



# Criminal Procedure Reform



*Launched on December 16, 2000 in two regions of the country, the most significant reform to Chile's justice system in 109 years entered its final phase on June 16 of this year, as the Metropolitan Region, with its more than six million inhabitants, was incorporated into the new system.*

Minister of Justice Luis Bates with the President of the Supreme Court, Marcos Libedinsky, and President Ricardo Lagos.

**"We have constructed a country in which we can design and implement a dream within a ten-year period. The easy way would have been to leave things as they were and to increase the budget for the justice system a little; the serious way has been to change the way we apply justice. That's why, in democracy, our country and its institutions proposed, developed and are now implementing public policies that will solve fundamental problems."**

**President Ricardo Lagos  
June 17, 2005**

Within an atmosphere of great anxiety and anticipation, Chile's "New Justice" was implemented in the Metropolitan Region at midnight on June 16. The Public Prosecutor's Office and the police were responsible for the startup of the new system, which was entering its fifth and final stage. During the first few hours, more than 150 crime reports were received.

The region containing the country's capital, Santiago, was the last to implement the Criminal Procedure Reform, which is aimed at making criminal proceedings more flexible, modern and democratic, putting an end to slow and cumbersome trials, secret investigations and inequality of conditions before the law.

During the official ceremony, held on June 18 at the new Santiago Justice Center, President Ricardo Lagos offered a brief summary of the Reform's performance in the regions: "The results we have seen to date are impressive. Under the old system, an average judgment took a little over three years, while today, cases are resolved in an average of seven months." He added that the system represents "an effective contribution to the fight against crime," since the conviction rate in cases handled under the Reform is significantly higher than it was under the old system.

With this "historic milestone," as it has been unanimously characterized, the country has put an end to the 109-year reign of the inquisitorial model, a

**“We feel proud to be the pioneers in a reform of this scope, which has cost a great deal of effort and resources, but has been worth the trouble. This reform has strengthened the country’s institutions, strengthened justice, and I believe that this great change represents a new face for the justice system in Chile.”**

**Soledad Alvear, former Minister of Justice (1994-1999)  
June 18, 2005**



### **National Prosecutor**

After earning a law degree from the University of Chile, **Guillermo Piedrabuena** (67) served for 30 years on the State Defense Council, acting as president from 1990 to 1993. With a wide-ranging academic background, he has served as professor of Trial Law at the Catholic and Gabriela Mistral Universities and counselor to the Bar Association. During the administration of President Eduardo Frei Montalva (1964-1970), he served as head of the advisory department for the Ministry of Justice and held the office of deputy undersecretary.



### **National Public Defender**

**Rodrigo Quintana** (44), an attorney trained at the University of Valparaíso, initiated his career at Valparaíso’s Second Juvenile Court. Since the early 1990s, he has served as chief of the legal departments of the National Institute of Youth, the National Service for Children and the Ministry of Justice. From 1996 to 2000, he was director general of the OAS Inter-American Children’s Institute. From 2000 until his appointment as National Public Defender, he has served as advisor to the Foreign Affairs Ministry.

concept deriving from the colonial era. Within that system, criminal proceedings were predominantly secret and written, and the investigation, prosecution and judgment of a criminal case were in the hands of a single person, the criminal judge.

Under the new system, these functions are completely separate, and defendants are considered innocent until proven guilty. “We are moving from a colonial system brought here by the Spanish, codified a century ago – and already the most backward in Latin America at that time – to a system very similar to that of the developed Anglo-Saxon countries, which will be the most modern in the region,” stated Gonzalo Vargas, general manager of the Paz Ciudadana Foundation, one of the civil society organizations most closely involved with the Reform.

### **The decade of change**

In 1995, the government and an array of civil society institutions, including NGOs, universities, foundations and international cooperation agencies, launched an ambitious project aimed at creating a more transparent, impartial and expeditious justice system offering equal access to all Chileans.

The result has been one of the most profound and comprehensive institutional transformations in the country’s history. It was promoted by President Eduardo Frei Ruiz-Tagle (1994-2000), who stressed that the justice system existing at the time was impeding the country’s socioeconomic development, due to its inequitable access as well as other flaws, such as long delays in reaching judgments.

The process was carried out by then-Minister of Justice Soledad Alvear and a team of young professionals, who conceived and designed the new system. Legislators from all parts of the political spectrum studied their proposals in order to enact the necessary laws for their implementation.

