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**PROYECTO DE CAPACITACION, POLITICA
Y GESTION JUDICIAL**

**LEGAL ASSISTANCE ACTIVITIES
BACKGROUND AND PROBLEM AREA DESCRIPTION
PROJECT PAPER - CHILE**

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I. PROBLEM AREA DESCRIPTION.

AID Chile proposes to award a grant through the Corporacion de Promocion Universitaria (hereafter "CPU") to conduct several initiatives, including a component on legal assistance to the poor. CPU has prepared a draft project paper, dated December, 1990, which the author has reviewed. Three major activities are proposed: development of alternative systems for the resolution of judicial conflicts involving the poor; public education and training in low income communities as to legal access and problem resolution; and, focused public interest litigation, primarily aimed at the protection of group or collective interests of poor citizens. In conjunction with these focused activities, the project paper proposes the gathering of further and more accurate data on the identification of the legal problems and needs of the poor, obstacles and advantages of seeking solutions through the current legal system, and exploration of alternatives to the formal legal system which may be used without the need for formal legislative amendment.

This paper will examine the background and players in the area of legal assistance to the poor and summarize the proposals made by CPU in this area. Separate papers will suggest specific programmatic directions, their relationship to other components of the grant, and priority and cost analysis.

This analysis will begin with a brief background of the impact of the democratic opening in Chile as it relates to the legal problems faced by the poor, an effort to identify the most needy

sectors of the population and their legal problems, and the scope of current laws and institutions designed to address the legal problems of the poor. The strengths and weaknesses of current structures to address the problems of the poor will be explored, as will the adequacy of the proposed project to address current weaknesses. Finally, priorities for the project will be identified.

A. Democratization and the Poor in Chile.

The election of a new government in December of 1989 and the overwhelming vote for adoption of significant amendments to the Chilean Constitution earlier last year bode well for dramatic improvement of both structures and personnel involved in the administration of justice and the plight of the poor and marginalized in Chile. Newly elected President Patricio Aylwin Azocar made a concern for poverty and human rights a cornerstone of his campaign and a primary focus of his administration's legislative and administrative agenda during these first months of his tenure. A 16-year stranglehold on the Chilean government by his predecessor, Gen. Augusto Pinochet Ugarte, effectively was ended in October of 1988 when voters quietly but firmly rejected his bid to remain in power until 1997. That plebiscite was followed in July of 1989 by another in which the electorate approved, by an 85% margin, constitutional amendments which further moved the country into the arena of democratic discourse.

The legacy of the Pinochet years has had a dramatic effect on all Chileans, but perhaps none have felt the impact of a regime described as "totalitarian" so much as the very poor. Moreover, the

institutional framework within which the law which might have protected the legal rights of the poor was controlled by a judiciary which was described by one European diplomat as "despicable and totally spineless." The Aylwin government has taken it as a strong public mandate to address both the problems of the poor and the improvement of judicial administration.

1. The Effects of the Pinochet Years on the Low-Income Sector. Much has been written about the systematic and pervasive human rights violations of the Pinochet regime, particularly through reports by public and private international human rights organizations. Another, less noticed phenomenon, however, was the dismantling of many governmental social programs through "decentralization," a process which had its most dramatic impact in the poorest segments of the community, where developed machinery for the handling of health, education and housing issues were all but eliminated during the Pinochet years. The removal of these structures, as might be anticipated, tended to have collateral impact on family structures. The Pinochet years saw dramatic increases in problems of single-parent households with working mothers, family violence and out-of-wedlock births.

a. Programs for the "Extreme Poor." The Pinochet government, however, was not wholly inactive in its attention to the poor, especially during the 80's, when the government renovated programs to identify and address the problems of the sector of "extreme poverty." The government adopted a definition for this category of persons which largely focused on housing conditions.

Sanfuentes, "Antecedentes Sobre la Distribucion del Ingreso y Gastos Gubernamentales para Atenuar la Extrema Pobreza," 60 Estudios Sociales 9, 12-14 (CPU, 1989). The National Office of Planning (ODEPLAN), using census data from 1970 and 1982, in fact produced "Maps of Extreme Poverty." *Id.*, at 11-14. (The first of these maps is now out of print.) These programs, together with tenacious (and effective) state administrative structures and solid economic growth, joined to produce impressive comparative data regarding social conditions: relatively low overall unemployment, extremely low infant mortality rates and an average of 10 years schooling (among the highest in Latin America). These programs began to slip in the late 80's, however, and never reached the remaining sectors of the poor, leaving a significant gap in the Chilean "safety net" at the end of the decade.

b. Centralization of Executive and Judicial Powers. At the same time as some state social structures were eliminated, structures for the consolidation and centralization of power in the executive branch, a traditional focus in Latin America, were even more exacerbated in the Pinochet years. The 1980 Constitution was to have been the crown jewel in this effort to focus state power in a president with virtually absolute control. The judiciary was one product of this consolidation which continues to operate under that centralized control. Until proposed reforms are adopted, the military courts and judges directly controlled by the commander in chief, who was also president, hold sweeping powers to try civilians, particularly for offenses thought to involve subversive

activity against the state, or so-called "terrorist" activities. Even outside of the military courts, however, judicial administration continues to be centrally controlled. Judicial selection, from the trial courts to the Supreme Court, is controlled by presidential appointment through terms proposed by the courts themselves. Local police judges, who hear minor infractions and are selected by the local mayors, are effectively under presidential control, since the mayors themselves are selected by the President in the current constitutional structure.

With a judiciary so politically loyal to, and so closely watched by, the President it is no surprise that the public's faith in the efficacy and integrity of judicial power was significantly eroded during the Pinochet regime. Poor people in particular, who carry traditional distrust and/or disrespect for any state power closely associated with the police or security forces with whom their daily contact is only negative, were totally estranged from the formal system of justice during the Pinochet years.

c. The Inheritance of Legal Formalism. The Pinochet government, and now the Aylwin, inherits an extremely rigid and antiquated system of law, based in codes which have not been amended significantly since their adoption at the turn of the century. This is most true in the area of criminal procedure.

Chile inherits one of the most antiquated codes of criminal procedure on the continent. Its provisions retain many of the essential features of the ancient Spanish codes in which it finds its roots. Moreover, the potential suspension of the code's

provisions during declarations of national emergency, as was often the case, creates additional procedural problems because the provisions for military justice are even more restrictive.

The primary shortcomings of the code lie in several areas: (1), the use of a single judge during all phases of investigation and trial; (2) complete lack of oral proceedings; (3) the total absence of any state representative in prosecution of cases at the trial level; and (4) the almost total control by the trial judge over development of proofs with almost total absence by the judge of any contact with parties or counsel, all of which are conducted by court functionaries at desks outside of judicial offices.

The absence of a public prosecutor deserves special mention because it results in "double victimization" of the poorest people in the criminal justice system. A formal complaint may be public in nature and formally require the intervention of the judge in investigation and prosecution once filed. In fact, however, a criminal complaint will only be brought by a private citizen with the assistance of counsel, and without the push provided by the private prosecutor, the complainant's case will quickly be lost in the shuffle. Effectively, therefore, the poorest citizen is frequently without legal access to the system when either accused or victimized by crime.

These problems are aggravated by conditions in the criminal courts, jails and prisons. Unlike the civil courthouse, a spacious, modern building in the center of the city, the criminal courts are housed in ancient and deteriorating facilities, with severe

understaffing at all levels.

The code was amended significantly during 1989. Ley No. 18,857, 6 de Diciembre de 1989, Diario Oficial No. 33,540. Major innovations of the new law provide for the right to counsel from the outset of the process, the right to access of the judicial file at the close of the sumario, the right to present proofs during the sumario, and the elimination of the use of rebeldia, by which the defendant could be sentenced in absentia if he or she did not respond within the tight time-frames provided by the code (six days). This last provision, however, has created additional problems in legal services offices (see below), as the requirement of an answer from the defendant does not suspend the proceedings. Thus, many of the defendants remain in jail due to the inability of the office to respond quickly due to its heavy pending caseload. What had been intended as a protection for the accused has, ironically, developed into an impediment. Moreover, the Corporation for Legal Assistance usually represents the accused, leaving the victims to seek private counsel, and leaving the poorest victims without access to justice at all. Finally, many practitioners say that the newest reform is highly technical and formal, and in some instances makes the process more difficult to follow, legally, than before.

One final problem deserving mention is the treatment of juveniles under Chilean law. For those under 16 years old, there is no criminal responsibility. For those between 16 and 18, there is no liability unless the minor has discernimiento of adult behavior.

When treated as a juvenile, the just applies whatever "protective measures" are necessary and may commit the minor to a juvenile home under the supervision of SENAME (Servicio Nacional de Menores). The biggest single problem in this system is that the juvenile is not permitted representation by counsel at any stage in the process, under the concept of parens patriae, in which the judge is to act as surrogate parent "in the interests of the child."

