express their views, which need to be taken into account if they are of sufficient age and maturity.<sup>227</sup>

456. With regard to opportunities for the children to be heard in judicial and administrative proceedings that affect them, the authority may but is not obliged to consult the views of the child. According to the Minors’ Act, the court may exercise the powers allowed under the law at the request of the Juvenile Police, of organizations or bodies caring for children or any other person, or even of its own volition. In exercising such powers, the court may order whatever “*procedures and investigations are deemed appropriate*”.

457. Some of the measures which have been taken to make families and the public in general aware of the need to encourage children to exercise their right to express their views are the following:

(a) The Seminar for the Rights of the Child, held in 1997 in the National Congress, under the auspices and with the sponsorship of UNICEF and in conjunction with the group of parliamentarians for children. The Ministry of Justice and Sename took part in the seminar;

(b) As far as the law faculties are concerned, the Diego Portales University has been delivering a postgraduate course for professionals working in the sector since 1997, in which the Convention and its consideration in public policies has been a key theme;

(c) The Judicial Academy, which trains court officials, especially social workers and magistrates, from the start introduced specialized courses on children, whose general objectives include closer acquaintance with the Convention on the Rights of the Child;

(d) Awareness campaigns for the prevention of torture and other cruel, inhuman or degrading treatment or punishment perpetrated against children, conducted by institutions specializing in children’s affairs, such as the National Kindergartens Board (*Junta Nacional de Jardines Infantiles*, known as Junji); the Integra Foundation, which cares for poor boys and girls, the Municipal Programmes for Children and Sename;

(e) The Good Treatment for Children campaign, which was launched in May 1997. It was given nationwide coverage through the Regional Committees for the Prevention of the Ill Treatment of Children, and made use of all the public media (press, television and radio) and public places (metro, hospital centres, shopping centres, etc.). Some booklets and technical publications were also prepared for professionals working in the sector.

458. Sename itself has also run courses for professional staff dealing directly with children, and for institutions, services and establishments working with and for children, with a view to preventing all types of ill treatment.

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<sup>227</sup> Decree No. 730 of 19 June 1996, art. 2.14.

## **Shortcomings and problems of the system of justice and the protection of the rights of children and young persons**

459. Despite the progress achieved in the last ten years, the rights of the child are still not fully respected in Chile. The approach commonly adopted in social policy does not take full account of the rights of the child, so that such policies never succeed in benefiting and extending their coverage to all children. The shortcomings in the legislation governing Sename (National Minors' Service) can be resolved only through a complete reform of the system. There is still a degree of confusion between the notions of protection and punishment. Welfare policies try to offset the deficiencies of basic social policies, but they have not managed to achieve equal opportunities for children. The protection system takes a judicial approach to childhood problems which are of a social nature, such as poverty. Lastly, there is no system of justice which is specifically intended for juvenile offenders. In order to deal with all these problems, a comprehensive reform of the system of justice and the protection of children's' rights has now been started.

### **Measures taken to remedy these shortcomings**

#### **Comprehensive reform of the system of justice and protection of the rights of children and young persons**

460. Through the Sename, the Government has been promoting a series of legal and institutional initiatives, with a view to improving the system of justice and protection of children's rights in the country, since despite the significant progress made under the democratic governments, many institutions and professionals working with children are still convinced that much remains to be done. In response, it was decided to undertake a profound reform of the whole childcare system, ensuring that the new system would be fully in line with all aspects of the requirements contained in the Convention on the Rights of the Child. This reform is being carried out in conjunction with private bodies, which have been cooperating with the State in the task of bringing care to children whose rights have been violated and to juvenile offenders. This reform, which aims to introduce a system of full protection for children's rights in Chile, recognizing the child as a subject in his own right and not as the mere recipient of welfare assistance, is based on the following principles:

(a) Recognizing, enhancing and encouraging the preferential right of children and young persons to live with their families, to exercise their rights within their families, and to ensure that the State provides due support for these policies;

(b) The right of young persons charged with or found guilty of committing an offence to be treated with due regard for their dignity and rights, taking account of the need to safeguard their development and social integration;

(c) Placing due emphasis on the need for cross-sectoral work, in which the different State institutions and the community play a central role in generating the sort of conditions which will ensure that young persons are entitled to their rights;

(d) Giving preference to the local environment as the most appropriate level at which to offer comprehensive services to children and their families.

461. In order to be implemented, the reform requires institutional, legislative as well as cultural changes. From an institutional point of view, it implies dealing separately and specifically with the protection of rights on the one hand and the penal responsibility of young people on the other. This

more specialized approach will give rise to a need for skills, knowledge, procedures and programmes of action which are different according to whether children whose rights have been violated are concerned or juvenile offenders.

462. From a legislative point of view, there is a need for a system of justice for the family and for the protection of the rights of the child, as well as a system specifically dealing with young offenders. This means there is a need for the following legislation, which is currently being prepared by the Ministry of Justice and by Sename:

(a) The Children's and Young Persons' Rights Protection Act, which will incorporate all the existing rules of the Convention on the Rights of the Child;

(b) A law setting up the National Service for the Protection of Children's Rights, intended for children whose rights have been violated;

(c) A law setting up the Juvenile Offenders' Penalties Enforcement Service;

(d) The Juvenile Offenders Liability Act, which will regulate the liability of young persons for any offences they commit from the age of 14 years upwards, while allowing them the penal and procedural guarantees stipulated in the Constitution and the Convention, protecting the rights of victims, meting out penalties appropriate for the age of offenders and placing the emphasis on rehabilitation;

(e) The Family Courts and Children's Rights Protection Act.

463. From the cultural point of view, an effort will be made to encourage the public to take a more active part in respecting and protecting children's rights, their right to live in a family and in their community, and to be treated as subjects entitled to rights and not merely as objects of protection. Sename's main tasks over the years ahead will include the gradual removal of children who are currently held in oversized establishments, which has already begun. This is accompanied by the development of programmes for family resettlement, improving family reception programmes as well as strengthening the adoption programme. There is also a plan to set up small-sized homes to take in children in a family atmosphere who have no alternative to living in an institution.

464. In the area of rehabilitation, the centres directly run by the State through Sename have been developing and implementing a new model of care, more appropriate for the needs of young persons, with the help of local networks supporting their rehabilitation work.

465. The guidelines of the reform comply with the international agreements signed by Chile in the area of children's rights, including those aimed at restraining social violence and ill treatment inflicted on children and young persons, making progress with the elimination of exclusion and social discrimination, ensuring minimum food, health and public education standards for children, and recognizing the need for a strategic alliance between all sectors to ensure the protection in practice of children's rights.

466. The aim of this reform is to establish a system for the protection of the rights of children that have suffered grave violations, to set up local mechanisms to guarantee effective protection and to encourage a more active role by the family.

**Draft law establishing a system of child care through the network of collaborators of the National Minors' Service, and its funding**

467. Despite all the legal changes introduced by democratic governments, there is still an urgent need for structural changes in the area of children and the family, such as a reform of the system of child protection, the introduction of a system of criminal justice designed for young persons and improvements in family legislation. The proposed legislation will change Sename's care system and the way it is funded, bringing the Chilean legal system in this respect into line with the principles and rules established in international treaties, especially the Convention on the Rights of the Child. It will also establish new responsibilities for the State, society and institutions contributing to Sename's care network. It is based on five basic principles for the implementation of a policy to protect children and young persons whose rights have been violated and young offenders:

(a) Principle of inclusion: aimed at ensuring access for the child and his family to the benefits of basic social policies and compensatory social policies;

(b) Principle of comprehensiveness: aimed at incorporating and coordinating the sectoral resources of public policy in order to deal with situations in which the rights of children are threatened or violated;

(c) Principle of territorial focus: aimed at encouraging the participation of regional and municipal bodies in the management and use of sectoral and Sename resources;

(d) Principle of participation: aimed at recognizing the capacities and the right of children and their families to participate in the management of measures undertaken to solve their problems;

(e) Principle of legal protection for the rights of children: aimed at facilitating the solution of legal conflicts arising between children and their parents, or between the latter and the authorities.

468. The new legislation would imply a substantial injection of Government funds in the current budget, which would cost an additional 8,400 million pesos (US\$ 12,192,643).<sup>228</sup>

469. The new model of childcare implemented through the Sename network establishes a clear separation of official responses on the one hand to situations in which the rights of children and young persons are threatened or violated, by seeking the availability of special resources, coordinated locally with basic social services, with a view to avoiding a fragmentation of Sename's programmes within the larger front of social policies. On the other hand, in order to deal with breaches of the criminal law, an effort is made to introduce programmes relying on measures that avoid any form of detention, which would be an essential part of any future legislation concerning the liability of young persons for offences against the criminal law.

470. In order to meet these challenges, the draft legislation introduces changes in the lines of action implemented by Sename, creating a new programme of care in the form of the Offices for the Protection of Rights (OPDs). These are technical and operational in nature and will endeavour to ensure that, within a particular area, children and young persons who find themselves in a vulnerable position, or in a situation where their rights are seriously threatened, as well as their

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At the average exchange rate for 2002.

families, have effective access to the programmes, services and resources that are available in the community. Special protection should also be offered directly whenever necessary. The new law will set up two new types of residential centres, in the form of residences and shelters. The idea here is to avoid the mass, institutionalizing approach of the existing internment establishments. Access to the new centres will be decided by the competent judicial authority within a certain time limit. A residence (*residencia*) will be a centre of limited size aimed at providing children and young persons deprived of their family environment of the necessary care and access to social services on a stable basis, while making an effort to ensure that the children maintain and strengthen their family relations or prepare to lead independent lives. The shelters (*casas de acogida*) will provide temporary accommodation, in order to look after children and young persons who are deprived of their family environment, while an attempt is made to reunite the children with their parents or with the persons in charge of their welfare, or while the courts arrive at a decision in their case.

471. The new law also aims to diversify the range of programmes offered by Sename, in order to bring its programmes more in line with present-day problems, for instance, by adding the possibility of financing projects in the area of children's rights aimed at providing training, disseminating information about those rights and preventing threatening situations from arising in the first place. Greater emphasis also should be placed on programmes aimed at protecting rights, moving away from the traditional approach linking such programmes with diagnosis and the internment of children in residential systems. A method of partial diagnosis can be introduced without the need to intern the children, based on the opinions of experts, which would also have the effect of reducing the technical assessment work of the judicial authority concerned.

472. With this new model of child care, there has also been a need to review the allocation of resources to collaborators, in order to eliminate the misdirected incentives offered under the present model. A Register of Collaborating Institutions is to be set up, linked to a system of tendering for the allocation of available funds in each line of action, and introducing procedures which allow both for penalties and for complaints, as appropriate.

473. The new model of assessment of Sename is aimed at detecting problems arising in the implementation of lines of action. It will be the main tool for the management of Sename and will facilitate a compilation of the results of regular assessments, which will then serve as a basis for classification systems.

### **Changes affecting Article 10 rights**

#### **Administrative measures by the Ministry of Justice concerning the family**

#### **Cross-sectoral Committee for the Prevention of the Ill Treatment of Children in Chile**

474. The Cross-sectoral Committee for the Prevention of the Ill Treatment of Children in Chile was set up in 1995. Its mandate is: "*To put forward recommendations aimed at protecting children against all forms of ill treatment, violence, physical and/or mental harm or abuse, neglect and, in general, all practices harmful to the survival and development of the child*".<sup>229</sup>

475. This Committee is made up at present of representatives of the Ministries of Education, Interior, Planning and Cooperation, Health, the Executive Office of the Government, the General Office of the Presidency, Economy, the Metropolitan Ministerial Regional Secretariat of Justice,

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Decree No. 697 of 24 March 1995.

Judicial Authority, National Minors' Service, *Carabineros* of Chile, Investigation Police, Social Investment and Solidarity Fund, Network of Municipal Defenders of Childhood, Integra Foundation, National Kindergartens Board (Junji) and the Family Foundation. This specialized work team has already undertaken major tasks in the area of promotion (three national prevention campaigns), training and intervention.

### **Sexual exploitation of boys and girls**

476. Three working committees were set up on the basis of the agreements reached at the First National Conference on Violence and the Commercial Sexual Exploitation of Children and Young Persons, held in August 1999. The committees, which were coordinated by the Ministry of Justice, were attended by representatives of the institutions present at the conference (NGOs, government institutions dealing with children's affairs, private institutions, police, universities, etc.). The objective of the committees is to prepare a plan of action for dealing with the sexual exploitation affecting boys and girls in Chile.

477. This new scheme tackles the problems from a social, legal and criminological point of view, with the intention of gathering reliable information concerning the sexual trade in children, arriving at an estimate of the number of children affected, and obtaining relevant data concerning pornography and child-related sexual tourism in Chile. It aims to promote policies for the introduction of programmes for prevention and specific treatment, as well as studies of the new legislation required, in order to prevent, classify and penalize all forms of behaviour that are harmful to children's rights in the area of sexual exploitation and trade. Starting in 2001, Sename has been implementing a specific programme to deal with 60 children in the metropolitan area, with a view to repairing the psycho-social damage suffered by victims of commercial sexual exploitation. One conclusion reached is that there is a need to heed the opinions and viewpoints of child victims when designing programmes and measures of prevention and intervention in this area.

### **Programme on Violence in the Family and the Ill Treatment of Children and Call Line 800-220040**

478. The Ministry of Justice, in conjunction with the *Carabineros* of Chile, the investigative police, regional governments and the Telecommunications Company of Chile, started this programme in 1995, as part of a general attempt to deal with violence in the family and the ill treatment of children. The first telephone line was opened in the Metropolitan Region and then extended to other regions in subsequent years. Since it was launched, the 800- telephone line programme has undertaken a number of tasks and actions, which have been constantly assessed, extended and improved. At present the programme offers care and attention for child victims of violence and/or ill treatment. It also receives complaints, gives out information on legal aspects, and deals with referral, the preparation of regional registries, follow-ups to complaints, training and the preparation of specialized material. As far as statistics are concerned, the open line 800-220040 in the Metropolitan Region, from January 1998 to 31 May 2000, processed a total of 10,800 calls, with an average of 425 calls per month.

### **The Legal Aid Programme and the services it provides**

479. In May 1993, the Ministry of Justice, with the support of the municipalities, launched the Legal Aid Programme "Access to Justice", which has explored several new ways of providing legal aid. The programme works with legal advice officers and fixed and mobile information centres, manned by teams of lawyers and social workers, who, with the help of computerized equipment,

provide a rapid and timely service to users. The fixed operating units receive visitors every day in the same place, while the mobile units move to different places, selected by common agreement with the municipalities concerned.

480. The programme at present covers 52 municipalities in the country: 12 in the metropolitan region (Provinces of Santiago and Chacabuco), 10 in Region VIII, Bío Bío (Provinces of Arauco and Concepción), 5 in Region IV, Coquimbo (Province of Limarí), 9 in Region VII, Maule (Provinces of Linares and Cauquenes), 7 in Region X of the Lakes (Province of Chiloé), and in the whole of Region II of Antofagasta. The Legal Aid Corporations also run legal consultancies in most of the country's municipalities.

481. The programme provides information and guidance in all legal and social matters. The objective of the service is to enable the community to know its rights and how to make them effective. It also helps to settle conflicts without resorting to litigation, using methods such as mediation and conciliation. In view of the slowness of court proceedings, a great proportion of conflicts and disputes are resolved out of court in the legal consultancies, by agreements reached between the parties. If a matter affecting a person of limited means needs to be brought before the courts because it cannot be resolved through mediation, the person concerned will be advised by a lawyer, who will take over the case and lead the person through the court proceedings.

482. The programme also does community work, by organizing educational activities, disseminating and promoting rights, creating awareness and trying to prevent legal and social problems. These parts of the programme are conducted through talks, workshops, seminars, the supply of information material, radio programmes and mass information and awareness activities. These actions take place locally, at the initiative of communal teams, and are implemented in coordination with other institutions, local organizations and representatives of organized groups in the community, through the establishment of support networks and cross-sectoral work.

483. The programme also gives assistance to the victims of violent offences, as part of an effort to develop strategies that meet the need at the same time for public security and for access to justice. Special units have been set up to assist the victims of offences, consisting of a criminal lawyer and a psychologist. These units attend to the victims and represent them in court, working in conjunction with the legal consultancies of La Pintana, El Bosque, Cerro Navia, Peñalolén, La Granja and Quilicura, all in the Metropolitan Region.

**Table 15**  
**Legal Aid Programme consultation areas**  
**January-December 1999**

	Family	Housing	Employment	Neighbourhood	Criminal	Social benefits	Inheritance	Property	Total
Antofagasta	2,567	1,032	1,343	80	1,067	312	1,002	1,304	8,707
Coquimbo	579	285	234	61	180	127	494	215	2,175
Maule	3,476	451	652	186	1,234	610	1,021	1,150	8,780
Bío Bío	4,462	561	786	224	1,004	940	875	1,024	9,876
Lakes	732	112	209	62	308	18	213	322	1,976
Metropolitan	12,698	3,292	3,077	367	1,527	539	3,126	2,089	26,715
TOTAL	24,514	5,733	6,301	980	5,320	2,546	6,731	6,104	58,229
Percentage	42.1	9.8	10.8	1.7	9.1	4.4	11.6	10.5	

Source: Ministry of Justice

484. Many legal consultations concern some aspect of family law (see Table 15), food, custody, visiting rules, recognition of paternity and violence in the family. Consultations are held on other matters related to the family, such as the housing programme, guidance regarding access to social benefits and information concerning rights of inheritance.

### **The Programme “Know Your Child” of the Chilean *Gendarmería* (prison service)**

485. Under the terms of an agreement between the Ministry of Education and the Ministry of Justice in 1997, the programme called “Know Your Child” was launched for mothers deprived of liberty in prisons administered by the Chilean *Gendarmería*. Its objective is to help improve the physical, mental and social development of children of preschool age whose mothers are in prison, and to strengthen family links through activities, in the course of which parents can acquire useful knowledge, values and forms of conduct that will support them in their parental role. The aim is to strengthen the link between mother, father and child, regardless of whether the parents are both deprived of liberty, as a means of contributing both to the development of the child and to the affective development of the parents.

486. The programme began as a pilot project in a prison for women. In the years following its launch, there was a significant increase in participation in the programme, due to the interest shown by the prison inmates in a subject as important as the family, and even more so the children, in their search for real social resettlement. For women who are incarcerated, their children provide a powerful motivation when it comes to undertaking a genuine commitment to change.

487. In 1999, detained fathers were also brought into the project. The outcome was judged in each case by the prisons to be positive, with regard to the behaviour of the prison inmates, and especially in their relations with their children. The methodology used is active and participative, requiring parents to play an active part in the learning process. They are encouraged to participate in activities aimed at giving them an opportunity to express feelings and ideas, using a variety of playful approaches, such as games, simulations and dramatizations, through which they learn by doing and by playing. These workshops take the form of educational meetings allowing the opportunity for individual and group learning, through the collective consideration of each individual’s experience with the education and socialization of the children, and with the solution of family problems.

488. The programme currently covers ten regions in the country (I, II, IV, V, VI, VII, VIII, IX and Metropolitan). In 1998, the programme was run in 12 prisons, where 168 women took part; in 1999 it covered 14 prisons, with 235 participants, male and female; and in 2000 it was extended to 16 prisons, with a total of 333 male and female participants.

### **Legislative measures**

489. In addition to the legal reforms mentioned in earlier paragraphs, the following measures also affect the rights enshrined in Article 10 of the Covenant.

### **Measures to protect children against all forms of physical and mental harm or abuse, neglect, negligence, ill treatment and sexual exploitation**

490. A number of laws were passed starting in 1994 in order to penalize all forms of ill treatment of children, violence in the family and sexual abuse of children. These laws were a conscious effort to follow international rules regarding the prevention and punishment of violence against women, and the ill treatment, abuse and sexual exploitation of children.<sup>230</sup>

### **Rights of children against illicit transfer and non-return. Convention on the Civil Aspects of International Child Abduction**

491. Article 11 of the Convention on the Rights of the Child establishes an obligation for States parties to take measures to combat the illicit transfer and non-return of children abroad. To this end, States parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements. Pursuant to the commitment, on 17 June 1994 the Convention on the Civil Aspects of International Child Abduction entered into effect. This Convention was approved at the 14th session of the Hague Conference on Private International Law and is intended to secure the prompt return of children wrongfully removed or retained and to ensure that rights of custody and access are effectively respected. The Ministry of Justice requested that the Supreme Court issue a general order giving instructions regarding the application and interpretation of the procedures contained in this instrument, which the Supreme Court duly did on 3 November 1998.

### **Right to enjoy a full life and active participation of physically or mentally handicapped children**

492. From 1994 onwards, legislation was introduced with regard to: the full social integration of disabled persons; the description and diagnosis of disabilities; prevention, rehabilitation and equal opportunities; the National Disability Register, including procedures and penalties; and the new National Disability Fund, a State body whose objective is, totally or partially, to finance plans, programmes and projects in favour of disabled persons.<sup>231</sup>

### **State recognition of the existence of indigenous ethnic groups and the rights of these groups to apply their own law, and to have their own cultural life, religion and language**

493. In 1993, the Indigenous Act recognized the existence of indigenous ethnic groups living in the country and created an obligation for the State in particular and for society in general to respect, promote and protect indigenous cultures and to favour their development and well being. The

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<sup>230</sup> These laws include Act No. 19,304 of 24 April 1994, amending article 16 of the Minors' Act; Act No. 19,324 of 26 August 1994, introducing amendments in the Minors' Act; Act No. 19,325 of 27 August 1994; Act No. 19,409 of 7 September 1995, introducing a new Article 367*bis*, aimed at punishing any person who should encourage or facilitate the entry or exit of persons to engage in prostitution, the penalties being increased in cases where the victim is under age; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belém do Pará"), published on 11 November 1998; and Act No. 19,617 on Sexual Offences of 12 July 1999.

<sup>231</sup> Act No. 19284 of January 1994.

recognition of indigenous rights led to a growing recognition of the rights of children of minorities to enjoy their own culture, to profess and practice their own religion or to use their own language. These rights are expressed in Article 30 of the Convention on the Rights of the Child.<sup>232</sup>

### **Measures to protect children from the illicit use of narcotic drugs and psychotropic substances and to prevent the use of children in the illicit production and trafficking of such substances**

494. Several recent laws punish illicit trafficking of narcotic drugs and psychotropic substances, by amending earlier legislation.<sup>233</sup> Special rules apply to persons under 18 years of age. Young persons who are under 18 but over 16 years of age are brought before the competent juvenile court, which, even in the absence of a declaration as to whether the young person acted with discernment or not, may include in the sentence the obligation to attend prevention programmes and for the young person to participate in activities for the benefit of the community. The court must, however, request a medical examination, as provided for by law, and in certain specific cases, order the young person to follow whatever treatment is advised, while making the necessary arrangements.

### **Amendment of the Code of Penal Procedure and the Penal Code with regard to detention and the protection of citizens' rights<sup>234</sup>**

495. These amendments were passed to prevent abuse on the part of the police of so-called "arrest on suspicion", according to which any young person could be arrested on account of his "physical appearance or mode of dress". This possibility was done away with under the new legislation. Nowadays, the police may identify from a range of legally determined circumstances those which refer to: offenders apprehended *in flagrante delicto*, convicted persons who have evaded their sentences, persons who have escaped detention, and persons hiding their identity or refusing to identify themselves. The amendments also establish, as a duty of public officials in charge of detention, that every arrested person must be told the reason for his detention and his rights according to the law.

### **Respect for and full recognition of fundamental freedoms and guarantees for children deprived of liberty**

496. A complete reform of legislation concerning children, and more particularly juvenile offenders, is one of the priority commitments of the Government of Chile. The following measures have been decided in this respect:

(a) To set up a work team, at national and regional level, to ensure that all children and young persons are removed from adult prison premises;<sup>235</sup>

(b) To establish working committees charged with preparing proposals for the complete removal of children and young persons from adult prisons, for submission to bodies working directly with children and young persons, especially juvenile offenders. These committees are cross-sectoral and are intended to continue operating indefinitely, their main objective being: "to

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<sup>232</sup> Act No. 19,253 of 5 October 1993.

<sup>233</sup> Act No. 19,366 of January 1995 and Decree No. 565 of January 1996.

<sup>234</sup> Act No. 19,257 of 1993.

<sup>235</sup> Independent Decision No. 1,820 of 6 August 1993.

avoid the detention of minors in prison premises for adults, by putting forward concrete recommendations to the authorities dealing directly with minors in an irregular situation and deprived of liberty”;<sup>236</sup>

(c) To prevent all possibility of non-chargeable minors being admitted to prison. As a result, Article 12 of Decree No. 2531 of 14 December 1928, approving the Regulation of the Act on the Protection of Minors and subsequent amendments, was repealed. Article 12 established that “in cases where there are no Minors’ Homes, a special section will be set aside completely separate from the premises used by adults in the penal establishment or detention centre, and this special section shall be operated according to the rules governing Children’s Homes”;<sup>237</sup>

(d) To authorize the National Minors’ Service (Sename) to allocate funds to the prison service for all young persons under the age of 18 who are deprived of liberty. This rule ensures that minors receive the most effective form of care, and ends the arbitrary discrimination affecting young persons under the age of 18 who were declared chargeable;<sup>238</sup>

(e) To remove all minors from prisons. According to this rule, no minor under the age of 18 may be sent to an adult prison by a juvenile court, while detention or internment in this type of establishment is restricted to special sections which must be completely separate from those housing adult inmates, in the case of “persons over the age of 16 but under the age of 18 who may be submitted to a test of discernment and who were found to have acted with discernment in the offence for which they were charged, in places where specialized premises for young persons have not yet been built”. Further facilities are provided in the Children’s Homes (*Casas de Menores*), which operate through two types of centres which are independent of each other: Centres dealing with minors who require diagnosis, assistance and protection pending the issue of a decision concerning them; and Observation and Diagnosis Centres. The President of the Republic is empowered, by Supreme Decree issued through the Ministry of Justice, to designate centres where minors may be admitted in places where there are no Observation and Diagnosis Centres.<sup>239</sup> A series of decrees have been issued by virtue of those powers;<sup>240</sup>

(f) To approve the regulation for the application of Title IV of Act No. 16618 on Children’s Homes and Aid Institutions. In the preambular part, the regulation states that the Government is responsible for aligning the legislation with the principles of the Convention on the Rights of the Child and all treaties, recommendations and directives approved by international organizations to which Chile is a party.<sup>241</sup>

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<sup>236</sup> Decree No. 509 of 21 March 1994.

<sup>237</sup> Decree No. 778 of 18 March 1994.

<sup>238</sup> Decree No. 1,103 of 25 November 1994.

<sup>239</sup> Act No. 19,343 of 31 October 1994, amending Act No. 16,618 of 8 March 1967 and establishing the final text of the Minors’ Act and other legal provisions.

<sup>240</sup> Decree No. 1,698 of 27 December 1994; Decree No. 80 of 20 January 1995; and Decree No. 1,091 of 22 January 1996.

<sup>241</sup> Decree No. 730 of 19 July 1996.

## Article 11

### Right to an adequate standard of living

#### Information concerning the current standard of living of the population

497. The social policy implemented in the 1990s attached growing importance to social investment programmes, intended to improve the social infrastructure and to enhance the quality, fairness and coverage of basic social services (education, health, housing and social security). An effort was also made to link aid policies with social investment programmes.

498. Significant innovations have been introduced in the form of cross-sectoral programmes, which adopt a comprehensive approach, and the development of policies specially intended for social groups identified as requiring priority treatment, and who owing to their circumstances are prevented from benefiting from the country's development.

499. Between 1989 and 2000, the expenditure of the central Government on social policies increased by 112.4%, while expenditure by the public treasury grew by 165.7%. In 2000, public expenditure in the social sector came to US\$ 11.605 million and fiscal expenditure to US\$ 9,807 (see Table 16).

**Table 16**

**Public expenditure and fiscal expenditure on social welfare\*, 1989-2000**  
(Million pesos at 2000 value) (US\$ at 2000 value)

Year	Public expenditure on welfare	Annual change	Fiscal expenditure on welfare	Annual change
1989	2,948,264 (US\$ 5,464,909,452)	–	2,067,864 (US\$ 3,832,997,831)	–
1990	2,921,649 (US\$ 5,415,575,821)	–0.9	2,238,781 (US\$ 4,149,810,005)	8.3
1991	3,189,851 (US\$ 5,912,715,713)	9.2	2,491,923 (US\$ 4,619,034,643)	11.3
1992	3,522,841 (US\$ 6,529,946,802)	10.4	2,802,180 (US\$ 5,194,127,787)	12.5
1993	3,861,614 (US\$ 7,157,897,273)	9.6	3,103,215 (US\$ 5,752,127,008)	10.7
1994	4,097,742 (US\$ 7,595,584,719)	6.1	3,330,166 (US\$ 6,172,803,944)	7.3
1995	4,395,121 (US\$ 8,146,807,170)	7.3	3,585,940 (US\$ 6,646,907,264)	7.7
1996	4,820,014 (US\$ 8,934,389,887)	9.7	3,983,850 (US\$ 7,384,474,225)	11.1
1997	5,088,343 (US\$ 9,431,765,186)	5.6	4,230,936 (US\$ 7,842,473,447)	6.2

Year	Public expenditure on welfare	Annual change	Fiscal expenditure on welfare	Annual change
1998	5,474,705 (US\$ 10,147,926,746)	7.6	4,460,498 (US\$ 8,267,990,138)	5.4
1999	5,901,305 (US\$ 10,938,673,562)	7.8	4,951,630 (US\$ 9,178,353,630)	11.0
2000	6,260,730 (US\$ 11,604,904,632)	6.1	5,290,918 (US\$ 9,807,258,707)	6.9
Average annual growth (%)		7.1		9.1
Accumulated growth (%)		112.1		165.7

Source: Ministry of Economy in *Economic and Social Indicators 1990-2000*, Mideplan.

\* Public expenditure on welfare is the expenditure of the central Government on welfare. Fiscal expenditure on welfare is the expenditure by the Public Treasury for welfare purposes.

500. The contribution of fiscal expenditure to public expenditure on welfare rose from 76.6% in 1990 to 81.6% in 1995, and then to 84.5% by 2000. From 1989 to 2000, public expenditure on welfare on a per capita basis grew by 79.8%, while per capita fiscal expenditure on welfare grew by 116.7%. In 2000, per capita public expenditure on welfare came to US\$ 763, while per capita fiscal expenditure on welfare came to US\$ 645.<sup>242</sup>

501. Between 1990 and 2000, the proportion of fiscal expenditure in the gross domestic product (GDP) increased from 16.4% to 20.2%, while the proportion of public expenditure in GDP rose from 21 to 24%. In 2000, the contribution of public expenditure and fiscal expenditure on welfare as a percentage of GDP came to 16.6% and 14% respectively, both of which were above the figures recorded for 1990 (12.9 and 9.9% respectively).<sup>243</sup>

502. From 1989 to 2000, both public and fiscal expenditure increased in all welfare sectors. Expenditure on education, health and other social investment programmes grew more than average, while expenditure on pensions and monetary allowances grew less than average (see Table 17).

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<sup>242</sup> Data extracted by Mideplan from information supplied by the Ministry of Economy, in *Economic and Social Indicators 1990-2000*, Mideplan.

<sup>243</sup> In *Economic and Social Indicators, 1990-2000*, Mideplan.

**Table 17**

**Sectoral structure of public expenditure and fiscal expenditure on welfare, 1990, 1995 and 2000 (Percentage)**

Welfare sector	Public expenditure on welfare			Fiscal expenditure on welfare		
	1990	1995	2000	1990	1995	2000
Health	15.3	18.0	17.6	7.5	10.2	9.6
Housing	8.1	8.0	5.8	6.6	8.6	5.9
Pensions	49.0	42.7	41.5	52.4	45.1	44.2
Education	19.5	22.3	25.2	25.1	26.9	29.9
Monetary allowances	4.6	3.9	3.9	5.9	4.8	4.7
Other*	3.6	5.1	6.0	2.5	4.4	5.8
Total welfare sectors	100.0	100.0	100.0	100.0	100.0	100.0

Source: Prepared from data supplied by the Ministry of Economy, in *Economic and Social Indicators 1990-2000*, Mideplan.

