

CHILE¹

General Information

Chile is a unitary state composed of thirteen regions with a population of 15,328,467 (2004).² Between the 1992 and 2002 censuses, the country's population grew at an average rate of 1.2% per year, down from 1.6% during the previous decade (1982-1992).³ The current population density is 20.8 inhabitants per sq. km. The urban population increased from 11,140,405 in 1992 to 13,044,221 in 2002 (+17.1%) and the rural population decreased from 2,207,996 to 2,006,120 (-9.1 %) during the same period.⁴ Chile's literacy rate is 95.2%. In terms of age group distribution, 28.5% of the population is between 0 and 14; 32.2 % between 15 and 34; 20.5 % between 35 and 49; 11.6 % between 50 and 64; and 7.2 % 65 or over.⁵ Life expectancy at birth is 76.3 years. In 2000, the percentage of households living below the poverty line was 17%, down from 23% in 1994 and 39% in 1987.⁶ The rate of growth of the GDP increased from 2.2% in 2002 to 3.3% in 2003,⁷ when per capita income was US\$4,390, with purchasing power parity equal to US\$9,810.⁸ In 2004, Chile's unemployment rate was 8.8%, slightly lower than its 2000 level of 9.2%.⁹

Judicial System Highlights

- The budget allocated to the justice system has increased in recent years. The sector received approximately 366 billion pesos (equivalent to US\$523,161,428) in 2003; approximately 394 billion pesos (equivalent to US\$668,413,559) in 2004; and about 500 billion pesos (equivalent to US\$892,671,428) in 2005.
- The justice sector budget represented 4.5% of total public expenditures in 2004 and increased to 5.3% in 2005.
- The new criminal procedure system entered into force in the Metropolitan Region on June 16, 2005, bringing to a close the final stage of the most important judicial system reform to be implemented in Chile in the past one hundred years. It is worth noting that the total cost of implementing the reform was 341 billion pesos (equal to US\$608,928,571), of which 199 billion pesos (or US\$355,357,142) represent investments and 142 billion pesos (US\$253,571,428) go to covering the operational costs of the system each year.
- Chile's new Civil Union Law went into effect on November 18, 2004. The old law was over a century old and did not reflect the changes that the Chilean family had undergone. The new law is more modern and comprehensive, addressing situations such as divorce, which Chilean law had not allowed.
- The country's new family courts will begin operating on October 1, 2005. These institutions will concentrate all legal family matters in the hands of a specialized judiciary. The new system features the creation of sixty new courts, which will initially be staffed by 128 judges (this number will gradually increase to 258) and 153 family law specialists (gradually increasing to 344), who will serve on technical boards to advise the judges.
- The year 2004 saw the approval of the Constitutional Justice Reform, which will replace the old system of double control of constitutionality (by the Constitutional and Supreme Courts) with one that concentrates control in the Constitutional Court.
- In late 2004, the Ministry of Justice officially announced that it would take the first steps towards implementing civil justice reform in 2005.
- The Law on International Commercial Arbitration went into effect on September 29, 2004, allowing access to international commercial arbitration mechanisms within Chile. The purpose of this effort is to increase opportunities for reaching agreements and reduce litigation costs.

¹ The main sources used for this chapter include responses to questionnaires submitted by the Judicial Branch Administrative Corporation, the Ministry of Justice, the Public Prosecutor's Office and the Public Defender's Office; the *Memoria Anual del Poder Judicial 2003*; the *Discurso de Inauguración del Año Judicial 2004*; the *Cuenta Anual del Defensor Nacional 2003*; the *Boletín Estadístico del Ministerio Público 2003*; the Ministry of the Interior study *Diagnóstico sobre la Seguridad Ciudadana en Chile* and information published on the websites of various Chilean judicial institutions.

- In late 2004, Chile had 488 courts, which represented an increase of fifty courts over 2002. This is primarily due to the Criminal Procedure Reform.
- Chile had a total of 766 judges in 2004 (or 5 per 100,000 inhabitants) of whom twenty-one were Supreme Court justices, 151 ministers of the Courts of Appeal, and 594 first instance judges.
- 399,507 complaints of socially relevant crimes were filed in 2004, representing a rate of 2,555 crimes per 100,000 inhabitants. This is the highest rate recorded, and represents an 11.7% increase over the previous year.

1. Institutions

Chile's judicial system is comprised of the ordinary courts, Constitutional Court, Ministry of Justice, Public Defender's Office (staffed by public defenders and private attorneys hired through procurement processes), the Public Prosecutor's Office, and the State Defense Council. Support agencies include the Judicial Academy, Civil Registry and Identification Service, Medical Examiner's Office, Corporation for Judicial Assistance (Legal Aid), Bankruptcy Prosecutor's Office, National Youth Service and the Prison Guard Administration. The country's 19,000 practicing attorneys also play a key role in the functioning of the judicial system.

Judicial Branch

The Judicial Branch is comprised of several agencies. The main functions of the ordinary courts are to hear and rule on civil and criminal cases and ensure that sentences are applied. They also intervene in non-contentious actions as required by law. The judiciary also includes the Supreme Court, courts of appeal, court presidents and justices (*presidentes y ministros de corte*),¹⁰ "professional" courts (*juzgados de letras*), investigative courts (*juzgados de garantía*, which guarantee the rights of the accused), and oral criminal trial courts.¹¹

The number of courts increased from 438 to 513 between 2002 and 2004.¹² This is largely due to the changes brought about by the Criminal Procedure Reform.

The highest authority of the Judicial Branch is the Supreme Court, which elects one of its *ministros* to the position of Chief Justice every two years by secret ballot.

In the administrative arena, the judiciary's main authority is the Supreme Board of the Judicial Branch Administrative Corporation.

Supreme Court

The Supreme Court is the highest court in the Judicial Branch and oversees all other courts with the exception of the Constitutional Court and the Electoral Review Board. Its responsibilities include the internal administration of the courts and the appropriate application of the law as expressed in sentences and rulings; the law therefore grants the Supreme Court the power to direct, correct and govern the economic aspects of the courts.

There are currently twenty-one Supreme Court justices including the Chief Justice. The Court is composed of four chambers: Civil, Criminal, Constitutional and Labor.

Courts of Appeal

The second level of the Judicial Branch is the courts of appeal, which are presided over by professional judges who sit in a given judicial district. The country has seventeen such courts, one in each of the following cities: Arica, Iquique, Antofagasta, Copiapó, La Serena, Valparaíso, Rancagua, Talca, Chillán, Concepción, Temuco, Valdivia, Puerto Montt, Coyhaique, Punta Arenas, Santiago and San Miguel. Each court exercises jurisdiction over a district that includes a group of provinces and municipalities or, in some cases, an entire region.

At the head of the courts of appeal, which are collegiate bodies, sits the President. Each member of the court holds this position for a one-year period in a rotating schedule in order of seniority. The appellate bench is composed of *ministros*, and the law establishes the number sitting in each district, which ranges from four to thirty-one.

Professional Courts

The professional courts (*juzgados de letras*) are unipersonal first instance courts composed of a professional judge (*juez letrado*), court clerk (*secretario abogado*) and a variable number of administrative and secretarial staff members. The respective court of appeal is responsible for supervising these courts.

The *juzgados de letras* generally have ordinary jurisdiction (and hear all types of matters) though there are also specialized courts in the criminal, civil, juvenile and labor areas.

Oral Criminal Trial Courts

Created through the Criminal Procedure Reform, these first instance district courts have one or more chambers, each with three judges. Thus, the number of judges in an oral criminal trial court varies from three to twenty-seven, as provided by law. Administratively their structure includes a court administrator, unit chiefs and secretarial staff. The respective court of appeal oversees these units.

The primary responsibilities of these courts are to hear and rule on cases that reach the oral trial stage; order pre-trial detention for defendants appearing before them, where so warranted; resolve all issues related to the oral trial stage; and hear and resolve other matters as provided for by law.

Investigative Courts

The Criminal Procedure Reform also led to the creation of these courts. Each district has one or more investigative courts in which judges act upon and resolve the matters submitted for their review. The courts of appeal supervise the investigative courts.