Reports are that the juvenile system is "a jungle." Children are treated badly regardless of the seriousness of their conduct; truants are put together with accused murderers. The so-called system of "protection" is actually a privatized warehousing system which, according to reports, virtually guarantees that the child will come out worse than when he went in.

d. Advantages to the Poor of a Strong "Rule of Law."

Ironically, the centralization of executive and judicial power had some potentially salutary effects on the problems of the poor. First, the faithfulness of the authoritarian government to a regime of "law and order" led to the adoption of rules which might now be used to the advantage of poor people, rather than for the protection of the traditional elites no doubt in mind at the time of their adoption. One such protection is that of the "recurso de proteccion," or writ of protection, which is contained in Article 20 of the 1980 Constitution and elaborated in an Act of the Supreme Court dating from 1978. That writ, which covers many of the basic political and civil rights of Chileans, holds significant promise for future public interest litigation which might protect diverse

and collective rights of the traditionally disenfranchised.

Another effect of the repressive regime was the growth of strong and diverse grassroots organizations which grew out of increasingly urgent collective concerns of the poor, particularly in the poblaciones, or poor shanty-towns in the urban areas. In these communities, and in the comunas, or townships, as well as the indigenous communities of the South, organizing for collective protection became a necessity created by bitter experience with government. See, Thome, "Grassroots Movements and the Democratization Process in Chile," (unpublished paper presented to the Latin American Studies Association, Sept. 1989); Jose Aylwin Oyarzun, "Pueblos Indigenas de Chile en la Transicion Democratica," (unpublished paper of the Comision Chilena de Derechos Humanos, Nov. 1990).

e. Existing Institutional Support for Legal Assistance to the Poor. The major institution to which the poor could turn for legal assistance was the Corporacion de Asistencia Judicial (CAJ), which had operated through sponsorship of the Colegio de Abogados de Chile (the Bar Association) since its founding in 1928. Major human rights concerns -- disappearances, extrajudicial executions, torture and prolonged detention -- found their primary voice through the Vicaria de la Solidaridad and the Chilean Human Rights Commission. The CAJ, historically unique in Latin America, evolved into a largely state-funded and controlled entity in 1981. The resources of the agency stayed relatively static as the legal needs of the poor sharply rose.

Caseloads of CAJ tripled in 1982, jumping from their traditional level of close to 20,000 annually, and continuing to climb precipitously to current levels at around 130,000 per year, as of 1989. Corporacion de Asistencia Judicial, Memoria '89, at p.9. Crushing caseloads for the part-time staff attorneys of the Corporacion, even with the assistance of graduate law students (Postulantes) who must donate six months of service to the state upon graduation, have become the rule rather than the exception.

f. The CPU. Another organization which took on increasing importance during the Pinochet years was the CPU. Founded in 1968 as a non-profit corporation, CPU formed a focal point for the democratic opposition during the darkest years of the prior regime, as well as a strong intellectual bridge to the policies of the new government during the crucial period from 1987 to the present. CPU, with an influential and highly placed board of directors including many progressive judges, a lean central staff, and diverse outside project directors from among the university community, produced a strong critique of the Pinochet government through studies and publications in its primary focus areas of education, technological and social development, international cooperation, and law and justice. CPU leadership permitted it to conduct the highly successful 18 month pilot project funded through U.S. AID in the area of judicial training. That leadership carries over strongly in the policies of the current government.

2. Early Efforts of the Aylwin Government. The new government of Patricio Aylwin has operated for less than a year. In that time,

its major focuses have been on the consolidation of democratic institutions, policy direction on the extremely delicate issue of amnesties and pardons for offenses committed by military personnel during the prior regime, and the development of a series of commissions for the drafting of legislation; in the latter category, a Commission on Reform of the Judicial Branch has proposed a number of reforms which might affect the delivery of legal services to the poor.

a. Current National Poverty Issues. Aylwin inherits a country with a population that was estimated in June of 1990 to exceed 13,000,000 people, about three-fourths of whom live in central Chile, which includes the greater Santiago Metropolitan area and surrounding Regions V through VIII. INE, Compendio Estadístico 1990. The country is generally considered to have experienced a period of strong economic growth during the period from 1985 to the present, averaging about 10% per year. Despite this growth and published national unemployment figures which have not exceeded 8% since 1987 and ran as low as 5.1% in late 1989, the picture of poverty in the country is extremely ambiguous, if not schizophrenic.

While unemployment figures would seem to suggest a low poverty population, some participants in the provision of legal services to the poor estimate a poor population of over 4 million persons, concentrated mostly in the urban poblaciones in Santiago and its environs. No one doubts that the distance between rich and poor has grown during a period of economic growth in which the rich

essentially got richer. INE figures showed that by the end of the 70's, the richest 20% of households held 51% of the resources while the poorest 20% held only 5%. One article suggests that since 1973 "the most privileged 10 percent of Chileans have seen their income rise nearly 30 times faster than the poorest 10 percent." The Independent, March 13, 1990. Another study, conducted by the Chilean Human Rights Commission, questions the INE unemployment figures and suggests that, in the Santiago metropolitan area, unemployment runs at 16.6% overall, with rates of 25% and 21% among young people (15-24) and women, respectively. True measures of poverty -- the ability of a family to satisfy basic needs in housing, health, education and food -- would put poverty levels at 54.8% of all workers, with about 15% of all families in Santiago in a state of total indigence. CCDH, Situacion de los Derechos Economicos, Sociales y Culturales durante 1989, at p.5-6. A very recent study conducted by UNICEF puts overall poverty rates at 44% (about 5.5 million people; more than a million under the age of 5), with total indigency touching just over 2 million citizens (17%). Of that number, women and children are the hardest hit; just over 69% of all female heads of households are defined as "extremely poor" and nearly 270,000 school-aged children do not attend primary school at all. "Unicef augura mejores en calidad de vida en Chile," La Epoca, Dec. 27, 1990, at 16.

One of the most serious problems in a regime which established its power through disinformation was the suppression of accurate data as to the nature and seriousness of the most profound social

and political problems. As one recent article puts it, "the military regime's expertise in strategic planning was undermined by the self-defeating logic of authoritarianism: officials were deaf to bad news and unwilling to report it up the chain of command." Constable and Valenzuela, "Chile's Return to Democracy," 68 Foreign Affairs 169, 172-173 (Winter 1989-90). While this may explain, in part, the seemingly dissonant data on the poor in Chile, many studies seem to confirm the seemingly contradictory data, and make the business of assessment of the true legal needs of the poor particularly hard.

b. The "New Decentralization" -- Executive and Judicial Powers. Another strong theme of the Aylwin government is that of decentralization. This, however, is a "new" decentralization which must be distinguished from that of the Pinochet government. It is meant to return to the municipalities and regions much of the power which had been so jealously guarded by the executive and judiciary during the previous government. That theme is most apparent in proposals such as those which would allow for the local election of mayors, the creation of neighborhood courts and the reformulation of judicial organization along regional lines. This theme, along with a companion effort to create a more effective judicial ethos of fairness and flexibility in the reading of the law, could go a long way in overcoming both the traditional formalism of Chilean legal structures and the willingness of poor people to approach the legal system for the vindication of rights and the resolution of problems.

Finally, another goal of the Aylwin government is the amendment of the restrictive provisions of the 1980 Constitution, adopted to assure the continued dominance of the military regime. Some of the most egregious provisions of the national charter were amended by national plebiscite in 1989. The constitution still, however, leaves in place a Senate which is dominated by Pinochet holdovers and does nothing to change the composition or method of selection of the membership of the current Supreme Court.

A long-term strategy of the Aylwin administration will therefore include the replacement of the well-entrenched judges who occupy all levels of the Chilean system with virtual lifetime tenure, due to the existence of the judicial career, which permits removal of judges only for causes such as crimes of moral turpitude. Article 77 of the Constitution provides that Supreme Court Ministers will occupy their posts until age 75. the terms of inferior court judges are for life, but there are several court-reform schemes under consideration which may change both the composition and terms of judicial branch personnel. Other organizations have recently proposed the recomposition of the Supreme Court to give the Aylwin government more leverage in appointments to the Poder Judicial. Centro de Estudios Publicos, Informe Final Sobre Reformas al Sistema Judicial Chileno 5-47 (Dec. 1990).

One important replacement on the Supreme Court has already occurred with the nomination of Min. Adolfo Banados. Min. Banados, known widely for his independence, distinguished himself in the

investigation of facts surrounding the discovery of a mass grave in the hamlet of Longuen, on the outskirts of Santiago, when the evidence showed the persons killed to have been in the custody of local carabineros. Despite his indictments of the police, military courts later totally exonerated the accused through use of the 1978 amnesty law. Americas Watch, Chile in Transition: Human Rights Since the Plebiscite, 1988-1989, at p.79.