\* Including social investment programmes for priority groups, implemented by organizations such as Fosis, Indap, Ministry of Labour, Sernam, INJ, Conadi, Fonadis, Integra, Prodemu, Conapran, Cordam, Sename and Digeder (see Annex 1, Abbreviations).

503. During the period 1990-2000, the sectoral structure of welfare expenditure changed according to the new guidelines of social policies, with a greater proportion going to education, health and new welfare programmes for priority (vulnerable) groups, and a decrease proportionally in monetary aid allowances. The country has achieved considerable progress in welfare terms. Evaluations made by the Ministry of Planning reflect a substantial reduction in poverty and extreme poverty between 1990 and 2000. Since 1996, however, this rate of reduction has diminished in relation to poverty and has stabilized in relation to extreme poverty, as a result particularly of the situation regarding employment in the country.

**Criteria used for determining poverty**

504. The method used to measure poverty employed by the Ministry of Planning and Cooperation (Mideplan) is based on the measurement of absolute poverty, using the income method or indirect method.

505. The income method measures standards of living with reference to a poverty line, which expresses the cost of a minimum basket of products needed to meet the basic requirements of a household. Poverty is defined by identifying a set of basic requirements, specifying the minimum characteristics that must be offered by subjects in order to avoid an unsatisfactory condition. Households are considered to be in a situation of poverty if their income is insufficient to meet the basic requirements (in terms of food and other) of their members. Households are deemed to be in a situation of extreme poverty if, when using all their income to meet their food requirements, they are unable to satisfy them adequately. A household is considered poor if its per capita income is less than twice the value of a basic food basket in urban areas, or 1.75 times that value in rural areas,

where less money tends to be spent on services. A household is considered to be in a situation of extreme poverty if its per capita income is below the value of a basic food basket. The value of this food basket in rural areas is considered to be less than that in urban areas.

506. In November 1998, the poverty line was valued at 37,889 pesos (US\$ 81) for urban areas, and 25,546 pesos (US\$ 55) for rural areas. The extreme poverty threshold in urban areas came to 18,944 pesos (US\$ 40) and in rural areas to 14,598 pesos (US\$ 31).

### Incidence of poverty and extreme poverty

507. In 2000, the population living in poverty in the country numbered close to 3,081,000 persons, which is equivalent to 20.6% of the total population. The population living in conditions of extreme poverty numbered 849,000 persons, equivalent to 5.7% of the total population. Around 643,000 households (16.36% of the total) were living in poverty, of which 177,000 (4.6% of the total) in extreme poverty.

**Table 18**

#### Trends in poverty and extreme poverty\* in Chile, 1990-2000

Thousands of persons and percentage of population**				
Year	Extreme poverty	Percentage	Poverty total	Percentage
1990	1,659.3	12.9	4,965.6	38.6
1992	1,169.3	8.8	4,331.7	32.6
1994	1,036.2	7.6	3,780.0	27.5
1996	813.8	5.8	3,288.3	23.2
1998*	820.0	5.6	3,160.1	21.7
2000	849.2	5.7	3,081.1	20.6
Thousands of households and percentage of total**				
1990	336.3	10.6	1,056.5	33.3
1992	242.4	7.2	932.5	27.7
1994	219.3	6.2	820.5	23.2
1996	175.8	4.9	706.8	19.7
1998	173.9	4.7	666.0	17.8
2000	177.6	4.6	643.2	16.6

Source: Mideplan, Casen survey 1990, 1992, 1994, 1996, 1998 and 2000.

\* Excluding in-house domestic service and related nuclear family.

\*\* The number and percentage of persons and households living in poverty include those living in extreme poverty.

508. In the decade 1990-2000, the country was able to reduce the population living in poverty from 38.6% in 1990 to 20.6% by 2000. The population living in extreme poverty also diminished, in the same period, from 12.9% to 5.7%. The percentage of poor households fell from 33.3% in 1990 to 16.6% in 2000 and the percentage of extremely poor households fell from 10.6% to 4.6% in the same period. This means that in 2000 there were some 1,884,000 fewer people living in poverty than at the beginning of the decade. This figure includes 810,000 fewer people living in extreme poverty compared with 1990. In 2000, there were 413,000 fewer households living in poverty compared with 1990, within which a little over 159,000 fewer households in a situation of extreme poverty.

509. From 1996 to 2000, the falling trend in the levels of poverty was maintained, in terms of both population and households, although the pace of the decline slowed down compared with the rest of the decade. The levels of extreme poverty remained relatively stable during that period. The flattening decline in poverty observed in the 1990s and the relative stagnation as regards the reduction of extreme poverty were due to the slowdown in economic growth which the country experienced after the second quarter of 1998. In view of the methodology used to measure poverty - the income method - the estimates arrived at are particularly sensitive to the economic situation prevailing in the country. At the end of 1998, Chile faced a particularly difficult economic scenario, owing to the repercussions of the international economic crisis and the application within the country of an expenditure adjustment policy.

### **Intensity of poverty and extreme poverty**

510. The poverty intensity indicators, measured by the average income gap and the international index FGT2, show a declining trend in the period 1990-2000. The average income gap is related to the difference between the average income of poor or extremely poor persons, and the poverty or extreme poverty line in either case. The FGT2 index reflects the income inequality within the group of poor and extremely poor people.

511. The average poverty gap declined from 14.8% in 1990 to 8.9% in 1996 and 7.1% in 2000. In the case of extreme poverty, the gap declined from 4.3% in 1990 to 1.9% in 1996, then rose again to 2.1% in 2000.<sup>244</sup> During that period, not only the incidence of poverty but also its intensity diminished, that is to say, the gap between the current income of the poor or extremely poor population and the poverty and extreme poverty line, respectively.

### **Income distribution**

512. The analysis of the distribution of independent income and monetary income<sup>245</sup> of households, during the period 1990-2000, shows that the country maintained a practically unchanged high concentration of income, with an improvement in the distribution resulting from monetary transfers received by low-income households.

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<sup>244</sup> Source: Mideplan, Casen surveys for 1990, 1996 and 2000.

<sup>245</sup> The monetary income of the household is defined as the sum of its independent income and the monetary transfers it receives from the State. Independent income, also known as primary income, is defined as all payments received by the household as a result of their ownership of production factors. It includes pay and salaries, earnings from independent work, self-supply of goods produced in the household, rent, interest, pensions and retirement. Monetary transfers are all payments in cash provided by the State, including State assistance pensions (Pasis), redundancy benefits, single family allowances (SUF), family allowances, the drinking water allowance (SAP) and other State benefits.

**Table 19**

**Distribution of independent and monetary income in Chile\*, 1990-2000**

	1990	1992	1994	1996	1998	2000
	Independent income					
20/20 index	14.0	13.2	14.3	14.6	15.5	15.3
10/40 index	3.5	3.3	3.5	3.5	3.5	3.6
Gini coefficient	0.58	0.57	0.58	0.57	0.58	58
	Monetary income					
20/20 index	12.9	12.2	13.2	13.8	13.9	13.2
10/40 index	3.3	3.2	3.3	3.4	3.3	3.3
Gini coefficient	0.57	0.57	0.55	0.56	0.57	57

Source: Prepared from information derived from Casen surveys for the respective years, in *Economic and Social Indicators 1990-2000*, Mideplan.

\* Excluding in-house domestic service and related nuclear family.

513. The values of the Gini coefficient, estimated from independent income figures, fluctuated between 0.57 and 0.58 during the period considered. The 20/20 index shows that average independent household income of the 20% of highest income households was between 13.2 and 15.3 times greater than the income of a household belonging to the 20% of poorest households. And the 10/40 index shows that average independent income in households among the 10% of highest income households was more than three times as great as the income of households in the 40% of poorest group of households.

514. Monetary transfers by the public sector to low-income households led to an improvement in distribution throughout the decade, considering only independent income, so that the gap between the incomes of the poorest and wealthiest groups declined. The Gini index improved slightly each year as a result of these transfers, if considered on the basis of monetary income, from values ranging between 0.57 and 0.58 (independent income) to values ranging between 0.56 and 0.57 (monetary income). In the 20/20 index, if the monetary transfers received from the State by low-income households are taken into account, the difference between incomes received by the latter and those received by the wealthiest households diminished. The variation went from a range of 13.2 and 15.3 (independent income) to values ranging between 12.2 and 13.2 (monetary income). In the case of the 10/40 index, the variations were from 3.3 and 3.6 (independent income) to values between 3.2 and 3.3 (monetary income).

515. In 1998, the impact of monetary subsidies on the average income of the poorest households (first and second deciles) was greater than that achieved in the whole of the decade. As a result of these transfers, the distribution of monetary income did not worsen between 1996 and 1998, as would have been the case if only the distribution of independent incomes had been considered.

**Table 20**

**Average independent and monetary household income by decile of per capita independent household income\* in Chile, 1990-1998**  
**November 1998 pesos (November 1998 US\$)**

Decile**	1990	1992	1994	1996	1998
Independent income					
1	44,761 (96.6)	54,999 (118.7)	52,177 (112.6)	55,358 (119.4)	55,022 (118.7)
2	86,633 (186.9)	101,647 (219.4)	106,117 (229.0)	114,103 (246.2)	118,207 (255.1)
3	115,126 (248.4)	132,704 (286.4)	137,174 (296.0)	154,410 (333.2)	161,589 (348.7)
4	141,172 (304.7)	167,850 (362.2)	176,070 (380.0)	197,886 (427.1)	211,501 (456.5)
5	171,148 (369.4)	202,628 (437.3)	213,870 (461.6)	239,563 (517.0)	248,160 (535.6)
6	218,167 (470.9)	238,130 (513.9)	245,800 (530.5)	278,799 (601.7)	297,758 (642.6)
7	247,865 (535.0)	291,514 (629.2)	311,491 (672.3)	359,322 (775.5)	386,380 (833.9)
8	327,331 (706.5)	377,086 (813.9)	408,597 (881.9)	486,649 (1,050.4)	511,626 (1,104.3)
9	481,865 (1,040.0)	533,848 (1,152.2)	596,134 (1,286.7)	682,019 (1,472.0)	748,488 (1,615.5)
10	1,337,199 (2,886.2)	1,515,170 (3,270.3)	1,618,338 (3,493.0)	1,833,098 (3,956.6)	1,928,392 (4,162.3)
Total	317,139 (684.5)	361,547 (780.3)	386,619 (834.4)	440,175 (950.0)	466,589 (1,007.1)
Monetary income					
1	50,365 (108.7)	61,280 (132.2)	58,262 (125.7)	63,940 (138.1)	67,343 (145.3)
2	90,758 (195.8)	106,421 (229.7)	110,642 (238.8)	120,700 (260.5)	126,246 (272.4)
3	118,616 (256.0)	136,910 (295.5)	141,145 (304.6)	160,792 (347.0)	168,276 (363.2)
4	144,584 (312.0)	171,586 (370.3)	179,266 (386.9)	203,194 (438.5)	216,486 (467.2)
5	173,902 (375.3)	205,654 (443.8)	216,563 (467.4)	244,451 (527.6)	252,104 (544.1)
6	220,717 (476.4)	240,544 (519.2)	247,858 (534.9)	282,572 (609.9)	300,857 (649.3)
7	250,049 (539.7)	293,403 (633.2)	313,423 (676.5)	362,120 (781.6)	388,614 (838.8)
8	329,149 (710.4)	378,852 (817.7)	409,978 (884.9)	488,697 (1,054.8)	513,111 (1,107.5)
9	483,446 (1,043.4)	535,102 (1,154.9)	597,197 (1,289.0)	683,143 (1,474.5)	749,409 (1,617.5)
10	1,338,540 (2,889.1)	1,516,171 (3,272.5)	1,618,820 (3,494.1)	1,833,669 (3,957.8)	1,928,768 (4,163.1)
Total	320,025 (690.7)	364,582 (786.9)	389,358 (840.4)	444,382 (959.1)	471,005 (1,016.6)

Source: Mideplan, Casen surveys for 1990, 1992, 1994, 1996 and 1998.

\* Excluding in-house domestic service and related nuclear family.

\*\* Deciles based on per capita independent income of households.

516. It may be observed from Table 20 that the average monthly income of households in the first seven deciles, both independent and monetary, is below the average for the population as a whole. In other words, the incomes of 70% of the country's households are below the overall average. If the percentages of income accounted for by the different deciles are considered, these differences were maintained practically unchanged throughout the decade, although in absolute terms the figures rose. If the real average income of households in the first and tenth deciles are compared, the difference increased from 1,292,438 pesos (US\$ 2,789.6) in 1990 to 1,873,370 pesos (US\$ 4,043.6) in 1998.

517. The table also shows a significant improvement in the income of low-income households, as a result of the monetary subsidies paid by the State to these households, which have the effect of reducing the difference between the average monthly income of the poorest households and that of the richest. In 1998, average monthly income for the poorest decile increased from 55,022 pesos (US\$ 118.7) to 67,343 pesos (US\$ 145.3) and from 118,207 pesos (US\$ 255.1) to 126,246 pesos (US\$ 272.4) for the second decile. This increase, which was the largest recorded for the whole of the decade, is particularly noteworthy in view of the difficult economic situation the country was experiencing.

**Table 21**

**Changes in average independent and monetary income of households, by decile of per capita independent household income\* in Chile 1990-1998 (Percentage)**

Independent income					
Decile**	1990-1992	1992-1994	1994-1996	1996-1998	1990-1998
1	22.9	-5.1	6.1	-0.6	22.9
2	17.3	4.4	7.5	3.6	36.4
3	15.3	3.4	12.6	4.6	40.4
4	18.9	4.9	12.4	6.9	49.8
5	18.4	5.5	12	3.6	45
6	9.2	3.2	13.4	6.8	36.5
7	17.6	6.9	15.4	7.5	55.9
8	15.2	8.4	19.1	5.1	56.3
9	10.8	11.7	14.4	9.7	55.3
10	13.3	6.8	13.3	5.2	44.2
Total	14	6.9	13.9	6	47.1
Monetary income					
1	21.7	-4.9	9.7	5.3	33.7
2	17.3	4	9.1	4.6	39.1
3	15.4	3.1	13.9	4.7	41.9
4	18.7	4.5	13.3	6.5	49.7
5	18.3	5.3	12.9	3.1	45
6	9	3	14	6.5	36.3
7	17.3	6.8	15.5	7.3	55.4
8	15.1	8.2	19.2	5	55.9
9	10.7	11.6	14.4	9.7	55
10	13.3	6.8	13.3	5.2	44.1
Total	13.9	6.8	14.1	6	47.2

Source: Mideplan, Casen surveys for 1990, 1992, 1994, 1996 and 1998.

\* Excluding in-house domestic service and related nuclear family.

\*\* Deciles based on per capita independent income of households.

518. Table 21 shows that, from 1990 to 1998, national household income increased on average by 47.1%. The sub-periods with the highest growth were 1990-1992 (14%) and 1994-1996 (13.9%). It may be observed from the table also that between 1990 and 1998 the average income of households in all deciles increased, though at different rates, in relation to both the deciles and the different sub-periods.

519. The incomes of households in the seventh, eighth and ninth deciles showed the highest growth in the period (55.9%, 56.3% and 55.3%, respectively), and in practically all the sub-periods considered. Average income of households in the first decile had the lowest rate of growth during the period (22.9%) with considerable differences between sub-periods. The average income of these households, from 1990 to 1992, increased by 22.9%, above the national average and above that of the households in all deciles; however, in the three remaining sub-periods it showed the lowest rate of growth, and actually fell in two of the sub-periods (-5.1% between 1992 and 1994, and -0.6% between 1996 and 1998). A similar trend is shown by the income of households in the second and third deciles. These incomes reached higher rates of growth, however, rising on average by 36.4% and 40.4%, respectively between 1990 and 1998.

520. In absolute terms, these variations reflected substantial differences in the real increases of average household income of the different income quintiles. These increases in real terms ranged from 10,261 pesos (US\$ 22.1) for the first decile to 591,193 pesos (US\$ 1,276) for the tenth decile.

## **Right to sufficient food**

### **Situation in the country as regards food**

521. At the same time as it has experienced a period of demographic and epidemiological transition, Chile has also clearly lived through a process of nutritional transition. This has gone on for the last decade and has been reflected in a steady alleviation of the problem of protein and calorie deficiency among the biologically most vulnerable groups, that is, children under the age of six and pregnant women with low incomes. The main source of information regarding these groups has come from the statistics derived from the population receiving primary care in Ministry of Health establishments, which in 2001 included around 89,000 pregnant women and around 1,050,000 children under the age of six (about 61% of the total population in the latter group).

522. Nutritional supervision of children under the age of six began in 1994, in conformity with the NCHS/WHO (National Centre for Health Statistics/World Health Organization) international standards. In that year, only 0.9% of the children were classifiable as under-nourished, using the weight/age ratio, a figure which fell to 0.3% if the indicator used was the weight/size ratio. At present, it is estimated that 0.5% of children under the age of six monitored in the public health system are under-nourished, while some 3.2% are considered to be at risk of under-nourishment. Both the former and the latter groups are submitted to a special programme of monitoring and supplementary food.

523. The data used each year to monitor the nutritional situation of school children are those gathered by the National School and Scholarship Assistance Council (JUNAEB), which carries out anthropometric evaluations of school children attending the first year of primary school.<sup>246</sup> In 1993, out of that population, 3.1% of children were situated below two standard deviations of the average

WHO standard, for the weight/age ratio. The corresponding figures were 1.9% and 5.9% of children in relation to the weight/size and size/age ratios, respectively. In 1999, the equivalent figures were 2.1%, 2.6% and 4.2%, respectively.

524. With regard to pregnant women monitored in the public health system, the percentage considered to be too thin fell from 25% to 13.3% between 1990 and 2001. The criterion used for nutritional evaluation was developed in Chile and is currently under review, because it is thought it may overestimate the percentage of underweight pregnant women. Less than 6% of women of reproductive age have a body mass index less than 20, and the proportion of underweight newborns in the country as a whole is only 5.5% (Ministry of Health statistics).

525. In the last decade, the most serious nutritional problem concerned obesity, which has increasingly affected practically all groups of the population. From 1990 to 2001, the percentage of children under the age of six considered to be obese increased from 5% to 7.4%. Some 15.6% of all children in this age group were considered to be overweight, while among schoolchildren in general obesity increased from 5% to 14% between 1986 and 1999, the proportion of overweight children also increasing from 10% to 17% in the same period. Among over 89,000 pregnant women monitored in December 2001, 21.8% were overweight, while 33.6% were obese. These figures are more than double the obesity figures recorded 13 years earlier.

526. With regard to the perception of overweightedness and obesity, some 26.7% of men tend to see themselves as overweight or obese, while the figure for women is 38.8%. In the lower socioeconomic sector of the population, 33% consider themselves to be overweight, while the equivalent figure is 34.6% in the middle socioeconomic sector and 31.1% in the upper socioeconomic levels. According to age distribution, the perception of overweightedness and obesity came to 16.7% of the population aged between 15 and 19 years, 30.8% in the 20-44 year old group, 44.5% in the 45-64 year old group, 33.5% among those aged between 65 and 74, and 31.9% in the 75-and-over age group.

527. Several studies show that the prevalence of obesity and overweightedness is around 20% among adult males in all socioeconomic groups, while in the case of adult women, the prevalence varies between 20% in the higher income groups to almost 40% in the low-income groups.

### **Measures for guaranteeing sufficient nutrition**

528. The problems of insufficient food quantities and food insecurity affect the poor sectors of the population. Starting in 1990, the Government's welfare policy aimed to improve the productive capacity of poor households, as a means of reinstating them in the social life of the country, from which until then they had been excluded. The poor sectors of the population are entitled to cash benefits<sup>246</sup> and food assistance, which are programmes of supplementary food distributed to pregnant women, wet-nurses (substitute mothers), preschool children and schoolchildren. To these programmes, which were kept up without interruption for several decades, a supplementary food programme was added in 1999 for adults, for the elderly aged 70 and over belonging to low-income

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<sup>246</sup> In Chile, children enter primary school on 1 March of the year they complete six years of age.

<sup>247</sup> These cash benefits are paid by the State and include State assistance pensions (Pasis), redundancy benefits, the single family allowance (SUF), family allowances and other monetary transfers by the State to households.

groups. In its pilot phase, this programme was run in 87 centres selected for their high proportions of poor and elderly people, and was gradually extended to the rest of the country. At present it covers 40% of all adults.

529. Given the fact that food availability in Chile is both sufficient and stable, food insecurity arises only from problems of access to proper nutrition, which depends partly on insufficient incomes and partly on unsatisfactory eating habits.

530. As a result of economic growth, eating habits have tended towards a preference for processed foods, the so-called fast foods rich in saturated fats and with a high calorific value. Annual fat consumption increased from 13.9 kg per person in 1975 to 16.7 kg in 1995. Sugar consumption increased from 30.2 to 39.3 kg per person per year in the same period. National consumption trends reflect an increase in the consumption of meat (especially pork and chicken), sausages and dairy products, offset by a decrease in the consumption of fish, fruit, greenery, cereals and pulses.<sup>248</sup>

531. In 1989, the Government laid down nutritional standards with a view to reducing protein and calorie deficiencies and their manifestations, a move which has been broadly successful. The same cannot be said for standards established to reduce iron-deficiency anaemia, in response to which, from 1998, a policy was pursued of adding iron and other micronutrients to the food distributed with the supplementary food programme of the Ministry of Health, in the hope of reducing the prevalence of iron-deficiency anaemia in nursing infants and preschool children from 25% to 5%. This programme is universally accessible for children under the age of six, pregnant women and wet nurses, currently achieving a coverage of 70% of all individuals in these groups.

532. The National Council for the Promotion of Health, coordinated by the Ministry of Health, Vida Chile, has established impact targets in consultation with experts and meetings of technicians. In the case of obesity, on the basis of national data collected by public institutions, the following targets were adopted for the five-year period 2001-2006: by 2002, stabilizing the prevalence of obesity among preschool children, schoolchildren and pregnant women; by 2006, diminishing obesity by three percentage points among preschool children; by 2006, diminishing obesity by four percentage points among primary schoolchildren and pregnant women.

### **Training and spread of knowledge concerning the basic principles of nutrition**

533. Considering that the main nutritional problem in Chile is obesity and related illnesses, the Ministry of Health, in its Programme for the Promotion of Health, has given priority to promoting healthy eating habits. In 1996, this policy was pursued with the publication of food guides and a "food pyramid" for the Chilean population over two years of age, while a food labelling system was introduced and applied generally. In 1999, food guides were added for adults over 18 and eating standards for children under the age of two. Promotion campaigns on healthy eating were held in health promoting schools, healthy workplaces, and healthy communes and communities. Individual items of the campaign include: healthy food stalls; healthy snacks; additions to curricula; parents' workshops in preschool, primary and secondary school establishments; changes in workers' diets at the workplace; and activity and healthy eating programmes in health establishments.

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<sup>248</sup> Vío, F. and Albala, C, "*Epidemiología de la obesidad en Chile*" (Epidemiology of obesity in Chile), *Revista Chilena de Nutrición*, 2000, N° 27, p. 97-104.

## Right to adequate housing

### Housing situation in the country

534. At the beginning of the 1990s, the housing situation in Chile faced a growing quantitative deficit,<sup>249</sup> reflected in the fact that more than 900,000 families were without housing. In addition, serious problems of quality arose in the national housing stock. Almost 660,000 households lived in qualitatively deficient housing.<sup>250</sup> Lastly, the existing supply of housing solutions could only partially cover the needs of the poorest households in the country.

**Table 22**

#### Trend in housing deficits, 1990-2000

	1990	1992	1996	1998	2000	Percentage change 1990-2000
Quantitative deficit						
Extended households	918,756	844,851	746,190	758,201	743,450	-19.0
Household housing deficits:						
Material deficits	290,340	242,603	181,451	176,274	159,469	-45.1
Sanitation deficits	257,773	241,590	248,836	221,090	200,575	-22.2
Material and sanitation deficits	118,081	99,870	73,240	62,493	61,135	-48.2
Total	666,194	584,063	503,527	459,857	421,179	-36.8

Source: Mideplan, from data supplied by the Ministry of Housing and Town Planning.

535. All types of deficit diminished between 1990 and 2000. In that period, the housing conditions of households improved significantly and the numbers affected by some type of deficiency were reduced from 53% to 37%. In 2000, *allegamiento* (the clustered household syndrome) was limited to some 30% of households, including persons without their own housing and those using the housing of a clustered household. The proportion of deficient housing (shacks, tenements, houses in poor condition or without basic sanitation) fell to 10.9% in the same year.

536. The current objectives of housing policy are:

- (a) To freeze the current quantitative deficit;
- (b) To improve the quality of the housing stock;

<sup>249</sup> This housing demand arises from the problem of clustered households (*allegamiento*). The clustered household may be external or internal: if external, it refers to several households sharing the same housing or premises; if internal, it refers to clustered family nuclei, that is, families belonging to an extended household (with more than one nucleus) which share the same housing and a common food budget.

<sup>250</sup> This refers to housing which is deficient in one of the following ways: (a) material amenities; (b) sanitation; (c) habitability.

- (c) To increase resources earmarked for housing solutions for the poorest families;
- (d) To promote more balanced urban growth and development;
- (e) To develop regional territorial development programmes and to encourage rural regrouping;
- (f) To improve the efficiency and quality of life in towns, by coordinating resources available for territorial investment.

### Programmes and actions for freezing the quantitative deficit

537. Between 1990 and 1996 (Table 23), the Ministry of Housing and Town Planning (Minvu) produced a total of 630,000 housing solutions. This is equivalent to an annual average of 90,000 solutions, which is significantly above the 54,000 average annual solutions produced in the six-year period 1984-1989.

538. Between 1990 and 1999, housing solutions reached a total of 1,076,843, for an annual average of 107,684. The production of basic housing came to a total of 232,505 units, while first-stage progressive housing reached a total of 42,952 units.

**Table 23**

### Housing solutions by type of solution, 1990-1998

	1990	1991	1992	1993	1994	1995	1996	1997	1998
Housing subsidy	24,801	22,721	21,213	21,382	23,144	23,325	23,899	21,972	20,686
PET subsidy	14,574	13,602	20,838	16,535	15,259	15,698	13,400	11,587	10,601
Rural subsidy	6,307	4,910	8,353	7,477	6,944	7,539	5,454	7,328	8,155
Basic housing subsidy	–	–	–	–	–	753	2,555	2,198	2,827
First-stage progressive housing subsidy	–	313	1,116	2,520	5,189	7,039	7,371	5,281	4,727
Second-stage progressive housing subsidy	–	195	161	1,581	1,450	2,225	2,582	1,703	1,217
Basic housing units	16,029	24,805	22,414	19,997	20,070	17,008	17,548	n.a.*	n.a.*
First-stage progressive housing units	–	5,488	8,053	3,736	4,525	2,778	1,994	n.a.*	n.a.*
Lots with services and neighbourhood improvements	20,677	20,979	15,372	12,175	9,556	16,154	16,320	n.a.*	n.a.*
Total	82,388	93,013	97,430	85,403	86,137	92,520	91,123		

Source: Ministry of Housing and Town Planning (Minvu), Statistical Report No. 36.

\* Not available.

539. Programmes and actions for improving the quality of the housing stock:

(a) Launch of the programme “Construction, extension and improvement”, aimed at former beneficiaries of serviced lots, in order to enable them to finish their houses up to a basic housing standard;

(b) Initiation of the “Housing improvement” programme, aimed at repairing and enlarging houses which are more than ten years old, under State or municipal programmes;

(c) Implementation of measures to improve housing quality. These include the development of new types of housing, the modification of standards of the Town Planning and Constructions Ordinance in order to adapt them to new technologies, and other measures placing the emphasis on the quality of the work produced by contractors.

540. Programmes and actions to increase resources aimed at delivering housing solutions for the poorest families:

(a) Start of the “Progressive Housing” programme, which is to take place in two stages;

(b) Introduction of a new system of “basic housing”, in the form of a subsidy, in order to allow beneficiaries to choose their housing freely in the market, giving priority to families among the 40% poorest sector of the population.

#### **Detailed information concerning groups in society which are disadvantaged in terms of housing. Basic statistics.**

541. According to the 1992 Population and Housing Census, Chile had a total of 3.2 million individual lodgings in that year, for a population of 13.3 million inhabitants (of which 83.5% lived in urban areas). It may be estimated from building permit statistics of the National Institute of Statistics (INE) that by 1998 the housing stock had risen to 4 million units, for a projected population of 14.8 million inhabitants. That improvement reflects a successful decade experienced by the country in terms of house-building activity, as shown by the increase in the national index of permanent lodgings per thousand inhabitants, which rose from 238 to over 270 in less than seven years. In percentage terms, by 1998 the country’s housing stock had risen by 28% compared with 1992 (886,000 new lodgings).

542. The output of housing made possible by the direct programmes and subsidies of the Ministry of Housing and Town Planning was a key component in the trend described above. Between 1990 and 1998, adding together the housing works undertaken by that Ministry (basic and progressive housing) and the subsidies granted, the public sector housing production reached the figure of 820,365 units, of which 659,424 were built between 1992 and 1998, accounting for 74% of building permits in the period following the 1992 census.

#### **Number of homeless individuals and families**

543. Homeless families make up the housing deficit, that is, the gap at any given moment between the number of materially acceptable lodgings and the number of units needed to meet the estimated demand for housing (additional households and family units). According to the studies

carried out, the deficit in 1992 came to 888,681 lodgings, consisting of 611,792 lodgings needed for either homeless or clustered families, and 276,882 lodgings required to replace semi-permanent housing.<sup>251</sup>

544. During the 1990s, Chile was the only Latin American country which managed to reduce its housing deficit, thanks to maintaining an annual construction output which exceeded the growth in requirements and therefore gradually absorbed the accumulated deficit. According to data from the Housing Policy Division of the Ministry of Housing and Town Planning, by 1998 the deficit had been reduced to a figure varying between 526,000 and 631,000 housing units, assuming an annual increase of between 75,000 and 90,000 new requirements, resulting from the formation of more families and the need to replace existing housing stock (see Table 24).

**Table 24**

**Two deficit trend scenarios in Chile, 1992-1998**

Year	Initial deficit	Housing units built	Housing requirements adding to deficit		Final housing deficit	
	(1)*	(2)**	(3a)***	(3b)***	(4a)****	(4b)****
1992	888,681 (1)	108,482	75,000	90,000	855,199	870,199
1993		122,062	75,000	90,000	808,137	838,137
1994		124,785	75,000	90,000	758,352	803,352
1995		135,600	75,000	90,000	697,752	757,752
1996		143,823	75,000	90,000	628,929	703,929
1997		137,208	75,000	90,000	566,721	656,721
1998		115,038	75,000	90,000	526,683	631,683

Source: Housing Policy Division, based on the following parameters:

\* Deficit according to the estimate contained in Working Document No. 16/94, *How many houses are still needed?* Joan MacDonald, June 1994. University Promotion Corporation.

\*\* Building works approved and started, public and private sectors”, *New Works*, Economic Statistics Directorate, INE.

\*\*\* (3a) and (3b): estimated number of housing units required according to the increase in the number of families plus replacement housing.

\*\*\*\* (4a) and (4b): estimates of housing deficit.

<sup>251</sup> Working Document No. 16/94, *How many houses are still needed?* Joan MacDonald, June 1994. University Promotion Corporation.

### Number of individuals and families lodged in inadequate housing without basic services

545. The statistics of the Casen survey of the Ministry of Planning and Cooperation, which are gathered in the country every two years, show the trends of indicators consulted for the period 1990-98, based on publications which systematically record, each year, the numbers of households according to the types of housing they live in (a household being defined for these purposes as a group of persons who, linked or not by family ties, share common housing and a common food budget).