The main responsibilities of these courts are to ensure respect for the rights of the accused and other individuals involved in the criminal procedure; to direct all hearings; to pass sentence in abbreviated procedures; to hear and pass sentence in simplified procedures; to ensure that sentences and protective measures are enforced; and to resolve related requests and complaints.

Judicial Branch Administrative Corporation

The Judicial Branch Administrative Corporation supports the jurisdictional work of the courts. This agency, which has legal standing and its own financial resources, is the body through which the Supreme Court administers human, financial, technological and other resources to the various courts.¹³

The Administrative Corporation has a Supreme Board, director, assistant director, four department chiefs and an official in charge of

internal affairs. Its general administration is governed by the Supreme Board, which is presided over by the Supreme Court Chief Justice and includes four other Supreme Court justices elected in separate secret votes for a period of two years, at the end of which they may be re-elected. The Corporation's director also plays the role of Supreme Board Secretary and may participate in the meetings but does not have the right to vote.

The Administrative Corporation's strategic objectives are as follows:

- To establish an integrated computer system for the courts and the Administrative Corporation at the central and district levels
- To improve the Judicial Branch's corporate image
- To enhance internal administrative processes in order to improve response times
- To improve the Corporation's financial administration

Judicial Academy

The Judicial Academy is a public corporation (*Corporación de Derecho Público*) founded in 1994 in fulfillment of a longstanding desire within the Judicial Branch to create an institution dedicated to training its members according to the Branch's specific needs and expectations. In other words, the Judicial Branch sought to create an institution that would be concerned about its members and focus on the creation and broadening of knowledge, abilities, skills and basic criteria to ensure the proper exercise of the judicial function.¹⁴

In meeting its objectives, the Academy delivers various educational programs. These include its training program (for attorneys wishing to enter the first level of the judiciary), the continuing education program (for those in the first level of the judiciary or judicial staff), and the capacity-building program (for judges aspiring to the positions of minister or judicial prosecutor in the courts of appeal). The Judicial Academy has also implemented a training system for the Criminal Procedure Reform for both first level staff and other employees.

The Academy's training program is geared towards attorneys who wish to become judges. In terms of methodology, the program focuses on "court internships" during which each student is assigned a "judge-mentor" who is expected to share a significant amount of his or her practical

Table 1
Judicial Branch Structure¹⁵

Type of Matter ¹⁶	First Instance	Second Instance	Superior Court ¹⁷
Civil	63 civil courts	Respective court of appeal	Supreme Court (Civil Chamber)
Criminal	69 criminal courts	Respective court of appeal ¹⁸	Supreme Court (Criminal Chamber)
	22 oral criminal trial courts		
	70 investigative courts		
Juvenile	51 juvenile courts	Respective court of appeal	Supreme Court
Labor	20 labor courts	Respective court of appeal	Supreme Court (Labor Chamber)
Shared Jurisdiction	110 professional courts	Respective court of appeal	Supreme Court

and personal experience with the student. The program sets a specific amount of time that students should spend in court with their judge-mentor in order to gain first-hand experience of his or her daily work. It also delivers theoretical modules and offers opportunities for reflection through activities such as talks, conferences and other meetings designed to provide students with the knowledge, criteria, abilities and skills they will require when exercising the judicial function. Faculty members include Judicial Branch officials, university professors, private attorneys and professionals from other areas whose contributions are crucial to the training of future judges.

The continuing education program consists of a series of courses offered annually on key topics in jurisdictional work. The main objectives are to update and increase the knowledge and skills required for the jurisdictional function. One feature that sets this program apart from other judicial schools in the Americas is the fact that it is open to all members of the Judicial Branch, including employees and support staff from different levels. Course topics change each year in response to the concerns of Judicial Branch staff, bar associations and universities. Faculty selection is grant-based and interested institutions and individuals present proposals that meet criteria set by the Academy. Selection is by specialized panels, which choose the offering that best meets the needs of each area.

Judicial Branch Structure by Subject Matter and Instance

In 2004 Chile had 766 judges (or 5 per 100,000 inhabitants), twenty-one of whom were Supreme Court justices, 151 of whom sat on the Courts of Appeal, and 594 of whom were first instance judges.¹⁹

The following table presents an overview of the Judicial Branch's human resources:²⁰

Table 2
Judicial Branch Human Resources

Judges	766
Administrative Staff	1,159
Support Staff	5,249
Total	7,174

The 2004 Judicial Branch budget was approximately 125 billion pesos (US\$211,178,037),²¹ which represents a 42.3% increase over 2002.²² This is mainly due to the additional funding for the implementation of Stage IV of the Criminal Procedure Reform.

Table 3
Judicial Branch Funding 1997 -2004

Year	Total Fiscal Budget (in millions of pesos from each year)	Judicial Branch Budget (in millions of pesos from each year)	Judicial Branch Budget (in thousands of U.S. dollars)	% of the Total Fiscal Budget
2004	12,989,415	124,595	211,178	0.95
2003	11,144,384	121,191	173,130	1.08
2002	10,493,058	97,895	148,325	0.93
2001	9,908,155	90,262	158,354	0.91
2000	9,058,095	77,915	147,009	0.86
1999	8,412,396	68,456	134,227	0.81
1998	7,775,181	60,731	121,462	0.78
1997	6,902,157	54,697	109,394	0.79

It is important to mention that in January 2005 the government submitted a bill to Congress that would grant the Judicial Branch more financial autonomy and require the Ministry of Finance to request the total budget required for the proper operation of the judiciary. It also allows the Judicial Branch to channel the funds received to operating costs and capital spending, maintaining the overall amounts, and provides that any surplus is to be incorporated into the following year's budget. Finally, it requires the Judicial Branch to provide an annual balance of accounts

through a financial report, which it shall submit to the Ministry of Finance Budget Office.²³

Access to Judicial Information

In 2004, JSCA conducted a study entitled *Online Access to Judicial Information in Argentina, Chile and Peru*. In the case of Chile, the study found that two measures should be taken immediately in order to improve the system of access to judicial information. The first, which is legislative in nature, is related to the need to establish a legal procedure for obtaining that information. In substantive terms, a judge must justify his or her decision to keep certain information confidential. In addition, this procedure should set reasonable time limits for producing requested information. Lastly, there should be adequate measures for requesting information in cases in which the judge denies access without juridical justification. The second measure that the judiciary should consider has to do with the presentation of the information. In the previous pages, we demonstrated that in various cases, the information requested was published but the terms used make it difficult to understand. This has a notorious effect on the way in which citizens relate to the judicial system. In addition, it makes it impossible for civil society organizations to research this area without the assistance of an attorney. Given that the jurisdictional labor is a public function, it is not fair that the information be expressed in terms that can only be understood by individuals with legal training.²⁴

Important Recent Legal and Institutional Changes

The following are some of the most important changes that have been implemented in Chile's Judicial Branch:

- *Criminal Procedure Reform*. The final stage of the Criminal Procedure Reform began on June 16, 2005 with its implementation in the Metropolitan Region. This represented the final step of the most important judicial reform to be undertaken in Chile in the past one hundred years. This modernization process represented an investment of approximately 180 billion pesos (equal to US\$321,428,571), which was channeled to expenditures such as the gradual hiring of 809 new judges and the construction of eight-four buildings to house new courts, the majority of which are investigative courts and oral criminal trial courts.²⁵
- *New Family Justice*. The new family courts, which concentrate all family law disputes in a single judiciary, began to function on October 1, 2005. Sixty new family courts were opened throughout the country with an initial staff of 128 judges (which will eventually increase to 258) and 153 family law specialists (which will eventually increase to 344), who sit on technical boards to advise the judges. This process also involves the strengthening of seventy-seven professional courts (*juzgados letrados*), which have specific jurisdiction in areas where there are no family courts. Lastly, the Ministry of Justice will create a Mediation Unit to implement and oversee a mediation system as provided by the new law.²⁶
- *New Juvenile Criminal System*. This initiative, which has received broad support from all government branches, was approved by Congress on July 14, 2004 and is currently in its second legislative round in the Senate. The bill establishes a specialized justice system for fourteen to eighteen year-olds who have committed a crime or crimes. This new system will put an end to the use of *discernimiento* (in which a judge interviews juveniles in order to determine whether they are tried as youths or as adults) and will hold adolescents responsible for the crimes they commit. The judicial procedure used in these courts will provide basic guarantees for both victims and defendants according to Chilean Constitutional principles and the International Convention on the Rights of the Child. Under the juvenile justice system, special procedures will be used to punish crimes and infractions as well as behaviors catalogued as misdemeanors but with a high impact on public safety. It will include a wide range of sanctions, which fall into two basic categories: non-custodial sentences (to be applied and supervised by National Youth Service institutions) and custodial sentences (to be served in detention centers managed by the National Youth Service, rather than in prisons for adult offenders).²⁷
- *Creation of an Integrated Computer System for the Courts and the Judicial Branch Administrative Corporation*. Strategic improvements in this area began in 2000 with the drafting and approval of the Judicial Branch Technology Plan, which established the key goals for this area for 2001–2005. The main achievements are as follows:²⁸