B. Legal Services for the Poor in Chile.

Before a complete picture of current legal services to the poor is developed, it might help to give an overview of Chile in the context of the experience of other countries in Latin America.

Chile's lawyer population is growing rapidly, especially after 1981, when a new law made the creation of new, private law schools so easy that today, there are 14 law schools in the country; this growth makes data on total enrollment difficult to obtain. There are about 350 new lawyers licensed (titulado) each year, while entering law school classes in the Santiago branches alone of the two largest and most prestigious law schools of the country, the University of Chile and Catholic University, total over 700 students. Thus, attrition is high in law school; some say it is the highest of the professional schools in that regard. There are about 10,000 lawyers officially listed on the roles of the Supreme Court, according to clerks in that office. Because there is no system for the removal of inactive or deceased members of the bar, this figure is inflated; a common estimate of active membership is about 8,000, of whom about 7,000 participate in the now-voluntary

Colegio de Abogados. If active membership estimates are accurate, Chile has a per capita lawyer population of about 1 to 1900 citizens, which might be compared to the U.S., where the ratio is closer to 1 per 300.¹ Thus, Chile intrinsically has a lesser ability to respond to the legal needs of its citizens, but most particularly of poor people, since so many fewer lawyers seek involvement in that aspect of the profession.

On the other hand, the institutional commitment of the country to the delivery of legal services is greater, relative to other Latin American countries, in a number of significant respects. First, so far as I am aware, there is no comparable entity to the CAJ in any of the Central or Latin American countries. While organized offices for the delivery of public defense services exist in Argentina, Costa Rica, El Salvador and in the capital of Uruguay, there is no other comprehensive office for the delivery of legal services in both civil and criminal cases with direct funding from national and local governments such as is provided through the Corporacion.

A second significant difference is the existence of a national mandatory six-month apprenticeship (postulancia), without compensation, which must be served through one of the offices of the CAJ upon graduation from law school. No other country in South America makes such demands of its graduates in the name of service

¹ This comparison would undoubtedly be even more dramatic if the number of lawyers devoted full-time to legal services for the poor were to be compared to the number of poor people in the respective countries. No such accurate data exists in Chile.

to the poor. Finally, I noted a level of interest in and commitment to high-quality, innovative clinical legal education in the Catholic and national universities which I have not witnessed elsewhere in the region. These two schools have struck the balance in favor of preparation of well-qualified lawyers while providing some needed services to the poor community.

Like other countries in the region, unfortunately, the Chilean legal profession ends its ethical commitment to the poor with the limited use of the abogado de turno system, under which the newly inscribed attorney, having completed all other requisites for graduation, is placed on a list of new lawyers wherever he or she begins practice, and is assigned by trial judges to take all assigned cases for a period of one month. Once this obligation is complete, there apparently exists no expectation or obligation to ever take a case without compensation because of the needs of poor people. (This is true in Santiago; in the remainder of the country the limited number of local bar members may make repeated appointment a practical necessity.) In this respect, Chile is like most other countries in the region, in which any lawyer may be appointed as a defensor de oficio, which usually happens only in the early years of practice, and routinely results in the delivery of poor or unfulfilled legal services.

Having looked at legal services to the poor in broader context, each of the various entities or models will now be examined more closely.

1. The "Privilege of Poverty." Any citizen who seeks legal

redress through the courts may seek the privilegio de pobreza, or privilege of poverty. Code of Civil Procedure, at Title XIII; Organic Code of Courts, Title XVII. This status appears to have no formal connection to access to any of the entities which may provide legal services to the poor, and instead seeks primarily to relieve the individual seeking that status from payment of a series of legal fees, extremely formal and required in all legal pleadings, which can be extremely costly when combined. See, Branes, "Access to Justice in Chile," in Access to Justice: A World Survey, vol.1, at 349-351 (M. Cappelletti and B. Garth, eds. 1981). The only statutory relationship of the privilege to that of the provision of counsel is a statement that, if the petitioner is otherwise without counsel, that task will be fulfilled by the procurador de pobres, understood to be the abogado de turno. Art. 137. But see, Art. 595 of the Organic Code of Courts, which states that anyone who fulfills the requisites of the privilege is entitled to an abogado de turno by right.

The privilege is essentially a discretionary choice provided to the judge to whom the request is made and can be opposed by other the opposing party or any of the interested officials to whom fees would otherwise be paid. Art. 134, 133. The criteria to be used by the judge include employment, housing costs, debts, personal or family obligations, intellectual and physical capacities, expenses on necessities or luxuries and any other factors relevant to the issue. Art. 134. A number of persons interviewed indicated that the judges are generous in granting the

privilege to virtually anyone who requests it, preferring not to be bothered with the administrative details of verification.²

2. The Corporacion de Asistencia Judicial. This entity is the largest institutional provider of legal services in civil and criminal cases. The CAJ came into being in 1981 under Law No. 17,995, which transferred the private legal services agencies of the Colegio into three regional corporation in Santiago, Valparaiso and Concepcion (Region de Bio-Bio).

The largest of the corporations is that of Santiago, with nearly 18,000 cases completed yearly and an annual budget of 265.5 million pesos (about \$805,000 U.S.) during 1989. The Santiago CAJ is divided into four regional work areas with nearly 100 offices or locations and a total attorney staff of 135, all of whom work part-time at salaries of about 40,000 pesos per month (about \$120 U.S.). The central and largest offices in Santiago are under the direction of Dra. Dora Silva Letelier, who is chosen by a statutorily created six-person Board of Directors. The Board is composed of the Regional Minister of Justice for the Metropolitan Region, the Deans of the University of Chile and Catholic University Law Schools, the President of the State Defense Council (!), and two private lawyers named by the Justice Minister. See Dept. of Justice Decree No. 995 of 1981, at Art. 6. Dra. Silva is new to her position within the last six months, but served as a staff attorney in the Araca

² This is also the situation in the United States. A major study conducted by the U.S. Justice Department in 1984 indicated that indigency status is routinely granted by judges in criminal cases where the right to counsel is constitutionally required.

regional office for some time prior to her new duties.

The greatest portion of the cases handled by the office, logically, is in the Santiago Metropolitan region, and ran nearly 80% of cases handled by the Santiago Corporation last year. As noted previously, the Santiago office statistics state that it handles about 130,000 "judicial matters" each year, and has done about that level of service since 1982. Of these, only about 30,000 result in legal action. The remainder of the cases, some 100,000, are handled by just over 30 non-lawyer social workers (meaning that these personnel "resolve" over 3,000 cases apiece each year! This may explain why statistics show that nearly 40% of all cases opened by the CAJ in 1989 resulted in "abandonment, dismissal or cancellation.")

The attorney caseload of the office is most heavily focused in the criminal area, where about 44% of all cases are found. Within criminal cases, property offences account for more than 60% of all matters, with violence against individuals totaling about 14% of all crimes handled. In the civil arena, which accounts for about 25% of all cases handled in the office, estate questions are about 24% of the caseload, support (alimentacion) for adults runs about 13%, name changes account for about 7% of all work, while the great majority of all civil cases (57%) are in diverse and uncategorized areas. The remaining 30% of the work of the CAJ is devoted to labor and juvenile matters, with the latter largely focused on support and custody issues. One advantage which clients of the CAJ enjoy is that their filing through the office exempts them from the formal

requirements of proving privilegio de pobreza, though a similar process is undertaken at the time of initial client intake interview. See, Codigo Organico de Tribunales, Art. 600.

The CAJ's annual budget comes primarily from two sources, the national Department of Justice and convenios, or contracts, with local municipalities to provide legal services in their courts. These two sources provide about 95% of all funding for the office, with another 3% coming from fees totaling, by law, 10% of the amount awarded to any client in damages. The organization is very labor-intensive, with about 85% of all expenditures going to support salaries for a staff of 260, 135 of whom are lawyers.³

3. Law School Clinics. Law school clinics in Chile play a critical role in the provision of legal services to the poor. While not mandated by law, as is the case in some Latin American countries, obligatory participation in clinic during the final years of law school has been a hallmark of both La Chile and La Catolica for many years. Before a detailed picture of the clinics is developed, an overview of Chilean legal education will be provided.

Legal education in Chile can be described generally as relatively expensive, highly competitive for initial entrance, with high drop-out rates during the five-year curriculum, which is strictly structured at all schools. In order to obtain a license (titulo), the student must complete all prescribed courses, which

³ All data in this section come from the 1989 Annual Report of the CAJ.

generally include clinic, a rigorous oral comprehensive exam which must be taken within a certain number of years after graduation, an extensive thesis in an area chosen by the student and his or her advisor, as well as the mandatory six-month apprenticeship. Of all these requirements, the exam is considered to be the most difficult to complete, and results in a precipitous drop in enrollment from start to finish in legal education. In the national university, for example, the largest of law schools in Chile, about 300-400 students enter each new first-year class while only about 25-50 will complete all requirements for licensure in any given year.