546. Although the average size of poor households is not in line with the national averages, the discrepancies are not such as to invalidate gross estimates of population based on the national average, sufficiently reliable to indicate the main trends occurring throughout the decade. The process of demographic transition has been fairly generalized among the different socioeconomic strata, so that fertility differences are less relevant, and bearing in mind that a substantial proportion of extreme material and sanitation deficiencies arise in rural areas, where households tend to be smaller in size owing to the effect of migration patterns.

547. With regard to sanitary services, in 1998, out of a total of 3.7 million households registered nationwide, according to the statistics of the Casen survey, 653,000 lived in housing where sewage was disposed of either through latrines or cesspools or through no system at all (17% of the national total). This means an accumulated drop of 20% compared with the figure for 1990, while households connected to drains increased by 32% in the same period, and those with septic tanks by 18% (see Table 25).

**Table 25**

#### Number of households housed according to sanitation in Chile, 1990-1998

Elimination of excreta	1990	1992	1994	1996	1998	Percentage change 1990-98
Drains	2,198,152	2,409,633	2,595,960	2,673,774	2,894,019	31.7
Septic tanks	165,364	137,745	194,729	187,237	195,103	18.0
Latrine, cesspool, none	809,034	819,006	746,085	726,630	653,561	-19.2
Total	3,172,550	3,366,384	3,536,774	3,587,641	3,742,683	18

Source: Mideplan (1999), Casen survey: 1987-1998 module series, Social Division.

548. In 1998, 211,000 households were without drinking water, that is, 5.6% of the national total. Compared with the similar figure eight years earlier (376,000), this represents an improvement of 44%. It may be estimated that in 1998, 820,000 persons were affected by the lack of drinking water, which was significantly less than the figures for earlier years (see Table 26).

**Table 26**

**Number of households and estimate of persons living in housing  
without drinking water in Chile**

Water supply	1990	1992	1994	1996	1998	Percentage change 1990-98
Number of households on distribution*	375,956	341,460	264,158	252,113	211,031	-43.9
Percentage of total households	11.9	10.1	7.5	7.0	5.6	-52.4
Number of individuals affected** (estimate)	1,523,048	1,347,874	1,024,992	994,904	820,784	-46.1

Source: Mideplan (1999), Casen survey: 1987-1998 module series, Social Division.

\* Includes households with and without access to mains supply.

\*\* Based on average household size for each year according to the Casen survey.

549. In 1998, 103,000 households were without electricity, less than 3% of total households in the country. In 1990, the figure had been 58% higher. It may be estimated that 401,000 persons live in housing without electricity (see Table 27).

**Table 27**

**Number of households and estimated number of persons living in housing  
without electricity in Chile**

Access to electricity	1990	1992	1994	1996	1998	Percentage change 1990-98
Number of households without electricity	245,637	197,476	152,506	157,235	103,256	-58.0
Percentage of total households	7.7	5.9	4.3	4.4	2.8	-64.4
Number of individuals affected* (estimated)	995,108	779,513	591,757	620,490	401,604	-59.6

Source: Mideplan (1999), Casen survey: 1987-1998 module series, Social Division.

\* Based on average household size for each year according to the Casen survey.

550. The situation regarding the number of persons living in inadequate housing may be estimated from two indices worked out by the Ministry of Planning and Cooperation (Mideplan): one of these concerns material deficiency and the other sanitation deficiency. Both of these figures may be differentiated according to whether the housing is classified as "good", "acceptable" or "repairable".

551. In 1998, 239,000 households were living in materially inadequate housing, and 283,000 households without adequate sanitation. Compared with 1990, the number of households living in inadequate housing has been reduced by 41% from the point of view of material conditions and 25% in terms of sanitation. Out of the total number of households, inadequate housing has fallen

from around 12% in 1990 to more like 7% by 1998. It may be estimated that around one million persons were living in inadequate housing in 1998, a figure which eight years earlier reached a peak of 1.6 million inhabitants in housing which was materially deficient (see Table 28).

**Table 28**

**Number of households and estimate of the number of persons living in inadequate housing according to two indicators in Chile**

	1990	1992	1994	1996	1998	Percentage change 1990-98
Materially deficient	408,421	342,473	316,916	255,029	238,767	-41.5
% of total households	12.9	10.2	9.0	7.1	6.4	-50.4
Numer of persons (estimated)	1,654,568	1,351,872	1,229,704	1,006,411	928,661	-43.9
With deficient sanitation	375,956	341,460	321,579	322,209	283,583	-24.6
% of total households	11.9	10.1	9.1	9.0	7.6	-36.1
Number of persons* (estimated)	1,523,048	1,347,874	1,247,798	1,271,521	1,102,968	-27.6

Source: Mideplan (1999), Casen survey: 1987-1998 module series, Social Division.

\* Based on average household size for each year according to the Casen survey.

552. With regard to overpopulated housing, cases of overcrowding are reported in publications of the Casen survey. In 1998, 57,812 households were estimated to be overcrowded, which represents 1.5% of the national total and a reduction of 44% compared with the number of households in that situation in 1990 (see Table 29).

**Table 29**

**Number of households in overcrowded housing in Chile**

	1990	1992	1994	1996	1998	Percentage change 1990-98
Number of overcrowded households	103,551	94,975	87,840	18,791	57,812	-44.2
Percentage of total households	3.3	2.8	2.5	0.5	1.5	-52.7

Source: Mideplan (1999), Casen survey: 1987-1998 module series, Social Division.

**Reduction of current housing deficit<sup>252</sup>**

553. The number of households living in materially deficient housing fell from 12.9% in 1990 to 6.4% in 1998. This occurred in all income quintiles, even though differences between them persisted. In 1998, while this type of housing deficit affected 13.9% of households in the first quintile, only 0.8% of households in the fifth quintile were in the same situation. The number of

<sup>252</sup> Data prepared from information supplied by the Ministry of Housing and Town Planning in *Economic and Social Indicators 1990-2000*, Mideplan.

households living in materially deficient housing in urban areas fell from 10.5% in 1990 to 4.8% in 1998. This reduction also occurred in all income quintiles. In 1998, 11.3% of households in the first quintile were affected, but only 0.5% of households in the fifth quintile.

554. The number of households living in housing deficient in sanitation in urban areas fell from 2.4% in 1990 to 1% in 1998. That same year, 2.5% of households in the first quintile had a sanitation deficiency, while only 0.2% in the fifth quintile were in that situation. The number of households living in housing with a sanitation deficiency in rural areas fell from 54% in 1990 to 47.8% in 1998. In that year, 58.3% of households in the first quintile were affected, while only 30.3% had deficient sanitation in the fifth quintile.

555. From 1990 to 1998, the number of households living in housing with a habitability deficiency fell from 3.7% to 1.7%. In 1998, 4.7% of households in the first quintile suffered from that deficiency, but only 0.2% in the fifth quintile. From 1990 to 1998, the percentage of households living in housing with a habitability deficiency declined. In 1998, this deficiency affected 2.1% of households in the first quintile, but none at all in the fifth. From 1990 to 1998, the percentage of households living in housing with a habitability deficiency fell from 16.7% to 9.9%. The differences between the quintiles, however, persisted. In 1998, while only 3.5% of households in the fifth quintile experienced a habitability deficiency, the equivalent percentage for the first quintile was 14.1%.

556. From 1990 to 1998, the number of households living in housing which was deficient in all three material, sanitation and habitability aspects fell from 666 000 to 460,000.

557. In urban areas, the percentage of households residing in housing without a qualitative habitation deficiency increased during the decade. In 1990, 87.8% of households had no deficiency and in 1998 as many as 94.5%. The differences between the quintiles, however, persisted. In 1998, 87.1% of households in the first quintile showed no deficiency, while the percentage for the fifth quintile was as high as 99.3%. In rural areas, the percentage of households living in housing without any qualitative habitation deficiency increased during the decade. In 1990, 39.4% of households had no deficiency and in 1998 as many as 46.2%. The differences between the quintiles, however, persisted. In 1988, 35.3% of households in the first quintile had no deficiency, while the equivalent percentage for the fifth quintile was 65.9%.

### **Number of persons living in illegal settlements or housing**

558. Since illegal settlements and housing are not recorded in normal housing statistics, it is impossible to make a longitudinal analysis of the number of persons in that situation. In 1996, the Ministry of Housing, in conjunction with the University of Chile, carried out a national survey of irregular camps and lots, arriving at a national total of 445,943 persons, living in 93,457 lodgings located in 972 irregular settlements. As a percentage of the population and of the housing stock, these figures at that date accounted for less than 4% of the country's population, and only 3% of the housing stock. Most of the persons living in irregular settlements are located in an urban environment (see Table 30).

**Table 30**

**Number of persons and lodgings in illegal settlements in Chile, 1996**

	Personss		Lodgings	
	Number	Percentage	Number	Percentage
TOTAL	445,943	3.1	93,457	2.8
Urban area	290,699	2.6	60,473	2.2
Rural area	155,244	6.9	32,984	5.6

Source: *Chile-barrio*, based on the National Survey of Irregular Camps and Lots, 1996, Minvu.

559. In order to overcome the problem of poverty and residential exclusion, the programme *Chile-barrio* was launched in 1997. This took the form of a cross-sectoral public initiative, aimed at opening up opportunities to assist people living in precarious settlements to overcome their poverty, through a substantial improvement in their housing situation, in the quality of their habitat and in their opportunities for resettlement in society and in the labour market. The type of action undertaken with this programme includes: community development and social resettlement; rehabilitation for work and production; housing and neighbourhood improvements; and the strengthening of institutions based on poverty-reduction programmes. By 31 December 1998, 13,000 families had already been assisted under the programme.

**Number of persons on waiting lists for housing**

560. Housing programmes are run on a system of applications, in which applicants are all entered on a "waiting list". In the case of programmes dealing with urban exclusion<sup>253</sup> and the Progressive Housing Programme,<sup>254</sup> a permanent register of applicants records all individuals who are in the system and who may be included in a future selection. The other housing systems (single subsidy, rural subsidy and the Special Programme for Workers) update their list of applicants every time a fresh selection is made.

561. In January 1998, the numbers of applicants listed with the Urban Exclusion System were as follows: 417,000 in the Serviu Basic Housing Programme, 13,000 in the Private Basic Housing Programme, and 83,000 in the Progressive Housing Programme. As the method of registering applicants was changed in 1997, there are no comparable figures for earlier years.

562. As far as rural subsidies are concerned, the statistics for applicants selected each year during the period 1990-1997 show that the number of applicants for the first programme fell during the decade from more than 25,000 families in 1991 and 1992 to around 15,000 families in 1997. The Single Subsidy, intended for medium and medium- to low-income sectors, has tended to increase, from around 11,000 applicants in 1991, to 23,000 in 1997, basically as a result of the greater elasticity of housing demand in this socioeconomic stratum (see Table 31).

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<sup>253</sup> Regulated by Supreme Decree No. 62 of 1984.

<sup>254</sup> Regulated by Supreme Decree No. 140 of 1990.

**Table 31**  
**Number of persons on waiting list**

	Applicants by programme and by year						
	1991	1992	1993	1994	1995	1996	1997
Rural subsidy	24,422	33,203	21,196	23,640	10,223	12,048	15,178
Single subsidy	11,693	15,398	18,078	18,901	16,434	18,928	23,624
Basic housing	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	416,919
Private basic housing	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	12,906
Progressive housing	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	83,157
Total							551,784

Source: Minvu Management Report, Rural Subsidy: applicants for selections 1/91, 1/92, 1/93, 1/94, 2/95, 2/96 and 2/97; Statistical Report, Single Subsidy: applicants for selections 1/91, 1/92, 1/93, 1/94, 1/95, 1/96 and 1/97; Statistical Report, Basic and Progressive Housing: applicants registered at 31 January 1998.

563. The measures adopted to reduce the so-called waiting lists have consisted in implementing uninterrupted programmes each year for the construction and allocation of housing, on the basis of physical targets financed by the Annual National Budget Act.

564. Given the stability of the supply system for permanent housing, there is no programme that provides for provisional housing. Nevertheless, the country runs various schemes for meeting requirements arising from emergencies or natural disasters, which are implemented through the Ministry of the Interior, the provinces and the municipalities.

#### **Number of persons according to title holders**

565. The Casen survey of the Ministry of Planning and Cooperation registers the number of households residing in housing classified according to the type of occupancy, without any breakdown as to whether the housing is public or private. In 1998, 2.6 million households, or 70% of the national total, were living in owner-occupied housing (either already paid for or in the process of being paid). Rented accommodation accounted for 619,000 households, or 16.5% of the total, while other types of occupancy (assignment of property, occupation and other) did not exceed 519,000 households altogether, equivalent to 13.8% of the national total. Compared to figures recorded in 1990, owner-occupancy has grown by 34.2% and the rentals by 13.6% (see Table 32).

**Table 32**

**Number of households according to type of occupancy in Chile**

	1990	1992	1994	1996	1998	Percentage change 1990-98
Owner-occupiers (property paid for or being paid)	1,941,460	2,149,462	2,308,926	2,427,673	2,605,452	34.2
Rentals	544,879	600,110	621,035	579,334	619,124	13.6
Assigned property	620,425	606,962	178,074	565,752	509,786	-17.8
Occupation	26,116	6,024	8,948	14,882	8,321	-68.1
Other	39,670	3,855	419,791	...	...	...
Total	3,172,550	3,366,413	3,536,774	3,587,641	3,742,683	18

Source: Mideplan (1999), Casen survey: module series 1987-1998, Social Division.

**National legislation concerning the right to housing**

566. A distinction may be drawn between firstly basic legislation, related to the functions of the Ministry of Housing and Town Planning and the Housing and Urbanization Services, and secondly, other legislation related to housing.

567. The Ministry of Housing and Town Planning (Minvu) was set up in 1965.<sup>255</sup> According to its current structure, the Ministry is divided territorially into a central Ministry, 13 regional ministerial secretariats (Seremi) and 13 regional housing and town planning secretariats (Serviu).<sup>256</sup> The central Ministry is responsible for formulating and supervising national housing and town planning policies. The regional secretariats are responsible for implementing the policies, plans and programmes ordered by the Ministry, either directly or through the appropriate regional offices. At local level, municipalities are allowed by law to undertake programmes for the construction of housing and sanitary infrastructure, for the purpose of resolving situations of housing exclusion.<sup>257</sup>

**Legislation relating to land planning, including procedures for community participation and expropriation procedures**

568. Land planning legislation includes:

(a) Rules regulating the territory of urban areas through land use plans (such as the Regional Urban Development Plan, the Inter-Communal Regulatory Plan and the Communal Regulatory Plan;<sup>258</sup>

(b) Rules which apply outside urban limits established in regulatory plans.<sup>259</sup>

<sup>255</sup> Act No. 16,391.

<sup>256</sup> Decree Law No. 1,305 of 1995.

<sup>257</sup> Act No. 18,138 of 1982.

<sup>258</sup> General Town Planning and Constructions Act, Legislative Decree No. 458 (Minvu) of April 1975 and related regulations; and General Town Planning and Constructions Ordinance, Supreme Decree No. 47 (Minvu) of May 1992.

As far as community participation is concerned, the only formal provision is made in the Communal Regulatory Plan and amended versions. When a project is brought before the community, the public is given the opportunity to make comments during the time allowed under the General Town Planning and Constructions Act, and in accordance with the procedure established in Article 217 of the General Ordinance.

### **Legislation related to the rights of tenants and housing finance**

569. The legislation relating to the rights of tenants or leaseholders establishes special rules regarding the tenancy of urban buildings, other matters being referred to the Civil Code.<sup>260</sup> With regard to housing finance, there are regulations governing housing grant systems, which are accessible to different layers of the population. These grants come in the form of direct State aid, without obligation of repayment, in order to help low-income families to finance their housing.

### **Legislation concerning construction codes, construction regulations and standards and the establishment of infrastructure**

570. The standards mentioned in paragraph 424 refer to the following aspects of housing, amongst others: town planning, urbanization and construction; the levels of action related to national, regional, inter-communal and urban-communal town planning; the regulation of urban lots; building permits and municipal approval of buildings and housing; works inspections, security standards, building conservation and repair; penalties for persons selling buildings or offering buildings for sale or for transfer without authorization; the establishment of redevelopment and sanitation areas; and the liability of first sellers, professionals or suppliers of building materials.

571. With regard to construction standards, the General Town Planning and Constructions Act lays down rules of design, urbanization and building works, building projects and buildings registered under the Horizontal Property Act. Title IV of that Act refers to “economic housing”. All these matters are regulated under the General Ordinance.

### **Legislation prohibiting any form of discrimination in the housing sector**

572. All types of legal discrimination are prohibited under the Constitution. The latter states, for instance, that “People are born free and equal in dignity and in rights”<sup>261</sup> and recognizes that “Men and women are equal before the law. Neither the law nor any authority may establish arbitrary differences”.<sup>262</sup>

### **Legislation prohibiting any form of eviction**

573. Protection is afforded under the law against eviction, although such protection does not constitute an absolute right, since it depends on the tenant or leaseholders’ fulfilment of contractual obligations.<sup>263</sup> Eviction must be ordered by a court, and tenants must be allowed a minimum period of four months to leave the rented accommodation. This period is increased by two months for

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<sup>259</sup> General Town Planning and Constructions Act, Art. 55.

<sup>260</sup> Act No. 18,101 of 1982.

<sup>261</sup> Constitution, art. 1.

<sup>262</sup> Ibid, art. 19.2.

<sup>263</sup> Act No. 18,101 (concerning the rights of tenants and leaseholders) of January 1982.

every complete year of residence, up to a maximum of one year. Rent is by agreement. In certain cases, the court may delay eviction by up to not more than six months. The rights established under this legislation are unrenounceable. Municipalities are responsible for looking after persons experiencing housing emergencies.<sup>264</sup>

### **Legislation restricting speculation in housing and property**

574. The right to housing is protected from speculation by systems which regulate access to housing subsidies, for social housing, which the State provides for low-income sectors of the population, through the Ministry of Housing and Town Planning.

### **Legislative measures conferring legal title on persons living in the “illegal” sector**

575. Legislative measures conferring legal title on persons living in the “illegal” sector (occupiers of land), as far as the Ministry of Housing and Town Planning is concerned, are contained in separate legislation.<sup>265</sup> The legislation establishes rules for the regularization of property titles and the urbanization of populations living in irregular circumstances. It also protects settlers, whether occupiers or not, who have been deceived by persons selling sites which have not been developed.<sup>266</sup> The Ministry of Housing and Town Planning is responsible for authorizing or removing encampments or marginal populations, for building social housing and for acquiring, expropriating and developing land on which to build such housing, for which the plans and programmes are implemented by the Serviu.<sup>267</sup>

576. Under Article 88 of Decree Law No. 1939 of 1977, the President of the Republic is authorized, through the Ministry of National Property, to transfer fiscal, rural or urban buildings free of charge to natural persons of Chilean nationality for whom such action is warranted in the light of their socioeconomic background, or because they are cases covered by that Ministry’s national or regional plans. According to the law, the persons who are allowed to settle on public land are entitled to request technical assistance or loans to enable them either to build or to exploit the land, as appropriate.

### **Legislation concerning environment and sanitation in housing and human settlements**

577. The sanitation of housing and human settlements, as well as the ordering of the environment, are regulated by law.<sup>268</sup>

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<sup>264</sup> Organizational Act No. 18,138 of 1982.

<sup>265</sup> Act No. 16,741 of 1968 and Decree Law No. 2,552 of 1979.

<sup>266</sup> Act No. 16,741 of 1968.

<sup>267</sup> Decree Law No. 2,552 of 1979.

<sup>268</sup> General Town Planning and Constructions Act; General Ordinance on Constructions and Urbanization and Sanitary Code. The ordering of the environment is regulated by Act No. 19300 of 1994, in conformity with general environmental principles.

## **Measures adoptes to give effect to the right to housing**

### **Encouragement for "facilitation strategies"**

578. By law, those receiving progressive subsidies may opt for either direct completion of their accommodation or for self-build. The same option is available under the Guarantee Fund, which provides financial guarantees for small building firms and technical assistance providers such as NGOs that wish to participate in the Progressive Housing Programme and are finding it difficult to obtain the bank guarantees needed to acquire resources.<sup>269</sup>

579. In 1996, MINVU established a technical assistance programme for implementation as a compulsory part of rural progressive subsidy programmes. The funding enables the families and organized groups accepted for the rural programmes to meet the costs of project design, the hiring of construction companies, works supervision or self-build, and technical and legal services.

### **Measures adopted by the state to build housing units and increase the availability of other types of low-rent housing**

580. Housing policy assigns the private sector an important role in the building and selling of houses, and to that end the state provides the private sector with direct (explicit) or implicit subsidies, and also endeavours to stimulate the market over the long term. These principles and the measures deriving from them are described below.

### **Role of the private sector**

581. Private companies have a decisive part to play in improving housing and environmental quality and in bringing down the cost of housing. Housing supply must reflect housing market conditions in the country's various regions, with private enterprise being encouraged to adopt a pluralist approach to what it makes available. There are many organizations that regulate housing demand, such as those which bring together potential buyers and offer them guidance in finding the right dwelling. The private sector also plays an active financial role by acting as a savings repository, granting mortgage credit, administering mortgage accounts and attracting the long-term resources needed to fund mortgages.

### **Policies based on subsidy**

582. Access to housing is characterized by various types of well-established subsidy, either direct (explicit) or implicit. These are granted to buyers as a means of facilitating access to their dwelling. Special emphasis is placed on achieving a just balance across this network, so that the least well-off receive the greatest amount of resources possible from the budget. The subsidies make it possible to transform housing need into demand, thus making it an effective force in the housing market.

583. Direct subsidies come in the form of direct state support to buy or build a dwelling or a housing solution. Currently, subsidized dwellings reach 88% of those who have access to official housing. The term "implicit subsidies" means the contribution made by the state to ensure that mortgage credit is granted on terms different from those found in the market, i.e. to ensure that interest rates remain stable over time.

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<sup>269</sup>

Supreme Decree No. 140 of 22 October 1990.

584. A large proportion of the credit granted is funded through the issuance of mortgage credit letters, which are traded on the secondary markets - the securities market or the stock exchange. These systems offer stable interest rates. If letters of credit relating to mortgage loans concluded with the beneficiaries of state programmes are sold and traded for less than their value, the state reimburses some or part of the difference. Since 1990, the maximum amount of implicit subsidy payable per operation has been restricted to 80 "Unidades de Fomento" (UF) - equivalent to 1,848 dollars - so as to prevent or restrict any regression in the system

585. With a view to encouraging the granting of small amounts of credit, in which the private sector normally takes little interest, the state has introduced a kind of safety net for debts, which covers part of the difference between the balance of an unpaid debt and the proceeds from selling the subsidized dwelling in the event that the lender institution should have to take action because of failure to service the debt. In 1998, the regulations were laid for the so-called transaction subsidy, which consists of a state subsidy intended to pay the costs of granting and administering a mortgage loan, provided the house is purchased at a price no higher than 500 UF (15,952 dollars) with a mortgage loan of up to 350 UF (11,166 dollars).

586. Between 1990 and 1999 the number of subsidies granted was 618,529. This period saw an increase in the number of subsidies granted to poorer households, as well as the creation of subsidies to finance basic and progressive housing.

### **Operation of the long-term market**

587. Mortgage loans are a normal component of every housing programme. Because of the small amounts involved and the fact that they are intended for the poorer sectors of the population, these loans are not an attractive proposition for the financial institutions and must be granted directly by the state. For all income groups, loans may be requested from private funding institutions: banks, finance companies and mutual organizations. They are based either on mortgage credit letters issued by the banks or finance companies, or on the endorsable loans issued by mutual organizations. Both types of certificate are valued and traded on the secondary markets. They are readjustable long-term arrangements, guaranteed by the mortgage, and can be traded on the secondary markets in exchange for investment bonds by pension fund administrators, securities companies and other institutions wishing to make long-term investments. They can also be acquired by private investors and financial institutions.

588. The mortgage loans granted by loan companies to persons receiving housing subsidy are funded by letters of credit giving entitlement to the above-mentioned indirect subsidy and, according to the amount, to the above-mentioned credit guarantee. A mortgage loan is paid through equal monthly dividends which take into account amortization, interest and commission. A letter of credit pays the investor through quarterly coupons which are separate from the letter and cover amortization and interest for the period, with the commission being earned by the issuing body, whether a bank or a finance company. These operations are carried out in Unidades de Fomento (UF), adjusted daily in accordance with inflation.

589. The Ministry of Housing and Urban Development (MINVU) is involved in two ways:

(a) Delivery of dwellings contracted for by the sector, through the housing and urban development services (Serviu), progressive dwellings (Serviu) and basic dwellings (Serviu);

(b) Delivery of the housing subsidy certificate, a document which is used in the private housing market to fund the purchase or construction of a dwelling. This document is paid off on fulfilment of the established conditions.

590. Funding for housing comprises a combination of the deposit paid by the beneficiaries, subsidies and mortgage loans, to be paid off over 20 or 25 years. In every system a direct subsidy is paid to the beneficiary; it must meet between 70 and 75% of the value of the dwelling for which the beneficiary is applying. To this end, maximum amounts of subsidy are set for the various programmes, and the amount in question is always paid off gradually in amounts commensurate with the income of the target population. The population's access to a programme is geared to a minimum set of demands, leading to a points system which is used to select beneficiaries in accordance with the programme's objectives.

### State housing programmes

591. The main ones are the progressive housing programme, the basic housing programme, the special programme for workers, the rural-sector housing subsidy, the integrated general housing subsidy scheme and the home leasing scheme.

### Progressive housing scheme

592. Established in 1990, this programme is intended for individual families or organized groups that have no accommodation, are in an alliance ("allegadas") or exist in other marginalized housing situations.<sup>270</sup> The programme takes care of families whose monthly income does not exceed 3 UF (71 dollars), and consists of two stages. The first comprises a built site containing kitchen and bathroom, the latter comprising lavatory, washbasin and shower. The progressive dwellings being delivered by Serviú also contain a living area of approximately 14 m<sup>2</sup>. The second stage comprises the rest of the dwelling, which is of the basic type described below.

593. The cost of this type of housing solution is approximately 140 UF (3,339 dollars) for the first stage and 70 UF (1 669 dollars) for the second. Each stage is financed in the following manner:

	Stage 1	Stage 2	Total
Minimum deposit	8 UF (190 US\$)	5 UF (119 US\$)	13 UF (310 US\$)
Subsidy	132 UF (348 US\$)	18 UF (429 US\$)	150 UF (3,578 US\$)
Serviú loan	0 UF	47 UF (1,121 US\$)	47 UF (1,121 US\$) (max)

### Basic housing programme

594. This programme targets families or organized groups with no home<sup>271</sup> and whose income falls between 5 and 12 UF (119-286 dollars). The dwellings have an average surface area of 42 m<sup>2</sup> and their cost varies between 250 and 380 UF (5 963 - 9 024 dollars), depending on location and design. The dwelling is financed as follows:

	Serviú type	Private type
Minimum deposit	10 UF (238 US\$)	20 UF (477 US\$)
Subsidy	140 UF (3,339 US\$)	140 UF (3,339 US\$)
Serviú loan	100+ UF (2,385 US\$ +)	100+ UF (2,385 US\$) (max)

<sup>270</sup> MINVU Supreme Decree No. 140 of 1990.

<sup>271</sup> MINVU Supreme Decree No. 62 of 1984.

### Special programme for workers

595. This programme facilitates the funding and development of special social housing construction programmes for organized groups whose members must meet minimum deposit and income requirements that allow them access to a mortgage loan.<sup>272</sup> This system is underpinned by an agreement between MINVU, the Chilean National Bank and the Edwards Bank. The programme is intended for families with an income between 12 and 16 UF (286 - 381 dollars). The average surface area is 45<sup>2</sup>, with the cost ranging between 350 and 500 UF (8,348 – 11,926 dollars). The financing is done as follows:

Minimum deposit:	40 UF (954 US\$);
Subsidy:	90 UF (2,146 US\$);
Mortgage loan (National or Edwards Bank):	220 UF (5,247 US\$).

### Rural-sector housing subsidy

596. This programme grants a housing subsidy certificate for use in funding the construction or purchase of dwellings or sanitary arrangements in rural areas.<sup>273</sup> The system benefits individual families and organized groups on a low income. In order to pay for their dwellings the beneficiaries have a housing subsidy, a deposit and, in some cases, a linked loan granted by the National Institute for Agricultural Development (INDAP). This system offers the following options:

Type of solution and method of application	Amount of subsidy (UF/ US\$)	Minimum deposit (UF/ US\$)
Category I: Individual or collective application. Construction of dwellings on own land or with rights.	150 - 300 (3,578 – 3,816)	5 (119)
Category II: Individual or collective (50 or more) application. Purchase or construction of dwellings in townships (shantytowns).	200 - 180 (4,470 – 4,293)	10 (238)
Category III: Collective application. Sanitary facilities in existing dwellings.	70 - 50 (1,669 – 1,192)	3 (71)

### Integrated general housing subsidy scheme

597. This system grants a subsidy certificate for use in funding the purchase or construction of dwellings in various price brackets.<sup>274</sup> The targets are families or organized groups with an average income of at least 18 UF (429 dollars), with the greater part of the resources being focussed on those with incomes from 18 to 20 UF (429 - 477 dollars). To fund a dwelling, the beneficiary must have a housing subsidy, a deposit, and a mortgage loan obtained in the private sector. The following subsidies and minimum deposit requirements apply in relation to house price bracket:

<sup>272</sup> MINVU Supreme Decree No. 235 of 1985.

<sup>273</sup> MINVU Supreme Decree No. 167 of 1986 and subsequent amendments.

<sup>274</sup> MINVU Supreme Decree No. 44 of 1988.

House price bracket	Amount of subsidy (UF/ US\$)	Minimum deposit (UF/ US\$)
Up to 500 UF (11 192)	120 - 110 - 100 (2,862 – 2,623 – 2,385)	50 (1,192)
From 500 to 1 000 UF (11 192 - 22 385)	100 - 90 - 80 (2,385 – 2,146 – 1,908)	100 (2,385)
From 1 000 to 1 500 UF (22 385 - 33 537)	80 - 70 - 60 (1,908 – 1,669 – 1,431)	150 (3,378)
Urban renewal for all the above- mentioned price brackets	200 - 190 - 180 (4,770 – 4,532 – 4,293)	50 - 100 - 150 (1,192 – 2,385 – 3,578)

598. Although mortgage credit can be obtained on the private financial markets, the first housing price bracket is governed by an agreement between MINVU, the Bank of Chile and Edwards Bank. This programme allows for various operating methods, called general application (Cat. I), group application with housing projects and land ownership (Cat. II) and areas of urban renewal (Cat. III).

### Home leasing scheme

599. In order to increase the building of dwellings at accessible rent, since 1995 the home leasing scheme has offered subsidies to fund home-purchasing, through a method known as "rent with the prospect of purchase".<sup>275</sup>

### Measures adopted in order to exploit unused, underused or improperly used land

600. Analysis of the evolution of Chile's population centres has revealed a tendency towards growth by extension. This situation has resulted in inefficient usage of scarce resources and high social costs. Urban transport systems are collapsing, roads are severely congested and the population, especially the poorer sectors, is concentrated in areas of cities far away from access to services. This situation is compounded by the tendency for housing programmes to be situated on the periphery of towns, owing to lower direct construction costs and the availability of land from the private sector.

601. The presence of waste land inside cities, and the amount of underused urban land on which actual density is well below desirable density, are mainly the result of market forces, since their location is related to urban decay, which deters investors from carrying out development. A vicious circle emerges: less investment, more decay; greater decay, less attraction to invest. The existence of such sectors in a city generates a blatant under-utilization of installed capacity, in terms of infrastructure, services and equipment.