- a) Development and operation of a Judicial Branch website that provides information on the institution and the status of cases.
- b) Development and operation of a Judicial Branch Intranet that provides information to court and administrative corporation officials.
- c) Development and implementation of a Judicial Management Support System for the Criminal Procedure Reform, which now operates in all criminal oral trial and investigative courts.
- d) Implementation of national Help Desks designed to provide timely and efficient phone support for users who have problems with applications, operational procedures and their PCs.
- e) Development and implementation of an Administrative Information System (AIS) designed to record and control financial management of the Administrative Corporation and the criminal oral trial courts and investigative courts at the national level.
- f) Development and implementation of an Integrated Human Resources System that maintains records of Judicial Branch and Administrative Corporation personnel.
- g) Development and implementation of a System for Filing and Distributing Suits and Registering Rulings for the Courts of Appeal. This application enables cases and voluntary issues to be registered in the system and equitably distributed among the civil and labor courts based on the number of cases filed per court and the type of matter involved. The system also allows users to file appeals, cases, procedural documents (processing, suspension, recusal) and related documents; generate a record of sentences passed in the court's different chambers; generate statistical tables; and find answers to different inquiries regarding appeals and report generation, among other functions.
- h) Redesign of the civil and labor court computer systems to ensure comprehensive case processing and record-keeping.

Constitutional Court

Prior to the reform of the Constitutional jurisdiction in 2004, this body was responsible for ensuring the constitutionality of proposed laws and declaring the unconstitutionality of organizations, political movements and parties, as well as the personal responsibility of those participating in the actions motivating such declarations. The Court was also responsible for ruling on the removal of government ministers and members of Congress.

The Court must furthermore instruct the Senate as to when it should declare the incompetence of the President of the Republic or President-Elect should a physical or mental incapacity interfere with the fulfillment of his or her duties.²⁹

The 2004 reform gave the Court the additional power to rule on appeals on the unconstitutionality of legal actions. This allows the court to declare the inapplicability of a law in force that is used as the basis of any decision issued by an ordinary or special court.

Other new functions of this Court include overseeing the constitutionality of administrative rulings issued by the Supreme Court, Courts of Appeal and Electoral Review Board, which rule on Constitutional issues or those related to the Constitutional Statutory Law and resolving matters of competence that arise among political or administrative authorities and the courts.

The reform also modified certain aspects of the Constitutional bench. For example, the number of judges increased from seven to nine, each of whom will serve for a period of nine years. The Supreme Court, the President of the Republic, and the Senate, each of which has one-third of the vote, appoint the members of this Court.³⁰

Ministry of Justice

This ministry represents the Executive Branch in the area of justice and acts as liaison between the Executive and Judicial Branches. The law assigns it numerous functions, including the following:³¹

- To analyze Constitutional norms and civil, criminal, commercial and procedural legislation and to propose reforms that it deems necessary to the President of the Republic.
- To formulate sectorial policies, plans and programs, particularly those regarding the defense of State interests; to oversee the treatment and rehabilitation of prisoners; to supervise the records office (*registro civil*); to administer and confiscate the property of individuals who declare bankruptcy; and to oversee social welfare programs for minors requiring guardianship or with custodial problems, those with behavioral problems and those in conflict with the law.
- To enact rules and issue guidelines for ministry services and oversee their enforcement.
- To meet the courts' organizational and functional needs.
- To ensure the provision of free legal aid as legally stipulated.

- To propose measures for preventing crime through social protection plans.
- To establish prisons and treatment and rehabilitation centers within the prison system.

The Ministry of Justice is led by its Minister, who is appointed by the President of the Republic. The second highest authority is the Undersecretary of Justice.

Chile's government system is composed of Regional Ministerial Services (*Servicios Regionales Ministeriales*, SEREMIS) that function in each region under the supervision of the respective Ministry.

The Ministry of Justice also directly oversees specific justice sector institutions including the Civil Registry and Identification Service, the Medical Examiner's Office, the Prison Administration Board, the Office of the Superintendent of Bankruptcy, the State Defense Council, the National Youth Service, the National Office of Returns and the Public Defender's Office.

The following table presents the growth of the Ministry of Justice budget between 1997 and 2005:³²

Table 4
Ministry of Justice Budget 1997-2005

Year	Budget (in millions of pesos per year)	Budget (in dollars per year)
2005	254,060	453,678,571
2004	222,116	376,467,796
2003	205,484	293,548,571
2002	155,887	236,192,424
2001	130,864	229,585,964
2000	106,012	200,022,641
1999	97,055	190,303,921
1998	94,122	188,244,000
1997	84,977	169,954,000

As shown above the Ministry of Justice budget has increased steadily since 1997. The larger increases from 2001 onwards (equivalent to 97.6%),³³ are noteworthy and coincide with –and to a large degree have been allocated for– the costs associated with the implementation of the Criminal Procedure Reform, as most of the financing for the reform has been channeled through this government agency.

Public Defender's Office

The *Defensoría Penal Pública* is a public service with legal status and its own patrimony. The

President of the Republic oversees this body through the Ministry of Justice. The institution was created in 2001 through the Criminal Procedure Reform.

The aim of the service is to provide criminal defense to indigent individuals arrested for or charged with a crime, misdemeanor or offense within the purview of a supervisory or oral criminal trial court or other courts.

The agency's highest authority is the National Public Defender, who directs, organizes, administers, oversees and ensures the fulfillment of the agency's objectives. He or she also sets criteria for the institution's performance.

The Public Defender's Office is decentralized and is composed of a National Public Defender's Office located in Santiago and Regional and Local Public Defender's Offices, which were established through the implementation of the Criminal Procedure Reform.

The number of Regional Public Defense Offices increased from twelve to fourteen when the new system entered into force in the Metropolitan Region in June 2005. There is one regional office in each region of the country and two in the Metropolitan Region.³⁴

The Regional Public Defender's Offices are located in the regional capitals and administer the resources required to offer public criminal defense in the region.

These units are overseen by a Regional Public Defender, who is selected by the National Public Defender through a public competition. Regional Public Defenders serve for a renewable five-year term.

In contrast, Local Public Defender's Offices are operational units staffed by local public defenders, who report directly to their respective Regional Office. Local offices with two or more attorneys must have a Chief Defender.

There are currently eighty local offices distributed throughout the country. Their locations are determined based on criteria related to workload, territory, communications capabilities and the efficient use of resources.³⁵

The resources assigned to implement the public defense system do not allow for the creation of Local Public Defender's Offices in all cities, and therefore only those with more than fifty thousand inhabitants have such an office. However, defenders may visit those places with smaller populations as needed.

Local Public Defenders represent defendants who do not have an attorney from the first procedural act against them and in all cases prior to their first hearing. They also assume this function whenever no

defense attorney is present, regardless of the case or stage of proceedings, as provided by the Criminal Procedure Code. They continue to represent the party in question until the attorney chosen by the defendant takes over, except in cases where the judge authorizes the defendant to represent him or herself.