This fall, about 125,000 secondary school students will take exams for entrance into the 20 most prestigious schools of the country, which offer a total of only 33,000 available seats.⁴ Once admission is gained, with few students seeking education outside of the country, expenses for university education are relatively high, running between 15,000 and nearly 40,000 pesos per course. Tuition and expenses can be expected to exceed \$1500 U.S., a relatively large sum, given the virtually free access to legal education given to any high school graduate in many other Latin American countries.

Another little-studied phenomenon in the last several years has been the growth in the number of private law schools, which developed during this decade with more liberal laws on incorporation and curricular prerequisites. Our informal count revealed 17 such institutions in the country with nearly 3,000

⁴ One interviewee indicates that there are really only 3 universities of national prominence; the others are either branches or less prestigious institutions.

students enrolled in the 10 law schools which provided data. Many of these institutions are so new that they have not begun to deal with the question of whether or how they will offer clinical courses to students. One exception is the Diego Portales law school, relatively new (1980), but growing rapidly in prestige and financial base, primarily because of the Dean, Jorge Correa, and a strong effort to hire professors who had left the more prestigious national schools during difficult years of anti-university sentiment in the Pinochet government.

The student bodies at the law schools are largely middle or upper class young people, the great majority of whom attend classes in the morning and hold full or part-time jobs outside of school. For most students, their first exposure to poor people and their problems is in the clinic, which is part of their last two years of study. Students generally enter the clinical program, however, highly motivated to perform what are their first assignments with actual cases and clients.

Law school faculty, too, are virtually all on a part-time basis, with private practice an absolute economic necessity, given the basically honorific salaries paid by the law schools. At la Chile, for example, there are about 125 faculty, including 12 clinical teachers, all of whom are part-time. This conflict between professional roles can create some difficulties in loyalty to the careful fulfillment of tasks required as part of the clinical education program.

Clinical legal education in Chile, as in other countries

including the U.S., is torn by a profound division of loyalties to potentially inconsistent goals of education of students and service to the poor community. Because the number of cases and clients far exceeds the abilities of the CAJ, the clinical programs of the law schools are pressured to take many cases, sometimes through formal agreements with the CAJ, as is the case in La Chile, or sometimes because their offices are located in the midst of poor communities where more clients than students show up in the office each day, as is the case in some of the offices of La Catolica. These commitments tend to push caseloads very high for the supervising faculty members, sometimes making difficult their ability to devote the time and effort necessary for proper individual supervision of each case under the individual student's control. Each of the clinic directors at La Chile and La Catolica is aware of this tension and has attempted to strike the balance increasingly in the direction of education rather than client service. A closer look at the two major clinical programs gives some idea of the nature of the problems.

One final problem in legal education which must be alluded to is the general level of the attack on universities during the prior regime. The universities were seen, sometimes accurately and sometimes with total paranoia, as intellectual havens for the political left. Control of the policy direction of schools, as well as fiscal control, was therefore exercised strictly to assure neutrality or pro-government sentiment in the major schools. Law schools, traditionally conservative, did not have the same degree

of difficulty, but some of the progressive faculty in the law schools see themselves and their schools as emerging from a long period of darkness, silence and distrust which will not immediately dissipate with the emergence of democracy.

a. The University of Chile. At "La Chile," the clinical program was raised in status to that of an independent department during the last year. It also acquired a separate, handsome building with ample space to operate as an off-campus law office, complete with private interview spaces, a mock courtroom, many classrooms and a complete set of video equipment. Clinical faculty, which now number 12 under the direction of Prof. Davor Harasic, were selected by a rigorous process of interviews and oral presentations which, according to those who now staff the clinics, has significantly raised the quality of teaching and practice experience of the faculty and guarantees it in the future. Department status also affects budgetary issues, but no annual budget was provided.

About 150 new students enter the clinic each semester, the majority being fourth year students. They elect a supervising professor, with about 12 students going to each professor. Cases handled by the clinic include a mix of criminal and civil matters, with no careful accounting of how many of each the clinic has. Each student handles about 8-10 open cases at any given time, which is not excessive given the largely predictable, slow written process of legal cases through trials. About 10-15% of the clients who seek assistance in the clinic are rejected, either on financial or

substantive grounds. Many of the cases handled by students are not completed and are passed on to another incoming student the next semester.

In addition to regular meetings of the students with their supervisors, both individually and collectively, students are offered a series of informal and non-mandatory workshops on topics of interest to clinical practice, such as client interviewing and environmental issues in cases. About 4 or 5 such seminars are offered each semester, with high student participation.

One unique, new clinic at La Chile is the Clinica Juridica, an externship program with an extended simulation, in which students spend part of the semester working under the supervision of a judge in the trial courts, after which they return to school to undertake the simulation, in which they are asked to act in the judge's role and decide a case. The clinic is new this year and is taught by a Supreme Court Minister and a faculty member.

b. The Catholic University. Organization and philosophy at La Catolica are different from La Chile, perhaps due to the long tenure there of Prof. Luis Bates, the clinical director since the clinic became a separate department in the mid-70's. Clinical teachers there number about 10, with recent graduates sometimes working as additional supervisors. Faculty largely work outside of the main offices of the clinic, with locations in a number of the poor communities and the local jail. Salaries for only about 5 of the faculty are actually paid by the University, while the remaining salaries are paid through grants or formal agreements

with the CAJ or other entities.

Students enter clinic in their fifth year and work there the entire school year. About 100 to 125 students enter the clinic each year, with each student choosing the area in which he or she wishes to work. Number of students per professor varies from 8 to 13, and caseloads per student also fluctuate widely from about 10 to 15. That means that an individual professor may have upwards of 150 open cases pending through the clinic at any given time.

Each of the clinics is accompanied by a mandatory seminar which meets for two hours weekly, taught by the professor to his or her charges on topics relating to clinical theory and practice. There is no consistent curricular package for the seminar, and teaching varies, depending on the level of experience of the professor, which ranges from almost 20 years to people new this past year.

Neither the clinic at La Chile nor at La Catolica does anything formal to prepare the student for work with poor or marginalized peoples, nor to focus on the nature or extent of the legal problems of the poor and their relationship to broader societal issues of class, race or gender.

4. Non-governmental Organizations. It is extremely difficult to enumerate all of the NGO's which might be relevant to AID's project in this area. One participant in the meeting suggested that there are over 700 such organizations on a national level. The government itself identifies 5,120 neighborhood associations and 6,400 women's centers as of 1988. INE, Compendio Estadístico 1990,

at p.88. It does seem that those identified below are the primary and largest players in this arena. The best way to describe the legal work of NGO's is to give a brief summary of each, with focus on their legal activities.

a. The Vicaria de la Solidaridad. This organization emerged in the early years of the prior government through the formal sponsorship of the Roman Catholic church. In its subsequent years, due to its religious connections, it became the largest single source for documentation of systematic human rights abuses and efforts to bring these abuses to the attention of judicial authorities. It now operates with an annual budget of something over \$2,000,000 and a permanent staff of about 90. Its many social programs also contributed to its having one of the largest staffs in Santiago to deal with the problems of the poor. The change in government has meant some realignment of staff, particularly in the legal area.

The Executive Secretary of the Vicaria is Alejandro Gonzalez. In an interview, he explained the two primary focuses of the Vicaria. The first area in importance in the Legal Section, which is now working closely with the Commission on Truth and Reconciliation in documenting the approximately 3,500 cases of death or disappearance during the Pinochet regime. The Legal Section will also help in the transition from military to civilian justice under legislation recently adopted. While the Legal Section does handle some criminal cases for the poor, their focus is on political crimes, and excludes crimes of violence or terrorism.

The second major focus of the Vicaria lies in the area of popular education, with particular emphasis on the area of human rights. Major projects in this area include a seven-year effort at adult education in human rights, with action in the poblaciones focused on the identification of formadores, people who have the ability and leadership qualities to carry on the campaign after formal meetings are concluded. A second major project in this area is the creation of a manual for national curriculum change in human rights education from pre-school through high school, with over 200 specific proposals which can be used by teachers. Yet another project in this area is popular legal education, called juridica poblacional. This project is designed to inform poor people of legal rights which exist under current law but are not widely published. The project uses pamphlets, meetings and demonstrations to carry forward this work. An example of the pamphlets is the Guia de Programas Sociales para Organizaciones Populares, produced in November of 1990.

b. The Chilean Human Rights Commission. This group, too, by its title, is focused primarily on the documentation and denunciation of human rights abuses, with its jurisdiction significantly expanded through Chile's ratification, last year, of many of the international human rights instruments and treaties. One of its several sections is that of Judicial Action, under the direction of Carlos Margotta. While in Santiago, I met with Fernando Escobar of that department, and Jose Aylwin, who specializes in issues of indigenous peoples. Both identified the

Commission's long and successful involvement in the use of the writ of protection as a litigative tool to protect human rights.