After three years of designing and giving form to the New Justice, the first step was taken in 1998: Congress approved the creation of the Public Prosecutor’s Office, an autonomous body tasked with overseeing criminal investigations, pursuing criminal charges in public trials and protecting witnesses and victims. In October 1999, attorney Guillermo Piedrabuena was appointed for a ten-year term as the country’s first National Prosecutor.



Former President Eduardo Frei and former minister of Justice Soledad Alvear

Seven months later, the new Criminal Procedure Code entered into force, and the Public Defender’s Office was created to defend individuals who are accused of a crime but lack access to a lawyer. The current National Public Defender, appointed in May 2002, is attorney Rodrigo Quintana.

The change arose from the need to modernize the existing justice system and adapt it to the principles of the rule of law as well as the social, economic, political and cultural development experienced by Chilean society in recent decades.

In 2000, it was agreed that implementation of the Reform would proceed gradually, in five stages, beginning with the country's regions. The first stage, initiated on December 16, 2000, implemented the Reform in the Fourth and Ninth Regions. The second, begun in October 2001, extended it to the Second, Third and Seventh Regions. In December 2002, the First, Eleventh and Twelfth Regions were added, and one year later, the Reform was carried out in the Fifth, Sixth, Eighth and Tenth Regions.

In its legal code, the Reform consecrates the principles of **impartiality**, through the separation of the functions of investigation and sentencing; the **public and oral nature** of all trials and hearings; **efficiency**, by establishing a variety of conflict resolution mechanisms; **concentration** of the presentation of all evidence in oral and public trials, in which judges present an immediate ruling regarding the defendant's guilt or innocence; and **immediacy**, which is provided by the judge's presence as a requirement for the validity of any procedure.

Finally, on June 16, 2005, the "go" was given for the Reform in the Metropolitan Region. Minister of Justice Luis Bates commented that "it is a historic event for the government and for this country, representing the culmination of an effort endowed with all of the necessary resources. Today it is a source of great satisfaction to confirm and be a witness to this new way of serving justice, which will be available to all."

### The New Justice

The most important change introduced by the Criminal Procedure Reform is the replacement of the old scheme – involving a single judge who was responsible for investigating and prosecuting a crime as well as pronouncing sentence – by a new system of oral and public trials. This required a constitutional reform and more than 15 new laws.

Under the new system, the functions of investigating and prosecuting crimes are in the hands of a **public prosecutor**, who decides whether to pursue an investigation further or to provisionally shelve the case if sufficient evidence is lacking. **Oral trial judges** and **supervisory judges** oversee the impartiality of the proceedings and resolve conflicts which may arise among the parties, in addition to evaluating requests from the Public Prosecutor's Office and the plaintiffs. Accused persons who cannot afford a lawyer are represented by **public defenders**.

In cases which reach the oral trial stage, the prosecution and the defense must present their petitions, evidence and arguments in public proceedings before a collegial tribunal composed of three judges without prior knowledge of the case, who will be responsible for passing judgment.

The oral trials may end in a standard judgment; an abbreviated trial, in which

## FACTS

On March 21, 2001, the first oral judgment was handed down, in an armed robbery case in La Serena (Fourth Region).

By December 31, 2004, 90% of the cases handled under the New Justice system had been brought to a conclusion. Of the cases reaching the oral trial stage, 91% resulted in conviction and sentencing.

During 2004, 516,405 crime reports entered the system. Of these, 19% resulted in a judicial decision, while 81% were terminated through administrative action.

the defendant accepts a guilty plea and the prosecutor cannot ask for a punishment greater than five years in prison; or alternative outcomes, such as an agreement to provide reparations to the victim or the conditional suspension of the trial.



"The new system, based on public hearings and rulings by a panel of judges, is more transparent, more efficient and much faster. Victims can attend the proceedings, which is similar to what happens in the U.S. courts, although there are no juries here. The presumption of innocence, which did not exist in Chile, is now written into the law."

CNN, June 4, 2005

## The rights of victims

1. To receive services
2. To be treated with dignity
3. To report crimes and make accusations
4. To be informed
5. To ask for protection
6. To obtain reparations
7. To be listened to
8. To file accusations
9. To participate in the trial
10. To present objections

## The rights of arrestees

1. To be told the reason for their arrest
2. To be informed
3. To remain silent
4. To make statements
5. Not to be treated as guilty
6. To inform others of their arrest
7. To communicate with others and receive visitors
8. To receive assistance from an attorney
9. To be brought before a judge within a fixed period
10. To have a judge pronounce upon their detention.

The plan calls for 809 oral and supervisory judges throughout the country – compared to only 80 under the old system – along with 640 prosecutors and more than 430 public defenders.