Public defense services are administered through a mixed system that includes services offered by official defense attorneys called local defenders and those provided by attorneys and private citizens who are selected to work with the Public Defender's Office through competitive procurement processes, which are overseen by the Public Defense Procurement Council. This panel sets the value of the service, publishes the invitation to tender, terminates contracts and carries out related duties.

Public defense services are available to individuals who do not have an attorney and require legal assistance because they have been accused of or convicted of committing a crime. In principle, public defense is free except where the beneficiary is found to have enough resources to cover these costs or some part of them. The fee is based on the defendant's income level, ability to pay and the number of dependent family members.

Fees for these services are set on a yearly basis based on criteria such as the institutional cost of offering this service and local market rate.

In mid-2004, the institution had ninety-two local defenders and 150 private defenders that had been hired through procurement processes.

Following the full implementation of the Criminal Procedure Reform, the system included one National Public Defender, fourteen Regional Public Defenders, 145 Local Public Defenders (distributed among eighty Local Public Defender's Offices throughout the country) and approximately three hundred private defense attorneys hired through procurement processes.³⁶

The Public Defender's Office budget for 2003 was \$13,564,722,000 pesos (equal to US\$19,378,174).³⁷

Important Recent Legal and Institutional Changes

The creation of Public Defender's Office is one of the pillars of the new criminal procedure system. Its implementation represented an investment of 30 billion pesos (or US\$53,571,428), a significant percentage of which go to ensuring the proper functioning of the fourteen Regional Public Defender's Offices and eighty Local Public Defender's Offices.

The most important changes in this institution are adjustments related to implementation. For example, in 2003 the National Public Defender established basic public defense service standards and a corresponding evaluation and oversight system in order to guarantee high quality criminal defense. In order to ensure fulfillment of the standards the judiciary created three Zone Inspector's Offices and hired private consultants to perform service audits.³⁸

In early 2005, a process was designed to choose which Public Defender's Offices would use private attorneys. Of the 174 defenders who work in the Metropolitan Region, 120 will be hired through procurement processes.

Judicial Assistance Corporation

The Judicial Assistance Corporation is a not-for-profit public legal entity with legal standing and its own resources. It has two main objectives: to provide free legal aid to low income individuals and to offer law students opportunities to carry out the internships required to obtain a law degree.

The government therefore charges the Judicial Assistance Corporation with fulfilling the Constitutional mandate of Article 19, Section 3, which guarantees equal treatment under the law for all people in the exercise of their rights.

Recent adjustments have added the following responsibilities to those of public defense services: the prevention of legal disputes, raising awareness of rights and responsibilities, and resolving disputes through non-adversarial mechanisms.

The Corporation's Board of Directors is presided over by the Regional Ministerial Secretary of Justice and is comprised of the President of the State Defense Council, the Deans of the Universidad de Chile and Universidad Católica Law Schools and two distinguished attorneys in private practice. The Board of Directors is responsible for adopting agreements on the matters submitted for its review during ordinary and special sessions as provided for by law. One of its attributes is to appoint the General Director, who is responsible for the direct, day-to-day administration of the institution.

In the pursuit of its strategic objectives and plans the Corporation has six departments composed of professionals from a variety of disciplines who carry out management support advisory and executive functions. The departments are Legal, Legal Aid, Planning and Research, Proposals and Finance, Personnel and Administration.

Public Prosecutor's Office

The *Ministerio Público* is an autonomous, hierarchical agency whose purpose is to exclusively direct the investigation of criminal acts, carry out criminal prosecution in accordance with the law, and offer protection to victims and witnesses.³⁹

Its highest-ranking officer, the National Public Prosecutor (*Fiscal Nacional*), is responsible for its operation, while the National Executive Director organizes and supervises the agency's administrative units in accordance with the general guidelines issued by the National Public Prosecutor.⁴⁰

The Public Prosecutor's Office is divided into Regional and Local Prosecutor's Offices, which are distributed throughout the country. There are sixteen Regional Offices—one for each region and four in the Metropolitan Region. Each Regional Office is led by a Regional Public Prosecutor who is responsible for exercising the functions and attributes of the office in that region, either personally or through the adjunct prosecutors working under him or her. The Regional Offices organize their work through local offices.

Each Regional Office has the following administrative units: Management Evaluation, Oversight and Development; Human Resources; Administration and Finance; Technology; and Victim and Witness Assistance. The Regional Executive Director organizes and supervises these units according to the instructions of the Regional Public Prosecutor.

Local Public Prosecutor's Offices are operational units of the regional offices and their staff members are responsible for investigating and prosecuting criminal acts and protecting victims and witnesses. These agencies have a variable number of adjunct prosecutors and support staff. Each local office has a Chief Prosecutor, who is appointed by the National Prosecutor upon the recommendation of the Regional Prosecutor and who oversees a variable number of Local Public Prosecutor's Offices. There were 104 offices in 2004, and this number is expected to rise to 125 when the final stage of Criminal Procedure Reform implementation is completed.⁴¹

Human, Material and Financial Resources

In late 2004, the Public Prosecutor's Office had 2,327 computers, all with Internet connections.⁴² The following table presents a summary of this institution's human resources:⁴³

Table 5
Public Prosecutor's Office Human Resources

Item	2004	2003	2002
Prosecutors	642	362	173
Legal Support Staff	233	225	105
Other Staff	1,673	1,408	743

This data shows how the number of professionals has increased with the successive stages of the implementation of the Criminal Procedure Reform and has moved towards its permanent composition.

Similarly, the institution's budget has increased as the reform has progressed.⁴⁴

Table 6
Public Prosecutor's Office Budget in Current Pesos and US Dollars

	2004	2003	2002
Budget in current pesos	52,977,906,000	44,746,426,000	21,561,176,000
Budget in US dollars	89,793,061	63,923,465	32,668,448

It is important to note that implementation of the Public Prosecutor's Office under the reform represents a total expenditure of 131 billion pesos (US\$233,928,571).

State Defense Council

The State Defense Council is a decentralized public service with legal standing that reports directly to the President of the Republic. It is independent of the various government Ministries.⁴⁵ Its main purpose is to defend, represent and provide legal counsel to the Chilean government about its interests, thereby maintaining the rule of law.⁴⁶

By statute, the Council is an internal body that uses its legal powers to bring legal action or defend public entities as provided by law. It is also responsible for assisting the President or any Head of Service in the "high level" defense of all judicial matters provided for in the Organic Law of the State Defense Council.

The Council is composed of twelve attorneys appointed by the President of the Republic who serve until the age of seventy-five unless the Senate approves their removal.⁴⁷

The President also appoints the Council President to a renewable three-year term during

which he or she legally serves as “Superior Council Chief” and directs the State Defense Council. The attributes of the Council include the legal representation of the government in all cases and procedures coming before the courts regardless of their nature, except where expressly stipulated otherwise by law in specific cases.

Police

There are two Chilean institutions charged with maintaining internal order and security, *Carabineros de Chile* and *Policía de Investigaciones*. Article 90 of the Chilean Constitution states that “the Forces of Public Order and Safety are made up of *Carabineros* and *Investigaciones*, which constitute the public force and exist in order to uphold the law and guarantee public order and internal safety in the manner set out by their respective statutes. (*Las Fuerzas de Orden y Seguridad Pública están integradas sólo por Carabineros e Investigaciones, constituyen la fuerza pública y existen para dar eficacia al derecho, garantizar el orden público y la seguridad pública interior, en la forma que lo determinen sus respectivas leyes orgánicas.*)”

The Constitution holds the *Carabineros* responsible for providing security throughout the nation through primarily preventive actions supported by ongoing community outreach.

For its part, the *Policía de Investigaciones* focuses on the scientific and technical investigation of crimes.

There are approximately 37,000 *Carabineros*. In order to improve police management, the government increased this body’s vehicle fleet (including vans, patrol cars and motorcycles) from 1,929 in 1990 to 5,013 in 2000.⁴⁸

During the same period the number of *Policía de Investigaciones* personnel increased by 23.6%, from 6,514 officers to 8,053.⁴⁹

2. Procedures

Criminal Cases

The new Criminal Procedure Code, which went into effect throughout the country in June 2005, places responsibility for investigating crimes with the prosecutor in direct collaboration with the police. Prosecutorial evidence-gathering activity is informal: there are no mandatory deadlines, and the Public Prosecutor’s Office may choose the most efficient way of handling this stage.