The Commission was formed in 1978 and worked "clandestinely" during the subsequent epoch until it was able to seek formal incorporation last year. It's five-member Board of Directors, headed by President Jaime Castillo, governs general activities of the organization.

The judicial activities of the organization are as diverse as the human rights instruments of which they seek implementation, but a distinct programmatic shift (and drop in staffing from over 150 to about 40) occurred with the Aylwin victory. Now, the Commission focuses its efforts on economic, social and cultural rights, with special emphasis on indigenous peoples, the environment and, most recently, women and children. Previously, their work had focused almost completely on political and individual rights. In this field, they continue to press for the release of political prisoners, alleging that these individuals are systematically mistreated in state custody, even after the change in governments.

c. Quercum. This organization is relatively small; its lawyer staff includes only the director, Manuel Jacques, and Felipe Viveros, both of whom attended our meeting at CPU. It relies on volunteer law student support, but lists 16 personnel in the work areas of Law and Society, Health, Popular Education, Studies, Publications, and Administration. Jacques, a sociologist and lawyer, is also a member of the Board of Directors of the Interamerican Legal Services Association (ILSA), with headquarters

in Bogota, Colombia under the full-time direction of Fernando Rojas there. ILSA is an emerging force in the organization of legal services throughout Latin America and the Caribbean, and has itself received funding from AID.

Quercum itself works with a philosophy of deep immersion in the communities which it seeks to help, developing leadership in the community in order to break dependence on lawyers and legal solutions. The group also has a focus on the problems of indigenous peoples. Its name derives from an Indian name for "a time of active waiting." Its literature calls Quercum a "center of reflection and action for change."

Quercum relies heavily on the use of interdisciplinary to carry forward its work. Its first priority is the creation of Centros Juridicos Comunales in Santiago (Conchali, Renca, Penalolen, Pudahuel) and the regions (Vina del Mar, Concepcion and Arica). The work teams in these centers are made up of lawyers, educators, social workers, law students and promotores or monitores, who are trained community leaders. The focus of the centers has been on primary community concerns: housing, health, basic urban services, security, employment and access to justice.

The centers also receive investigative and analytical support from the central office. That office has produced a number of studies in the areas of community law, municipalities, legal assistance and protection of civil and economic rights. Quercum, too, has produced a series of fliers for popular education, most of which seek to reformulate the conception by the poor of their

relationship to the formal legal system, with an emphasis on alternative uses of the law to resolve problems. Examples are Abrir las Puertas para el Nuevo Derecho and Reconociendo los Conflictos Juridicos Populares.

d. The National Women's Service (SERNAM). Mirtha Olloa came to our large meeting at CPU during my first visit, but I have not interviewed anyone there, and have very little information on the service or its activities.

SERNAM is very new. Its legislation was published in January of 1991. Ley No. 19,023 de 3 de Enero de 1991, Diario Oficial No. 33,858. Its primary mission is to work with the Executive to promote the rights of women and equality before the law. Its special tasks include the conduct of studies, the proposal of legislation, the distribution of information, promotion of "measures which tend to dignify and value domestic work" and "motherhood" as a fundamental value of society.

The legislation approves staffing in a central office of 43 people, with regional offices adding an additional 16. Each Region is to have a Regional Director (and nothing more).

A recent newspaper article states that the Director of SERNAM, Soledad Alvear, had criticized Chile as being the least developed country on the continent in the area of legislation for the protection of women. Alvear proposes new legislation which will give full legal rights to married women, who, under current law, frequently lose legal rights at the moment of marriage. The most frequent example, she said, was that of disqualification for

personal loans. She said that as a lawyer and Catholic, she could not support legislation promoting either abortion or divorce, and that no such action is contemplated by SERNAM.

e. RIDEM. Monica Gajardo came to the large CPU meeting, but we have nothing on them other than written materials. RIDEM is the Red de Informacion de los Derechos de la Mujer, or Womens' Rights Information Net. It lists a lawyer staff of 4 in Santiago, with an additional staff of 9 in areas of Psychology, Social Work, Family Orientation, Teaching and Communications. There are also Zone Offices in five areas of the country. RIDEM maintains a library of 200 volumes on women's issues in its central offices.

RIDEM's 1990 Annual Report of Activities lists its first task as promotion of the autonomy and dignity of women from "disfavored sectors." It attempted to rebuild the base community social organizations and seeks to build links with the new government. It conducted nearly 60 civic education programs through local workshops, and in its regional offices attended to well over 1000 individual complaints or concerns in legal, social and health problems. Workshops covered topics such as incorporation, domestic violence, mental health, legal rights, leadership training and oral and written expression.

In November of 1990, RIDEM held its second annual convention, attended by about 400 women from the poblaciones. The principal focus of the meeting was training in democratic participation and voting, as well as various other themes treating women's issues.

5. The National Service Requirement -- Los Postulantes. As

noted above, licensure requirements in Chile include the obligation of completion of a six-month apprenticeship program upon graduation, under the supervision of a staff attorney at the CAJ. While this requirement is admirable in its intentions, its execution leaves much to be desired.

Each staff attorney at the CAJ will ordinarily have three or four postulantes, or six-month interns, under his or her supervision at any given time. The postulante works on either civil or criminal cases, and may have a caseload of up to 150 cases during the relevant time period. Despite the completion of clinic requirements, the abrupt jump in caseload (from 10 to 15 at the two major law schools) to 150 frequently leaves the student ill-equipped to give the needed attention, with the requisite legal knowledge, to the legal problem presented. The supervisor is, in my view, in no better position to give appropriate attention to legal questions, since the staff works only two to four hours per day, handles his or her own cases and supposedly supervises work on the potentially over 500 cases of the interns.⁵

There is no other formal mechanism for the supervision, distribution of students or monitoring of quality of student work

⁵ The issue of what constitutes an appropriate caseload is not defined at all in Chile. Given the numbers mentioned in the text, it is virtually unimaginable that these caseloads are considered appropriate. In the U.S., for example, national caseload standards suggest that a lawyer should not handle more than 150 felony criminal matters a year, or 400 non-traffic misdemeanors. National Advisory Commission on Criminal Justice Standards and Goals, Standard 13.12. A related survey of practicing public defenders suggested that these figures were too high for competent representation. NLADA, The Other Face of Justice (1973).

other than the individual staff attorney of the CAJ. This lack of institutional support is a serious shortcoming of the program and a serious gap in the provision of legal services to the poor.

6. The Abogado de Turno. The only other formal structure for the delivery of legal services to the poor is the abogado de turno, the obligation to take all assigned cases in a given area for a period of one month in one trial court.

The statute governing this process is simple and direct. It states that each Appellate Court will name an attorney or attorneys each month to handle each of the following areas: criminal, civil and labor cases. Codigo Organico de Tribunales, Art. 595. The criminal accused in custody must be appointed an abogado de turno. Cases must be handled to completion. Art. 598. Attorneys may be excused from the obligation on "justified grounds," demonstrated to the judge. Art. 598. Again, the scant statutory structure for this program contains no requirements for administration of lists of attorneys or for assurances that they have adequately fulfilled the requirements. Conflicts of interest are invited by statutory language which permits the lawyer to collect fees if the person does not qualify for the privilege of poverty. Art. 596.

The abogado de turno provisions do not suggest a limit on the number of requests which can be made of an attorney to serve in that role. However, it is common practice in Santiago that a lawyer will be asked to fill this role only once in his or her career. Lawyers in other regions may be asked to repeat the service with frequency.

Another problem exists with the relationship between the appointment of the abogado de turno and the staff of the CAJ. Judges prefer to get the more reliable attorneys from the CAJ, and frequently send poor persons directly to those offices without appointing the abogado. Even when the code requires appointment of the abogado de turno, in cases of incarcerated criminal defendants, the CAJ attorney, more often than not, is later substituted for the abogado de turno when that lawyer fails to complete work on the case. The law should provide for more direct connection of the CAJ and the privilegio de pobreza.

No other statutory or ethical obligation exists in Chile to provide legal services to the poor. This absence of any professional obligation during what may be a career of 30 or 40 years seems to put an inordinate burden on the new and inexperienced practitioner to carry the burden which might be more widely and fairly shared by the legal profession.

7. Non-lawyer Interventions -- Illegal Practice of Law and the Poor. Before leaving the area of legal services to the poor, some mention must be made of the frequently mentioned and apparently common practice by some court personnel to provide illegal and low-cost services to poor people. This practice has its origins in the common practice of poor persons, on entry into the unfamiliar surroundings of the courthouse, to seek advice and assistance from the person to who they have easiest access: the court employees at the desks nearest the doors. These are usually usuarios (legal secretaries) or receptores (process servers). These court

functionaries, who should have only ministerial duties but find that they can turn handy profits from the preparation of legal papers for poor people, offer to represent poor persons on guarantees that the unsuspecting visitor can save significant money by doing so.