602. So as to redress this situation, MINVU is developing strategies to stimulate demand, by granting increased subsidies for the purchase of dwellings in new areas of interest. Such areas correspond to those defined as being in need of urban renewal and high-priority development. The latter, still being determined, attract the same subsidies as those granted for urban renewal; they are intended for housing construction.

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<sup>275</sup>

Act No. 19,281 of December 1993.

### Percentage of the national budget earmarked for housing

603. Every year, the various ministries and departments work with the Ministry of Finance to prepare a draft Budget Act for the consideration and approval of the National Congress. The act determines the proportion of the budget allocated to each sector, giving a breakdown of investments and subsidies. Table 33 uses Ministry of Finance data to show the trends in public spending on housing for the period 1990-98, including expenditure by MINVU as well as on the programmes carried out by the Under-secretariat for Regional and Administrative Development and the Ministry of the Interior, the latter being concerned with the provision of toilets and sanitary fittings. The table also shows housing expenditure by central government, and as a percentage of annual GDP.

**Table 33**  
**Public expenditure on housing, 1990-98**  
**In millions of pesos per year (dollar equivalent in brackets)**

Year	MINVU (a)	Others (b)	Total exp. on housing (a) + (b)	Total exp. by central government (c)	% of central govt. exp.	% of GDP
1990	81,448 (267,130,206)	14,488 (47,517,218)	95,036 (314, 647,424)	1,942,849 (6,372,085,929)	4.9	1.0
1991	119,405 (341,919,134)	19,413 (55,589,599)	138,818 (397,508,733)	2,620,029 (7,502,517)	5.3	1.1
1992	154,601 (426,391,417)	21,513 (59,333,112)	176,114 (485,724,529)	3,282,066 (9,051,977,494)	5.4	1.2
1993	193,671 (479,182)	21,899 (54,182,645)	215,570 (533,364,672)	3,958,334 (9,793,735,309)	5.4	1.2
1994	227,653 (541,798,752)	26,002 (61,883,560)	253,655 (603,682,312)	4,615,392 (10,984,321,005)	5.5	1.1
1995	253,819 (639,713)	34,791 (87,685,560)	288,610 (727,398,744)	5,265,064 (13,269,813,746)	5.5	1.1
1996	300,771 (729,548,596)	45,017 (109,193,004)	345,788 (838,741,600)	6,137,987 (14,888,269,823)	5.6	1.2
1997	305,062 (727,533,328)	46,325 (110,479,120)	351,387 (838,102,448)	6,909,975 (16,479,394,719)	5.1	1.1
1998	327,128 (710,699,776)	49,600 (107,758,152)	376,728 (818,457,928)	7,781,898 (16,906,511,112)	4.8	1.1

Source: Budget Office (2000)

(a) Expenditure by MINVU; (b) Expenditure by the Under-secretariat for Regional Development on slum improvement, urban redevelopment and equipment provision; (c) Expenditure on general, social and economic activities, interest on public debt, and on other items unclassifiable from the operational standpoint.

604. Since 1990, spending on housing has been increased considerably in order to tackle the severe housing shortage, meet the growing demand for housing and boost urban development. The additional budgetary spending on housing amounted to 151.5% between 1989 and 2000, with public

expenditure increasing by 52.7% over the same period. In 2000, public spending on housing rose to 668 million dollars, equivalent to 1% of GDP, while budgetary spending rose to 578 million dollars, or 0.8% of GDP.

605. The budgetary contribution to public spending on housing rose from 52.4% in 1989 to 87.8% in 1995, falling to 86.3% in 2000. Between 1989 and 2000, housing as a proportion of budgetary social expenditure rose from 6.6% to 8% in 1995, then fell to 5.9% in 2000. Housing as a proportion of public social expenditure decreased from 8.1% to 8% in 1995, falling to 5.8% in 2000<sup>276</sup> (see Table 34).

**Table 34**

**Budgetary/Public Housing Expenditure, 1989-2000 (%)**

Year	Budgetary/Public
1989	52.4
1990	62.4
1991	67.6
1992	78.4
1993	86.6
1994	88.3
1995	87.8
1996	84.0
1997	89.2
1998	85.8
1999	85.6
2000	86.3

Source: Ministry of Finance

606. From 1989 to 2000, public housing expenditure as a proportion of GDP remained at around one per cent. Budgetary spending on housing as a proportion of GDP increased from 0.5% to 0.9% in 1995, and fell to 0.8% in 2000.<sup>277</sup>

607. From 1990 to 1999, investment in housing (including social housing, housing subsidies and slum improvement) and in urban infrastructure (including facilities, paving, urban highway administration, parks, sanitary infrastructure and rainwater equipment) rose by 62.3%. To achieve the target of 90 000 dwellings per year, investment increased by 53.1%. In addition, the amount of resources allocated for infrastructural purposes doubled over this period.<sup>278</sup>

608. From 1990 to 1999, sectoral investment in housing solutions increased by 53.1%. In the case of social housing, the increase was 122.4%, for subsidies 23.4% and for slum improvement 27.5%. Social housing investment began with basic housing, followed by progressive housing in 1990. During this period, changes were made to the pattern of expenditure on subsidies, with greater

<sup>276</sup> Ministry of Finance, in *Economic and Social Indicators, 1990-2000*, Mideplan.

<sup>277</sup> Ibid.

<sup>278</sup> Mideplan, based on data from MINVU, in *Economic and Social Indicators, 1990-2000*.

emphasis coming to be placed on lower-income households.<sup>279</sup> From 1990 to 1999, sectoral investment in urban infrastructure grew by 116.3%. Spending on pavements and urban highways accounted for around 90% of total investment in urban infrastructure over the decade, showing an increase of 95%.<sup>280</sup>

### **Measures to boost the development of small and intermediate urban centres, especially in rural areas**

609. These measures belong to the body of regulations that govern the granting of rural housing subsidies in response to collective applications made by housing cooperatives or by natural persons which have set up a community.<sup>281</sup> Their aim is to encourage the growth of rural townships, by means of a subsidy that enables rural inhabitants to purchase or build dwellings, either in pre-existing settlements or by directly building new townships.

610. In 1996, MINVU published a document entitled "Urban and Territorial Development", which sets out the principles and objectives of policy in relation to territorial legislation, and advocates the intermediate-sized settlement as the means to enhance land-use efficiency.

611. During the 1990s, great emphasis was placed on reviewing and formulating regional urban development plans. These are now the major planning instruments at the regional political-administrative level, dictating the manner in which human settlements grow and territories are occupied by different types of activity, and proposing the sites for urban development. These plans provide the framework for decision-making on the measures for stimulating urban growth in some centres while curbing excessive expansion in others, and for supporting the development of medium-sized towns.

### **Measures adopted to protect against eviction, and other guarantees**

612. Protection against eviction and other guarantees are provided for in law.<sup>282</sup> Under the relevant fundamental law, the municipalities are responsible for preventing risks and providing emergency assistance.<sup>283</sup>

### **Difficulties and problems encountered in giving effect to the right to housing**

613. In 1999, the concept of a minimum living standard, understood as the basic minimum for conducting family life, was introduced in response to the problem of defining an adequate living standard in relation to demand and funding capacity.

614. Proportionally greater resources are allocated for "subsidy delivery" programmes, which cost the state less, than for "housing delivery" programmes, since the latter allow people more say in finding a solution to their housing problem, thus making social expenditure more efficient and acceptable.

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<sup>279</sup> Idem.

<sup>280</sup> Idem.

<sup>281</sup> MINVU Supreme Decree No. 167 of 1986.

<sup>282</sup> Decree-law No. 2,186 of 1978 (Fundamental law on expropriation procedure), General law on town planning and construction, MINVU Decree-law No. 458 of 1976.

<sup>283</sup> Act No. 18,695, article 4 (i) of 1992.

615. Land for social housing is scarce. Accordingly, a special section of the budget has been set up to fund land purchasing by MINVU, both as an aid to timely planning, and in order to prevent speculation by landowners.

616. With regard to the focus on extreme poverty, at the start of the decade the only housing programme concerned with those living on the margins was the Basic Housing Programme, operated by Serviu. As part of an effort to improve access to housing by the lower-paid, the Progressive Housing Programme was introduced, which made it possible for groups to apply.

617. Subsequently, the focus of these programmes has been adjusted through a series of procedural adjustments relating to applications and the allocation of benefits. The administrative and advice networks have been strengthened so as to improve access to information for the low-income groups.

618. In 1998, the "Chile Barrio" programme was launched, to which MINVU, the Interior Ministry, the ministries for state property and labour and the Social Investment Fund contribute jointly. This programme takes an integrated approach to the many housing, social and cultural problems affecting the families who live in the temporary shantytowns, by contrast with traditional housing programmes which operate on too narrow a front and have limited capacity to deal with such problems.

### **International assistance**

619. During the period 1990-99, the main programmes in the housing sphere involving financial cooperation or non-reimbursable support were carried out under agreements with the governments of Germany and Sweden. They are described below.

#### **Cooperation programme with Sweden**

620. Eleven million dollars were contributed towards this programme between 1990 and 1994, with 78% of the costs being funded by Sweden and the remainder provided by MINVU as Chilean counterpart. These contributions paid for progressive housing projects (PVP) comprising 2,863 first-stage and 2,379 second-stage solutions (1,851,045 dollars). In addition, funding was provided for 30 community amenities, institutional development and capacity-building projects (898,926 dollars) consisting of contracted technical assistance for 9,000 families either applying for or receiving progressive housing, evaluation studies of the initial period of PVP implementation, and training seminars on PVP initiation and adjustment. This funding was also used to set up a guarantee fund - which is still in operation - designed to encourage greater involvement by small and medium building companies in the construction of progressive dwellings across Chile's 13 regions.

#### **German financial cooperation programme (KFW)**

621. This programme operated from 1991 to 1999. The German Government contributed 8.5 million dollars, covering 75% of the cost, with MINVU contributing the remainder as Chilean counterpart.

622. The main objectives of this cooperation programme were to provide a clear response to the housing problems of vulnerable settlements in the Metropolitan Region and the Bío-Bío Region, which then included Coquimbo Region, through two reconstruction projects carried out in the

aftermath of the 1997 earthquake. These funds were also used to encourage community organizations and popular participation. PVP private housing projects were funded, as well as minor communal amenities: 2,202 first-stage and 1,589 second-stage PVP solutions and 20 amenities.

623. Other donations during this period, given in the framework of a MINVU/GTZ agreement which complemented the financial assistance provided by KFW, led to a progressive housing technical assistance project. The Andalusia Regional Council made a financial donation to restore and rehabilitate the centre of Santiago; this project involved the construction of housing units. The governments of Denmark, Holland and Norway provided donations during the first five years of the decade, with the same objectives as the cooperation provided by Sweden and Germany.

## Article 12

### Right to physical and mental health

#### Information on the population's physical and mental health

624. The most common causes of death are cardiovascular disease, cancer (cervical, breast and bladder), trauma (traffic accidents), respiratory disease (pneumonia in adults), diabetes and HIV/AIDS, the latter having continued to increase since the start of the epidemic. Societal changes have led to problems that do not kill, but diminish quality of life through disability, pain and distress. The latter include mental, dental and osteo-articular diseases. All these health situations are included as health objectives for the 2000-2010 period.<sup>284</sup>

625. Mortality among the adult population aged from 20 to 64 accounts for 29% of total mortality in the population. Young men account for 66%, the main causes of death being trauma and poisoning. Women represent 34% of the mortality rate for the adult population, the main cause of death here being cancer.<sup>285</sup> Maternal mortality has fallen, but the number of hospital admissions for abortions is 114 per 1 000 live births, and adolescents account for 16.1% of all pregnancies. In a publication issued by the Ministry of Health's Department of Epidemiology, entitled " Methodology for supporting local prioritization of health problems - national and regional analysis of years of potential life lost (AVPP) between 1985 and 1995", the three main causes of AVPP are defined as: trauma and poisoning, tumours, and diseases of the circulatory system. They appear in this order in men, whereas with women the major cause is tumours, followed by circulatory diseases and accidents.

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<sup>284</sup> *Health objectives and health model for the decade 2000-2010*, Official document of the Chilean Government, Ministry of Health, January 2000.

<sup>285</sup> Dept. for Health Statistics and Information, Ministry of Health.

**Table 35**  
**Health indicators, 1990, 1999 and 2000**

Indicator	1990	1999	2000
Professional care at birth (per 100 births)	99.1	99.7	99.8
Low birth weight (per 100 live births)	5.7	5.5	5.3
Insufficient birth weight (per 100 live births)	18.2	15.6	15.2
Malnutrition rate for under-6's under observation in public hosp. (per 100 such children)*	7.4	0.6	0.5
Child mortality (per 1000 live births)	16	10.1	8.9
Neonatal mortality (per 1000 live births)	8.5	5.9	5.6
Delayed child mortality (per 1000 live births)	7.5	4.2	3.3
Child mortality, age 1-4 (per 1000 in 1-4 age-group)	0.8	0.4	0.4
Maternal mortality (per 10 000 live births)	4	2.3	1.9
Cervical cancer deaths (per 100 000 women)	11.9	9.6	8.9
Deaths due to perinatal infections (per 100 000 live births)	552.8	353.2	353.4
Deaths due to respiratory disease (per 100 000 inhabitants)	73.1	76.4	54.5
Deaths due to trauma and accidents (per 100 000 inhabitants)	72.8	51	51
Life expectancy at birth	74.4	75.2	75.5

Source: Ministry of Health, Department for Health Statistics and Information, March 2003.

\* In 1994 the parameter for measuring nutritional status was changed.

626. In recent decades, mental disorders have become gradually more prevalent, and now affect between 12 and 21% of the population aged over 15. They generally take the form of emotional upsets - mainly depression - in women, and dependence on alcohol or drugs in men. In children, hyperactivity or attention deficit disorders and emotional or behavioural problems affect 20% of schoolchildren in the 6-13 age group. In Chile, schizophrenia affects 1.02% of the general population. As of September 2001, 653 people had gained access to clozapine as a result of primary health consultations.

627. According to the Survey on Health and Living Standards, high blood pressure affects 10% of the population: 7% of men and 13% of women. It starts to become prevalent in the over-45 age group and affects more than 40% of the population aged over 65. Diabetes mellitus is present in 3.2% of the population: 3.4% of women and 3% of men. Like high blood pressure, diabetes starts becoming more pronounced among the over-45 age group; it affects 14% of people aged over 75.

628. Workplace accidents affect 12% of the population every year, notified occupational diseases affect 23 per 1,000 workers, and the number of working days lost to industrial accidents and diseases increases every year. In 2000 the recorded accident rate was 7.98% and the number of cases of notified occupational disease reached 17 per 1,000 workers. Six per cent of the population reported sight defects. One per cent had cataracts and 0.5% glaucoma. There was a higher prevalence of factors relating to the main health problems among the most underprivileged socio-economic groups, with differences among the genders.<sup>286</sup>

629. The Survey on Health and Living Standards shows that 40% of the population had smoked during the previous month: 44% of men and 36% of women. This proportion is increasing among younger people, reaching 44% among the 15-19 age group and 48% among the 20-44 age group. Twenty-three per cent of the population said they were not currently smoking but had done so at some time in their lives. Approximately 5% of the population aged over 12 said they had taken illegal drugs in the previous year, and around one per cent were dependent on them. Most of those people had used marijuana, with one fifth stating that they had used substances such as cocaine, crack or amphetamines. Sixteen per cent of the population admitted to a drinking problem, having had two positive results using the "EBBA" test. This test, carried out at national level, comprises seven questions requiring a yes or no answer, and focuses on people's personal appraisal of their drinking habits. The proportion of problem drinkers among men was 30%, and among women 5.5%. Most of the male problem drinkers were concentrated in the 20-44 and 45-64 age groups (over 30%). In women, the largest proportion were to be found in the 15-19 age group (9%).

630. The survey also found that 13% of males and 22.7% of females were obese. Obesity affected 8% of children aged under 6, 24% of adolescents, and 38% of women aged from 20 to 50. Among the Chilean population, 91.2% are sedentary and take exercise fewer than three times per week (men 88.8%, women 93.8%). Among the lower socio-economic groups, the proportion living a sedentary life was 93.6%, among the intermediate groups 90.5% and among the higher groups 89.8%. By age-group, a sedentary life characterised 78.6% of those aged 15-19, 90.4% of those aged 20-44, 95.5% of those aged 45-64, and 98.8% of those aged over 75.

631. The sociocultural, economic, educational, housing, environmental and other factors that condition risk in relation to non-transmissible diseases all pose difficulties for those wishing to live a healthy life. The poorest groups have the highest morbidity and mortality rates for all causes, and the highest levels of chronic disease.

632. The population regards violence, especially the domestic kind, as a significant factor in the deterioration of living quality and health levels. One in every four households experiences some level of physical or psychological violence. Around 50% of children say they have suffered some kind of physical or mental abuse. Five per cent of the children affected have required professional health care for physical injuries caused by abuse. This is most frequent in males aged under ten, and in females aged over ten. It is estimated that 33.6% of women suffer physical or mental abuse in their domestic lives. Although the prevalence among adults has not been studied, on the basis of the international studies carried out the level in Chile is thought to be around 4%. In view of the importance of this matter, an intersectoral plan on domestic violence has been formulated; this will be carried out jointly by the Ministry of Health and the National Women's Service.

### **National policy on health**

633. In 1990, the public health sector was experiencing severe infrastructural and operational problems, which led to difficulties in gaining access to health care and lowered the overall quality. Hospitals and equipment, both medical and other kinds, were in serious decay. At the same time, in nearly every service, at every level, there were staff shortages and staff dissatisfaction at the low pay and poor working conditions. This was compounded by inequalities in the care provided for the population.<sup>287</sup> Faced with this situation, the authorities made it their first priority to rehabilitate public health, particularly health care coverage and quality. Since March 1990, Chile has conducted a health policy based on the following principles:<sup>288</sup>

(a) Health is a universal right enshrined in the Constitution, and its existence as a commodity available on request to the population obliges the state to guarantee all Chileans access to services for maintaining their health, regardless of gender, age or socio-economic status. This right must be recognized and put into practice by all those involved;

(b) Recognizing health as a universal right means establishing shared social protection mechanisms that will end the sense of insecurity felt by the least protected sectors regarding access to services that will ensure an adequate level of health care;

(c) In order to guarantee health protection, it is necessary to establish a shared funding system to which all citizens contribute, and from which they all benefit;

(d) In order to guarantee an effective and efficient health care system in response to Chileans' right to health, quality parameters must be determined in relation to the infrastructure, equipment and staff needed for comprehensive health care, thereby generating confidence through user satisfaction.

634. Health policy targets have been set for improving the population's health, in accordance with the guidelines and priorities defined by the Ministry of Health. In order to respond to new demographic, epidemiological and cultural developments that have occurred over the past decade, basic health programmes have changed considerably. Principal among these are the separate programmes for children, adolescents, adults, senior citizens and women, and those aimed at emerging problem areas such as mental health, injuries and violence, tobacco use, alcohol use, drug use and HIV/AIDS. One of the main objectives is to change the pattern of care by strengthening primary health care as the point of entry. The issue of accessibility has been addressed by extending the hours of care facilities and by stepping up the treatment available for diseases and dental problems.

### **Measures adopted to give effect to primary health care**

635. Chile has had planned primary health care since before the Alma Ata Conference in 1978. Chile's policies, plans and programmes in the health sector have placed emphasis on disease promotion and prevention, and a network of primary health-care establishments has existed for many years, enabling the country to achieve levels of care that are well known.

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<sup>287</sup> Mideplan: *Summary of six years' social policy, 1990-96*; 1996

<sup>288</sup> Presidential message of 21 May 2001.

636. On the basis of a new health-care model geared to outpatient care carried out by multipurpose facilities, a large proportion of the investment made in health throughout the 1990s was earmarked for primary health care. Examples are the rehabilitation of emergency primary care units (SAPU) and surgeries, the introduction of short-stay wards, which has helped to reduce the infant deaths caused by pneumonia, the installation of basic laboratories, the establishment of 35 family health centres, and the introduction of outpatient facilities specialising in ophthalmology, dentistry, orthopaedics and ear, nose and throat treatment, among others. The achievements in 2000 were the introduction of a free consultation hotline ("Linea 800") at 287 primary care facilities, a 51% increase in urgent dental care provision, over 400,000 more consultations in specialized emergency outpatient centres, and the elimination of queuing in 97% of consultations.

### **Percentage of gdp allocated for health, and total expenditure on the health sector**

637. The resources allocated to the health sector have been increased consistently since 1990, in order to improve quality and coverage. Budgetary spending on health increased by 226.4% between 1989 and 2000, enabling a public spending increase of 135.4% over the same period. In 2000, public health spending rose to 2 037 million dollars, equivalent to 2.9% of GDP, while budgetary spending reached 940 million dollars, or 1.3% of GDP.

638. The contribution made from the budget to public health spending rose from 33.3% in 1989 to 46.1% in 2000. From 1989 to 2000, the proportion of public social spending taken up by health increased from 15.8% to 17.6%, and the proportion of budgetary social spending taken up by health went from 7.5% to 9.6%.<sup>289</sup>

639. Between 1989 and 2000, the proportions of public spending on health and budgetary spending on health as part of GDP rose, respectively, from 2.1% to 2.9% and from 0.7% to 1.3%. Over the same period, budgetary spending per capita on health rose by 222.2%, and public spending per capita by 132.4%. In 2000, public spending per capita on health increased to 204 dollars, and budgetary spending per capita to 94 dollars.<sup>290</sup>

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<sup>289</sup> Ministry of Finance, *Economic and Social Indicators*, Mideplan.

<sup>290</sup> Ibid.

**Table 36**  
**Public and budgetary spending on health, 1989-2000**  
**(Millions of pesos (millions of dollars) in 2000)**

Year	Public exp.	Annual variation	Budgetary exp.	Annual variation
1989	466,887 (865)		155,383 (288)	
1990	445,687 (826)	- 4.5	167,110 (309)	7.5
1991	524,905 (972)	17.8	210,860 (390)	26.2
1992	613,624 (1,137)	16.9	260,441 (482)	23.5
1993	687,869 (1,275)	12.1	308,746 (572)	18.5
1994	758,221 (1,405)	10.2	357,673 (662)	15.8
1995	790,037 (1,464)	4.2	367,312 (680)	2.7
1996	858,208 (1,590)	8.6	400,909 (743)	9.1
1997	909,711 (1,686)	6.0	433,936 (804)	8.2
1998	984,081 (1,824)	8.2	454,842 (843)	4.8
1999	1,014,263 (1,880)	3.1	481,177 (891)	5.4
2000	1,099,109 (2,037)	8.4	507,156 (940)	5.4
% ave. annual growth 1989-2000		8.9		12.6
% cumulative growth 1989-2000		135.4		226.4

Source: Ministry of Finance in *Economic and Social Indicators*, Mideplan.

## Health indicators

### Infant mortality

640. Infant mortality is one of the most important variables in the population's state of health. In Chile, this indicator has seen a downward trend in recent decades. In 1950, 136 in every 1,000 children died before they reached one year of age. In 1970, the rate was 79 per 1,000 live births, and by 1999 ten children in every 1,000 died before one year of age. With regard to the activities of the health sector, some researchers maintain that more than half of the reduction in infant deaths is attributable to greater health care coverage. Over 99% of Chilean children are now born in maternity units and receive professional care.

641. Women's reproductive performance has changed: from 4.9 children per woman in 1965 to 2.1 in 1999. Seventy-three per cent of births involve first or second children, and it is young women who are having them: 65.4% of live births involve mothers aged under 30. The changes in fertility and family size are closely linked to improved education among mothers. This cultural change is behind almost a third of the decrease in infant mortality. Another important factor has been greater availability of basic health care, drinking water and sewerage. Now, 99% of the urban population has access to clean drinking water, although only 40% of the rural population can count on it. Despite the progress made, analysis of the national situation shows great disparities across the regions, and infant mortality tends to be three and four times worse in the communes with lower living standards.

642. As to the main causes of infant deaths, the epidemiological profile has varied significantly in the past twenty years, owing to the great decrease in deaths from infectious and respiratory diseases. Perinatal infections have also decreased significantly in this period, and consequently there has been a rise in the relative importance of congenital defects, which account for 30% of deaths among children aged less than one year. To a large extent, the decline in infant mortality has come at the expense of delayed infant deaths, the cause of a large proportion of neonatal deaths, which in turn account for 58% of all deaths in children less than one year old. Out of all deaths among children aged under 28 days, around 76% occur in the first week of life. The main causes of neonatal death are: extreme prematurity, respiratory problems, intra-uterine hypoxia and asphyxia at birth - all causes associated with low birth weight. Around 5.5% of neonates weigh less than 2,500 g, and 15.6% have an inadequate weight of between 2,500 and 2,999 g. These figures have remained relatively stable in recent years, and are lower than those found in other developing countries.

### **Children immunized against diphtheria, whooping cough, tetanus, measles, poliomyelitis and tuberculosis**

643. The Expanded Immunization Programme is a universally accessible national programme which achieved the following coverage rates in 2001:

- (a) DPT/Polio third dose (diphtheria, tetanus, whooping cough): 95.6%;
- (b) Triple virus (measles, mumps, rubella) in children under 1 year: 93.8%; and
- (c) Triple virus in schoolchildren: 95%.

### **Life expectancy**

644. The statistics indicate that life expectancy at birth in the period 1990-95 rose from 71.35 for men and 77.44 for women, to 72.99 for men and 79.04 for women in the period 1996-2000.

### **Access by the population, pregnant women and children to qualified health practitioners**

645. With the exception of very small groups living in isolated areas, 95.8% of the population has access to qualified medical staff to the medicines needed to treat common diseases, according to estimates based on the National Survey on Socio-economic Classification (CASEN) for 2000.<sup>291</sup> Ninety per cent of pregnant women are seen by qualified staff during pregnancy, and 99.7% receive professional care during the birth, at public and private establishments (1999). The maternal mortality rate in 1999 was 2.3 per 10,000 live births (60 cases per 263,867 live births). In the public health care system, 100% of Chilean children were cared for by properly trained professional and technical staff.

### **Groups whose health situation is much worse than the rest of the population**

646. Despite these good national indicators, some population groups have health levels much lower than the national average and those enjoyed by higher income groups. They are: children aged less than one year, adult workers aged from 45 to 64, adults older than 65, temporary workers

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<sup>291</sup> See Annex 1.

- especially women - in lower-income sectors, and people who live in the country's poorest regions, especially the rural ones. This is reflected in the highest mortality rates for infants and certain age-groups, greater AVPP (years of potential life lost) levels, lower life expectancy and a higher disease rate.<sup>292</sup>

### **Government measures to improve the mental and physical health of vulnerable and underprivileged groups**

647. One of the Government's targets for 2000-06 is to carry out a thorough examination of current intra-regional and intra-communal health conditions. The information will be used to produce a national health inequality map. In the context of the health reform, for 2001 and 2002 parts of the budget have been specifically allocated for the strengthening of actions that target the most vulnerable groups.

648. Women constitute one of the six high-priority groups identified by the Ministry for Planning and Cooperation in the framework of the process to adapt public programmes and policies. The Ministry of Health Women's Health Programme aims to take action that will improve their overall development - physical, mental and social - at all stages of their lives.<sup>293</sup> This programme has been in operation since 1997. The important strategies in this context involve intersectoral activities with the National Women's Service (SERNAM), the Foundation for Women's Advancement and Development (PRODEMU), the ministries of education, labour, justice and housing, and NGOs, as well as greater participation by women themselves in the programmes and projects intended to improve their situation.

649. In 1995, a Programme for the Elderly was introduced as a sub-department of the Presidency, its objectives being to provide supporting mechanisms for elderly persons suffering from disabilities, and to find ways of covering the whole cost of highly expensive surgical interventions. This initiative led to a 120.5% increase in the provision of such services between 1995 and 2001, benefiting 488,900 people.

650. The dental programme introduced into the primary care system is made up of special treatment subprogrammes for the elderly, adolescents, low-income mothers, temporary workers and heads of household. The programme also addresses such matters as the application of fillings, fluorinated drinking water, weekly fluoride mouthwashes for children in local basic education, and the prevention and treatment of tooth and gum disorders.

### **Measures adopted by the Government to reduce stillbirths and infant mortality and to foster child development**

651. With a view to reducing the stillbirth rate, the laws regulating pregnancy and birth care are being revised. A central concern is to improve the links between the existing care facilities in each geographical area, so as to establish clear lines of decision-making and mechanisms capable of ensuring coordination among the various conflicting interests in the care sector. The following table reflects this undertaking in terms of the main indicators relating to this matter, for the period 1990-99.

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<sup>292</sup> Ministry of Health.

<sup>293</sup> Women's Health Programme, Series 01: Health Programmes. Chile, 1997.

**Table 37**

**Stillbirths and infant mortality in Chile, 1990-98**

Year	Maternal mortality per 100,000 live births	Late foetal mortality per 1,000 live births	Early neonatal mortality per 1,000 live births	Infant mortality per 1,000 live births
1990	39.9	5.8	7.7	16.0
1991	35.3	5.9	6.4	14.6
1992	30.9	5.7	6.1	14.3
1993	34.4	5.3	5.3	13.1
1994	25.3	4.6	5.2	12.0
1995	30.7	4.6	4.6	11.1
1996	22.6	4.5	4.8	11.1
1997	22.3	4.5	4.5	10.0
1998	20.3	4.3	4.5	10.3

652. The Children's Cancer Programme (PINDA) delivers 100% of the chemotherapy used to treat all child cancers, applying the internationally recognized protocols. This programme has enabled the children concerned to live a disease-free life for 10 years; given timely and adequate treatment, the survival rate is 60%.

653. The mental health programme, operated jointly with the Education Ministry's National Schools Welfare and Scholarships Board, is carrying out an increasing number of promotional and prevention activities within the various health services countrywide, to encourage young people to acquire habits that protect against the onset of mental disturbance. These activities focus on family stability, ties of affection, cognitive stipulation, family adjustment to developmental stages, and the acquisition of the skills needed for interpersonal communication and conflict resolution. The work is being done in schools and in the community, and places particular emphasis on child abuse and drug and alcohol abuse.

654. The changing epidemiological profile of the main causes of death in the 0-5 age group shows that several chronic diseases are afflicting the infant population and posing a public health problem; their after-effects and limitations reduce children's quality of life by impairing their biological and psycho-social development. One of these diseases is haemophilia, which has a disastrous and permanent effect on the patients and their families. A comprehensive programme to improve the treatment of these patients has been developed. The programme has an administrative structure which provides training and education for patients and their families, and supplies them with highly pure biological products. Since 2000, haemophiliacs have been receiving a new treatment which ensures with 99% accuracy that they will not be infected by their transfusions.

655. With respect to injuries and accidents, the Ministry of Health has launched a new accident control programme which is geared to training and multisectoral coordination, particularly for the police and firefighters, in an attempt to tackle road accidents and deaths by drowning.

656. The Ministry of Health has also initiated a series of accident prevention weeks to get its message across. These take place in holy week, public holidays and the new year period. The same ministry is also an active member of the national road safety committee, which has representatives

from a further eight ministries - the secretariat-general of the presidency, the home office, the secretariat-general of the government, education, justice, public works, housing and urban development, transport - as well as the police.

657. In response to the high prevalence of oral diseases, the Ministry of Health places particular emphasis on promotional, preventive and educational activities. The national drinking water fluorination campaign has been stepped up, as the most effective means of tackling dental caries. The national fluoride mouthwash programme has benefited 980,000 children in basic education. A component has been incorporated into child health checks, in order to educate mothers in prevention and promote the early treatment of disease.