Preparations for trial are overseen by an investigative judge (*juez de garantía*), who is responsible for resolving any dispute that may arise between the prosecutor and the defendant, particularly those related to individual rights. This activity constitutes preparation for the trial, which is the main stage of the process. As a result, the evidence gathered by the prosecutor has no evidentiary value whatsoever until he or she presents it at trial.⁵⁰

During the investigation stage, the prosecutor is required to go before a judge each time he or she wishes to carry out an activity that could affect the defendant’s rights. This requires that the prosecutor precisely define basis for the charges, which may not be broadened without due warning.

Once the investigation stage ends, the prosecutor closes the investigation and may propose that the judge dismiss the case or lay formal charges. In the case of the latter, the prosecutor may formally charge the defendant, who is then granted time to prepare the defense, after which a preliminary hearing is held before the same judge. During this hearing, the possibility of using alternative sentences or shortened procedures is considered. If none of these alternatives is adopted, the case is prepared for trial and a resolution is drafted outlining the following: the charges to be considered at trial, the parties, the court with jurisdiction over the case, and the evidence that has been declared admissible by the judge.

The trial is held in a court presided over by three professional judges. All admissible evidence should be presented at this point. The court has some limited powers to accept new evidence and examine witnesses once both sides have questioned them. After the examination of the evidence, the court listens to closing arguments by both parties, offers the defendant an opportunity to make a final statement and retires to deliberate. At this point, the judge pronounces a decision regarding the defendant’s acquittal or conviction. Once the judge delivers the verdict, he or she establishes a period for submitting the grounds for the decision and setting the penalty. Only cassation appeals may be brought to challenge a definitive ruling.

Some judicial system data indicate that in the first four years of its implementation 457,310 cases were filed, of which 417,608 (91.31%) were resolved. Disaggregated data for 2003 shows that 220,743 cases were filed that year, 211,045 of which were resolved (or 95.6%).⁵¹

Concerning the duration of proceedings, a study carried out in 2003 demonstrated that the

new system reduced case duration by 61% on average over the old inquisitorial system. The following data, which list the old and new duration of proceedings for specific types of crimes and overall dismissals, serve as an example:⁵²

- Robbery: 167 days versus 127 days
- Rape: 310 days versus 171 days
- Resolutions:⁵³ 591 days versus 193 days
- Dismissals:⁵⁴ 174 days versus 108 days

Civil Suits

Chilean civil procedure is mainly written and is subject to the provisions of the Civil Code and Civil Procedure Code, both enacted in the mid-19th century. There are various types of civil procedures, among which the following deserve to be highlighted:

Ordinary Civil Procedure. This is also known as large claims ordinary procedure. It involves a broad decentralized procedure structured into the following stages: discussion (during which the complaint, response to the complaint, rebuttal and rejoinder are the main documents); discovery; issuing of the sentence; contesting and enforcement of the sentence. The procedure is supplementary in nature; in other words, it is used for all matters for which the law has not established a special procedure. According to the Judicial Branch Administrative Corporation, the average length of trial under ordinary civil procedure is 509 days.⁵⁵

Executive procedure. A mandatory or compulsory procedure that leads to the confiscation of debtors' assets. The order must be based on a title that is granted executive force by law as well as the fulfillment of other requirements that grant it an unquestionable character. According to the Judicial Branch Administrative Corporation, the average length of an executive procedure trial is 365 days.⁵⁶

Summary procedure. Compared to ordinary civil procedure, this type is particularly concentrated, resulting in the simplification of procedures and a substantial reduction in duration. It is only used as provided for by law, mainly where the nature of the action in question requires a speedy response to be effective. According to the Judicial Branch Administrative Corporation, the average length of a trial handled through summary procedure is 245 days.⁵⁷

3. Case Volume and Movement

The following table presents the number of cases that came before the courts in 2004:⁵⁸

Table 7
Number of Cases Filed in 2004

Jurisdiction	2002	2003	2004
First Instance Courts	1,676,906	1,842,814	1,886,215
Courts of Appeal	250,070	177,080	157,990
Supreme Court	5,590	6,262	N/D

During 2004, case movement in the first instance courts experienced an increase of 2.35% over 2003. This was not the case in the Courts of Appeal, where there was a dramatic 10.7% drop compared to the previous year. The reason for this downward trend is the gradual entry into force of the new Criminal Procedure Code, under which requests for appeal are only granted in exceptional cases.

The following table presents a detailed analysis of cases filed in the first instance courts by subject matter.⁵⁹

Table 8
Cases Filed by Subject Matter in First Instance Courts

Subject Matter	2002	2003	2004
Civil	661,182	871,059	994,273
Old Criminal System	571,972	534,257	358,058
New Criminal System	72,673	83,395	174,591
Labor	189,254	175,031	174,470
Youth	181,825	179,072	184,823
Total	1,676,906	1,842,814	1,886,215

The upward trend in case movement is mainly due to the increase experienced in the civil arena.

The following table presents cases filed in the courts of appeal by subject matter:

Table 9
Cases Filed in the Courts of Appeal

Jurisdiction	2003	2004
Civil	31,906	33,680
Old Criminal System	109,904	86,937
New Criminal System	2,513	5,931
Labor	7,334	7,574
Youth	7,123	7,329
Other Matters	18,300	16,539
Total	177,080	157,990

The steady decrease in the number of cases filed is due to the strong (-17.3%) drop in the criminal arena.

Data submitted by the Judicial Branch Administrative Corporation allows us to appreciate the caseload of courts of appeal and Supreme Court judges.⁶⁰

Table 10
Caseload of Supreme Court Justices and Courts of Appeal Judges

Jurisdiction	Filings 2003	Cases Pending at start of 2003	Number of Judges	Caseload per Judge
Courts of Appeal	177,080	83,009	151	1,734
Supreme Court	6,262	2,272	21	406

Table 11 presents the number of cases resolved by first instance and appellate judges.⁶¹

Table 11
Cases Resolved by First Instance Courts and Courts of Appeal

Jurisdictional Level	Filed 2003	Disposed 2003	Filed 2004	Disposed 2004
First Instance Courts	1,842,814	1,432,941	1,886,215	1,592,014
Courts of Appeal	177,080	169,707	157,990	148,920

The statistics indicate that the clearance rate for first instance courts in 2004 was 84.4%, while that of the courts of appeal was 94.2%.

4. Crime Rates

Over the past decade, crime has been a priority for the Chilean government and the community in general. Certain types of crimes tend to provoke greater concern among the public because of their seriousness, violence, frequency or spectacular nature. The Chilean Ministry of the Interior has called these crimes "*delitos de mayor connotación social*" (DMCS, or high impact crimes), and they include violent robbery (violent robbery, robbery with intimidation and robbery involving surprise); breaking and entering (whether or not the location is inhabited); assault; rape; murder; and theft.⁶² According to the Ministry of the Interior there were 399,507 complaints received regarding these types of crimes in 2004, which presents a rate of 2,555 crimes per 100,000 inhabitants.⁶³

The statistics indicate a sustained increase in the frequency of these types of crimes. The year 2004 presented the highest levels recorded, with an 11.7% increase over the number of complaints received the previous year.