The same phenomenon occurs with unlicensed practitioners of law, the so-called procuradores or, more commonly, tinterillos. These persons, sometimes law students or graduates who have not been licensed, charge lower rates but also may give bad advice.

No systematic study of this practice exists; there is no indication as to how widespread the practice is, how much is commonly charged or what services are allegedly provided. The issue came up repeatedly, however, and is universally believed to be a process which results in significant misrepresentation or erroneous submission of legal claims on behalf of the poor. No study of legal services for the poor should omit this issue.

II. STRENGTHS AND WEAKNESSES IN CURRENT STRUCTURES DEALING WITH LEGAL ASSISTANCE TO THE POOR IN CHILE.

A. Strengths.

1. Sophisticated Institutional Delivery Systems. One of the greatest strengths in what now exists in Chile is the combination of services provided through a national legal services office, the law school legal clinics, non-governmental organizations and statutorily mandated legal services from individual attorneys, the cumulative effect of which puts Chile among the leaders in South America in providing access to justice

for the poor.

2. Relatively High Level of Development of Clinical Legal Education. One of the things I have been most struck by in other Latin American countries in which I have worked is the almost complete absence of commitment by law schools to the provision of any pedagogical content to their frequently mandatory clinical programs. Caseloads are extraordinarily high and students receive almost no theoretical guidance in how to handle cases; "sink or swim" case handling is unfortunately the rule. In Chile, in the two largest law school clinics, I saw a distinctly different philosophy taking hold and emerging. The effective training provided to students in their law schools provide both short-term benefits to those poor clients with whom they work there, but also provide a basis on which students can provide high-quality legal services to all of their clients on graduation.

3. A Uniform National Commitment to Attorney Service to the Poor. The existence of a statutorily mandated requirement of both six months national service as a postulante and the completion of one month service as abogado de turno, which seems to be universally honored, are both commitments for which the Chilean legal profession must be praised. No such requirements exist in many other countries in the region.

4. A Strong Legal Infrastructure. The existence of an authoritarian military regime in control over 16 years seems to have produced the ironic result of a body of law which can now be brought into service in satisfaction of the legal needs of the very

people most disempowered during the past. The Constitution itself, through the open-ended writ of protection provides such a tool. Other laws dealing with social security, pensions, housing and consumer issues seem to provide a wealth of opportunities for innovative lawyering.

Moreover, despite the dissolution of mandatory participation in the Bar Association, that organization continues to have the participation of the vast majority of lawyers in the country, and its child, the CAJ, has grown strong with the institutional support of government funds.

5. A Strong Economy and Low External Debt. Unlike other countries in the region which must focus their national priorities on issues of hyper-inflation, wage controls, banking laws and spiraling interest on external debt, Chile can focus its priorities on the next level of social issues, the alleviation of poverty and its causes. The Aylwin government has shown its commitment to this priority.

6. A Well-Trained, Disciplined and Numerous Police Force. With the major exception of the Pinochet connection with the Army and its abuses, most of the public perceives the carabineros to be a modern, professional and relatively uncorrupt entity. Public disorder and crime in Chile are listed high on the list of priorities in the country, but it is not because the police are not trained to deal with such problems efficiently and effectively. The absence of this component of a national infrastructure can lead to catastrophic results in the operation of the court system, and in

the public's faith in the administration of justice.

7. The Democratic Opening and the Opportunity for National Hope. Though entirely subjective, this component must also be mentioned. The level of national energy generated by the re-opening of democratic institutions was and continues to be truly inspiring to this foreign visitor. Whether this hope can be conveyed and cherished by the poorest sectors of Chilean society is hard to measure, but among the legal profession the turn to democracy means opportunities for innovation and change which have not been seen for almost two decades.

B. Weaknesses.

1. Lack of Knowledge of the Extent of the Problem. As the forgoing analysis demonstrates, the single greatest problem in Chile may be the absence of accurate qualitative and quantitative empirical data on which effective decision-making can be made. There are sporadic and anecdotal data on the nature and extent of poverty in Chile, but systematic suppression of such data by the prior regime make these nothing more than educated guesses. Moreover, the diverse providers of legal services know little specifically of the nature of their clientele, the process by which they are chosen or rejected, or the nature of the legal problems which may not now be addressed by any legal structure.

2. Weak Resource Commitment to Infrastructure of Legal Services. A related problem is the general lack of commitment by the Chilean government and universities to the provision of high-quality legal services to the poor. All personnel are part-time,

their salaries are low, students work without compensation during their six-month service, and little exists beyond the barest necessities for the set-up of a law practice. As in the U.S., the gap between attorneys fees in the private and public sector is huge and growing.

This problem is not limited to the CAJ. From my brief perspective, it seems that all sectors of the criminal justice system -- courts and the Ministerio Publico -- are severely understaffed and without necessary support resources.

3. Lack of Systematic Approach to Legal Problems of Poor People. The legal problems of poor people in Chile largely are defined by the number of persons who present themselves at either the CAJ or the law school clinics. There is no effort to systematically identify what those problems might be, the level of awareness in the poor community of those problems, or the level of knowledge of the legal rights or the availability of any legal services. There are a few NGO's which have made an effort to immerse themselves in the local communities in order to identify their problems, but these organizations are small; the major providers continue to be "defensive" service providers, responding to the issues with which they are presented.

One lawyer in the meetings at CPU, seeming to echo a commonly held sentiment, summed this problem up when she said that "the law doesn't provide solutions to the problems of poor people. When the law does provide solutions, poor people don't know about the law. When they know about the law, it works too slowly to do poor people

any good."

There also may be significant areas in which there is no law which addresses the problems of the poor, or where the law creates obstacles to favorable resolution of the problem, even where it is intended to provide solutions. An example of non-existent law may be in the area of the police courts, where a close examination of the decree controlling their operation contains nothing regarding the provision of counsel to poor persons or the availability of the privilege of poverty. Decreto Supremo No. 307 (Diario Oficial No. 30,070, 23 mayo 1978). The police code deals with a number of minor criminal offenses other than transit violations, and also provides for judgment in some simple civil matters. These may, in fact, be the cases in which a poor person is most likely to need and benefit from the assistance of a lawyer. I have no concrete example of laws which may create obstacles, but typical situations in the U.S. occur when complex administrative procedures and extensive paperwork inhibit poor persons from seeking protection of the law or benefits, such as housing or pensions.

4. Lack of Effective Supervisory or Training Structures for Legal Services Attorneys Beyond Law School. Once the student has completed law school, he or she faces two highly unstructured encounters with poor people's legal problems. The first is the six month internship, or postulancia. The second is the one-time service as abogado de turno. In neither of these situations is there any effort at systematic preparation or training, at effective and continuous supervision, or at careful or systematic

evaluation of the work performed (or even if it has been performed).

The CAJ does provide supervision of postulantes, but it can hardly be called systematic or careful. This is not to blame the CAJ; they operate with stringent budgetary and structural constraints. There is now simply no national commitment to assure that the mandated legal services provided to poor people by recent law school graduates is effective, complete and efficient.

5. Schizophrenia in Legal Clinics Over Education versus Service. Both of the major law schools have gone a long way in moving their legal clinics toward a focus on preparation of good lawyers rather than providing extensive and needed services to the poor communities. However, more work is needed on moving in that direction. This means a further reduction in students per professor and/or a further reduction in the number of cases handled by each student in clinic. Clinics should undertake discussions with the CAJ as to the potential conflicts of interest created by the universitys' entering into convenios, which appear to invite this type of conflict, despite their infusion of much-needed funding into the clinics.

6. A Conservative Transitional Judiciary. In the short run, until legal reforms occur or until time causes attrition in the ranks of the Supreme Court, the judiciary in Chile will continue to be dominated by many judges who support a restrictive and highly formalistic view of the law. Any visionary use of law as an instrument of social change cannot be widely expected from this

quarter, unless this vision is built into the training component of the CPU grant.

7. A Strong Tradition and Culture of Legal Formalism. A problem related to conservative judges is that of a high degree of rigidity in the reading of the law and in the role of judges as social change agents. A strong tradition in the civil law system of which Chile is a part is the conception of the legislature as law giver and the judiciary as mere instruments for the vindication of that code-based law. The judge is not to interpret, but merely to follow the letter of the law. If the law is conservative, its interpretation will be conservative.

This problem is particularly important in the area of criminal procedure, where both victim and accused may be denied important basic rights to due process and equal protection of the law because they lack access to counsel, and because excessive formalism leads to slower and more prejudicial practices.

On the other hand, careful use of the law in this tradition can be useful to poor persons, particularly if a rigid construction of a statute might work to the claimant's benefit. Rigidity can be turned into a tool for protection of poor person's rights.

III. PROPOSED REFORMS: CHILE AND U.S. AID.

This section will address the reforms which have been proposed to address some of the weaknesses in the system which have been noted above. The first part will identify a number of current reform efforts which are underway at the national level in Chile, all of which are proposed by the Aylwin administration. The second

section will identify the principle aspects of the AID project proposals relating to legal assistance.