658. Special attention has been paid to ensuring that hospitalized children are treated more sympathetically. General Administrative Regulation No. 4 of 1 December 1995, states, *inter alia*, the following:

(a) A child may be nursed directly by his or her mother, except when this is not possible for medical reasons;

(b) The child must be provided by the doctors and support staff with all the care and treatment that medical science recommends for one's case and situation;

(c) The child's mother or father, or an adult appointed by them, may accompany him or her during the hospitalization, except for specific reasons decided by the attending physician, and in accordance with the relevant regulations of the hospital providing the treatment;

(d) The child's parents or guardians shall receive timely and full information on the child's illness, the treatment to be given, progress, after-effects and possible complications;

(e) The child shall be provided with all possible facilities for continuing his/her schooling in the event of a prolonged stay in hospital;

(f) The child shall be entitled to receive visitors, including minors, unless prevented on doctor's orders, and in any case in accordance with the hospital's rules.

659. Virtually all health service establishments have introduced programmes for enabling mothers to accompany their children in hospital.

### **Measures to improve environmental and industrial hygiene**

660. With regard to environmental contamination, regulations on the following aspects have been introduced:

(a) Operation of heating flues in dwellings and other buildings in the Metropolitan Region;

(b) Emissions of atmospheric pollutants from fixed private outlets in the Metropolitan Region;

(c) Sources of atmospheric pollutants used in emergencies;

(d) The setting of values and percentages for particulate emission reduction in emergencies and pre-emergencies. Regulations on fixed industrial outlets in the Metropolitan Region have also been requested.

661. The following strengthened measures have been taken with a view to protecting the health and safety of workers:

(a) New regulations have been brought into force on basic hygienic and environmental conditions in the workplace;

(b) Chile has become the first Latin American nation to ban the use of asbestos in the workplace;

(c) A special programme has been devised for temporary female workers in agriculture, with emphasis on the use made of pesticides.

662. With regard to hygiene control, food hygiene programmes have been reinforced through more stringent checks on the use of waste water to irrigate vegetables, and on the conditions under which prepared meals - especially fish and seafood - are sold. More stringent checks are carried out on the handling of solid wastes, especially in places where refuse is removed by clandestine means.

663. One of the strategies used in promoting health in relation to the environment, called "Plazas Vida Chile", involves rehabilitating public spaces for purposes of recreation, physical activity, socializing and artistic and cultural activities, with special emphasis on information and education relating to health and quality of life. In 2001 there were 290 such areas operating in 259 communes. This initiative comes in addition to the public spaces recovery campaign coordinated by the ministry for housing, urban development and state property, with the active involvement of the national environmental committee (CONAMA), the secretariat-general of the government, the national sports institute and others.

664. By December 1993, 99.6% of the urban population had access to drinking water. By 1997, 62% of the rural population had such access.

665. In December 2000, 93.3% of the urban population had sewage facilities, meaning they were provided with a means of removing excrement. The 1997 data show that this was a service enjoyed by 15% of the rural population.

### **Measures to prevent and control transmissible diseases**

666. The system for epidemiological monitoring of infectious diseases has been improved. The rules that govern the monitoring of transmissible diseases provide for four methods:<sup>294</sup>

(a) Monitoring of morbidity, universal coverage and compulsory notification on a case-by-case basis, for 36 diseases;

(b) Monitoring through "sentinel points" and notification clusters, for high-frequency diseases;

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<sup>294</sup> Health Code and Supreme Decree No. 712, Ministry of Health, 17 April 2000.

(c) Monitoring of causative agents through clinical laboratories offering universal coverage, for a list of 20 agents including bacteria, viruses and rickettsias;

(d) Monitoring of resistance to microbes, for a list of specific agents, at all hospitals in the country. This is complemented by environmental monitoring of water (reservoirs, vectors, quality) air, soil and food.

667. The Ministry of Health coordinates subsystems concerned with environmental information, laboratory data and morbidity statistics - environmental monitoring and morbidity. The Institute of Public Health (ISP) is responsible for the national reference laboratory for these diseases. The national monitoring network operates on three levels, reflecting the structure of the national health system. These are local (treatment centres), intermediate (health services) and central. This arrangement makes it possible to integrate the information and provide a gradual and differentiated response, so as to ensure the timely implementation of control measures. This network is backed up by all the public and private care facilities and clinical laboratories, health units, regional ministry offices, the ISP and the Ministry of Health. Information generated by this system is distributed in *El Vigia*, the quarterly epidemiological monitoring review, its monthly electronic equivalent e-vigia, and the website of the Ministry of Health ([www.minsal.cl](http://www.minsal.cl)).

#### **Diseases considered to require monitoring as a priority**

668. The diseases included under the above-mentioned Decree No. 712 are those regarded as requiring monitoring as a matter of priority, from both the national and the international viewpoint, since disease can spread easily across frontiers. The following criteria were considered in compiling the list: repercussions on morbidity and mortality, epidemic potential, existence as a specific target of a control programme (e.g. the International Health Regulations) and whether knowledge of the latter leads to significant public health action.

669. The diseases requiring compulsory notification are shown below:

(a) Immediate notification: botulism, brucellosis, carbuncle, cholera, dengue fever, diphtheria, hantavirus pulmonary syndrome, invasive *Haemophilus influenzae*, meningococcal disease, yellow fever, malaria, plague, poliomyelitis, human rabies, measles, trichinosis, outbreaks of food-transmitted diseases;

(b) Daily notification; whooping cough, Chagas disease (*Trypanosomiasis Americana*), typhoid and paratyphoid fever, gonorrhoea, viral hepatitis (A,B,C and E), hydatidosis, leprosy, parotiditis, psittacosis, rubella, congenital rubella, syphilis in all its forms and locations, AIDS, tetanus, tuberculosis in all its forms and locations, exanthematic epidemic typhus;

(c) Notification exclusively through sentinel points: influenza, acute respiratory infections, diarrhoea, STDs (except gonorrhoea, syphilis and AIDS).

670. The following microbiological agents that cause disease will be monitored by laboratories: *E. coli verotoxigenica* (0157 etc.), *Mycoplasma pneumoniae*, *Chlamydia psittaci*, *Leptospira sp.*, *Coxiella burnetii*, *Trypanosoma cruzi*, *Treponema pallidum*, *Streptococcus Beta haemolyticus Group A* (invasive). Enteropathogens: *Vibrio parahaemolyticus*, *Vibrio cholerae*, *Campylobacter sp.*, *Yersinia sp.*, *Salmonella sp.*, *Shigella sp.*, *Hepatitis B and C*, *Legionella pneumophila*, *Ehrlichia sp.*, and *Streptococcus pneumoniae* (invasive).

671. The following agents will be monitored for resistance to antimicrobial treatments: *Streptococcus pneumoniae*, *Mycobacterium tuberculosis*, *Shigella sp.*, *Salmonella sp.*, *Haemophilus influenzae type b*, *Staphylococcus aureus*, *Neisseria meningitidis*, *Neisseria gonorrhoeae*, and isolated agents of hospital infection, in accordance with the prevailing legislation.

### **Specific control mechanisms for notification of diseases and preventive measures in the community**

672. In December 2000, the Regulations on the Monitoring of Transmissible Diseases were published,<sup>295</sup> in which are outlined the regulations on diseases monitoring at the universal, sentinel and outbreak levels. For each disease there is a justification for monitoring, a characterization of the disease, a description of the case, the type of monitoring, the control regulations in force and ICD-9 and 10 codes.

673. With regard to hantavirus, a suspected case of hantavirus cardiopulmonary syndrome (HCPS) must be notified immediately by the regional epidemiological health services and the Ministry of Health; a single form is used for notification and for sending the laboratory results. The regional service starts the investigation and control process, which consists of an on-site visit to examine epidemiological and environmental conditions. There are three accredited diagnostic laboratories; the Institute of Public Health (ISP) is the reference laboratory which examines all positive cases for confirmation. The ISP directly informs the requesting organization and the Ministry of Health of the result. The information is gathered and analysed by the Department of Epidemiology, and then posted on its website, which is updated every time a case occurs. In the past year information campaigns on prevention have been carried out, professionals have been trained in the early detection and handling of hantavirus cases, national experts have compiled a guidebook on clinical treatment of hantavirus, and the regulations on epidemiological monitoring, laboratory examination and control of hantavirus have been reviewed.

674. For meningococcal meningitis, notification of a suspected case to the Department of Health triggers an active search for contacts, with a view to administering chemoprophylaxis. Samples are sent to the ISP for classification. In 2000, two outbreaks of meningitis C were detected in the towns of Aysén and Concepción, leading to vaccination campaigns in the surrounding areas.

675. Influenza monitoring has two components: virus testing on samples received by the network of 16 ISP rapid diagnosis laboratories, using the indirect immunofluorescence technique, most of these originating from hospitalized paediatric cases with acute respiratory syndrome; and disease monitoring by sentinel centres which send their information to the Ministry of Health Department of Epidemiology. This monitoring involves weekly notification of aggregated cases in accordance with a specific case definition, and aggregated information on deaths due to influenza. The information is compiled and analysed as a whole, and issued weekly on the website. The Ministry of Health carries out an annual influenza vaccination campaign for people aged over 65 and other vulnerable groups.

676. Dengue fever was included in the list of diseases for compulsory notification in 2000. The ISP is carrying out serological studies to detect dengue in negative measles and hantavirus samples, and in suspected persons coming from countries where the disease is endemic. The first indigenous case of dengue fever was diagnosed in March 2001, signalling an outbreak on Easter Island which is still ongoing. The presence of *Aedes aegyptii* on Easter Island had been known since 2000, with

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<sup>295</sup> Regulations No. 55, Exempt Resolution No. 2,323 of 1 December 2000, Ministry of Health.

infestation in 70% of cases. That year saw the start of a campaign to eliminate the vector, but although this succeeded in reducing infestation to an average of 5%, there remain areas in the town where the level is still 25 or even 30%. Mainland Chile remains free of the vector. Anti-vector campaigns are carried out continuously in the high-risk areas, mainly in the far north of the country and at ports and airports. Since 2001 systems for monitoring the fever have been in place in Arica and on Easter Island.

677. Concerning malaria and yellow fever, no domestic cases have been reported, and both diseases are considered to have been eradicated since the first half of the 20<sup>th</sup> century. Active anti-vector measures are taken in the high-risk areas, and monitoring is done in the north.

678. Chile is still on the WHO list of cholera-free countries. Active measures are still taken at the environmental level (monitoring of water supply points according to the prevailing regulations), and through the taking of clinical samples. With regard to the latter, vibrio colera testing is carried out in all diarrhoea cases in the regions affected by the 1991 outbreak. In the other regions, stool sampling is carried when the symptoms of diarrhoea are present. The last outbreak was in San Pedro de Atacama, Region II, and in 2000 the last confirmed environmental sample was taken from a sewage outlet in Region IV.

679. In 1998, the detection of an outbreak of rubella, affecting mainly the adult population, triggered a countrywide vaccination campaign among females in the 10-29 age group. A system to monitor congenital rubella syndrome was set up at that time.

### **Measures to prevent transmissible diseases in the community**

680. In addition to the measures described above, individual information campaigns have been mounted against cholera, hantavirus and others. The Ministry of Health's website has a section dedicated to measures for preventing and controlling transmissible diseases, entitled "Information for the Public".

### **Support for environmental monitoring**

681. Risk factors such as rural situation, presence of vectors or water bodies in or near houses or workplaces, and water or soil contamination, provide the basis of the monitoring and control systems operated in the various environmental sectors; water, air, soil, food and water bodies. They include programmes against rabies, testing of water bodies for hantavirus, control programmes for brucellosis, hydatidosis and Chagas disease, and monitoring of "Red Tide". In view of the epidemiological situation in neighbouring countries, entomological monitoring programmes have also been introduced in areas at risk and those where vectors are known to accumulate. Fatal workplace accidents are also monitored systematically in order to focus control measures in the areas of highest risk.

### **Effects of measures to reduce infant mortality and transmissible diseases**

682. As a result of the measures described in previous paragraphs, the population's general level of health and its access to more and better health care have improved greatly in the past ten years.

683. The mortality rates for infants, the under-fives, the elderly aged over 65 and women have continued to decline. Mortality rates between age 5 and age 65 have remained stable. The mortality and morbidity rates for tuberculosis have resumed the downward trends last seen in the early 1980s,

and this disease is on the verge of being eliminated in several regions. Deaths caused by bronchopneumonia in the over-65 age group have been declining for three years: in the first half of 1999 they totalled 2,817, and in the same period of 2000 1,776. The equivalent figures for infants under one year old were 93 and 64.

684. From early 1994 to the end of 1999, it is estimated that improved prevention and treatment saved the lives of 2,696 infants aged under one year old suffering from pneumonia.

### **Measures adopted by the Government to guarantee universal medical care and medical services in the vent of illness**

685. Current legislation guarantees health care for all Chile's inhabitants, through a network of public and private subsystems. The National Health Service provides care for around 70% of the population (100% where promotion and prevention campaigns are concerned).

### **Programmes and action to improve the population's access to good health**

686. The social health reform is the major universal measure adopted by the government of President Ricardo Lagos. It has provided the framework for the setting of national health care targets for the period 2000-2010, these being the basic point of reference for launching much-needed emergency initiatives.

687. The Government's objective and commitment is to make the right to health a reality, through its plan for ensuring universal access to health programmes that explicitly guarantee opportunity, quality and financial protection. As the central plank of the social health reform, this plan includes the following objectives:<sup>296</sup>

- (a) To guarantee equal access to health care, ensuring treatment according to state of health, regardless of capacity to pay;
- (b) To contribute to the success of health objectives;
- (c) To strengthen the health regulations with regard to the stipulations concerning access to, appropriateness and quality of health programmes;
- (d) To operate a model of care that places emphasis on promotion and prevention, primary and outpatient care, and actions and services of a curative and palliative nature;
- (e) To support the sector in its delivery of health programmes and services. Also, the plan has a universal dimension, benefiting all contributors and those without resources.

688. With regard to the extent of the free treatment, the plan provides for:

- (a) free institutional care, as provided since the start of the national system of health services, for Groups A and B, and adults aged over 65, from 2001, and a reduction of the contribution paid by Groups C and D, from 25 and 50% to 10 and 20%, respectively, from 1997;<sup>297</sup> and

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<sup>296</sup> *The core of the health reform: the plan for universal access with explicit guarantees (AUGE)*, working document submitted to the country. Ministry of Health, January 2002.

<sup>297</sup> For information on these groups, see paragraph 282 of this report.

(b) greater availability of free medicines as compared with 1990-2000: an increase from 38% to 80% of prescriptions.

689. With regard to human resources, more and better-qualified staff have been recruited into the primary care system. From 1990 to 1998, the number of physicians, dentists and pharmacists rose from 2 039 to 2 903, with the number of nurses and psychologists increasing from 580 to 3 600. More non-professionals have access to training.

690. The strengthening of primary care led to the following achievements from 1990 to 2002: construction and repair of rural surgeries and centres; establishment of 73 emergency primary care centres (SAPUs); extended opening times of up to 20 hours at all urban and rural surgeries; establishment of 162 basic laboratories, one for each commune; more widely available dental care - preventive, curative, rehabilitative and urgent - at 308 surgeries; implementation of a programme to tackle bronchial obstruction and acute respiratory infections in children, including 490 short-stay hospital wards; a pilot programme on adult respiratory diseases; and monitoring of chronic diseases by surgeries, in order to increase the coverage and effectiveness of primary care. In addition, 45 family health centres have been set up. Over 35% of surgeries offer appointments by telephone, and those aged under one year and over 65 are guaranteed treatment within 48 hours.

691. In 1996, the Timely Treatment Programme was introduced, with a view to reducing surgical waiting lists. This programme now enables patients suffering from eight major diseases to gain prompt access to 11 types of surgery. The programme commits the service providers to resolving these health problems within three months of the physician's recommendation that an operation is needed. This has meant that the number of surgical theatres increased by 45% between 1996 and 2000.

692. Waiting lists have been reduced in order to speed up hospital care. Virtually all fields of medicine for adults and children are covered. In 1991-93 an initial effort was made to reduce waiting lists through a programme operated by the Ministry of Health. This produced satisfactory results in the areas of adult surgery, child surgery, ophthalmology, orthopaedics, and ear, nose and throat treatment. Unfortunately, the programme was discontinued. In 1996 a fresh effort was made to reduce waiting lists in the health services of the Metropolitan Region and Viña del Mar-Quillota, by introducing the concept of pay-per-diagnosis. The selected diseases reflected the local situations of the health services involved.

693. Payment for complex interventions has been introduced, including heart surgery, brain surgery, kidney transplants, liver transplants, dialysis, cystic fibrosis, use of immunosuppressive drugs and oncology treatments. Since 1998, patients in the public health system with catastrophic complaints have enjoyed 100% coverage of the costs. These services are funded through FONASA, at highly sophisticated public hospitals or in subcontracted private institutions.

### **Community participation in the planning, organization, operation and control of primary health care**

694. Since 1998, in response to the population's needs and the requirements of the latest nationwide epidemiological profile, Chile has had a national plan for health advancement and regional Ministry of Health plans, modelled along decentralised and intersectoral lines and based on social participation and strengthened regional and local government. The plan places emphasis on healthy food, physical exercise, tobacco-free environments, pooling of efforts, and healthy open spaces.

695. Finally, at the communal level the Vida Chile communal committees have been formed. These are intersectoral and participative bodies whose aim is to assist in the preparation, implementation and follow-up of communal plans for health advancement. Ninety per cent of the country's communes have such a committee, which guides the local activities relating to the creation of a healthy living environment. The communal plans form part of the regional plans and contribute to the national health advancement objectives.

### **Training, prevention and control measures relating to health issues**

696. Concerning the 10 recommendations that WHO has made to countries with regard to improving their mental health policies and services, Chile has made progress in the following areas:

(a) Treatment of depression at primary health care centres. Primary care quality has improved, thanks to new drugs and psycho-social counselling made available through increased investment since 2001. Fourteen communes have launched school mental health programmes. Primary care has assumed responsibility for the reception and treatment of victims and their attackers in cases of domestic violence - 14 000 such people have been seen. There are 167 care and prevention networks in various communes throughout the country;

(b) Availability of psychotropic drugs, currently used with 653 patients;

(c) Treatment in the community: 25 day hospitals, with 500 places and 1 500 people being treated; day centres for rehabilitation, with 800 clients; 15 social clubs attended by 300 mentally ill people; and 60 sheltered homes allowing 453 people to live in the community;

(d) Education of the public through community activities. Primary care teams carry out promotion and prevention activities on mental health issues;

(e) The Ministry of Health has formulated a national mental health and psychiatry plan. International regulations have come into force guaranteeing the rights and responsibilities of patients, and a national committee for the protection of the mentally has commenced full operation;

(f) The number of staff working in mental health has increased, both in primary care and the specialised teams, although their contractual status is still not far from stable;

(g) Permanent intersectoral links are maintained with the Ministry of Justice, through the forensic psychiatry programme, with the Ministry of the Interior, through the national narcotics control council, with the national women's service, on matters concerning domestic violence and responsible sexual behaviour, and with the Ministry of Education, in the areas of schools mental health and alcohol and drug abuse;

(h) Prevention campaigns have been mounted with regard to cholera, measles and rubella, as well as winter campaigns, women's awareness and self-examination campaigns, and those against AIDS and sexually transmissible diseases.

### **National AIDS/HIV prevention and treatment campaign in Chile**

697. In 1990, the National AIDS Committee (CONASIDA) was founded. Administratively, it takes a lead from the Government's policies of decentralisation, equality and participation, in the sense that AIDS is a biological and psychosocial problem requiring a comprehensive commitment from society. This is expressed in the form of a national workplan, formulated by the various actors

involved, such as the organizations whose members have AIDS/HIV, the NGOs concerned with AIDS and the various health teams concerned. These formulate regional prevention and treatment plans for people afflicted with HIV/AIDS, for implementation by the health sector, other state sectors and civil society.

698. Chile's first AIDS case<sup>298</sup> was notified in 1984. Between then and 30 December 2000, there have been a total of 3 741 notified cases. Of those, 89.7% have been men and 10.3% women. Among those infected, 85.1% were in the 20-49 age group, and the means of transmission was sexual in 93.1% of cases. Blood transmission as a result of drug injection accounted for 5.3%, and vertical mother-child transmission 1.5%.

699. The epidemic has the following characteristics: mainly urban but tending more and more to be rural; mainly affects homo- or bisexual men; growing numbers of female victims; major increase in the number of women for cultural reasons relating to gender inequality in social and working situations and within couples; increasing poverty in men and women; predominance of young adults.

700. Comprehensive care for people living with HIV is provided by 26 specialised centres across the country, on the basis of an updated clinical protocol that provides for the following: the administration of antiretroviral drugs; continuous training for health teams in the various aspects of treatment; the provision of informative material to assist decision-making and participation by people with HIV/AIDS; psycho-social support to facilitate treatment and clinical testing and promote secondary prevention, on the basis of active participation by sufferers; and access to screening and to antiretroviral treatment.

701. The level of coverage for young men with HIV/AIDS is 100%. The same is true of seropositive pregnant women, both in the public and private sectors, in order to prevent vertical HIV transmission. Coverage for adults with HIV/AIDS is 84%, including those in the public health system with access to triple therapy. The prevention strategy operates at three levels:

(a) The social level: national campaigns geared to prevention and involving media personalities and the public health system;

(b) The group level: education and training aimed at specific social groups deemed to be at greatest risk, such as sex-trade workers of both sexes; men who have sex with other men; the prison population; and drug users. Attention is also focused on groups that normally do not recognize the risks they are taking owing to lack of information or socio-cultural problems, such as adolescents and housewives;

(c) The individual level: advice on HIV/AIDS prevention, directly or through the FONOSIDA telephone service. Both approaches are organized through a network of advisors working in 28 health service centres.

702. The more notable results of this strategy are: reductions in the population's mortality rate, the death rate for those with HIV/AIDS, and in the indicator for years of potential life lost (AVPP), owing to fewer premature deaths from AIDS; fewer hospital admissions, thanks to the availability of treatment for opportunist infections; more information and knowledge about HIV/AIDS; more

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<sup>298</sup> The information given here is based on the notifications sent by physicians and the health services to CONASIDA. It covers around 85% of all AIDS cases in Chile.

social organizations and institutions participating in HIV/AIDS prevention activities across the country's 13 regions; social acceptance of the condom for prevention purposes, leading to an increase in the number of condoms imported, according to Central Bank statistics; and a greater concentration of calls (65%) by young people aged 15-24 whose behaviour puts them at greater risk of infection by HIV/AIDS.

703. Since December 2001, the law has set out the State's obligations regarding prevention and informed consent with respect to diagnostic examinations.<sup>299</sup> In addition, it provides for counselling before and after diagnosis, and penalizes discrimination in school, at work and in health care. In its transitional provisions concerning AIDS and catastrophic diseases, the act in question establishes an annual fund intended to return the levies on persons who import drugs through non-profit institutions.

### **Other prevention and care programmes**

704. The Women's Health Programme carries out activities conducive to women's overall physical, mental and social development at all stages of life. At the primary care level, the emphasis is placed on promotional activities (counselling), preventive activities (prenatal checks, birth control, preventive gynaecology) and general examinations for diseases (obstetrics, gynaecology and oncology). In 1995 a breast cancer detection and control programme was introduced, and the cervical cancer programme was stepped up.

705. The Health Programme for the Elderly aims to prevent chronic diseases and their debilitating after-effects, reduce the death rate from preventable and avoidable causes, and encourage promotional, preventive and rehabilitative activities that facilitate active old age. All people aged over 65 have the right to benefit from the programme. To do so, they must present themselves at their nearest advice centre, carrying their identity card, or be a beneficiary of the National Health Fund (FONASA).

706. An adolescents programme has been incorporated into primary care, as a different entity from the Children's Programme.

707. With regard to intersectoral action, the National Plan for Health Promotion and the Vida Chile Council have set targets for producing an impact on risk factors (obesity, sedentary existence and tobacco use) and on protective factors (psycho-social and environmental).

708. In the framework of the health policy and its promotional aspects, the Government, through the Ministry of Health, has been developing social and institutional capacities to facilitate implementation of the National Plan for Health Promotion. Special attention has been devoted to creating the scope for joint intersectoral activity at the national and regional levels of public health policy. The instrument of such activities is Vida Chile, a body that brings together several ministries and public or private organizations. The Vida Chile Plan will address the following objectives for the 2000-06 period:

- (a) Halting the explosion in risk factors;
- (b) Developing the psychosocial and environmental factors that protect health;

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<sup>299</sup>

Act No. 19,779.

- (c) Strengthening civil involvement and social networks;
- (d) Consolidating the State's regulatory role in respect of the factors that condition health;
- (e) Creating a new public policy on health and quality of life.

### **Programmes and actions to aid the rehabilitation, strengthening and modernization of the public health system**

709. In response to the deterioration and neglect that characterised the public health sector at the beginning of the 1990s, democratic governments embarked on a vast programme of investment and spending. The cost of replenishing and expanding the infrastructure and providing hospitals with appropriate equipment exceeded 683,000 million pesos (991,378,000 dollars)<sup>300</sup> over the period 1990-2002. The results were:

- (a) Construction of 12 new hospitals;
- (b) Modernization of 71 hospitals; and
- (c) Creation of 13 special care centres - reference health centres and treatment and diagnosis centres - for the health services of the Metropolitan Region, Antofagasta, Valdivia, San Felipe-Los Andes and Llanquihue, Chiloé and Palena) from 1990 to 1998.

710. In primary care, the programme led to:

- (a) Creation of 126 new surgeries and reconstruction of 68 others;
- (b) Upgrading of the physical infrastructure of the emergency services;
- (c) Purchase of vitally needed equipment for emergency treatment and to strengthen supporting units;
- (d) Hiring of vital professional services and purchase of essential consumables; and
- (e) Deployment of emergency primary care units (SAPU).

711. Up to 1999, 60 SAPUs had been introduced in Regions I and X, and a further 30 in the Metropolitan Region. The establishment of the emergency medical care service (SAMU) in 1994 has improved the survival prospects of people who are in a critical situation caused by disease or an accident. The SAMU network currently attends to 80,000 cases per year.

### **Programmes and actions to strengthen the sector's institutional capacity**

712. The programme introduced in order to make public health institutions more efficient is underpinned by a number of key institutions, namely the preventive health institutions supervisory body (INAPRES), the reorganized national health fund (FONASA), central supply body (CENABAST) and the public health institute (ISP). Health programmes have been reorganized, new general health service regulations introduced, and new mechanisms established for allocating resources to primary care centres and health service hospitals.

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<sup>300</sup> At 2002 rate.

713. The management support programme has improved communications, management and productivity at the central and regional levels, and in devolved institutions such as CENABAST and ISP.

714. Since 1994, under the administrative commitments system, the various health services agree with the central body on meet strategic targets, with results measured by precise indicators. This all takes place within the framework of increasing participation and negotiation by each health service.

### **Role of international assistance**

715. In the context of its efforts to improve the population's mental and physical health as a basic component in raising their living standards, the Chilean State is constantly seeking new budgetary resources, as well as possible sources of help through international cooperation. Since the return to democracy, the latter has been stepped up considerably, in accordance with Articles 55 and 56 of the United Nations Charter, to which Chile is a signatory.

716. The following agreements are being implemented in relation to physical and mental health:

- (a) Project on rehabilitation of the disabled; JICA (Japanese Cooperation/Pedro Aguirre Cerda National Rehabilitation Institute);
- (b) WHO International Classification of Functioning, Disability and Health (ICF);
- (c) Twinning arrangement between the Dr Philippe Pinel Psychiatric Hospital, in Putaendo, and the Thuir Psychiatric Hospital in France;
- (d) Project on AIDS/HIV prevention for intravenous drug users in the Southern Cone; UNAIDS/CONASIDA (Ministry of Health).

## **Article 13**

### **Right to education**

#### **Situation as regards the realization of the right of all to education**

717. The general objective of the Government's educational policy is to improve the quality and equity of education. The following specific objectives are derived from this general objective:

- (a) To achieve substantial improvement in the conditions, processes and results of preschool, primary and secondary education, according to the principles of equal opportunities and positive discrimination in favour of groups at educational risk;
- (b) To reform curricula in primary and secondary education in order to update their contents, to raise the quality of education and to decentralize their preparation;
- (c) To extend the school day in primary and secondary schools, in order to dispose of more time to implement changes in the curriculum and in the teaching methods employed;
- (d) To strengthen the teaching profession.

### **Description of the school system**

718. The Chilean school system consists of: general primary education, covering eight grades, for ages ranging between 6 and 13 years, which is compulsory; and secondary education, with four post-primary grades, which is divided into two cycles. The first two grades of secondary school consist of general education, while the last two are divided into two streams, either humanistic/scientific or technical/vocational. In addition, there is preschool or nursery school, for children under the age of 6. This is divided in turn into crèches for very young children between the ages of 0 and 2; middle preschool, for children aged 3 to 4 years old; and transition level, for children aged 5 and 6.

719. School education is divided into four sectors, according to who owns the schools and the way they are managed: municipal public education; private State-subsidized education; private education paid for by the families; and technical/vocational schools, run on behalf of the State by private corporations, set up by business associations in their own specialized field.

720. The Ministry of Education bears the overall responsibility for school education, but by virtue of the principle of decentralization, it does not run either schools or teaching staff. Public educational establishments are owned by municipalities. The municipalities, which are independent public bodies, are endowed with their own powers for the management of school staff, infrastructure, school equipment and budgeting, on the basis of subsidies paid by the national Government, plus the funds provided by the municipalities themselves.

721. The Ministry of Education, according to the structure of the State administration, is divided into 13 regional ministerial secretariats, each connected to the Government of the region where it operates, and 40 provincial departments of education. The Ministry with its territorial structure is responsible for overall policy guidance, in terms of curricula and teaching methods, for technical and financial support and for evaluation and information.

722. The construction, maintenance, repair and extension of schools are in principle the responsibility of municipalities or private school sponsors. The bulk of investment in public educational establishments is made by regional governments, on proposals put forward either by the municipalities or by the Ministry of Education. According to recent legislation, the Ministry may also put up funds for the maintenance of buildings, both for public schools and for private State-subsidized schools. According to that legislation, funds may be allocated to subsidized private establishments wishing to extend their premises in order to lengthen their daily work time.

723. There are no aggregated data regarding the spatial distribution of rural schools. The rural population accounts for 17% of the total population, and its degree of dispersion is low. Generally speaking, the municipal public education system tries as far as possible to adapt its supply of primary and secondary education to the needs of the scattered rural population, by means of incomplete schools, offering combined courses; complete primary schools, with or without boarding facilities; school transport systems; student homes in villages and small towns; and other solutions thanks to which the school network has achieved extensive coverage.

### **Free, compulsory primary education**

724. Primary education is compulsory and is known as "basic general education". It is offered on six levels over a total of eight years, normally for children between the ages of 6 and 13. In accordance with the Constitution, the Government finances a school system which is free of charge,

thanks to which it can be made compulsory and can provide access to primary education for all children. According to 1998 Ministry of Education data,<sup>301</sup> the Government finances and supports materially and technically a network of 8,507 schools, which are run either by the country's 341 municipalities or by private sponsors. Municipal schools enrol 57.7% of the school population at that level, while State-subsidized private schools take in 34.2% of the primary school population. The remaining 8.1% of primary schoolchildren attend 764 private primary schools financed by parents.

725. In 1990, the coverage of primary education was as high as 96.8% of the population aged between 6 and 13 years, and by 1998 the figure had risen still further to 98.3%. That same year, 91.2% of the school population received primary education in educational establishments financed from public resources. Non-paying schools are financed mainly by means of a State subsidy for every pupil attending the school. This type of school is provided by the State with: free school textbooks, technical assistance, meals, boarding facilities, scholarships, examinations, healthcare and other benefits and resources aimed at facilitating the admission, continued attendance and success of primary schoolchildren.

726. In 1998, according to the Casen survey,<sup>302</sup> the main reasons given for not attending primary school were "incapacitating illness" (24%), "behavioural and performance problems" (17.9%), "lack of interest" (12.7%) and "financial difficulties" (10.2%). Boys and girls who do not attend school live in households whose average pay is equivalent to 52.2% of that earned in households of children who attend school.