The following statistics offer information on the different types of high impact crimes:

Table 12
Crime Rates

Year	2001	2002	2003	2004	Variation 2002/2001	Variation 2003/2002	Variation 2004/2003
Total Number of Complaints	263,740	294,529	357,619	399,507	11.7%	21.4%	11.7%
Complaints per 100,000 Inhabitants	1,762.8	1,940.6	2,321.9	2,554.9	10.1%	19.6%	10.0%

Table 13
High Impact Crimes

Year	2001	2002	2003	2004	Variation 2002/2001	Variation 2003/2002	Variation 2004/2003
Robbery with Violence	9,026	10,676	15,878	17,882	18.3%	48.7%	12.6%
Robbery with Intimidation	19,319	19,301	23,608	28,719	- 0.1%	22.3%	21.6%
Robbery with Surprise	6,270	9,327	15,833	18,457	48.8%	69.8%	16.6%
Breaking and Entering	106,846	121,657	138,936	151,892	13.9%	14.2%	9.3%
Theft	55,079	64,953	83,564	93,512	17.9%	287%	11.9%
Assault	65,005	66,560	77,798	86,495	2.4%	16.9%	11.2%
Murder	290	296	281	272	2.1%	- 5.1%	- 3.2%
Rape	1,905	1,759	1,721	2,278	- 7.7%	- 2.2%	32.4%

According to the data, in 2004 there were 1.7 reports of murder, 553 cases of assault, 14.6 rapes, 598 thefts and 971 robberies with use of force per 100,000 inhabitants in Chile.

Victimization Surveys

Victimization is one of the basic elements used to characterize the degree of criminality, as it refers to crimes that are effectively committed and not only those reported. Surveys that ask respondents about their experience as victims of certain types of crimes over a given period are used to gather this data. The results should be comparable to complaint rates in order to calculate the number of crimes that go unreported, as well as reporting trends.⁶⁴

Chile has two main sources of surveys. The first is the Ministry of the Interior, which has implemented them since 1999, mainly in the Metropolitan Region. The second is *Fundación Paz Ciudadana*, which has published *Indice Paz Ciudadana-Adimark* since 1998.

The Ministry of the Interior's Public Safety Division implements and analyzes government victimization surveys. According to the last survey (which was carried out in early 2002 and was geared towards crimes that took place in 2001), 38.7% of the adult population of the Greater Santiago region had been the victim of one of the crimes mentioned in the survey. These are vehicle theft, theft of vehicle accessories, robbery with use of force, theft, violent robbery, assault, and sexual abuse/assault.⁶⁵

The same source reports that 33.1% of adults had been the victim of a crime against personal property (vehicle theft, theft of vehicle accessories, robbery with the use of force or theft), while 11% of adults living in the Greater Santiago region had been the victim of violent crimes (violent robbery, assault and sexual abuse/assault).⁶⁶

The following list presents key facts related to this topic:⁶⁷

- One of every ten adults (over the age of eighteen) in the Greater Santiago region was the victim of one of the violent crimes included in the last survey.
- The incidence of sex crimes is very low and has decreased from 1.5% to 0.7%.
- The rate of unreported crimes dropped 51% (from 25.9% to 12.7%) between 2000 and 2001 in the category of vehicle theft, 18.2% (from 69.7% to 57%) in the category of violent

robbery and 6.5% (from 67.6% to 63.2%) in the category of theft of vehicle accessories.

In its victimization section, the *Fundación Paz Ciudadana-Adimark* survey asks whether the respondent or a family member has been the victim of a robbery or attempted robbery in the past six months. The survey also asks if the robbery took place inside the home or in another location, and whether or not it involved violence. It is important to note that for the purposes of this survey "robbery" includes all legal categories of robbery and theft.⁶⁸

The following figures describe the percentage of households in which one or more family members have been the victim of robbery or attempted robbery in the past six months. The figures do not distinguish whether the robbery took place in the home or elsewhere, and with or without violence.

Table 14
Victimization

May 2000	October 2000	May 2001	October 2001	June 2002	November 2002	June 2003
30.8%	29.8%	31.1%	30.6%	34.8%	36.9%	38.2%

Based on the data above one can assume that the number of robberies has progressively decreased since October 2001. Results from the last available version of this survey showed that in 38.2% of households one or more members had been the victim of a robbery or attempted robbery in the previous six months.

5. Prison Population

The agency responsible for prison administration in Chile is *Gendarmería de Chile*. This entity, which is an agency of the Ministry of Justice, serves, protects and assists inmates and contributes to their reintegration into society.⁶⁹

According to statistics provided by this institution, the total prison population in 2003 was 36,331 inmates, of whom 19,965 had been convicted, 14,178 had been tried and were awaiting sentencing, and 1,799 were detained (or in temporary detention). 34,060 prisoners were male and 438 were minors.⁷⁰

In other words, 0.25% of Chile's population is currently in prison, which makes it one of the countries with the largest relative penitentiary population, with 237 inmates per 100,000 inhabitants.⁷¹

One of the most disturbing features of the prison system is the recidivism rate, which exceeds 70% for male inmates in the Metropolitan Region.⁷²

Gendarmería de Chile—reports that the prison population has grown steadily since 1993. This is due to a variety of factors, including a restricted pardon policy, a decrease in the use of parole by the courts and more efficient police. The result is an average growth rate of 6.5% from 1995 to 2000 with annual variations of up to 16% (between December 1998 and December 1999).⁷³

This explosive growth can be added to the infrastructure deficit that began to be felt in the early 1990s and has not been solved despite increases in public spending in that area in the same decade. As a result, Chile's prisons were overcrowded by 50% of their holding capacity of 23,533 inmates in 2001. This led the Ministry of Justice and Ministry of Public Works to establish concession programs that keep prison administration and security in the hands of the *Gendarmería* but grant private companies a role in the design, financing, construction and maintenance of prisons as well as in the provision of penitentiary services (food, laundry, health, cleaning, basic goods, reintegration, etc.).⁷⁴

The Ministry of Public Works is responsible for overseeing the bidding process by mandate of the Ministry of Justice, which is responsible for making periodic payments as per the respective contract (one of the program's main characteristics is that most payments to the concessionaire derive from a state subsidy).

The concession program covers ten penitentiary establishments with a total holding capacity of 16,000 inmates. The construction of these facilities will take place in three stages. The first will involve the construction of prisons in Iquique, La Serena and Rancagua. It was adjudicated to a consortium and involves a US\$75 million dollar investment. The scheduled completion date was mid-2005.⁷⁵

6. Related Areas

Alternative Dispute Resolution (ADR)

Chilean legislation provides for the following alternative dispute resolution mechanisms:

Arbitration. Arbitration is allowed in disputes involving parties that cannot reach an agreement and that expressly delegate the resolution of the dispute to a neutral third party, called an arbitrator. It is widely applied in the civil and commercial arenas. In some areas, such as conflicts among business

partners, it is mandatory; parties may not go to court.

Conciliation. This practice has been mandatory in all civil, youth offender and labor cases in 1994. It can also be applied in criminal cases involving crimes, misdemeanors and some property crimes that do not threaten the public interest.

Negotiation. In informal terms, negotiation takes the form of lobbying, while in legal terms it resembles a transaction that is expressly set out in civil and labor legislation.

Mediation. Here a neutral third party assists the parties in determining points of consensus and disagreement to enable them to explore alternatives and consider potential commitments that allow them to reach mutual agreements on the issues under dispute. This practice has been increasingly used in family law disputes in Chile.

The Ministry of Justice began to promote these forms of dispute resolution following the publication of a 2002 report that stated that they were underused.⁷⁶ In late 2004, the Ministry launched the "Justice of Agreements" campaign, which is designed to publicize these mechanisms, the types of conflicts they can resolve, the public and private institutions offering such services, and the advantages that they offer. Some of the institutions that offer these services are the Judicial Assistance Corporation; mediation centers associated with some Santiago and Valparaíso courts; the National Consumers' Service; the National Indigenous Corporation; the Labor Board (*Inspección de Trabajo*); the Ministry of Public Property; chambers of commerce; several universities; and family courts.⁷⁷

In addition, Chile has passed a law that brings the country into line with international commercial arbitration standards and provides the elements required to make Chile a provider of arbitration services to other economies. The law, which was approved by Congress in July 2004, is based on UN Commission on International Trade Law (UNCITRAL) Model International Commercial Arbitration Law, which provides countries with a unified and uniform legal framework for the solution of international commercial disputes.⁷⁸

Gender and Justice Administration

A recent JSCA study analyzed how the criminal justice reform has affected the handling of crimes that primarily involve female victims. In the area of sex crimes, findings on users' perceptions of the justice system reveal that there is a high level of satisfaction with the services provided to

victims and witnesses. These services include Victim Assistance Units (6.7), treatment provided (6.5) and provision of information (6.6).⁷⁹ The report indicates that these units have improved the functioning of the system, increased victim participation, and reduced the effects of the process on the victim.⁸⁰