Another important aspect of the Reform is the codification of rights for both defendants and victims. These rights must be visibly displayed in all detention centers, courts and tribunals.

Without a doubt, one characteristic of the new system which is most appreciated by the public is the treatment afforded to witnesses and victims of a crime. Under the Reform, crime victims are considered **participants** in the proceedings, with express recognition of their rights and an active role in the criminal trial. In practical terms, the

authorities cannot dismiss or shelve their cases without first informing them and giving them an opportunity to be heard.

## The protagonists

All participants in the criminal justice system – including judges, lawyers, police officers, investigators, forensic scientists and judicial officials – had to undergo intensive preparations for the Reform.

One notable trait of the new **prosecutors** and **public defenders** is their youth, leading President Lagos to characterize them as the “new vitality.” The average age of the prosecutors is 31, and that of public defenders, 34. Their training has included the study of criminal trial law, crime typology, juvenile crime and anti-terrorist law, among other areas, in addition to police procedure and the use of expert witnesses. Most of them were also required to complete courses in oral expression, to help them present their cases and deliver closing arguments before the court, since the quality of their presentations will be a fundamental factor affecting the fate of the accused.



The institutions involved in the justice system have also had to prepare themselves for the change. The **Legal Medical Service (SML)** had to increase medical staff hours by nearly 40%, hire new professionals, equip its laboratories to analyze toxins and DNA, upgrade its information system, implement electronic

## FACTS

An opinion survey carried out by IPSOS Chile showed that 75.4% of Santiago residents approve of the New Justice. Some 89% expect judgments to be reached more quickly under the Reform, while 79% believe that the justice system will become more transparent.

Citizens can receive answers to any questions they may have about the Criminal Procedure Reform by calling 800-422-000, a free, 24-hour service. Callers can also request information about where to go with a legal issue or problem.

The website [www.minjusticia.cl/reforma/index.htm](http://www.minjusticia.cl/reforma/index.htm) informs citizens about all aspects of the new system.

signatures and train its personnel in the new criminal justice technologies. The service also increased its level of decentralization, strengthening its branches located in various cities in the regions. From 2004 to 2005 alone, the institution invested approximately five million dollars in these improvements.

## Alternative punishments

The New Justice system also permits the use of punishments other than incarceration. For example, in the port of San Antonio, a judge sentenced a pair of youths who had vandalized a church to clean a police office building in the city for a year. In Antofagasta, a worker who threw his dog from the fifth floor of a building will have to spend two months taking care of animals. In Iquique, two university students were ordered to provide community services for causing disturbances on a public street.

## Technological support

One of the factors supporting the Reform has been the use of modern technologies.

Prosecutors are now using a mechanism called the Prosecutors' Support System (SAF), which allows them to manage cases, undertake criminological analysis, and assemble needed statistical data. The system also offers online information about victims, witnesses and defendants.

The Santiago Appeals Court has moved from the use of paper recordkeeping to virtual files. Since June 16, all written documents must be presented on CD, on diskette or by electronic mail.

The **Public Health Institute**, which carries out toxicological examinations, increased its budget to purchase new equipment and hire additional experts. It is estimated that approximately 18,000 samples per year will be sent to the institute for analysis.

Among the **Carabineros** (uniformed police), some 35,000 officials received intensive specialized instruction in areas such as crime scene protection, treatment of evidence, identity checks, searches, arrests, the taking of statements, police operation techniques and the role of police officers as witnesses and experts in the new oral trial process. "The Carabineros undertook a significant effort to demonstrate to the community that we are prepared for the Reform, with new infrastructure and personnel training, in order to effectively fulfill the role assigned to us within the new criminal justice system," explained General Alberto Cienfuegos, the institution's general director.

The (civilian) **Investigative Police** had to hire and train new personnel – including experts, technicians and support staff – upgrade their criminal laboratories and public offices, and purchase new equipment for their operative units. Their investment during 2004 and 2005 is estimated at some 8.5 million dollars.

Another important measure was to prepare the **citizens** themselves to assume the rights and duties assigned



to them under the new system. With the help of diverse civil society organizations, seminars were organized in Santiago and the regions; mass media and door-to-door public education campaigns were carried out; and informative leaflets were distributed, even in Braille. An important role was taken on by the "Young People for the Reform," mainly law students at the country's universities, who have served as enthusiastic volunteers to help publicize the most important aspects of the Reform.