727. Under the present financing system, State-subsidized private schools<sup>303</sup> may collect funds from authorized sponsors. The amount of these funds is restricted by the Ministry of Education and is proportionally discounted from the State subsidy. In order to offset the effects of a possible economic fragmentation of the system, a scholarship scheme has been introduced. An obligation has also been laid down for municipal schools to admit all students who apply.

## **Secondary education**

728. Secondary education in Chile is known as "intermediate education" and is divided into two streams: "humanistic/scientific", which is general, and "technical/vocational". Both cover four grades, following on general primary education. Secondary education is not compulsory, but is broadly accessible. In 1990, it achieved a coverage of 80.5% of the population between the ages of 14 and 17 years, a figure which by 1998 had risen to 86.9%. In secondary education, the number of girls enrolled is slightly higher than that of boys, at 87.6% compared with 86.3%. This situation applies in all admission quintiles, except for the fifth quintile, where the enrolment of girls is the same as for boys.

729. In 1998, the three main reasons given for not attending secondary education were: "currently working or looking for a job" (22.2%), "financial difficulties" (15.4%) and "lack of interest in pursuing secondary studies" (14.9%). Non-attendance at secondary schools is higher among the

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<sup>301</sup> From here onwards, data are taken from the statistics of the Chilean educational system of the Ministry of Education, unless indicated otherwise.

<sup>302</sup> See Annex 1, Abbreviations.

<sup>303</sup> These account for 32.2% of all primary school enrolment, Ministry of Education, 1998.

poorer sectors of the population. The proportion not attending secondary school is higher in the first quintiles, where the majority of young people, 72.7%, belong to the 40% of lowest income households.

730. In order to support free or low-cost secondary education, the Government provides resources and funds similar to those provided for primary education. In 1998, State-assisted secondary education was offered in 952 municipal schools, known as "*liceos*"; in addition to 938 State-assisted private schools, known as colleges or "*liceos*"; and 88 technical/vocational schools run by private corporations funded by business associations. In addition, there are 481 private colleges paid for by families.

731. Since 1993, it has been possible for schools partly financed from public funds offering secondary education to collect funds from persons responsible for the children. This intake of funds is restricted to a maximum amount established by the Ministry of Education and is proportionally discounted from the State contribution. Under this system, new operating conditions have been introduced, whereby schools run by the municipalities and corporations offering technical/vocational education must obtain the majority consent of parents or persons responsible for the schoolchildren for the running of the establishments.

### **Access to higher education**

732. Students having completed either stream of secondary education are allowed access to higher education, which is given in universities, professional institutes and technical training centres. The latter offer short post-secondary study courses.

733. In order to be admitted to higher education, students must hold a secondary education diploma. They are then subjected to a selection process, the so-called academic aptitude test, in which they are given marks, in order to help the higher education institutions select applicants when there are not sufficient places in the different disciplines. Access to higher education is limited, because this type of education is not free of charge in Chile. Students have to pay fees which cover a large proportion of teaching costs. In exchange, the State and other organizations offer scholarships and systems of loans to finance the studies of students who are unable to pay the fees. Enrolment in higher education has been increasing, from 245,408 students in 1990 to 390,169 students in 1998. In terms of coverage, which was 29.3% in 1998, there are significant disparities between the first and the fifth income quintiles (with coverages of 8.7% and 65.5%, respectively).

### **Facilities for completing primary school studies**

734. Young persons and adults who have not been able to complete their primary schooling may have access to a subsystem of adult education, offering them the opportunity to finish primary school studies which they were unable to complete in the normal way. Generally speaking, these later studies take place in the form of evening or night courses operating in the schools and *liceos* referred to in earlier paragraphs. A subsidy is then paid from public funds for every student attending the courses. The State provides further support, such as textbooks and technical assistance. In 1998, 21,387 persons attended primary adult education classes.

735. In addition, there is a system of free examination, which provides a way of recognizing independent personal study and experience acquired in everyday activities and at work; the results are equivalent to regular studies for the purpose of meeting employment requirements.

## Obstacles to the full realization of the right to education and measures for overcoming them

736. The right to education is restricted by the limits of the system's capacity on the one hand and by the cultural and socioeconomic limitations affecting different sectors of the population. As a result of globalization requirements, economic competitiveness, the drive for democracy and stricter demands for equal opportunities, the Government has set new targets for the realization of the right to education. By the end of its six-year period of office, in 2006, the Government hopes:

(a) To have created 120,000 new places in preschool education, for low-income families and children, equivalent approximately to an increase of 36% over current coverage;

(b) To have made secondary schooling universal, thus ensuring 12 years of schooling for the whole population of children and young persons, under the guiding principle of "secondary school for all". This implies trying to retain children for as long as possible at this level. To achieve this, subsidies will be paid to poor families whose children are attending secondary school, and several programmes will be introduced to improve the attractiveness and retention capacity of the secondary schools themselves;

(c) To have established systems of scholarships and loans to finance the admission and continued attendance of low-income students in technical training centres and higher vocational institutes, as well as forms of State support which nowadays benefit only low-income students in universities.

## National statistics on education

737. In 1990, the illiteracy rate was 6.3%. It then fell to 4.9% in 1995 and 4.6% in 1998. Chile is still one of the countries with the lowest rates of illiteracy in the world.<sup>304</sup>

738. The main long-term effort to overcome illiteracy will focus on expanding primary education. Literacy campaigns and programmes are limited, since most illiterate persons are already fairly advanced in years and mostly belong to the scattered rural population. In 1998, 1,786 persons were made literate. The enrolment figures for the different educational levels, according to gender, are shown in Table 38.

**Table 38**

### Enrolment by educational level and gender in Chile, 1998

Primary education		Secondary education		Preschool education*		Adult education	
Both sexes**	Women	Both sexes	Women	Both sexes	Women	Both sexes	Women
2,253,171	1,094,663	774,034	393,251	270,267	132,749	97,612	41,819

Source: Planning and Budgetary Division, Ministry of Education.

\* Not including schools of the National Kindergartens Board and the Integra Foundation.

\*\* Only 334,317 are situated in rural areas, i.e. 14.8%.

<sup>304</sup> Ministry of Education, in *Economic and Social Indicators 2000*, Mideplan.

739. Between 1990 and 1998, the average duration of schooling increased from 7 years to 9.7 years. It may be observed that, as the level of income rises, the duration of schooling also rises, from 7.4 years on average for the first quintile, to 13.1 years on average for the fifth quintile (1998). The schooling gap between the first and fifth quintile diminishes for the younger generations, from a gap of 6.5 years for generations aged 25 and over to a gap of only 3.7 years for the generation aged between 15 and 24 years.<sup>305</sup>

740. Between 1990 and 1998, there was an increase in coverage at all levels of education. Preschool education registered the highest average rate of growth per year, given the high coverage rates already achieved in secondary and primary education.

741. While as far as primary education is concerned, the country has achieved practically universal coverage for all income quintiles, in secondary and preschool education there are significant discrepancies according to income levels.

**Table 39**

**Coverage by level of education, 1990-1998  
(Percentage)**

Level of education	1990	1992	1994	1996	1998	Average annual growth rate
Preschool	20.9	24.7	26.9	29.8	30.3	4.8
Primary	96.8	97.4	97.6	98.2	98.3	0.2
Secondary	80.5	82.2	83.9	86.9	86.9	1.0

Source: Mideplan, Casen surveys.

**Table 40**

**Coverage by level of education, according to per capita independent household income quintile, 1990 and 2000<sup>306</sup> (percentage)**

		I	II	III	IV	V	Total
Preschool	1990	16.9	17.5	20.4	27.2	32.4	20.9
	2000	25.5	29.6	32.7	37.6	50.2	32.4
Primary	1990	95.5	96.9	97.6	98.9	96.8	96.8
	2000	97.7	98.6	98.9	99.3	99.7	98.6
Secondary	1990	73.3	76.3	80.5	87.2	94.3	80.3
	2000	82.3	88.0	92.4	96.1	98.5	90.0

Source: *Economic and Social Indicators*, Mediplan, 2002.

<sup>305</sup> Ibid.

<sup>306</sup> Each quintile represents 20% of the population. The quintiles are used methodologically to measure poverty in the country, with the first quintile corresponding to the poorest group and the other quintiles to wealthier groups in ascending order.

742. During the period 1990-1998, there was a steady decline in the failure and drop-out rate in primary education. In 1990, 89.9% of children passed, 7.8% failed and 2.3% dropped out. In 2000, these three percentages improved to 95, 3.5 and 1.5, respectively. The failure and drop-out rates also fell in secondary education, from 12.4% to 7.9% and from 7.4% to 4.9%, respectively. During that period, the pass rate increased from 80.3% to 87.2%.<sup>307</sup>

**Table 41****Drop-out rates by educational level in Chile, 1990-1998**

Rates	Primary education		Secondary education	
	1990	1998	1990	1998
Drop-out rate	2.29	1.49	7.37	4.95
Pass rate	63.21	77.76	67.98	68.43

Source: Planning and Budgetary Division, Ministry of Education.

**Education budget**

743. The level of public and fiscal expenditure on education increased significantly after 1990, as well as their share of total expenditure, in order to implement a broad set of reforms and programmes aimed at increasing the quality and equity of education. The priority given to education was reflected in an increase of 176% in fiscal expenditure on education between 1989 and 2000, which allowed an increase in public expenditure of 165% over that period. In 2000, public expenditure on education came to US\$ 2,923 million, equivalent to 4.2% of GDP (see Table 42).

**Table 42****Public and fiscal expenditure on education, 1989-2000  
(Million pesos at 2000 value (million US\$ at 2000 value))**

Year	Public expenditure	Annual change (%)	Fiscal expenditure	Annual change (%)
1989	595,113 (1,103)	–	573,763 (1,063)	–
1990	568,995 (1,054)	–4.4	561,530 (1,040)	–2.1
1991	645,459 (1,196)	13.4	630,530 (1,168)	12.3
1992	742,070 (1,375)	15.0	722,575 (1,339)	14.6
1993	805,630 (1,493)	8.6	774,737 (1,436)	7.2
1994	878,556 (1,628)	9.1	859,484 (1,593)	10.9
1995	981,300 (1,818)	11.7	965,267 (1,789)	12.3
1996	1,108,321 (2,054)	12.9	1,111,571 (2,060)	15.2
1997	1,220,842 (2,262)	10.2	1,251,980 (2,320)	12.6
1998	1,359,860 (2,520)	11.4	1,349,180 (2,500)	7.8
1999	1,454,355 (2,696)	6.9	1,461,476 (2,708)	8.3
2000	1,577,035 (2,923)	8.4	1,583,555 (2,935)	8.4
Average annual growth (%)		9.3		9.7
Cumulative growth (%)		165.0		176.0

Source: Ministry of Economy, in *Economic and Social Indicators*, Mediplan.

744. During the period 1989-2000, practically all public expenditure on education came from fiscal revenues. In 1990 the proportion was 98.4%; by 1995 it had risen to 98.3% and by 2000 to 100.4%. In addition, the proportion spent on education as part of social public expenditure rose from 20.2% to 25.2% between 1990 and 1995, with the proportion rising to 29.9% in 2000. Between 1989 and 2000, the share of public expenditure on education and fiscal expenditure on education as a proportion of GDP increased from 2.6% to 4.2% and from 2.5% to 4.2%, respectively. Lastly, per capita fiscal expenditure on education increased by 128.6%, while per capita public expenditure increased by 119.5%. In 2000, per capita public expenditure on education came to US\$ 826.<sup>308</sup>

745. The main source of financing was the contribution from fiscal revenues, which reached the figure of 99% of the public education sector budget. Transfers accounted for 85.9% of expenditure, including the cost of subsidies, transfers to higher education and other.<sup>309</sup>

### Proportions of male and female students in the school system and literacy

746. For 1998, the proportion of girls attending the different educational levels was as follows: preschool, 49.11%; primary, 48.58%; secondary, 50.8%. In 1998, 1,786 persons became literate, of which 32.2% were female.

### Equity in education

747. From 1990 to 1998, the gap in the coverage of the population sectors belonging to the first and fifth income quintiles declined in both primary and secondary education. That was not the case in preschool education, however (see Table 43).

**Table 43**

**Coverage according to level of education: first and fifth per capita independent household income quintiles in Chile, 1990-1998 (percentage)**

	Income quintile	
	First quintile	Fifth quintile
Preschool education		
1990	16.9	32.4
1998	23.6	44.8
Primary education		
1990	95.5	98.9
1998	97.2	99.5
Secondary education		
1990	73.3	94.3
1998	77.4	97.7

Source: Mideplan, Casen survey for 1990 and 1998.

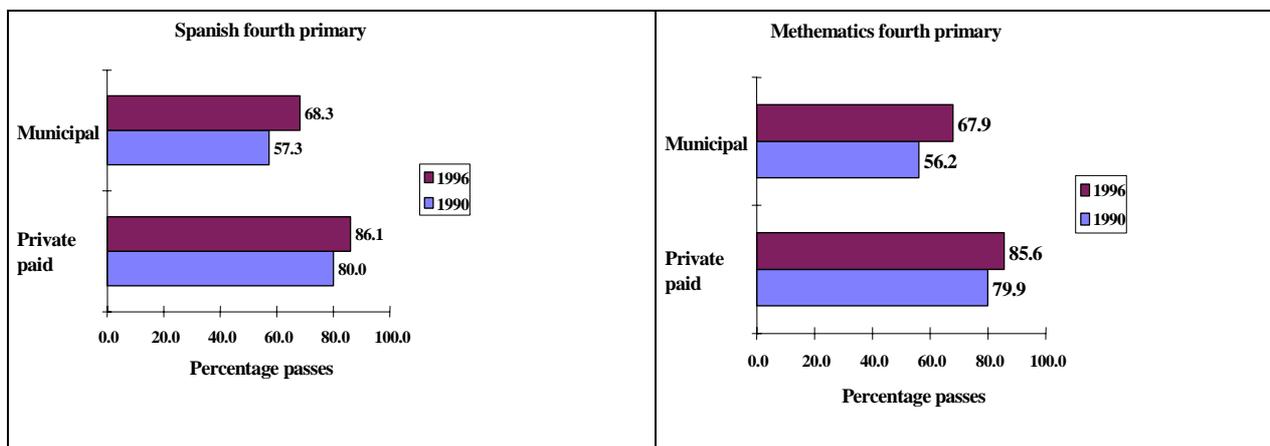
<sup>308</sup> Ministry of Economy, in *Economic and Social Indicators*, Mideplan.

<sup>309</sup> Ibid.

748. The results of the Educational Quality Evaluation System test (Simce)<sup>310</sup> in the fourth primary grade show that the existing discrepancies between fee-paying private education and municipal education have tended to diminish.

**Figure 1**

**Simce test results by subject and by sector, fourth primary, 1990 and 1996**

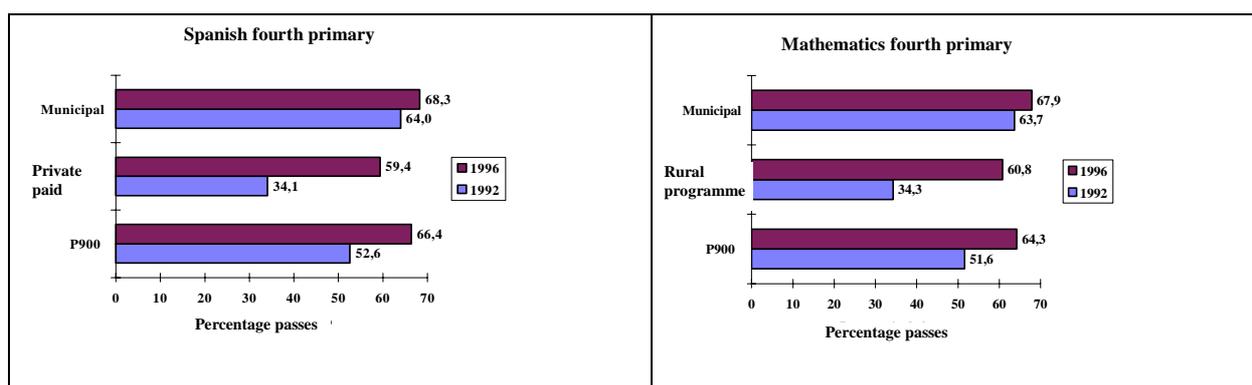


Source: Simce national coordination.

749. The schools taking part in programmes intended for poor, low-performance schools (P-900 Programme and Education Quality Improvement Programme, MECE, in rural schools) made significant progress, reducing the gap between them and the average of municipal schools.

**Figure 2**

**Simce test results, fourth primary, by subject: municipal schools, P-900 schools and rural schools taking part in the rural schools improvement programme, 1992 and 1996**



Source: Ministry of Education

<sup>310</sup> The Educational Quality Evaluation System (Simce) is applied annually by testing pupils in the fourth and eighth primary grades.

### **Measures for ensuring equity in education**

750. The emphasis placed on quality does not exclude or limit progress in terms of equity. Social equity continues to be one of the principles and guiding criteria of educational policy. In recent years, policy in this sector has used a combination of resources and strategies, enabling the State to continue maintaining some of the traditional mechanisms for improving equity standards.

751. In the first place, a broad supply of free education has been maintained in preschool and primary education. Although secondary education offered in public establishments is not legally speaking non-paying, it is provided at low cost. Some 91% of primary and secondary school children are educated free of charge or for a low cost, thanks to the effort made by the State to maintain subsidized schools.

752. Another traditional mechanism for expanding opportunities is the creation or extension of either schools or the number of school places, through State investment and expenditure. Investment in infrastructure in 1990 came to 12,023 million pesos (US\$ 39,432,600), and in 1999 it was 115,735 million pesos (US\$ 227,475,530). Thanks to this support and other forms of support and incentives, enrolment in the subsidized sector, between 1994 and 1998, grew by 278,611 students, which represents an additional 10%.

753. The education subsidy, which is payable for pupils attending all establishments, covers the financing of basic operating costs for all new schools offering free education, as well as for existing schools wishing to expand their intake. This provides support for the majority of the population, which is unable to pay for education. While school subsidies increased from 326,396.1 million pesos (US\$ 1,070,502,132) in 1990 to 910,666.8 million pesos (US\$ 1,688,014,236) budgeted for 2000, the increase in enrolment estimated for 2000 will amount to 20.9%. Similarly, the average monthly subsidy per pupil, which in 1990 amounted to 10,103 pesos (US\$ 33), is estimated to rise to 23,310 pesos (US\$ 43) for 2000, which represents a 30.3% increase.

754. Another traditional mechanism for promoting equity consists in the large-scale supply of certain inputs or supports, aimed at facilitating the admission of students to classes and their continued maintenance there. This sort of measure, which had been left in abeyance in the previous decade, was given further impetus in the 1990s. Examples include the increase in the distribution of free textbooks and improvements in schooling allowances. While in 1990 1,900,000 textbooks were distributed for primary education, by 1999 this figure had risen to 7,380,000 textbooks. In secondary education, 1,537,000 textbooks were distributed in 1999 to 630,000 students between the first and third years. From 1995 to 1998, the Education Quality Improvement Programme (MECE) was introduced for secondary education, and has since then extended its actions, benefits and incentives to practically all subsidized secondary schools. The same universal approach has been applied to the Full School Day Programme, which aims to equate the time available for school teaching between private fee-paying schools and State-subsidized education. Subsidized students, numbering almost 3 million by now, are receiving full-day teaching, instead of the twice daily half-day classes, as used to be the rule before the programme was introduced. In this respect, students in State schools now have the same timetable as the 280,000 students in private schools.

755. The main innovation in policies promoting equity in education in the 1990s was the application of the principle of positive discrimination, the expressions and recent advances of which are described below, starting with those more clearly and more positively oriented in favour of the most vulnerable sectors.

756. Further efforts have gone into the “900 Schools Programme” (P-900), which in each province assists 10% of the most vulnerable and worst performing schools, through a strategy of preferential, intensive technical and pedagogic support, aimed at improving the basic standard of learning of the schoolchildren and closing the gap between those schools and the average in primary education. Between 1990 and 1998, the programme helped an average of 164,443 pupils in the first to fourth grades of primary school. The programme is run by an average of 5,440 men and women teachers, with the further assistance of an average each year of 2,174 volunteer monitors, who have worked with approximately 32,000 pupils in a situation of educational failure. The programme has been extended since 1998, by incorporating in all schools the preschool annexes and the fifth to eighth primary school grades, which were not included in the programme before 1997.

757. The rural primary education programme is designed to assist “multigrade” rural primary schools: these are schools with three or less teachers, admitting children which may be studying in up to six different grades of primary schooling. Comparatively speaking, such schools tend to be situated in the greatest isolation and among poor pupils and communities, which obviously adds to the difficulties experienced in one class with pupils studying at different levels. The programme aims also to provide technical pedagogic support, the main components of which are “microcentres” of further self-training for teachers, the generation of innovations, and the use of textbooks and exercise books adapted to rural reality and to learning in multigrade classes. The schools in the programme are offered preferential technical advice by the Provincial Departments of the Ministry of Education, to which is added access to the various components of educational reform, such as: Educational Improvement Projects (in this case directly related to “microcentres” rather than to schools), the “Links” (*Enlaces*) network and other opportunities for the professional development of teachers. The schools also benefit from focused attention of State-assisted school programmes. The Rural Primary Education Programme began in 1992, with a coverage of 623 schools, 20,993 pupils and 944 teachers, distributed among 104 microcentres. In 1997, it achieved its own universal coverage, by attending to all 3,330 schools of this type, with an enrolment of 96,346 pupils, in the care of 5,132 teachers spread over 518 microcentres, which represents 41.4% of all primary schools and 4.6% of enrolment at this level. The programme has continued to enjoy universal coverage until now. The results have been encouraging, despite the fact that most of the schools have been participating only for the last three to five years. The schools which were already included in the rural programme between 1992 and 1996 progressed in Simce measurements from 34.3% to 60.8% in maths and from 34.1% to 59.4% in Spanish.

758. The National Council for School and Scholarship Assistance (Junaeb) has extended, diversified and refocused its aid programmes. Its main efforts are concentrated on the School Food Programme (PAE). In 1998, this covered 42% of primary school and subsidized secondary school enrolment. Due to the Treasury’s financial restrictions, in 1999 coverage amounted to 45% of enrolment. In schools offering a full teaching day, the food programme covered 96% of children in primary education and 80% in secondary education, so that the impact of the programme could be assessed as satisfactory. According to the Casen survey for 2000, the Food Programme is one of the best focused social programmes, since it reaches approximately 80% of students in the first and second income quintiles.

759. The boarding school or student homes service offered accommodation to 58,069 pupils in 1996, while family residences were provided for another 2,108 students in the highly vulnerable socioeconomic category. In addition to this service, there are other programmes, such as various forms of scholarship, including some in favour of indigenous students engaged in primary, secondary or higher education.

760. In 1992, a school health programme was established for the purpose of diagnosing and dealing with the pathologies which most directly affect learning. In 1996, the programme covered 986,000 children in the first to fifth primary school grades, and continued to expand in the following years, with a view to maintaining coverage for children entering primary grades 6, 7 and 8.

761. In 1990, preschool education covered 20.9% of the population of children under the age of six. By 1994 this had grown to 26.9% and by 1998 to 30.9%. In the three-to-five age group, these coverage rates were 29.9%, 37% and 42.2%, respectively.<sup>311</sup> In the five and six-year-old age group, coverage was 82.9% in 1998. Between 1990 and 1998, the coverage of primary schools in rural areas doubled, even though the discrepancy remained compared with urban areas. The public authorities give preference to assisting lower income families, which have improved their children's access to preschool education. According to the Casen survey, between 1990 and 1998, coverage for quintiles I and II rose from 16.9% and 17.5%, respectively, to 23.6% and 29.1%. Although these increases are substantial and reflect the focused effort by the authorities to assist the low-income sector, they are still considered insufficient because in this category of families there is an urgent need to achieve high rates of coverage.

762. The preschool networks are not only extending their coverage and diversifying their strategies in order to achieve better results. They have also made a sustained effort to obtain qualitative improvements, through the introduction of many conventional and non-conventional programmes of support and incentives.

763. The requirements of children with special needs have been met in two ways: firstly by improving special schools and secondly by facilitating the integration of this type of child in regular schooling. In order to make it easier for children with special needs to be admitted to the regular system, from 2001 it became possible to pay the special education allowance from the second preschool transition level until the first year of secondary education. This improvement was extended this year to children in the second year of secondary schooling, the intention being eventually to extend the facility throughout secondary education.

764. Against the background of the Indigenous Act,<sup>312</sup> the National Indigenous Development Corporation (Conadi) and the Ministry of Education signed a cooperation agreement in 1996, with the aim of developing pilot projects in schools and colleges with high proportions of indigenous children. Through its Bilingual Intercultural Education Programme, the Ministry of Education is supporting new participative pilot projects to introduce and experiment with a new form of adapted training curriculum for boys and girls attending this type of school, covering seven regions including the Metropolitan. In addition, actions are being undertaken to train teachers, by providing support to universities and research in this field, as well as acquiring, publishing and distributing learning material.

765. The average subsidy per student between 1994 and 1999 rose from 13,503 pesos (US\$ 26.5) to 20,996 pesos<sup>313</sup> (US\$ 41.3), which represents a 55.8% increase over the six-year period and a 130.7% rise between 1990 and 2000.

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<sup>311</sup> Casen survey for 1990, 1996 and 1998.

<sup>312</sup> Act No. 19,253 of 1993.

<sup>313</sup> At 1999 values.

766. Apart from such increases in the overall amounts, reforms have been introduced in the system of educational subsidies. From 1990 onwards, these reforms made a greater effort to overcome the initial uniform approach and to channel more resources to the most deficient areas, namely rural education, special education, adult education and technical/vocational training. The value of subsidies allocated to rural education and to adult education was increased.<sup>314</sup> A special effort was made for rural schools (the “*pisos rurales*” programme), which provided a special compensatory subsidy to small rural schools, based on a criterion which was different from that governing allocations in the general system: the fewer the pupils, the greater the subsidy.

767. In the case of special education, the 1990 subsidy came to 30,342 pesos (US\$ 40) for every pupil, and this figure has currently risen to 54,297 pesos<sup>315</sup> (US\$ 106.7) monthly for every pupil attending a special school or admitted to a regular school. For special education schools, or for pupils enrolled for full-day teaching, the subsidy comes to 67,262 pesos (US\$ 132.2), which represents increases of 167% and 231%, respectively.

768. Schools taking in pupils with multiple disabilities that have not more than eight pupils have had their subsidies increased by 200% compared with the usual amounts allocated in such cases.

769. Lastly, the Ministry has made a considerable effort in another aspect of equity policy: the fight against discrimination and the practices of exclusion and fragmentation. Even though they often lack the necessary legal powers, the Ministry’s regional and local authorities frequently intervene in situations of this kind, which unfortunately arise increasingly in the day-to-day running of schools and in the relations with sponsors (owners receiving the State subsidy), administrators, teachers, families and the students themselves. At the Government’s initiative, a clause was included in the Full School Day Act to prevent students from being expelled on socioeconomic grounds, such as the non-payment of monthly fees. The part fee-paying mechanism has been improved with new provisions, such as the offer of free scholarships in schools which cooperate with the scheme.

770. It cannot be said that the problems of social inequality and other gaps in education have been resolved in the period between 1990 and 1998, since such problems have historical and social roots which cannot be eradicated in a few years. Nevertheless, significant advances have been made in the right direction. Access to education - the right of all Chileans - has been extended, as reflected in the increase in the student population and in the coverage of the different levels of formal education.

771. On the other hand, the policy of promoting equity, in the sense of providing more opportunities of access to good quality education for all, has produced clear practical results. The schools receiving assistance from the socially focussed positive discrimination programmes have improved at a faster rate than other educational establishments at the same level.

### **Language facilities**

772. Spanish is the official language of the State of Chile, and is used by the great majority of the population. There are minorities in the country, however, which belong to the cultures of origin, among whom the most numerous are the *Mapuche*, the *Aymara* and the *Pascuense* (Rapa Nui).

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<sup>314</sup> Act No. 19,410 of 1995.

<sup>315</sup> Both figures at 1999 values.

Only part of these populations use the original language as their mother tongue. Most of the indigenous populations use Spanish as their first language or as their language of learning at school.

773. The official policy is to help preserve original languages, as a result of which schools with a significant proportion of indigenous students offer bicultural and bilingual education. Difficulties have arisen with respect to this policy owing to the dispersion and lack of culture of the indigenous groups and, in some cases, by the fact that the original language is not codified.

774. A bilingual intercultural education programme was launched in 1994. Previously, in 1991 and 1992, the Indigenous Peoples Commission had encouraged the training of bilingual teachers in the North (where *Aymara* is spoken) and in the South of the country (where *Mapuche* is spoken). The programme was started in rural primary schools, which have a high population of indigenous pupils, and a few experimental programmes have even been tried in urban sectors.

### **Situation of teaching staff**

#### **Salary trends**

775. The policies implemented in order to improve the working conditions and salaries of teachers are based on the Education Professionals Statute,<sup>316</sup> which established a basic minimum salary for all teachers in the country. This represented a real salary increase for many professionals who found themselves in a disadvantaged situation. It also made it possible to rebuild the teaching profession, establishing common standards for all teaching staff with regard to training, further training, participation and the development of professional independence and responsibility. The Statute introduced separate standards for professionals in the municipal sector and those of the private sector.

776. In 1999, the minimum salary for teachers teaching 44 hours a week, in primary and secondary schooling, was 338,000 pesos (US\$ 614), and for a 30-hour teaching week 230,802 pesos (US\$ 420).

777. The real increase in salaries in the municipal sector, between 1991 and 1998, came to 313.8%. The increase in minimum basic pay for the country as a whole according to the rise in the cost of living, that is to say, without any other allocations, comes to 94.3%. This significant increase in salaries has been part of the considerable effort of reform, improvement and innovation, and has provided substantial encouragement for the teaching profession.

778. According to ECLAC (Economic Commission for Latin America and the Caribbean) figures, for 1995, the effective average hourly pay for teachers was US\$ 6.7, while the equivalent average wage for professionals and technicians in the public sector was US\$ 10.1. The average number of years of education for the two categories was 15.8 and 15.6, respectively. While teachers worked on average 38 hours a week, professionals and technicians in the public sector worked for an average of 44 hours a week.

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<sup>316</sup> Act No. 19,070 of 1991, amended in 1995.

### **Number of teachers employed**

779. In 1998, there were 134,885 teachers working in State-subsidized establishments. Of those, 58.4% worked in municipal schools and 26.7% in privately owned schools. Another 13% worked in private family-sponsored schools, and the remaining 1.9% in schools belonging to corporations run on a delegated basis.

780. By category, the teaching profession is divided into classroom teachers, directors, pedagogic technicians and teacher-directors, the latter being appointed to schools situated in rural sectors.

781. With regard to academic and professional qualifications, 124,207 teachers hold teaching diplomas (92%); 3,155 hold diplomas in other disciplines (2.4%) and 7,523 have no diploma (5.6%).

### **Working hours**

782. Working hours tend to differ considerably. Teachers are distributed as follows according to their weekly working hours.

783. In 1998, 35.5% of teachers were under contract to work 30 hours a week; 12.8% were contracted for less than 30 hours; 21.1% worked between 31 and 44 hours; and 9.8% worked more than 44 hours a week, which is the maximum length of working time permitted with a single employer. Out of the 134,885 professionals working in State-subsidized establishments, 86.7% worked in a single establishment, 11.8% in two and 1.5% in three establishments. There are no statistics regarding a second or third job held outside teaching.

784. With the extension of the school day, following the policy initiated in 1997, the working week for teachers will tend towards 44 hours. According to the law regulating the system, 38 hours a week at least are worked in classes between the third and eighth primary school grades, and 42 hours a week in secondary education.