A. National Reforms Now in Progress.

1. Constitutional Amendments. There were a number of salutary amendments to the 1980 Constitution as a result of the 1989 plebiscite. A number of other reforms have been proposed by the Aylwin administration. Noteworthy among these are proposals to abolish the death penalty, to decentralize the government and to adopt as domestic law international human rights instruments. Some of these reforms will have direct impact on the legal problems of poor people, but their resolution is highly political and speculative at this time.

2. The Commission on Truth and Reconciliation. This national commission deals with the extremely sensitive issue of the issue of amnesty, pardon or prosecution of government officials, especially the military and police, who may have been involved in activities which violated domestic law at the time. These violations include murder, kidnapping and disappearances, torture, prolonged detention without charges, illegal or improper interrogation, denial of access to medical treatment or legal counsel and a host of other serious violations. These issues have deeply divided other emerging democracies in Latin America, particularly Argentina, Uruguay and Brazil. The commission is expected to issue its report in late January, and one of its principal draftspersons is Dr. Jorge Correa, who also drafted the section of the CPU proposal on legal assistance.

Aside from the conflicts in time commitments for Dr. Correa, there are implications of this report which may affect the approach to the legal problems of poor people. One issue will be the perception, in poor communities, of the quality of justice in Chile. If people whose rights were systematically violated during the Pinochet regime must now hear that their legal claims must be abandoned in the name of national reconciliation, there may be a more general and widespread disenchantment or even disrespect for the efficacy of law or legal institutions to favorably resolve poor people's problems. Such attitudes could contribute to a greater unwillingness to participate in any project. Expectations are high for the Commission's work product, and a period of disappointment may well follow its recommendations, particularly in the poorest communities, where distrust of legal institutions is traditionally at its highest.

3. Code and Law Reforms. The Commission on Reform of the Judicial Power, headed by Manuel Guzman, will propose projects which have direct impact on the issue of legal assistance to the poor. Two anteproyectos with greatest significance in this area are noted below.

a. Ley Sobre Servicio Nacional de Defensa Juridica. This proposal is under discussion by the Commission with the CAJ, and was mentioned at one of our meetings by Judith Cox, a member of the commission.

The object of the project apparently is to provide a kind of centralized coordination of national legal services for the poor

and a clearinghouse for their activities. The draft law states that the function of the National Service is to "apportion [proporcional], coordinate, plan, promote, stimulate and supervise" all legal services to the poor. It also seeks to "prevent or resolve judicial conflicts and the assistance which these people require." Art. 2.

The entity is to operate through the Justice Department. Its Board of Directors is made up of 5 persons plus a professor from each of the law schools which provide legal services. Art. 8. The Board is to advise a National Director, whose manner of selection is not specified in the draft, but whose duties are set forth extensively in Article 4. Those duties include "direct exercise of judicial defense and advise." Art. 4(c).

There are serious problems with this proposal and its relationship to the proposed AID program. The proposal looks more like the creation of a mega-agency for delivery of legal services than a "clearinghouse." If it is the former, there are likely to be serious problems with its implementation. First, no provisions in the act suggest how it will be funded, and funding of such entities has been the traditional nemesis of legal services for the poor, given its politically weak base of support. Second, it will be superimposed over the existing structure of the three CAJ entities which now exist, and will create "territorial wars" over who has ultimate authority on policy and resource issues. Third, it cannot be expected that NGO's will flock to participate in any such bureaucratic structure, especially when the draft suggests that

their participation will be through convenios. Art. 2. and national registration.

While the apparent motivation to take part in the National Service is the availability of national funds, there may be serious issues as to independence from the government, particularly when the ultimate authority to which these entities report (the Justice Department) may be defending lawsuits brought by the members!

If this entity is to come into being, there will need to be serious discussions as to the relationship of the CPU project with the functioning of the new agency. None of the goals of the project appear to conflict with the consolidation of legal services at the national level, but such a decision holds important policy implications for the delivery of legal services to the poor.

b. Neighborhood Courts. This idea has roots which extend back more than two decades and has been a proposal for reform every few years. See, J. Spence, Search for Justice: Neighborhood Courts in Allende's Chile (1979); A. Cuneo Macchiavello, "Tribunales Populares," in Materiales para un Estudio del Fenomeno Juridico 100-108 (2d ed. 1990). With the backing of the commission, and of another important project on legislative changes, it now stands its best chance of adoption in the near future. See, CEP, Informe Final Sobre Reformas al Sistema Judicial Chileno, 47-75 (Dic. 1990).

The draft for the Neighborhood Courts replaces the existing Police Courts in an effort to consolidate jurisdiction in "small claims" cases, to respond to the unique problems which arise in the

poorest communities, and to provide locations within each community to which citizens can turn for rapid and informal resolution of their problems.

Neighborhood Judges must be lawyers, and must have "special knowledge" of the problems of the community in which he or she sits. Art.4. Judges are to be named by Regional Representatives, as proposed by slates from the local Municipal Councils. Their terms of office are four years, and they must live in the community which they serve. Art. 8. Judges in the courts respond directly to the authority of the respective Courts of Appeal in their regions.

These courts hear a variety of matters, including family disputes, civil cases of small claims, issues of community concern and some minor criminal matters. Many of the matters previously heard by Police Courts would now be heard in the Neighborhood Courts, while some of the matters previously heard in the Police Courts would be handled through administrative procedures. The procedure for use of the courts is to be simple, quick and final, and appeal lies to the Appellate Court. Title III. The judge is given powers to enforce decrees, and may impose sentences of verbal admonition, fines or jail. One problem with this system, in fact, occurs because the system relies for funding on the municipality. Art.3. This creates an improper incentive for the judge to impose heavy fines, since these funds may be used, as the proposal now stands, to fund the office of the judge.

An attribute of these judges which may be of particular interest to the CPU project is that which permits the judge to use

friendly settlement of suits whenever possible, so long as the interested parties agree. Art. 23.

In discussions with Jorge Correa, we were told that the design of the project does not rely on whether the Neighborhood Courts are adopted or not. This does seem to be the case, but there again seems to be a need to adopt a program flexible enough to respond to and adapt to this new structure, in the event that its comes into being.

B. The CPU-AID Project Proposal. This section is designed to give an assessment of each of the objectives and activities contemplated by the CPU project segment dealing with legal assistance. It will give a brief description of each of the objectives, an assessment of their viability and importance, and the scope of planned activities for the objective. An estimated level of activity and budget projections will be provided for activities during the remainder of FY1991. Budget projections do not include overhead or staffing for the project area, but only activities themselves.

After that discussion, I will suggest a few other possible activities outside of the scope of the immediate work plan.

There are five objectives focused on four substantive areas: a national survey of the legal needs of poor people, the development of models and systems for alternative dispute resolution, support for a national back-up center for support of collective legal interests, and production and distribution of pamphlets through popular legal education. It should be noted that

there are a number of national seminars contemplated in this area. These conferences do not involve the same audiences, and, in many cases, the materials discussed are cumulative; that is, one seminar cannot be conducted until a predecessor has occurred. This will be examined more closely in text.

Objective details are as follows:

1. National Study of the Legal Needs of Poor People. Despite the extensive body of knowledge on the extent and nature of poverty in Chile, virtually no data exist as to the most common and most needed legal assistance which ought to be provided to all Chileans, but most importantly to those at the margins. This objective proposes to conduct such a survey as a first priority of the legal assistance area. The project proposes to collect the data, analyze it, produce a report and make that report the basis for a national seminar on the legal problems of the poor.

This objective, more than any other, is key to the project's success. The results of the survey will affect and relate to all other project objectives in the legal assistance area, and can form the basis for discussions in the judicial training component.

Some care should be taken in the design of information collection, given levels of suspicion or boredom in the poblaciones for interviews. It is strongly recommended that organizations with already-existing roots and contacts in the poor communities be used for this purpose. The best such groups would be the Vicaria, Quercum and RIDEM.

Proposed Activity in FY1991. The survey can be begun

immediately after completion of the process of awarding funds to a professional survey organization as sub-grantee for conduct of the survey. All funds for the survey need not be encumbered this fiscal year. The national seminar would be the first of several, and would occur in year 2 under current design.

Proposed Budget. The over-all budget for this objective is about \$80,000, including the survey itself and the national conference. Only the survey itself will begin during FY91, under the direction of the proposed Chief Investigator.

Costs for the Chief Investigator should be \$1000/month for five months (May-September), a total of \$5,000. Start-up costs for the survey should not reach exceed those proposed for the first component, as set forth in the budget annex, a level of \$13,304. Total costs for the survey are \$41,575, under Activity I.A. and the attached Appendix. These costs apparently project four separate geographic areas, with some of the initial costs pro-rated in the subsequent steps, although this is not contained in budget detail.

Total costs for this activity in 1991 would not exceed \$18,304.