The aim of the public education campaigns is to inform all Chilean citizens that within the new justice system, anyone can report a crime or assist in solving one, provide information to the police or to the prosecutor in charge of an investigation, and attend hearings in the oral and supervisory courts freely and without restrictions. With an effective understanding of their role within the system, citizens can exercise social control over the way in which justice is pursued in the country.



Deputy Minister of Justice Jaime Arellano (second from right) at the launch of the publicity campaign for the Criminal Procedure Reform in the Metropolitan Region.



The efforts to inform the public about the Reform have also extended to the schools. More than 20,000 copies of the comic book *The Trial and the Truth* have been distributed to students around the country. The story describes the trial of the Big Bad Wolf for attacking Red Riding Hood and her grandmother. In keeping with the provisions of the Reform, the prosecutor in the book defends the rights of Red Riding Hood and her grandmother, while the public defender protects the wolf's rights, and the police and SML provide the evidence. At the end, the oral trial judge sentences the wolf to 15 years in a high-security prison.

### Modern infrastructure

Implementing the Reform has required an investment of more than 550 million dollars. "The political will existed to provide the resources and fulfill the objectives, even in the economically difficult years," affirmed President Lagos. Starting in 2005, the justice system's budget will exceed 2% of the national budget, compared to 0.9% in 1999.

Not only has it been necessary to hire and train personnel – more than 8,000 officials – to carry out the Reform, but also to construct adequate facilities for their work. The new system will require a total of 84 court buildings, which must be ready by 2008. By the end of 2005, it is estimated that more than 50% will be in operation. For the Public Prosecutor's Office, 150



buildings are planned, along with 94 for the Public Defenders.

Without a doubt, the most important new facility is the 115,000-square-meter Santiago Justice Center, which will provide offices for 302 oral and supervisory judges, 76 public prosecutors, 47 public defenders and more than 1,500 professionals, technicians and administrative staff. In addition to parking facilities, food courts and a notary office, it will contain 520 rest rooms and 80 elevators. When it becomes fully operational, it will be the largest building of its kind in Latin America. Days before the Reform was initiated



in Santiago, the first of the nine buildings which will make up the Center – Tower G-4, for the Supervisory Courts – was completed. The total investment for the project reaches nearly 80 million dollars.

### Still to come

Since the implementation of the new system, ongoing evaluations have permitted officials to identify modifications that will increase its effectiveness. For example, it has been necessary to introduce changes to the Criminal Procedure Code, in order to strengthen the powers of the police in certain situations; to reinforce victims' rights; and to establish the gradual appointment of oral and supervisory judges, in response to the progressive increase in their workload. Further modifications are still in the legislative process.

The transition period between the old and new systems has also required

**"It is one of the most significant achievements from a political point of view, which should bring satisfaction not to a particular administration, but to all of Chile, because it shows the seriousness with which we can define long-term goals and fulfill them step by step."**

**President Ricardo Lagos  
June 18, 2005**

much consideration. Since the new criminal trial process will only be applied to crimes committed after the precise moment of its entry into force, the next step is to approve the so-called “Splicing Law” (*Ley Empalme*) which seeks to accelerate the cases remaining under the old system and put an end to the dichotomy produced by the Reform’s entry into force.

### Expanded justice

The Criminal Procedure Reform is not the only change to the country’s judicial institutions. In the coming months, new courts in the areas of family and labor law will be inaugurated, improving and simplifying the justice system and citizens’ access to it.

Starting in October, 60 new courts dedicated exclusively to cases of family law will become operational in Chile. There will be 258 judges dedicated solely to these cases, an increase of 500% compared to the current number. In addition, each court will be supported by an interdisciplinary technical council made up of social workers, psychologists and family counselors, who will advise the judges on cases involving issues such as adoption, domestic violence, custody, alimony, visitation, paternity and divorce petitions.

The courts will conduct flexible and focused oral proceedings, as well as establishing a comprehensive mediation system, which – for the first time under Chilean law – will include cooperative and non-adversarial solutions. That is, before



sentence is passed, an attempt will be made to resolve the complaint through a mediation body. The idea is to prioritize the search for peaceful agreements among the parties and lessen the emotional cost arising from these types of conflicts.

On May 30 of this year, the legislature approved the creation of 35 new Labor Courts and Social Security Courts, which will take on the

responsibility of resolving labor-related cases and disputes over retirement payments and other worker benefits, starting on March 1, 2007. “At the end of my administration, I want to leave behind a system in which labor cases are resolved in a rapid, oral and efficient manner, rather than a slow process taking five years, which in practice is the denial of justice, causing people to lose confidence in their rights,” stressed President Lagos. ♦

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