### **Established and contracted staff**

785. Depending on their working arrangement, teachers may be either established or contracted. In the public sector, 83% of teachers are established, while 17% are on contract or replacements. In this sector, the percentage of teachers under contract or as replacements cannot exceed 20% of the total numbers employed in each municipality, in accordance with the Statute of Education Professionals.

### **Qualifications**

786. Academic qualifications required for teaching are held by 92% of teachers. Another 2.4% of teachers hold diplomas in areas other than education; these are employed preferably to teach technical/vocational subjects in secondary education. Only 5.6% of teaching staff have no diplomas, although the minimum compulsory requirement is to hold the secondary school diploma (at least 12 years of schooling).

### **Percentage of women teachers**

787. In 1998, out of a total of 134,885 teachers, 69.5% were women. According to distribution by education levels, this proportion tends to be higher in primary education (73.5%) than in secondary education (57.2%). This distribution is relatively uniform between regions and geographical areas in the country. Nevertheless, there is a disparity and discrimination when it comes to the positions held. While in classroom teaching women occupy 72.5% of the positions, and 65.9% in pedagogy, the proportion is only 45.6% holding positions as principals.

### **In-service training**

788. According to the Statute of Education Professionals, all teachers are entitled to pursue in-service training, although this activity must be conducted outside working hours or during vacations. One exception is the case of fellowship holders, who undertaken traineeships or degree studies abroad. Since 1996, approximately 900 teachers each year receive State fellowships, in order to finance their studies and their travel and residence expenses, while their salaries are maintained by employers during their absence.

### **Age range of teachers**

789. About 75% of all teachers are situated in the over-36 age range. Only 11.8% are aged 30 or under. At the other extreme, 23.4% are aged over 50 years.

### **Regional and ethnic origin**

790. In Chile, the indigenous population is in a minority, and there are no statistics showing how many teachers are of indigenous origin. Nevertheless, there is a small percentage of teachers who master both their original language and Spanish, and another percentage who understand indigenous languages but do not speak them. Teachers working in indigenous communities are a minority, and it is estimated that out of the 19,960 teachers working in rural areas (14.6%), approximately 500 (2.5%) speak either Mapuche, Aymara or Rapa Nui.

### **Years of service**

791. One-third of teachers (33.4%) have less than ten years of service, while 11.9% have completed 30 or more years of service.

### **Salaries, allowances, bonuses and other benefits**

792. The monthly remuneration of teachers in the public sector, as established by law, includes: the national minimum basic salary, plus optionally an experience allowance for years of service, an allowance for completed improvements, an allowance for managerial or technical responsibility, and an allowance for working in difficult conditions. The latter allowance and the national minimum basic salary are paid by law also to teachers in the private sector. As a result of collective bargaining, other improvements have been obtained, such as the basic professional improvement unit, the supplementary professional improvement unit, the proportional bonus and the complementary schedule.

## **Supply and use of teachers**

793. There are no official standards that restrict ratios such as teacher/pupil, pupil/course or teacher/class. The only mandatory standards relate to the maximum number of pupils per grade or section, namely 45 pupils per class. The indicators in this respect, however, are fairly regular and there are no great disparities between urban and rural areas. This may be illustrated in the following ratios, derived from 1998 data:

- (a) The average pupil/teacher ratio is 30 in primary education and 18 in secondary education;
- (b) The average pupil/class ratio is 35 in primary education and 34 in secondary education;
- (c) The average teacher/class ratio is 1.2 in primary education and 1.9 in secondary education.

794. The strengthening of the teaching profession is one of the four components of educational reform, which began in 1996. If the curricular reform which has been undertaken in primary and secondary education is to be successful, then highly qualified professionals are needed to put the new educational methods into practice. A number of measures have been initiated to improve teacher training facilities, as well as the later opportunities available to teachers for further training.

## **Policies and actions for strengthening the teaching profession**

795. Within the framework of educational reform, policies and actions are being implemented to strengthen the teaching profession, as an indispensable factor for the successful implementation of the reforms in curricula and teaching methods undertaken since 1990. These measures are outlined in the paragraphs below, concerning teachers' performance and working conditions, professional improvement and initial teacher training.

### **Teachers' performance and working conditions: participation, incentives and remuneration**

796. The regulations governing teaching were significantly changed at the start of the 1990s. In response to the loss of protection and loss of identity experienced by teachers in the 1980s, the Statute of Education Professionals, known as the Teachers' Statute, was passed in 1991.<sup>317</sup>

797. Through the Teachers' Statute, the Government wanted to improve the professional standards of teaching work, considered to be one of the main requirements for raising the quality of education. Its aim was to further the cause of social equity, to the extent that it would introduce fairer conditions for teachers and especially those working with the poorest sectors and under the most difficult conditions. A further purpose was to express a commitment on the part of the State to finance improvements in the salaries of teachers in the subsidized sector, regardless of the financial capacity of their direct employers.

798. The Statute recognized the specificity of teaching work, which had not been taken into account by the common labour legislation governing the profession until 1991. A uniform set of rules was applied to teachers of all levels and all forms of education in both the public and private

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<sup>317</sup> Legislative Decree No. 1/96.

sectors, which had never before shared a common statute. At the same time, each form of teaching was dealt with separately within an educational system under different managements. Through the Teachers' Statute, municipal teachers gained job security and protection from dismissal. The Statute authorized transfers and exchanges, while improving regulations governing working hours by establishing a maximum of 44 chronological hours a week contracted with a single employer, and stipulating the internal distribution of those working hours. It was decided that in the working time of classroom teachers, not more than 75% could be used for actual teaching activities. The Teachers' Statute legalized summer holidays, which until then had merely been a form of accepted practice, while class teachers with more than 30 years of service obtained the right to reduce their teaching load without any loss of pay.

799. Between 1994 and 1998, teachers' income rose on average, in the municipal sector, from 374,106 pesos (US\$ 890.3) to 505,394 pesos (US\$ 1,098) a month for a 30-hour working week, taking as the average salary that of a class teacher with 20 years of service. For a 44-hour working week, from 1990 to 1999 the average pay was raised from 243,000 pesos (US\$ 797) to 541,000 pesos (US\$ 1,063.3), while minimum pay rose from 130,000 pesos (US\$ 426.4) to 341,000 pesos (US\$ 670.2).

800. In addition to those general increases, various pay incentives were introduced for the collective and individual performance of teachers. One such incentive was a bonus payable for two years to teams of teachers in subsidized education recognized as "outstanding" in each region, in accordance with an ad hoc system of assessing the performance of educational establishments, specified by law.<sup>318</sup> This bonus was paid to 30,300 teachers in 1,815 schools, who received an average annual amount of 278,000 pesos (US\$ 515.3).<sup>319</sup>

801. Another form of encouragement to improve the professional performance of teachers has been the initiative of the President of the Republic, who introduced excellence awards for the most deserving teachers in each region, at different levels and in different forms of education, according to selections made by qualified panels. From 1997 onwards, 50 such awards were made each year, valued at approximately US\$ 10,000 each.

### **Professional improvement**

802. Significant advances have been achieved in this respect, on the basis of the recognition given to the teachers' right to professional self-improvement, which was contained in the law approving the Statute of Education Professionals.<sup>320</sup> Since the summer of 1997, in conjunction with universities and other approved academic bodies, the Ministry has offered introductory improvement courses to the new study programmes free of charge for teachers in the first to fifth years of primary school and, in the summer of 1998, to first-year teachers in secondary school. The further training opportunities were also extended to the principals of establishments who adopted the Ministry's programme. In 1999, 40,000 teachers and principals benefited from improvement training.

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<sup>318</sup> Act No. 19,410 of 1995.

<sup>319</sup> US\$ at 2000 values.

<sup>320</sup> Act No. 19,070 of 1996.

803. In 1986, a new stage began in the further training programme for teachers, with the launch of a programme of scholarships abroad, giving preference to classroom teachers of the subsidized education system across the country, in the form of traineeships or diploma studies. The latter were divided into courses attended at institutions in Chile and periods spent studying abroad. Between 1996 and 1998, 2,286 teachers, selected from 309 communes in the country's 13 regions, received scholarships for trainee or diploma courses. In 1999, approximately 900 more teachers received such scholarships, bringing the total to 3,200 scholarships.

804. Meanwhile, opportunities have been offered for non-contractual professional further training in educational establishments. These new opportunities include the following:

(a) Microcentres for the further training of teachers in rural schools with one, two or three teachers, in which more than 5,000 teachers of the Basic Rural Programme have participated. These microcentres are a way of alleviating the isolation experienced by teachers in rural areas, while helping them to improve their performance and to design and implement innovative projects for their schools, applying a collective and reflective approach.

(b) Teachers' workshops in reading, writing and mathematics, for teachers in the 900 Schools Programme (P-900), available to all primary school teachers in P-900 schools.

(c) The participation of teachers in the Links (*Enlaces*) Network, which offers training in the use of computer equipment and programmes and in the pedagogic and administrative application of computing facilities. This training is given by the universities that belong to the Network. It also provides access for teachers to sources of professional information and to spaces of communication between teachers.

(d) The MECE<sup>321</sup> media programme, in support of professional working groups in all secondary schools, on the basis of two hours of discussion on teaching methods within their teaching hours, once a fortnight. Facilities are provided in the form of handbooks and technical guidance for the development of this activity. Modules are also supplied, covering either several disciplines or individual subjects, with suggestions for participative activities and methodologies. In 1998, the scheme covered more than 25,000 teachers, who made up 2,700 professional working groups in 1,028 publicly subsidized colleges.

(e) A new opportunity for professional improvement has also been provided with a fresh approach to ministerial supervision, aimed at providing technical support for teachers and schools, instead of using supervision merely as a means of checking the fulfilment of standards.

805. Apart from improving the professionalism of teachers, these new opportunities for improvement help to develop new teaching methods which are better adapted to the curricula adopted under the reform.

### **Initial teacher training**

806. In 1996, the Government announced a five-year programme for the all-round improvement of teacher training. Institutions responsible for teacher training were invited to submit renovation projects, including at least the following aspects: improvement of their academic staff; contracting of consultants or visiting teachers; improvement in libraries and educational computing;

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<sup>321</sup> Education Quality Improvement Programme.

scholarships for outstanding pupils; cooperation agreements between education faculties and other academic faculties, in order to help future teachers update their knowledge in the subjects they expect to teach; working agreements between education faculties and schools in their region, in order to lend technical support to the latter while improving awareness of the situation in schools; and improvement of supervised practical work of students completing their education studies.

807. Out of 32 universities and institutes which submitted projects, 17 were selected, which altogether account for more than 80% of enrolled students following study courses. In order to implement these projects, the Ministry of Education has made available a budget of US\$ 25 million, to be invested over four years. This sum is to be complemented from the internal resources which the universities have committed for the same project and the same period. Altogether, the Ministry and the universities will invest 20,455,507 pesos (US\$ 37,916,378) between 1998 and 2001.

808. In 1998, a scholarship programme was launched for teacher training students, aimed at attracting students achieving high marks in university entrance exams, or scoring high marks in secondary education or having acquired previous teaching experience. In 1998, out of 633 applicants, 179 were selected, of which only 122 eventually entered the career. For the academic year of 1999, 1,944 young persons applied, out of whom 265 were selected; of these 232 eventually enrolled for teaching careers.

#### **Private establishments: requirements for official recognition**

809. In primary and secondary education, 40.4% of schools are private. These cover 34.4% of the total school population, the other 59.6% of schools being under public management.

810. Ever since the 1833 Constitution was passed, the legal principle of educational freedom has prevailed in Chile, which was further confirmed by the Constitution introduced in 1980. All those living in the country have the right to open and maintain educational establishments. Nevertheless, certain requirements are imposed by law before official recognition is given to private schools that apply for approval. In accordance with the rules of accreditation, the State grants recognition to private schools which are supported by a sponsor, which assumes responsibility, which follows plans and programmes compatible with the basic objectives and minimum compulsory contents of primary and secondary education, which employs suitable staff and which complies with infrastructure and equipment requirements.

#### **International assistance**

811. As the country has experienced economic growth and has succeeded in strengthening its social policies, it has gradually developed the financial, political and technical capacity to deal with its problems with its own resources. Comparatively speaking, therefore, the importance of international assistance has tended to diminish.

812. In the case of education, the country has had the advantage of hosting the headquarters of several major regional or subregional offices, such as those of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children's Fund (UNICEF) and the Economic Commission for Latin America and the Caribbean (ECLAC). This physical proximity has provided easy access to the professional knowledge and information capacity accumulated in these organizations, which, in varying degrees, have used their resources to help resolve the problems of analysis, design and implementation of Chilean social policies.

813. More specifically, the most emblematic of the school improvement programmes of the decade of the 1990s, the 900 Schools Programme (P-900), was started with initial finance provided by the Governments of Denmark and Sweden. At present, the programme is being completely financed from national resources.

814. In 1992, the Ministry of Education initiated a close and sustained relationship with the World Bank. A loan from that institution was used to finance the bulk of the Programme for the Improvement of the Quality and Equity of Basic and Preschool Education, known as MECE-basic, between 1992 and 1997. In 1995, a similar programme was launched for the improvement of secondary education, which was to last until the end of 2000 (MECE-secondary). In this programme, the bulk of the financing comes from Chile's own budget, while the country benefits principally from technical contacts with the Bank. A third agreement with the bank was initiated in 1998, aimed at the improvement of higher education, known as MECE-advanced. In 2001, the Government began discussions regarding a possible fourth MECE programme, focused on continuing education and the technical training of persons who have not completed their schooling.

#### **Article 14**

##### **Free access to primary obligatory education**

815. Pursuant to the Compulsory Primary Education Act, 1920, primary education is compulsory and free of charge.

#### **Article 15**

##### **The right to culture**

##### **Legislative measures to guarantee the right to take part in cultural life and to express one's own culture**

816. Article 19, section 10, of the Constitution provides that "*it shall [...] be the duty of the State to promote the development of education at all levels and to encourage scientific and technological research, creative activity and the protection and promotion of the Nation's cultural heritage*".

817. During the period under review, the Books and Reading Promotion Act<sup>322</sup> was enacted and a number of competitive funds, such as the Support Fund for Regional Cultural Initiatives, were set up for small communities and specific groups. Cultural donations were encouraged through tax incentives under the Cultural Donations Act. Nevertheless, with the exception of the Book Fund, most of the existing funds and budgets are injected into different institutions that do not necessarily coordinate with each other and are not covered by specific laws, or they form part of general policies<sup>323</sup> under which the resources earmarked for culture are variable. Public financing and funds for promoting cultural development, including private-sector support

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<sup>322</sup> Act No. 19,227 of 10 July 1993.

<sup>323</sup> For example, article 8 of the Tax Reform Act, which is known as the Cultural Donations Act.

818. In 1991, Chile invested approximately US\$ 13 million into culture, according to calculations by the Presidential Advisory Commission.<sup>324</sup> In 1999, that figure was estimated to be just over US\$ 40 million.<sup>325</sup> The government budget in this field has increased steadily because the competitive funds that now exist for the promotion of cultural activities had not been created in 1991 and because the budgets of some public bodies for the advancement of culture have increased significantly.

819. In spite of the above, the State contribution seems to be insufficient and, considering the experience and the needs of the cultural and artistic world, it is small. The resources provided by the Arts and Culture Development Fund (Fondart) have, on average, been adequate to cover the cost of only just over 10% of the projects submitted, even though the budget for this Fund - the foremost in the country - has doubled over the last eight years. This is because, although in the 1990s some useful machinery was introduced to promote culture, there is a backlog due to a policy that has failed to focus priority attention on this area of the country's development.

820. Chile has various legal, financial and administrative instruments and mechanisms at its disposal for the development, promotion and dissemination of goods and services relating to culture and heritage. The main bodies dealing with these issues are:

(a) In the Ministry of Education: the Culture Department, the National Monuments Board, the Film Classification Board, and the Directorate of Libraries, Archives and Museums. In addition, the Ministry of Education has to make a financial contribution every year to the Santiago Municipal Theatre and to the Balmaceda 1215 Cultural Centre, which was created for the general public;

(b) In the Ministry of Foreign Affairs: The Directorate of Cultural Affairs and the Export Promotion Bureau (ProChile);

(c) In the office of the Minister-Secretary General of the Government: the Department of Culture, the Department of Research - regarding analysis of the media and the cultural industry - and the National Television Board;

(d) The Production Development Corporation (CORFO) runs a Feature Film Promotion Programme, which supports the development of film projects and the distribution and marketing of Chilean feature films;

(e) The Indigenous Development Fund under the Ministry of National Planning (Mideplan) and the National Indigenous Development Corporation (Conadi) finances projects that include, inter alia, support for cultural and communication events involving the indigenous people.

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<sup>324</sup> The figure takes into account the budgets of: the Directorate of Libraries, Archives and Museums; the Directorate of Cultural Advancement; the Film Classification Board; the Department of Culture of the Office of the Minister-Secretary General of the Presidency; the Foreign Information Directorate of the Ministry of Foreign Affairs; the Architecture Directorate of the Ministry of Public Works; the Directorate General of Sports; the National Forestry Corporation; the Municipality of Santiago; and contributions to the University of Chile.

<sup>325</sup> Deflation during this period must be taken into account.

Also under Mideplan, the National Disability Fund (Fonadis) finances programmes and projects in support of persons with special needs, including projects that tap into the artistic and intellectual potential of these persons;

(f) The Ministry of Public Works is running a public competition to finance the incorporation of works of art into public infrastructure projects;

(g) The Urban Development Division of the Ministry of Housing and Urban Development administers an Urban Improvement Programme geared towards building community facilities such as cultural centres and multi-purpose venues;

(h) The National Television Board, an independent public body, administers a fund to support cultural television programmes or those that are of national or regional interest.

821. The following bodies and funds fall under the jurisdiction of the Ministry of Education:

(a) The National Council for Books and Reading, which administers:

(i) An annual competition for projects to promote books and reading, which allocates resources in areas such as development of libraries, promotion of reading, cultural events and training, support for publishing and developing the export of Chilean books;

(ii) A competition for the best literary works by Chilean authors, in the categories of unpublished and published works;

(iii) A scholarship scheme for teachers and librarians who propose initiatives to promote books and reading;

(iv) A national children's literature competition to promote unpublished works;

(b) The Arts and Culture Development Fund (Fondart), which organizes:

(i) A national competition to fund artistic projects in the categories of the plastic arts, audiovisual works, theatre, dance, music and combined arts;

(ii) A regional competition to fund cultural projects administered autonomously with a view to promoting cultural infrastructure and local artistic and cultural initiatives, traditional culture and artistic and cultural events;

(c) The Ministry of Education's competitive funds, used to support the development of establishments specializing in artistic education at primary and secondary level;

(d) In addition to the competitive funds, the Ministry of Education, operating through its Cultural Department, supports a variety of services, programmes and opportunities aimed at the public nation wide. These include a theatrical programme, a dance project, the National Folk Dance Troupe and the National Programme of Youth Orchestras - which supports activities by the National Youth Symphony Orchestra and the Chilean Chamber Orchestra in different regions of the country - and the recent compilation of a "cultural map of Chile";

(e) The Chilean Touring Theatre, under the patronage of the Ministry of Education, which administers a national competition for cultural touring projects.

822. The budgets of other ministries also include sections earmarked for cultural items – both for creative activity and for social and cultural activities, infrastructure development, heritage protection or the establishment and consolidation of organizations, microenterprises and other initiatives. This contribution is not always taken into account in official cultural statistics because it is not a permanent arrangement, because it is allocated by ministries whose remit is not thought of as "cultural", or because the contributions are allocated under the "miscellaneous" rubric. For example, in the 1990s, the Ministry of Public Works invested approximately 3,000 million pesos (US\$ 5,560,807)<sup>326</sup> to rehabilitate public buildings which form part of the nation's architectural heritage. Likewise, the National Regional Development Fund (FNDR) of the Ministry of the Interior finances projects connected with education and cultural research, publicity or infrastructure. Up to September 1999, spending in the amount of approximately 5,000 million pesos (US\$ 9,827,439)<sup>327</sup> had been authorized for these purposes. The Ministry of Planning also allocates resources for social and cultural projects through the Indigenous Development Fund and the Social Solidarity and Investment Fund (Fosis), and the Ministry of the Economy, through CORFO, earmarks money in its budget for the film industry and small and medium-sized industries in the cultural sector (handicrafts, film, publishing ventures, etc.).

823. In short, only approximate figures can be given for public expenditure on culture in Chile.

**Table 44**  
**Trends in competitive funds, 1994-1998**  
**(in pesos and US\$, value 1998)**

Year	FONDART*	FNLL*	FDEA*	FAIR**	Total
1994	1,424,358 (3,094)	1,004,223 (2,182)	-	76,849 (167)	2,505,430 (5,443)
1995	1,612,527 (3,503)	1,001,604 (2,176)	-	106,590 (232)	2,720,721 (5,911)
1996	1,933,920 (4,202)	1,038,149 (2,255)	326,979 (710)	77,700 (169)	3,049,769 (6,626)
1997	2,100,000 (4,562)	1,041,166 (2,262)	324,106 (704)	73,290 (159)	3,538,562 (7,688)
1998	2,747,662 (5,969)	1,046,512 (2,274)	319,329 (694)	-	4,113,503 (8,937)
1999	2,904,145 (6,309)	1,067,270 (2,319)	325,663 (708)	-	4,297,078 (9,336)
Total	127,222,612 (276,397)	6,198,924 (13,467)	1,296,077 (2,816)	334,429 (727)	-

Source: Patricia Moscoso Pinto, *Cifras: superficie resbaladizas* in *Revista Cultura No. 25. 1990-2000: Una década de desarrollo cultural*. Office of the Minister-Secretary General of the Government.

\* Including staff costs.

\*\* Excluding staff and administrative costs.

Fondart: Arts and Culture Development Fund; FNLL: National Books and Reading Fund; FDEA: Arts Schools Development Fund; FAIR: Support Fund for Regional Cultural Initiatives.

<sup>326</sup> 2000 value.

<sup>327</sup> 1999 value.

824. Analysing changes in the competitive funds, it is apparent that Fondart is the only fund to have grown substantially. This is also reflected in the increase in allocations for certain arts sectors or disciplines. The number of subsidized projects in the sphere of the plastic arts increased from 44 in 1992 to 84 in 1998; over the same period, the number of audiovisual projects rose from 21 to 57; literary projects increased from 35 to 49 (these also get assistance from the Book Fund); and the number of performing arts projects (dance and theatre) increased from 24 to 59.

**Table 45**

**Projects selected by Fondart, by thematic area**

Theme	1992	1993	1994	1995	1996	1997	1998	Total
Plastic arts	54	58	98	20	49	42	84	405
Visual arts	21	56	69	44	43	46	57	336
Performing arts	24	38	70	59				191
Music	44	80	67	49	33	33	54	360
Literature	35	51	93	38	40	49		306
Local culture	29							29
Traditional culture	33			40	36	43	71	223
Enrichment of the cultural and artistic heritage	23	29	42		27	26		147
Cultural infrastructure				19	15	27	36	97
Cultural or artistic events		47	40				111	198
Artistic initiatives and local culture				62	36	53	149	300
Local and traditional culture		57	59					116
Theatre					43	41	44	128
Dance					11	20	10	128
Total	263	416	538	331	333	380	616	2,877

Source: Executive Secretariat of Fondart.

**Private contributions and cofinancing**

825. During the 1990s, the private sector helped to finance cultural projects by channelling resources through foundations and other bodies, or by contributing directly to culture-related institutional projects. The law<sup>328</sup> permits donors to obtain a tax "credit", equivalent to half of the amount contributed, out of the total amount subject to category 1 tax (paid by companies) or category 2 tax (paid by private individuals). This concession is subject to a ceiling of 2% or 14,000 tax units. There are no accounting figures for calculating how much is contributed by private enterprise and how much by the State in this system of shared responsibility for the financing of cultural projects.

<sup>328</sup> Act No. 18,985 of 28 June 1990.

**Table 46**

**Cultural Donations Act\*  
(in current pesos and US\$)**

Year	Requested amount	Actual amount
1991	1,293,041,763 (3,702,657)	390,494,851 (1,118,192)
1992	1,953,951,899 (5,389,023)	776,698,526 (2,142,144)
1993	2,185,304,142 (5,406,893)	652,442,292 (1,614,277)
1994	1,664,751,416 (3,961,996)	472,551,673 (1,124,641)
1995	2,287,457,052 (5,765,197)	971,740,738 (2,449,129)
1996	6,204,507,069 (15,049,621)	2,748,289,738 (6,666,238)
1997	5,576,428,410 (13,299,059)	1,699,752,797 (4,053,690)
1998*	6,507,866,018 (14,138,621)	2,055,035,367 (4,464,654)
1999*	3,551,055,505 (6,979,550)	-

Source: Executive Secretariat of the Cultural Donations Assessment Committee.

\* These are provisional data.

**Institutional infrastructure for the promotion of popular participation in culture**

826. No inventories or studies exist of Chile's cultural infrastructure, but available information shows a considerable increase between 1990 and 2000, both in spaces and areas linked to traditional artistic disciplines and in the culture industry sector. Santiago's landmark sites are: Centro Cultural Estación Mapocho; Centro Cultural Balmaceda 1215; Museo de la Solidaridad Salvador Allende; Museo Interactivo Mirador; and Museo Artequín. In the regions the Museum of Modern Art of Chiloé, the conversion of the former Velarde cinema in Valparaíso into a municipal theatre, and the construction of the new municipal theatre in Temuco are worthy of note.

827. In the publishing world, since 1992, when the ISBN (*International Standard Book Number*) was officially recognized in Chile, an average of 80 new publishers have been registered annually, with a peak in 1996 when 116 were recorded.

**Cinemas, libraries and multi-purpose venues**

828. Up to October 1998, the Culture and Media Yearbook issued by the National Institute of Statistics (INE) registered 208 cinemas in the whole of the country. Since then, 48 have been opened in Santiago, La Serena and Iquique. This considerable increase was due to the inauguration of multiplexes in Santiago and the provinces. Older premises have been subdivided into six or eight mini-cinemas, and new installations have been created. The same phenomenon was repeated in Iquique, La Serena, Viña del Mar, Rancagua and Concepción.

829. Diversifying and reaching out to all types of audience has also been a challenge for the libraries. INE calculated in 1998 that there were 2,049 throughout the country, of which some 300 have agreements with the Department of Libraries, Archives and Museums (DIBAM). This figure, however, does not take account of other efforts made by DIBAM and other bodies to create new

forms of access to books and reading such as libraries located in the stations of Santiago's underground railway, touring in vans or small boats, etc. (mobile libraries for areas with no permanent library facilities).

830. According to INE, the largest number of cultural facilities is to be found in Santiago. In October 1998 there were 25 theatres, more than 600 libraries and 123 cinemas in the capital. A further 40 multiplex cinema screens have subsequently been opened.

831. Fondart has contributed systematically to the construction, repair and fitting out of venues for cultural and socio-cultural activities and the restoration of buildings which form part of the heritage. The Support Fund for Regional Cultural Initiatives (FAIR) also made a contribution in this area for seven years. During the first four years of Fondart's existence demand for infrastructure and equipment was placed under the heading of "enrichment of the artistic and cultural heritage." In 1996 a specific item was created for "improvement and provision of infrastructure", on the basis of which 276,900,000 pesos (US\$ 1,453,889) were awarded that year. The following year the figure increased to 609,630,000 pesos (1,453,889 dollars).

832. The selection of a project by Fondart basically depends on feasibility, but other criteria relating to the environmental, social and cultural impact of the proposal also play a part. Initiatives have been encouraged in areas of high population density such as provincial capitals, but also in isolated areas with few resources and few inhabitants, where a form of positive discrimination has been applied.

833. Resource requirements concern very different areas of the infrastructure. There has been much demand for the construction or fitting out of municipal theatres, but since the costs are enormous the Cultural Department of the Ministry of Education recommended a special allocation for the purpose. These theatres were traditionally a symbol of opulence, performing musical shows or operas for the cultural elite; in the course of time, however, they have come to be places of entertainment for the masses. The creation of cultural centres and multipurpose venues is another resource-intensive area. These are places which are more in keeping with a concept of culture that makes no distinction between a chamber music concert and video projection to a large audience.

834. The work of the Department of Architecture in the Ministry of Public Works is more focused. Its activities are directed only at the public sector and, since 1991, it has developed a programme for the restoration of buildings which form part of the heritage, with an investment of 3,000 million pesos (US\$ 5,560,807) to date. In all, the programme has involved expenditure of 10,000 million pesos (US\$ 18,536,024), the remaining 70% being contributed by the actual users of the buildings. The Ministry makes a valuable contribution by installing works of art in public places.<sup>329</sup>

835. The National Regional Development Fund (FNDR), which reports to the Under-Secretary for Regional and Administrative Development (Ministry of the Interior), has collaborated in equipping libraries or multi-purpose venues and restoring areas which form part of the heritage. Since 1996 the regional governments have regularly earmarked between 50 and 300 million pesos (US\$ 92,680 and US\$ 556,080, respectively)<sup>330</sup> for the purpose, and the figures are steadily rising. In 1999, resources were allocated through this channel for such projects as the construction of a

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<sup>329</sup> 2000 values.

<sup>330</sup> 2000 values.

museum and a library in Pica (Atacama region), equipment for the Cultural Extension Department in Constitución (El Maule region) and the construction of the Siqueiros Cultural Centre (Bío-Bío region).

### **Promotion and conservation of cultural identity and heritage**

836. Under the National Monuments Act,<sup>331</sup> the National Monuments Council works to conserve and extend access to that part of the national heritage which takes the form of tangible monuments. There are also private organizations that support efforts to survey and preserve the national heritage.

837. The State takes responsibility, through the Department of Libraries, Archives and Museums (DIBAM), for safeguarding and promoting sources of identity in the country's cultural heritage. Its director is Executive Vice-Chairman of the National Monuments Council. Several heritage institutions form part of DIBAM. They include national bodies: National Library, National Historical and Government Archive, and three national museums (the Fine Arts, History and Natural History Museums). It also groups 21 museums throughout Chile, the Intellectual Property Registration Department, the National Centre for Conservation and Restoration, the Araucanía Regional Archive, the National Bibliographical Information Network and the Diego Barros Arana Research Centre. As a result of agreements, DIBAM also contributes to the operation of 306 public libraries throughout Chile.

838. The Government recently successfully proposed that Easter Island and its monuments should be declared part of the cultural heritage of mankind. It is currently applying for the same status for the city of Valparaíso, the churches of the island of Chiloé and the abandoned nitrate works in the desert of northern Chile.

839. Cultural Heritage Day was introduced by the Government of President Lagos and is celebrated on the last Sunday of May each year. The celebration has aroused the interest and collective awareness of the population. Dozens of institutions and private historic buildings are open to the public on that day, beginning with the presidential palace, known as La Moneda, which is now accessible to the public on a daily basis.

### **Freedom of expression and the media**

840. There are two areas of achievement to be analysed: the generation of a climate of transparency in the media and the improvement in journalism. The communications policy of the democratic Governments has spelled out the restoration of the role of the information media, which had been weakened by pressure and control under the military regime. The key objective of this policy was enable the media to recover their credibility and shed the label of official government organs.

841. This was the start of their transformation from government to public media, with the granting of independence in management to the national television company (TVN) and the sale of the State-owned Agencia Orbe and Radio Nacional. The Constitution<sup>332</sup> was amended to eliminate film censorship and replace it by a rating system embodying the right to freedom of artistic creation.

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<sup>331</sup> Act No. 17,288, of 4 February 1970.

<sup>332</sup> Act No. 19,742, of 9 November 2002.