Race and Justice Administration

A JSCA study analyzed how the Criminal Procedure Reform had affected the administration of justice in indigenous communities, of which the Mapuche is the most numerous in Chile. The investigation found that this is in part the result of progress regarding the protection of rights as compared to the previous system. It is generally recognized that oral and public trials not only facilitate the control of the actions carried out during the process, but also their transparency and various actors' opportunities to follow-up with various instances. However, and in spite of these advances, the reform has not benefited the Mapuche community as such. It does not reflect specific norms (though there is an opportunity to use interpreters –known as intercultural facilitators- during trials this right is not a direct result of the reform) and ignoring cultural differences has only made those who are different equal under the law.⁸¹

Legal Profession

In early 2005, Chile had approximately 19,000 attorneys, or 126 per 100,000 inhabitants.⁸²

Concerning university education, 15,282 students enrolled in law schools at the forty universities that offer such a program in 2003. This is equivalent to 102 law students per 100,000 inhabitants.⁸³

Chile is one of a small number of countries in the Americas in which attorneys' adherence to a professional body is voluntary. Decree 3621, issued in 1981, dissolved professional associations, substituting them with private legal entities known as "*asociaciones gremiales*."⁸⁴ At that point, disciplinary control of the profession fell into the hands of the courts, which are given information on all harmful, abusive or unethical acts committed by a professional in the exercise of the profession. According to the Judicial Branch, six attorneys were punished for unethical behavior in 2003.⁸⁵

7. Judicial Reform and International Cooperation Projects Underway

Creation and Implementation of Family Courts.

The family courts, which began to operate across the country in October 2005, are designed to ensure that family law disputes are resolved quickly and transparently, promoting peaceful agreement among parties –with the use of mediation and conciliation—and including the opinions of the children and adolescents involved. The new courts involve oral, flexible, direct and concentrated procedures between the judge and parties. Judges have jurisdiction over all types of family matters, which eliminates the need for multiple trials in different courts. Each family court has a technical interdisciplinary board composed of a variable number of specialists in family and child matters, who advise the judge on the facts and situations presented.

New Juvenile Criminal System. Congress approved this initiative on July 14, 2004 and it is currently completing a second reading in the Senate. Its purpose is to establish a specialized justice system for offenders between the ages of fourteen and eighteen who have committed a crime or crimes. This new system will put an end to the use of *discernimiento* (in which judges interview juveniles to determine whether they are to be tried as youths or as adults). It holds adolescents responsible for the crimes they commit through a judicial procedure that provides basic guarantees for both victims and defendants according to Chilean constitutional principles and the International Convention on the Rights of the Child. Under the juvenile justice system, special procedures will be used to punish crimes and infractions as well as some behaviors catalogued as misdemeanors but with a high impact on public safety. The system establishes a wide range of sanctions, which can be divided into two basic categories: non-custodial sentences (to be applied and supervised by National Youth Service institutions) and custodial sentences (to be served in special detention centers managed by the National Youth Service, rather than in prisons for adult offenders).

Civil Justice Reform. In late 2004, the Ministry of Justice officially announced that it would take the first steps towards initiating the civil justice reform in 2005. This decision comes in response to the need to address the problems experienced in this area of justice, particularly the slowness, secrecy, lack of immediacy and limited access in civil cases. The final report, which will aim to ensure the participation of all actors involved,

will be submitted to the Forum for Civil Reform, to be organized by the Ministry of Justice in March 2005. The Forum will be composed of distinguished members of the legal community, including attorneys, judges and academics. The second stage will include the drafting of a new Civil Procedure Code based on the proposals and contributions made during the Forum. It is expected to be ready in late 2005.⁸⁶

8. Websites

Judicial Branch (*Poder Judicial*)

<http://www.poderjudicial.cl>

This official website contains information on the organization itself and the courts, as well as daily updates on the status of cases, a schedule for Supreme Court and courts of appeal, general information, publications and news. Spanish-language only.

Ministry of Justice (*Ministerio de Justicia*)

<http://www.minjusticia.cl>

This website provides descriptions of the Ministry's functions and organization and information on the Minister of Justice, as well as a list of priorities, important events, speeches, a description of ministerial agencies, programs and goals, and annual reports. Users can also access descriptions of common procedures, a list of legal aid clinics, and a section with information on the Criminal Procedure Reform. Spanish-language only.

Public Prosecutor's Office (*Ministerio Público*)

<http://www.ministeriopublico.cl>

Users may access information on the functioning and organization of the agency, national and regional offices, and witness and victim protection services through this website, which also contains news, press releases, and a Virtual Library with laws, newsletters and a glossary of legal terms and descriptions of bidding competitions. Spanish-language only.

Public Defender's Office (*Defensoría Penal Pública*)

<http://www.defensoriapenal.cl>

The official website for the public defense system offers information on organizational functions and structure and listings for the National Public Defender and regional offices, as well as an

organizational flowchart, case law, a glossary, a section on frequently asked questions and laws, as well as news. Spanish-language only.

Fundación Paz Ciudadana

www.pazciudadana.cl

This organization's mission is to contribute to reducing crime by offering technical support for policymaking and developing and transferring tools.

Forja

www.forja.cl

Corporación Formación Jurídica para la Acción is a not-for-profit non-governmental organization made up of a multidisciplinary team of professionals concerned about delivering law and justice to the citizens throughout the nation using the most diverse approaches possible.

Corporación Justicia y Democracia

www.justiciaydemocracia.cl

The Corporation for Justice and Democracy is a not-for-profit institution whose purpose is to update and disseminate democratic values and principles and analyze and discuss tools and experiences that help to build a society in which social bonds are built on justice, equity and democracy. This organization has actively participated in public instances created to discuss and analyze current challenges related to institutional structure and governance. It has promoted conferences and seminars on decentralization in collaboration with the Ministry Secretary General of Government.

9. Basic Directory

Poder Judicial

Address: Palacio de Tribunales
Corte Suprema de Justicia
Bandera 344, Santiago
Phone: (562) 873-5000
www.poderjudicial.cl

Ministerio de Justicia

Address: Morandé 107, Santiago
Phone: (562) 674-3100
Fax: (562) 698-7098
www.minjusticia.cl

Ministerio Público

Fiscalía Nacional
Address: Almirante Lorenzo Gotuzzo 124,
Piso 10, Santiago
Phone/Fax: (562) 870-5200 / (562) 688-7766
www.ministeriopublico.cl

Defensoría Penal Pública

Address: Alameda 1449, Piso 8, Santiago
 Phone: (562) 431-6800
 Fax: (562) 431-6809
www.defensoriapenal.cl

Gendarmería de Chile

Address: Rosas 1274, Santiago
 Phone: (562) 698-2155
www.gendarmeria.cl

Colegio de Abogados de Chile

Address: Ahumada 341, of. 207
 Casilla 224, Santiago Centro
 Phone: (562) 639- 6175/ 633 -6720/ 639 7945
 Fax: (562) 639 -5072
www.colegioabogados.cl

Centro de Desarrollo Jurídico Judicial - CDJ-CPU

Corporación de Promoción Universitaria
 Address: Miguel Claro 1460, Santiago
www.cdjhile.cl

Corporación de Desarrollo Formación Jurídica para la Acción – FORJA

Address: Ernesto Reyes Nro. 065, Santiago
 Phone/Fax: (562) 777-6196/ (562) 737-8598/ (562) 735-4845
 Email: ongforja@entelchile.net
www.forja.cl

Fundación Paz Ciudadana

Address: Valenzuela Castillo 1881, Santiago de Chile
 Phone: (562) 244 -2200
 Fax: (562) 244 -3800
www.pazciudadana.cl