842. The Government has also contributed to the transparency of the information system in order to make the public administration more answerable in its activities. An example is the bill on access to administrative information introduced by President Frei in 1995, which was based, for the first time in Chilean legislation, on the existence of a general right to information, and specified the circumstances in which public officials could refuse to provide it together with a legal remedy for contesting such refusal.<sup>333</sup>

843. As regards the free practice of journalism, the numerous cases pending against journalists in the military courts, most of them involving offensive behaviour and insults against the armed forces, were transferred to the civil courts. However, judicial provisions and procedures, that are extremely repressive vis-à-vis the media and journalists are still in force. Since March 1990, most cases relating to freedom of expression have involved the defamation of public officials, affecting 16 journalists and 8 politicians. Recently, the case of *El Libro Negro de la Justicia Chilena* (The Black Book of Chilean Justice) led the Inter-American Commission on Human Rights to condemn the existence of provisions contrary to freedom of expression and thought, which are guaranteed in the international covenants Chile has signed.

844. This situation has highlighted urgency of the bill to amend the State Security Act<sup>334</sup> by repealing the provision giving the courts exceptional powers to suspend publications or broadcasts which have committed the offences of defamation, insult or slander against the authorities. Disagreement exists here between the groups sponsoring the amendment of the Act, who seek to eliminate the special safeguards for the dignity of the authorities, and their opponents, who wish to keep the provision in force for some officials.

845. Another of the judicial procedures preventing the proper practice of journalism is the ban on information issued by the courts in cases of public disturbance. Although there is consensus regarding the need to abolish this provision, contained in the Press Bill, approval has been delayed. This bill, which seeks to protect journalists and regulate the guarantees of freedom of information and opinion, has provoked lengthy discussion, owing to the clash of institutional and trade union interests and the lack of consensus among the various stakeholders. After six years of negotiation, the executive, aware of the importance of this statutory framework, has placed new emphasis on efforts to speed up discussion.

### **Vocational training in culture and art**

846. In addition to cultural and artistic training establishments and activities which benefit from freedom of education and are not “officially recognized,” the formal education system contains a group of establishments for vocational training in the arts. At the basic and secondary level, there are art schools which combine general training with diversified training oriented towards the arts, mainly in the spheres of music and the visual arts. Many of the institutions in higher education (universities and vocational institutes) provide vocational courses of this type. Several of the main universities have specialized faculties, department or schools which not only offer instruction but are also engaged in research, creation, extra-mural studies and popularisation in the field of the arts and humanities.

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<sup>333</sup> Act No. 19,653 of 1999.

<sup>334</sup> Act No. 12,927, of 6 August 1957.

### **Measures for the conservation, development and dissemination of the culture of the indigenous peoples**

847. Within the system of institutions created since 1990-1991 to deal with the affairs of Chile's indigenous peoples, plans have been drawn up to lay the foundations of what has been termed bilingual intercultural education, as part of a broad approach to the cultural dimension of ethnic development in Chile. The Basic Education Training Programme for Mapuche Teachers, which has been in operation since early 1992 under an agreement with the Catholic University of Temuco, is an important addition to this.

### **Measures for the realization of the right to enjoy the benefits of scientific progress and its applications**

848. The Constitution gives the State responsibility for promoting scientific and technological research. One of the three main functions of Chile's universities is scientific research; in addition to their own resources, they receive State support as described below. They carry out most of the scientific and technological research in Chile. The National Commission for Scientific and Technological Research (CONICYT), an independent public institution with links to the Ministry of Education, has responsibility for the National Fund for Scientific and Technological Research (FONDECYT), which finances research projects submitted by individuals or teams from the universities and other areas, through annual competitions judged by adjudicators from the scientific community itself.

849. Other State initiatives aimed at fostering scientific and technological development have been pursued over the last decade. These include the Fund for the Promotion of Scientific and Technological Development (FONDEF), based within CONICYT, which was established in 1991 with the aim of helping enhance competitiveness in the main sectors of the Chilean economy by strengthening national scientific and technological capabilities. As part of its mandate, FONDEF endeavours to strengthen links between universities and research institutions and business. Its objectives are:

(a) To increase the quantity and quality of research and the provision of scientific and technological services with a significant impact on productive activities;

(b) To boost the transfer of know-how to the production sector through interaction, collaboration and implementation of projects conducted jointly by research and development units and Chilean businesses;

(c) To enhance Chile's specialization in research and development in priority areas of significant social benefit and national interest.

850. The purpose of the Funds for Advanced Studies in Priority Areas (FONDAP) is to encourage teamwork by groups of researchers in thematic areas to which the Government has decided to attach priority, where national scientific endeavours have achieved a high-level and where there are substantial numbers of researchers of proven productivity. The FONDAP programmes are focused on one scientific problem or group of problems. The Research is more likely to produce if it is multidisciplinary (where appropriate) and enjoys long-term funding. The research includes an educational component, which is also a basic feature of these Programmes. In 1996 an oceanography and marine biology programme and an applied mathematics programme were set up under FONDAP. Biomedicine and materials sciences programmes were financed in 1999.

851. The National Fund for Technological and Productive Development (FONTEC) was established in 1992 under the 1992-1995 Science and Technology Programme of the Production Development Corporation (CORFO). Its purpose is to enable private enterprises to invest more rapidly in innovation and it is directed at all private enterprises in the national production sector with a level of development in economic and technical terms such that they can share the risks and profit of technological innovation. At the present time its tasks are:

(a) To promote and finance the implementation of projects involving innovation and the transfer and purchase of technological infrastructure, carried out by private enterprises; and

(b) To support the scaling up of the production and marketing of projects derived from an innovative process.

852. The Development and Innovation Fund (FDI) was established in 1995 as a CORFO committee, with the title of Fund for Public Service and Interest Research Programmes and Projects. When established it was only available for financing projects from the CORFO Institutes. In 1996 it ceased to deal exclusively with the CORFO Institutes and the first national projects competition was held; it was open to Chilean technological institutes and centres, incorporated thematic tendering procedures and was included in the Technological Innovation Programme. In 1997 the Fund's mission and scope of action was redefined and its name changed to FDI. FDI's current role is to promote initiatives which make a substantive contribution to generating and managing processes of innovation and technological change in areas of strategic impact on Chile's economic and social development, in conjunction with public and private technological centres. At the same time, the Fund seeks to serve as a strategic instrument in CORFO's mission of stimulating production and contributing to improving the links between the main stakeholders in national technological development.

853. The Fisheries Research Fund (FIP)<sup>335</sup> is an institution governed by the Fisheries Research Council. It was set up to finance fishery and agricultural research projects whose findings would supplement the information required for the adoption of measures in the field of fisheries management and aquaculture. The main objective of the latter is the conservation of hydrobiological resources, taking into account biological factors, fisheries considerations and economic and social aspects. The Fund is financed by allocations under the annual Budget Act, advance payments by industrial fisheries operators and fish farmers for fishery and aquaculture licences, and other contributions earmarked for the purpose.

854. The Mining Research Fund (FIM), established in 1996 as part of the Centre for Mining and Metallurgical Research (CIMM), was incorporated into the Technical Innovation Programme in 1997. It is financed with capital contributions from enterprises in the sector, such as the Copper Corporation (CODELCO) and the Escondida, Zaldívar and Cerro Colorado mining companies, through the International Copper Association (ICA). The Fund's main purpose is to carry out scientific research on copper and its by-products.

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<sup>335</sup> Established under the General Fisheries and Aquaculture Act, No. 18,892, promulgated on 6 September 1991, as amended; the redrafted text was established under Supreme Decree No. 430 of the Ministry of the Economy.

855. The objective of the Millennium Scientific Initiative<sup>336</sup> is to contribute to making the most of human capabilities for scientific and technological research as a key factor in long-term sustainable economic and social development. The Initiative is aimed at the training of teams, particularly of young people, to levels of international academic and scientific excellence in research, starting with the few of high-level specialists to be found in Chile. Efforts are made to provide a satisfactory environment (equipment, remuneration, critical mass of professionals, etc.) so that the best scientists, as part of an international network of excellence, can express their potential within an independent, transparent, flexible and efficient system. It is hoped that the customary “brain drain” to foreign countries will be reduced in this way and that Chilean and foreign scientists based in other countries will be interested in returning and contributing to the national system of scientific and technological research. The Initiative’s close links and coordination with the valuable system of institutions that already exists (among others, the Ministry of Education, universities and national research institutes), will have an additional impact and provide synergy, helping to strengthen these institutions and Chile’s research and development system. The aim of the programme is innovative reform of national scientific and technological activity.

856. CONICYT has also established a post-doctoral research programme to incorporate young researchers into the national system of research. The aim of this programme is to stimulate the scientific productivity and independence of researchers who have recently obtained their doctorates, enabling them to devote themselves exclusively to research. As part of this undertaking, CONICYT has also increased its postgraduate fellowships and organized new educational opportunities (to include international cooperation, joint tutor fellowships and thesis completion fellowships).

857. In support of this effort, public funds earmarked for research and development were substantially increased from US\$ 159.4 million in 1990 to US\$ 500 million in 1999.

#### Conservation of the natural heritage of mankind and promotion of a clear and healthy environment

858. The Constitution guarantees all Chileans “*the right to live in an unpolluted environment. It is the duty of the State to ensure that this right is not jeopardized and to promote the conservation of nature*”.<sup>337</sup>

859. The Environment (Framework) Act<sup>338</sup> forms part of the institutional infrastructure whose purpose is to set out measures for the conservation of the natural heritage of mankind and the promotion of a clean and healthy environment. This Act provides the legal framework for the protection of the environment in Chile, expressly acknowledging the “*right to live in an unpolluted environment, the protection of the environment, the preservation of nature and conservation of the environmental heritage.*” The Act defines and regulates each of these aspects, although it may also be supplemented by other provisions. Within this institutional structure, the National Environment Commission (CONAMA) was established with a management and supervisory role in environmental policy in Chile, as a functionally decentralized public service with juridical personality and its own assets, reporting to the President through the Office of the Minister-

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<sup>336</sup> Created and formalized through Supreme Decree No. 151/99 adopted by the Ministry of Planning and Cooperation.

<sup>337</sup> Article 19, section 8.

<sup>338</sup> Act No 19,300, promulgated on 1 March 1994.

Secretary General of the Presidency. In order to enhance its performance, CONAMA is decentralized into Regional Environment Commissions, which are responsible for the environmental policies of each region.

860. The Environment (Framework) Act contains a set of environmental management tools. First and foremost among these are education and research, the latter supported by the Fund for Scientific Research and Technological and Social Development, the purpose of which is to finance projects concerning the environment. Secondly, the Environmental Impact Evaluation System was created as a preventive management tool to be applied to all public or private projects or activities established by law which may have an impact on the environment. This enables the consequences of projects to be anticipated and to be countered and minimized by measures of mitigation, reparation or compensation. Depending on the characteristics and effects of the project, an environmental impact statement or environmental impact study will be required. Although initially this system applied only voluntarily, in 1997 it became mandatory when the Regulations on Environmental Impact Assessment<sup>339</sup> were issued. The environmental impact assessment procedure established under these Regulations includes machinery for informed and organized participation by the public, as stipulated for each specific case depending on the project being evaluated. Provision is also made for a Plan for Measures of Mitigation, Reparation and Compensation, an Environmental Monitoring Plan and the supervision of each of the projects or activities.

861. Standards for environmental quality and for the preservation of nature and conservation of the cultural heritage established by law for general implementation throughout the country constitute a third environmental management tool. The aim of these standards is to define emergency situations in terms of thresholds. The procedure to be followed for issuing such standards is regulated by law.<sup>340</sup> Foremost among the environmental quality standards issued in accordance with the statutory procedure is the primary quality standard for inhaled PM 10 particles, and in particular the values which correspond to emergency situations.<sup>341</sup>

862. Fourthly, emissions standards are adopted as an environmental management tool and will be specified in a Supreme Decree, which will determine their geographical scope of application. These emissions standards indicate the maximum permitted quantity of a pollutant measured in the outflow of the emitting source. The procedure for issuing these standards can be found in the relevant regulations.<sup>342</sup>

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<sup>339</sup> Adopted by Supreme Decree No. 30 of the Office of the Minister-Secretary General of the Presidency, published on 3 April 1997.

<sup>340</sup> Regulations for the Issue of Environmental Quality and Emissions Standards, approved by Supreme Decree No. 93, of 15 May 1995, of the Office of the Minister-Secretary General of the Presidency, published in the *Diario Oficial* of 26 October 1995.

<sup>341</sup> Supreme Decree No. 59 of 1998, of the Office of the Minister-Secretary General of the Presidency, published in the *Diario Oficial* of 25 May 1998. This standard is currently being revised.

<sup>342</sup> Supreme Decree No. 93, of 15 May 1995, of the Office of the Minister-Secretary General of the Presidency.

863. Existing emissions standards include the following:

(a) Supreme Decree No. 146, of 1997, of the Office of the Minister-Secretary General of the Presidency, containing an emissions standard for unpleasant noise from fixed sources, based on the revision of the emissions standard contained in Ministry of Health decree No. 286 of 1984;

(b) Supreme Decree No. 686, of 7 December 1998, of the Ministry of the Economy, Development and Reconstruction, establishing an emissions standard for the regulation of light pollution, published in the *Diario Oficial* of 2 August 1999;

(c) Supreme Decree No. 609, of 20 July 1998, establishing an emissions standard for the regulation of pollutants associated with the discharge of industrial effluent into sewage systems;

(d) Supreme Decree No. 165, on air pollution, signed by the Ministries of Health and Agriculture and the Office of the Minister-Secretary General of the Presidency, establishing an emissions standard for the regulation of arsenic emissions into the atmosphere.

(e) Supreme Decree No. 167, on air pollution, establishing an emissions standard for unpleasant odours associated with the manufacture of sulphate pulp, of 1 April 2000.

864. Fifthly, the Environment (Framework) Act covers the areas of handling, prevention and decontamination. The regulations governing the procedure for and stages involved in drawing up prevention and decontamination plans are in force.<sup>343</sup> The decontamination plan is a tool intended to bring about a return to the levels set out in the quality standards in heavily polluted areas, while the prevention plan is aimed at preventing one or more environmental quality standards from being exceeded in areas of potential pollution.

865. Chile has signed both the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. It has also ratified the various amendments to the Protocol, specifically the London (1990), Copenhagen (1992), Montreal (1997) and Beijing (1999) amendments. In 1993, Chile submitted to the Multilateral Fund for the Implementation of the Montreal Protocol a country programme for the protection of the ozone layer, which was approved and financed by the World Bank. The programme has been implemented by the National Environment Commission (CONAMA) since 1994.

### **Climate change**

866. The Government of Chile signed the United Nations Framework Convention on Climate Change during the Earth Summit. It was ratified by the National Congress on 24 December 1994 and published in the *Diario Oficial* of 13 April of the following year as a law of the Republic.

867. The National Advisory Committee on Global Change was set up on 29 May 1996 and formalized its structure in April 1998. Its duties are to advise the National Environment Commission on implementing commitments under the Convention on Climate Change, and to advise the Ministry of Foreign Affairs on the position to be taken by Chile on the decisions adopted by the Conference of the Parties to the Convention. This Committee is made up of various

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<sup>343</sup> Contained in Supreme Decree No. 94, of 15 May 1995, of the Office of the Minister-Secretary General of the Presidency.

Government institutions, the private sector, NGOs and academics. The Committee's work has focused on discussing issues raised in subsidiary bodies of the Convention and meetings of the Conference of the Parties.

868. Through the work strategy in this area approved by the Governing Board of CONAMA, the Government has committed itself to taking action to deal with the problem of climate change, including more prompt and active participation on the part of Chile in finding a solution to this global problem, ratification of the Kyoto Protocol, use of the Clean Development Mechanism and analysis of advantages and possible voluntary commitments, drafting of a national action plan for climate change and the creation of a fund for pertinent scientific and technological research.

### **Environmental standards**

869. In addition to the environmental provisions mentioned above, priority is given to a total of 28 quality and emissions standards, which provide a framework for the regulation of air, noise, water and solid waste pollution. The standards are at different stages of progress towards official promulgation, and they are expected to enter into force within the next three years.

### **Other activities**

870. The Ministry of Health has set up an Environmental Health Division, which regulates and coordinates matters concerning human health and the environment through the Departments of Environmental Programmes located in 23 health services throughout Chile. In addition, the Metropolitan Environmental Health Service, in coordination with the National Environment Commission (CONAMA) and other State and private bodies, provides information on progress in scientific knowledge of the environment and its relation to human health.

871. In 1992, the Ministry of National Assets established the Environment Technical Unit, which as part of its activities carries out sectoral and intersectoral studies and projects in this regard. Through its National Assets Divisions and the State Property Survey – which includes the Department of Territorial Studies and the Division for the Constitution of Real Estate through the Indigenous Unit – it has for some years been carrying out studies and programmes on the conservation of the natural heritage of mankind and promoting the appropriate preservation of the environment.

872. A second programme related to the first is being implemented in parallel; it focuses on the management of State-owned land viewed as public spaces. This programme acknowledges the natural environmental heritage of each locality, assigning value to its development in harmony with its environment, earmarking land for public use and highlighting the creation of common areas in a context of urban land shortages. The Ministry's goal is to improve the quality of life of the inhabitants, permit harmonious development together with care and conservation of the environment and ensure free access to and use and enjoyment of shared assets for existing and future generations.

### **Measures to promote the dissemination of information on scientific progress**

873. The Ministry of Education has implemented a series of measures:

(a) Creation of programmes, such as the Explorer Programme and all its subprogrammes, intended to popularise science by encouraging the interest of young people in scientific matters;

(b) Establishment of the National University Network, a programme intended to provide Chile's public universities with high-speed Internet connections and develop programmes using broadband communications systems;

(c) A large increase in Internet providers and sites with information on national science and technology programmes;

(d) Implementation by CONICYT and all the universities of online science and technology information programmes via the Internet. Internet access to all information on State-financed research projects;

(e) Access to primary information on scientific topics produced by all State bodies, via the Internet;

(f) Implementation of a programme for the publication of national scientific reviews in electronic format;

(g) Access to all national legislation via the Internet;

(h) Implementation of distance learning programmes. These include the Ministry of Education's *Enlaces* programme, which links all Chile's secondary education centres and half of its basic schools in a network with the data banks of universities and other institutions and, more recently, with the Internet.

874. The formal education system is also making a contribution in this area. Between the first and fourth grades, basic education includes mathematics and "understanding the natural and social environment"; in the fifth and ninth grades, this is divided into two sectors: "understanding the natural environment" and "understanding the social environment". "Technological education" is also introduced and extended until the first and second grades of secondary school. Science education proper appears here in varying proportions: mathematics, natural sciences, history and social sciences, biology, physics, chemistry, etc., which educational establishments are free to select. Technological education is diversified in the third and fourth year of secondary technical and vocational education, which is organized into 44 areas of specialization linked to 13 major vocational sectors.

### **Measures to prevent the use of scientific and technological progress for purposes contrary to the enjoyment of all human rights**

875. There is no specific legislation banning or criminalizing the use of scientific and technological progress for purposes contrary to human rights - merely the general provisions of the Constitution concerning the acknowledged rights of all Chilean citizens.

## **Protecting the moral and material interests of authors**

876. The Constitution<sup>344</sup> recognizes “the right of authors to their literary and artistic creations of any type, for the period of time fixed by law, which shall not be shorter than that of the life of the owner. (...) The rights of the author include the ownership of the works and other rights such as authorship, the right to publish and the integrity of the works; all of the above in conformity with the law”. In addition, the Constitution applies to the ownership of intellectual and artistic creations certain provisions which protect the general right to property.<sup>345</sup> This constitutional principle is put into effect through the Intellectual Property Act,<sup>346</sup> which “protects the rights acquired by the authors of products of the intellect in the literary, artistic and scientific fields, through the very act of their creation, irrespective of their form of expression, and related rights”. An Intellectual Property Office has been set up to enforce the Act. The National Council for Books and Reading the Chilean Authors’ Rights Society and the Chilean Performers Society operate in a similar capacity. Any conflicts that may arise with respect to copyright are resolved by the courts.

877. The 1990s saw the emergence of writers’ and performers’ societies. The main activity of such associations, which focus on intellectual property rights, is the collective management of such rights as a modern option for protecting them against the challenges of new technologies, the globalization of markets and the development of treaties and agreements on regional integration. Such challenges require not only common rules, but also better internal coordination among the different sectors of the culture industry, with a view to harmonizing competitive strategies for the sustainable development of local works of art at the international level. The organizations that provide collective management are non-profit bodies that operate on the self-management principle.

### **Chilean Authors’ Rights Society**

878. With more than 2,500 members, the Chilean Authors’ Rights Society deals with the protection of rights in the music sector. Aside from granting rights and collecting and distributing fees, the Society now plays an active role on the cultural scene. Its auditorium – established to promote national artists - is the only platform for popular music with an annual programme, despite its experimental nature and limited seating capacity. More than 90 young people study at the Society’s Education Centre, where they have an opportunity to apply for full scholarships on the basis of their talent, which is assessed by the musicians themselves. The Music and Technology Centre is another innovative project, which provides training in new technology and provides material for the Society’s web site, where each musician is entitled to his or her own page. The Health and Assistance Funds for medical and emergency care are another aspect of the Society’s activities.

### **Creaimagen**

879. Still image artists - as distinct from those who produce moving images or audiovisual works- set up this organization, under the auspices of similar Spanish and French societies. Composed of plastic artists, sculptors, photographers, illustrators and graphic designers, its purpose is to prevent abuses involving works of plastic art, photographs or drawings, which are extensively

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<sup>344</sup> Article 19, section 25.

<sup>345</sup> Article 19, section 24

<sup>346</sup> Act No. 17,336

used in publications, advertising material and miscellaneous articles without the authorization of their creators or the payment of any fee. The phenomenon is on the increase as a result of networking and digital manipulation. The Society is currently negotiating international agreements to obtain extensive agency rights for foreign works and is starting to set up monitoring and licensing systems. The main reason for the lack of opportunities for Chilean artists is the free use made of foreign works of art without any form of control.

### **The National Society of Writers for the Theatre, Cinema and Audiovisual Arts (NWT)**

880. This body is aimed at people who write and create adaptations of plays, choreographies, pantomimes and puppet and marionette shows; the authors of original or adapted musical shows such as comedies, operas, folk operas and ballets; and the authors of cinematographic and audiovisual works in general. The Society has set itself the tasks of compiling a register of all the theatre, cinema and audiovisual writers who are members; organizing and documenting the repertory of national works; managing rights and collecting and distributing fees for the use of these works; monitoring the use and abuse of the repertory of works by the media and publishers; and granting licences. It intends to promote the national repertory of plays and audiovisual works internationally by establishing relations with foreign societies. In Chile there are no agencies or associations representing dramatists, nor do those producing audiovisual works have any links with societies which deal with such rights abroad. Legislation exists which offers remuneration for the authors of such works, but no benefit has been drawn from it in the absence of a Chilean national organization.

### **Chileactores**

881. This society, set up for soap opera actors in 1999, brought about recognition of rebroadcast rights for soap operas and audiovisual performances. Recognition was secured for actors' rights when television series were sold abroad, in an agreement that many feared was unattainable since in their individual contracts the actors had relinquished all their rights to the television channels. The collective management society achieved that goal, and now other forms of control of unauthorized activities are under study. *Chileactores* is also trying to set up a programme of help for actors who have no savings and need assistance. Almost all the actors who work in Chilean television are members of *Chileactores*.

### **The Chilean Actors Association**

882. The Chilean Actors Association is a special project for the promotion of musical performers, with strong international ties in Latin America. It operates as part of the Chilean Authors' Rights Society, to which it delegates copyright management activities. It focuses primarily on finding ways of disseminating the work of Chilean musicians and opening up an artistic market that is completely cut off from society and from the business world. It also trains musicians in business management and provides information to the market on artists through regular communications and the granting of contracts.

### **Measures for the conservation, development and dissemination of science and culture**

883. Between 1990 and 2000, the Government developed an important policy for the conservation, development and dissemination of science and culture, combining public efforts with collaboration from the private sector. The main measures adopted include the following legal provisions:

(a) Act No. 19,227, of 10 July 1993, establishing the National Books and Reading Promotion Fund;

(b) Budget Act of 1993, establishing the Arts Development Fund (Fondart). This and the above Fund are administered in a decentralized manner by the Cultural Department of the Ministry of Education;

(c) Cultural Donations Act of 1992, establishing tax incentives for private contributions towards cultural activities;

(d) Act No. 19,247, of 15 August 1993, establishing tax incentives for donations from private individuals for educational projects;

(e) Act No. 19,253, of 5 October 1993, establishing the National Indigenous Development Corporation, with a number of provisions relating to the protection, promotion and development of indigenous cultures.

884. The ongoing educational reform has ensured that the new curriculum covers such sectors as language and communication, art education, history and social sciences, foreign languages, computer science and religion (there must be offered in all schools, but are optional for the students), in addition to the disciplines and activities which schools are able to incorporate into the free sections of the timetable at the various levels.

885. The initiatives listed below, which have been undertaken in the context of the aforementioned reform, are of special significance for the development, conservation and dissemination of science and culture:

(a) Creation and maintenance of classroom libraries of 35 to 50 titles in all classrooms in basic State-subsidized education to encourage a taste for reading;

(b) School books policy: free books are now provided throughout subsidized basic education and, for the first time in Chile, also in subsidized secondary education. The numbers of textbooks distributed free rose from 1,900,000 in 1990 to 7,000,000 in 1999;

(c) Establishment of learning aids centres with State financing in all Chile's secondary schools, offering books, magazines, periodicals, manuals, encyclopaedias and dictionaries, video tapes, cassettes, CDs and other media, with ad hoc equipment and infrastructure;

(d) *Enlaces*, the school computer network, which has set up computer labs in all secondary schools and half of the basic schools, connecting participants online, generating and offering appropriate software and training teachers in the use of the technology for educational purposes. The *Enlaces* network is a powerful and far-reaching means of cultural and scientific communication at the service of the new generations.

**Promotion of the enjoyment of freedom for scientific research and creative activity, including the creation of all the conditions and facilities required for such activities**

886. The Education Organization Act specifically acknowledges freedom of scientific research as an intrinsic element of the administrative and academic independence of higher education institutions. The State creates the conditions and facilities required through an education policy aimed at the extension and improvement of basic, secondary and higher education, the inclusion in the curriculum of objectives and subject matter relating to the sciences, humanities and arts; and the science and culture policy described above.

887. In addition to the above, legal entities and private individuals collaborate in or encourage the processes which generate scientific knowledge and works of art. Private contributions are stimulated in part by State initiatives and mechanisms, such as tax incentives for donations for cultural or educational purposes, and joint efforts by businesses, the universities and the State in promoting scientific and technological research.

**Measures to ensure the free exchange of scientific, technological and cultural information, opinions and experience among scientists, writers, creative workers, artists and other creative individuals and their institutions**

888. Freedom of exchange between scientists and creative artists is not inhibited by legal provisions in a democratic system under the rule of law. In Chile freedom of opinion and information is respected without prior censorship, including the freedom to found, publish and run newspapers, magazines and periodicals. Freedom of assembly and association similarly exist. The areas and mechanisms of exchange that can be used by the above-mentioned cultural stakeholders function without legal or political restrictions.

**Measures in support of cultural associations, academies of science, professional associations, workers' unions and other organizations and institutions dedicated to scientific research and creative activities**

889. No major policy exists for the support of such bodies, with the exception of a State subsidy for the Instituto de Chile, which groups together academies of natural and social sciences and humanist academies, which are selective and comprise a limited number of scientists and intellectuals. CONICYT also provides financing on a smaller scale for academic meetings organized by scientific societies, but not for the operating costs of these bodies.

890. There is no permanent State support for associations of creative artists in literature, music, the visual arts, the performing arts or others.

## ANNEX 1

### Abbreviations used in the report

AFP	Pension fund administrator
AIDS	Acquired immunodeficiency syndrome
ANAFADIS	National Association of Families and Friends of Persons with Psychological Disabilities
APEC	Asia-Pacific Economic Cooperation
AUGE	Universal access with explicit guarantees
AVPP	Years of potential life lost
CASEN	Inquiry into the Socio-economic Characteristics of the Nation. This survey is carried out periodically to study the socio-economic circumstances of households and the population, and to assess the degree of focus and the redistributive impact of national social programmes, to assist in drawing up and evaluating social policies. It covers all the households in the country at the national, regional and urban/rural levels. Such surveys have been conducted every two years since 1985, with the exception of the 1989 survey, which was carried out in 1990.
CENABAST	Central supply body
CIMM	Centre for Mining and Metallurgical Research
CONADI	National Indigenous Development Corporation
CONAMA	National Environment Commission
CONAPRAN	National Agency for the Protection of the Elderly
CONICYT	National Commission for Scientific and Technological Research
CORDAM	Children's Aid Agency
CORFO	Production Development Corporation
CPI	Consumer price index - measures the change in the cost of living from one month to the next (inflation or deflation from one month to the next)
DIBAM	Department of Libraries, Archives and Museums
DIGEDER	Sports and Recreation Department

DPT	Diphtheria, pertussis and tetanus (vaccination)
ECLAC	Economic Commission for Latin America and the Caribbean
FAIR	Support Fund for Regional Cultural Initiatives
FDI	Development and Innovation Fund
FIM	Mining Research Fund
FIP	Fisheries Research Fund
FNDR	National Regional Development Fund
FONADIS	National Disability Fund
FONASA	National Health Fund
FONDAP	Fund for Advanced Studies in Priority Areas
FONDART	Culture and Arts Development Fund
FONDECYT	National Fund for Science and Technology
FONDEF	Fund for the Promotion of Scientific and Technological Development
FONTEC	National Fund for Productive and Technological Development
FOSIS	Social Solidarity and Investment Fund
GDP	Gross domestic product
HCPS	Hantavirus cardiopulmonary syndrome
HIV	Human immunodeficiency virus
ICF	International Classification of Functioning, Disability and Health
ILO	International Labour Organization
INAPRES	Preventive health institutions supervisory body
INDAP	National Institute for Agricultural Development
INE	National Institute of Statistics
INJ	National Youth Service
INP	Institute for Social Security Standardization

INTA	Institute for Nutrition and Food Technology
IPC	Consumer price index
ISAPRE	Health insurance institution
ISP	Institute of Public Health
JICA	Japan International Cooperation Agency
JUNAEB	National School and Scholarship Assistance Council
JUNJI	National Kindergartens Board
KFW	German financial cooperation programme
LPP	Poverty line per head - a person is considered to be poor if his or her income level stands below a minimum which enables the person to meet his or her basic needs. This minimum is termed the "poverty line".
MECE	Education Quality Improvement Programme
MIDEPLAN	Ministry of Planning and Cooperation
MINSAL	Ministry of Health
MINVU	Ministry of Housing and Town Planning
NCHS	National Centre for Health Statistics
NGO	Non-governmental organization
OPDs	Offices for the Protection of Children's Rights
OTEC	Technical Executing Agency
PAE	School Food Programme
PAHO	Pan-American Health Organization
PANAR	National Board of Assistance for Offenders
PASIS	Assistance pensions
PINDA	Children's Cancer Programme
PMG	Management Improvement Programme
PRAIS	Corporation of Beneficiaries of the Comprehensive Health Care Programme

PRODEMU	Foundation for Women's Advancement and Development
PVP	Progressive housing project
SAMU	Emergency medical care service
SAPU	Emergency primary care units
SEBI	General Basic Investments System
SENAME	National Minors' Service
SENCE	National Training and Employment Fund
SEREMI	Regional ministerial secretariat
SERNAM	National Women's Service
SERNATUR	National Tourism Service
SERVIU	Regional Housing and Town Planning Secretariat
SIMCE	Educational Quality Evaluation System
SM	Minimum wage
STDs	Sexually transmitted diseases
SUF	Single Family Benefit
TVN	Chilean National Television
UF	Unidad de fomento - development unit : a payment unit used for banking operations, adjusted daily in line with the rise in the consumer price index
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
US\$	United States dollars
WHO	World Health Organization

## ANNEX 2

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