Universidad de Chile Law School

www.derecho.uchile.cl
<http://www.derecho.uchile.cl/centros/centros.htm>

Universidad Diego Portales Law School's Juridical Research Center

<http://www.derecho.udp.cl/site/index.php?ID=13&tipo=1>

Centro de Mediación de la Corporación de Asistencia Judicial de la Región Metropolitana

www.cajmetro.cl

Notes

- ² INE- National Statistics Bureau of Chile.
- ³ *Ibid.*
- ⁴ *Ibid.*
- ⁵ ECLAC, *Statistical Yearbook for Latin American and the Caribbean 2003*. "Part One: Indicators of Economic and Social Development in Latin America and the Caribbean."
- ⁶ *Ibid.*
- ⁷ World Bank, *World Development Indicators*, see <http://devdata.worldbank.org/data-query/>.
- ⁸ *Ibid.*
- ⁹ INE - National Statistics Bureau of Chile.
- ¹⁰ We are including those that can operate as single judge courts.
- ¹¹ Each municipality also has local police courts, which hear cases for lesser crimes and traffic violations. These courts are not within the purview of the judicial branch.
- ¹² Chilean Judicial Branch, *Memoria Anual 2003*, p. 6, see www.poderjudicial.cl.
- ¹³ Chilean Judicial Branch, *Memoria Anual 2003*, p. 26, see www.poderjudicial.cl.
- ¹⁴ See www.academiajudicial.cl.
- ¹⁵ Chilean Judicial Branch, *Memoria Anual 2003*, p. 6, see www.poderjudicial.cl.
- ¹⁶ Importantly, sixty new family courts were inaugurated on October 1, 2005.
- ¹⁷ The third instance does not exist in Chile. The Supreme Court hears 1) appeals in general; 2) appeals regarding sentences handed down by the Courts of Appeal or by an arbitration panel; 3) appeals of rulings issued by the Courts of Appeal on protection matters (*recursos de amparo y protección*); and 4) other judicial matters under the purview of the Supreme Court that do not expressly require plenary consideration.
- ¹⁸ In this regard it is important to note that the new criminal procedure only allows appeals in exceptional cases.
- ¹⁹ See www.poderjudicial.cl.
- ²⁰ Chilean Judicial Branch, *Memoria Anual 2003*, p. 20, see www.poderjudicial.cl.
- ²¹ Ministry of Finance Budget Office.
- ²² Calculated from the dollar amount.
- ²³ See <http://www.minjusticia.cl/Comunicados/2005/Enero/ene13.htm>.
- ²⁴ The complete version of the Chile report for the *Index of Online Access to Judicial Information* is available on our Website. See www.cejamericas.org.
- ²⁵ See <http://www.minjusticia.cl/reforma/implementacion/inversion.htm>
- ²⁶ See <http://www.minjusticia.cl/Comunicados/2004/Diciembre/dic27.htm>.
- ²⁷ See <http://www.minjusticia.cl/Comunicados/2004/Julio/julio28.htm>.
- ²⁸ Chilean Judicial Branch, *Memoria Anual 2003*, p. 40, see www.poderjudicial.cl.
- ²⁹ Humberto Nogueira, "La Reforma Constitucional a la Jurisdicción Constitucional: del doble control concentrado de constitucionalidad a la concentración del control en el Tribunal Constitucional" in *Ius et Praxis*, 2002, Vol. 8, No. 1, 337 - 370.
- ³⁰ See http://www.institutolibertad.cl/p_183.htm.
- ³¹ See www.minjusticia.cl.
- ³² Ministry of Finance Budget Office.
- ³³ Based on figure in dollars.
- ³⁴ See www.defensoriapenal.cl.
- ³⁵ *Ibid.*
- ³⁶ See www.defensoriapenal.cl
- ³⁷ Defensoría Penal, *Cuenta Pública del Defensor Nacional. Gestión Año 2003*, see www.defensoriapenal.cl.
- ³⁸ *Ibid.*
- ³⁹ Chilean Constitution, Article 80 A.
- ⁴⁰ The Administrative Units established by law are the Division of Research, Oversight, Development and Management Evaluation; the Internal Oversight Division; the Division of Human Resources; the Division of Administration and Finance; the Computer Technology Division; and the Victim and Witness Assistance Division.
- ⁴¹ Public Prosecutor's Office, *Boletín Estadístico Año 2003*.
- ⁴² Public Prosecutor's Office.
- ⁴³ *Ibid.*
- ⁴⁴ *Ibid.*
- ⁴⁵ Law of the State Defense Council, Article 1.
- ⁴⁶ See www.cde.cl.
- ⁴⁷ *Ibid.*

- ⁴⁸ See <http://eduardosaffirio.tripod.cl/seguridadciudadana/id1.html>.
- ⁴⁹ *Ibid.*
- ⁵⁰ Cristián Riego, "Las Reformas Procesales Penales en América Latina," *Ad-Hoc*, 2000.
- ⁵¹ Juan Enrique Vargas, "La reforma procesal penal chilena: evolución y resultados" in *Bien Común*, año XI, Nro. 122, febrero 2005.
- ⁵² *Ibid.*
- ⁵³ Solutions include definitive sentences, dismissals, conditional suspensions and reparatory agreements.
- ⁵⁴ Dismissals: provisional file, prosecutorial discretion and decision not to proceed.
- ⁵⁵ JSCA. *Report on Judicial Systems in the Americas 2002 – 2003*.
- ⁵⁶ *Ibid.*
- ⁵⁷ *Ibid.*
- ⁵⁸ Judicial Branch Administrative Corporation.
- ⁵⁹ *Ibid.*
- ⁶⁰ *Ibid.*
- ⁶¹ *Ibid.*
- ⁶² Ministry of the Interior, *Diagnóstico de la Seguridad Ciudadana en Chile*, p. 21, 2004.
- ⁶³ See <http://www.seguridadciudadana.gob.cl/>.
- ⁶⁴ Ministry of the Interior. "Diagnóstico de la Seguridad Ciudadana en Chile," p. 18, 2004.
- ⁶⁵ *Ibid.*, p. 36.
- ⁶⁶ *Ibid.*
- ⁶⁷ *Ibid.*, p. 37.
- ⁶⁸ *Ibid.*, p. 49 ff.
- ⁶⁹ See www.gendarmeria.cl.
- ⁷⁰ *Gendarmería de Chile*. "Estadística de la Población Penal atendida por Gendarmería de Chile." 2004.
- ⁷¹ Ministry of the Interior. "Diagnóstico de la Seguridad Ciudadana en Chile," p. 18. 2004.
- ⁷² *Ibid.*
- ⁷³ See <http://www.gendarmeria.cl/penitenciaria/establecimientos.htm>.
- ⁷⁴ *Ibid.*
- ⁷⁵ *Ibid.*
- ⁷⁶ Sebastián Cox and Clara Salgado, "Resolución Alternativa de Conflictos en las Américas. Informe de Chile" in *Judicial Systems Journal*, JSCA-INECIP, No. 2, 2002, 91-93.
- ⁷⁷ See <http://www.minjusticia.cl/Comunicados/2004/Septiembre/sept29b.htm>.
- ⁷⁸ See <http://www.minjusticia.cl/Comunicados/2004/Julio/julio21b.htm>.
- ⁷⁹ On a scale of 1 to 7.
- ⁸⁰ The complete version of the report for JSCA's project on *Pueblos Indígenas y Reformas a la Justicia Procesal Penal* is available in Spanish online at www.cejamericas.org
- ⁸¹ The complete version of the JSCA project report on *Gender and Criminal Procedure Reform* is available online at www.cejamericas.org
- ⁸² Calculations made by the author on the basis of the number of attorneys in 2002 -15,200- and the number of attorneys that the Supreme Court swears in each year.
- ⁸³ Ministry of Education.
- ⁸⁴ The *Colegio de Abogados de Chile* is the most important in Chile, with approximately 6,500 members. In addition, most cities situated in outlying regions have their own attorneys association. For example, there are local associations in Valparaíso, Talca and Concepción.
- ⁸⁵ Chilean Judicial Branch, *Discurso de inauguración del año judicial 2004*, see www.poderjudicial.cl.
- ⁸⁶ See <http://www.minjusticia.cl/Comunicados/2004/Diciembre/dic28.htm>.