Additional Resources. I will send to Carl Cira the project design and survey instruments used in the Ohio Civil Legal Needs Study, the last of several such studies conducted at the state level by The Spangenberg Group, a consulting firm in Boston with long experience in the design of national and local studies of legal problems of the poor.

Another source of information is the National Center on

Preventive Law in Denver. Luis Bates has information on the Center and its materials. Of particular interest are their instruments for a personal "legal checkup," much like a medical examination.

2. Evaluation and Design of Alternative Dispute Resolution Systems in Chile. CPU proposes to identify alternative dispute measures which are now in operation in the various entities which provide legal services to the poor, principally the CAJ and the law school clinics. This objective is closely related to the next, which proposes development of specific projects in the existing structures which would implement the systems designed in this objective for the use of alternative dispute measures.

Chile currently has some alternative dispute measures, if these are defined to include any legal structure which provides a less expensive, more flexible means by which poor people are to be given greater access to justice. These include settlement of civil actions, mandatory and optional arbitration, police courts and small claims. Although small claims law continues to exist on the books, it appears to have disappeared from practical use.

The difficulty with both settlement and arbitration as alternatives is that both assume conflicts over money sums which intrinsically put them out of the reach of poor people. Moreover, arbitration requires the use of a trained arbitrator, who may be more expensive than courts or lawyers, and the required procedures take on a formality which seems counterproductive to informal resolution. The police courts are a viable alternative for poor people, and their relationship to the proposed neighborhood courts

will have to be clarified, as will the question of how poor people can best be taught to use these mechanisms, particularly since legal counsel is not contemplated in either of these fora because of their intentional design for informality.

The decision by CPU to explore alternative dispute resolution mechanisms is a sound and sensible one. The decision reflects a basic policy (along with popular education, discussed below) of putting one major focus of the CPU initiative on resolution of legal problems within the poor community, and by avoiding the highly formal and technical courts (and lawyers) where possible. This policy is one which is now in active development in the U.S. and elsewhere.

It also seems appropriate to focus effort on the informal dispute resolutions which must be occurring through the CAJ. Given their caseloads, it is projected that approximately 100,000 cases are handled annually through informal mechanisms in the Santiago region alone, usually by Social Workers. The same is true to a lesser degree in the law school clinics, many of which operate with formal contracts to provide services funded by the CAJ. A careful study of these devices, some of which grow out of practical necessity and some of which may give short shrift to proper legal resolution, seems timely and congruent with project goals.

This objective contemplates the preparation of five Working Papers which would become the basis for both a national seminar and the five model programs discussed in Objective 3, below.

Proposed Activity in FY 1991. It has been suggested that

only two of the proposed Working Papers be budgeted for this year, and that the national seminar will follow in year 2 or 3. Jorge Correa suggests that work could begin in study of the CAJ's and the law school's use of alternative resolutions. I am unclear whether the Working Papers are keyed to the work of specific entities or to dispute resolution themes. This should be clarified.

Proposed Budget. The total budget for this objective is about \$22,000. If the first two Working Papers are budgeted, costs for this year would not exceed \$5,000. To whom would this money be paid?

Additional Resources. I am exploring several basic documents on ADR in the U.S. When I produce the documents or sources, I will pass them on the Carl Cira. In addition, there are a number of persons skilled in this area who might be of assistance. One is Professor Beryl Blaustone, a former colleague at CUNY Law School in Queens, NY. Beryl teaches all aspects of ADR at CUNY and is fluent in Spanish. She recently spoke in El Salvador to judges on that topic, and would be a wonderful asset to any project in this area. The school's phone is (718)575-4300.

3. Pilot Projects in Alternative Dispute Resolution. This goal is a product of Goal 2. It proposes to link the five Working Papers with five Pilot Projects in the Legal Services Centers of the CAJ. At conclusion of the Pilot Projects, it proposes to hold a national seminar, where the results will be discussed, and successful techniques will be promoted and disseminated.

This objective is an integral component of the scheme to study

ADR and take action to use it where possible. It is the action phase of ADR study.

Proposed Activity in FY1991. None. This project will commence with completion of Goal 2. It will begin at the close of year 2, at the earliest.

Proposed Budget. Total budget for this component is about \$76,500. No expenses in FY1991.

Other Resources. See Objective 2.

4. Center for Promotion and Protection of the Public Interest.

This is a fundamental reconception of Objective 4 as currently written. That objective had as its focus the funding of expensive litigation to protect collective interests, primarily through the use of the recurso de proteccion, a legal mechanism first contemplated in the Chilean Constitution of 1980. Conclusion of 20 lawsuits using the recurso was to be followed with a series of 4 national seminars to disseminate the results in various regions of the country. As proposed, this was the most expensive single component of the area.

As reformulated, the objective seeks creation of a national center which would provide a locus for collection of information, training, study and cooperation through participation of volunteer cooperating lawyers in the use and promotion of legal methods for the protection of collective community interests. Study at the center could be offered in the form of clinical or post-graduate legal studies, or as continuing legal education for practitioners.

This objective would create an entity unique to Latin America

which could provide models for integration of the legal profession in the highest and most ethical aspirations of the profession: service to the community through protection of collective legal rights in Chile.

This goal presents a distinctly different yet integrated approach to the legal problems of the poor. It recognizes that true access to justice cannot be achieved without the participation of skilled lawyers, not only from within the CAJ, but throughout the Bar. The CAJ has no training facility now, and this center could reach this area as well. The center would provide a source for inspiration and pride in public service, as well as the highly specialized training necessary to perform these legal tasks, while offering a unique perspective in the legal problems of the poor. It is, in fact, only through the combination of community-based and lawyer-based proposals that this project achieves its basic symmetry and congruence. Neither philosophy should be avoided and both should be actively explored.

The law in Chile has a unique and well-developed remedy in the constitutional writ of protection. Created after long study during the 70's the writ is found in Article 20 of the Constitution of 1980. It permits and "affected party" to "reestablish the rule of law" protected in many of the provisions regarding individual rights, as set forth in Article 19. The writ is filed with the Court of Appeals, where evidence is taken and a decision rendered. Appeal lies to the Supreme Court. Cruzat, "Esquema del Recurso de Proteccion," Documentos, Instituto de Estudios Judiciales, at 215.

The writ is simple and efficient, and has given rise to successful litigation in several areas. Even during the Pinochet years, lawyers were often able to successfully invoke the writ, particularly in cases involving public health. One famous case involved the mandatory removal by the government of a garbage dump in urban Santiago after the dump caused extensive water contamination, health problems and horrible odors in the surrounding poor communities. Other cases have reached issues regarding the protection of women, ethnic minorities and other areas of social importance to all Chileans. The writ could be used to protect rights of the consumer, pensions, insurance and other collective societal rights.

Protection of collective rights, however, need not be limited to this remedy; other collective rights in Chile are protected, for example, in legislation regarding terrorism and drug sales, by which any citizen may complain "in the public interest," regardless of personal injury, whenever he or she has evidence of these activities. Also, the center would promote the creation of new legislation to protect collective rights, perhaps those recognized in human rights accords which Chile has now ratified as national law, covering civil, political, cultural, social and educational issues.

Proposed Activity in FY1991. None. Because this entity would be formed as a separate not-for-profit entity, and would seek additional funding from sources such as foundations, its operation and initial funding would begin during year 2.

Proposed Budget. Funding for this objective was originally contemplated at a level of nearly \$209,000, making it the largest single component. As reformulated, it is hoped that the same relative commitment could be made to the creation of the center, whose commencement and many activities would easily require this level of expenditure. No spending will occur during FY1991.

Other Resources. This is the single most appropriate area for international involvement. In the U.S., there is a long and successful history of both public interest practice and the protection of collective rights, primarily through the use of class action suits. Moreover, the opportunities which the center provides for the improvement and advancement of legal education based in practice in protection of the community rights, particularly those of the legally disadvantaged, provides a unique opportunity to create in students an early and lasting sense of commitment to the highest aspirations of the profession.

Nan Aron, Director of the Alliance for Justice, a public interest coalition in the U.S., recently published a book summarizing the history, successes and failures of public interest practice in the U.S. It contains a complete listing of back-up centers in the public interest arena in the U.S. The book will shortly be in print in Spanish. Aron, Liberty and Justice for All (1989). Copies will be forwarded as soon as they become available to the public.

In Chile, the Chilean Human Rights Commission and the University of Chile law school clinic have long histories of

development of litigation through the recurso de proteccion. Materials which had been prepared for an exchange between the U.S. and Chilean clinical faculties could be further developed to promote this aspect of the program, either through various faculties or through the American University, where a relationship exists with the University of Chile through its summer exchange program.

5. Popular Legal Education. This final goal seeks to provide basic legal knowledge for resolution of legal problems directly in the poorest communities through the use of pamphlets or fliers on various legal topics. Two frequent examples are issues of inheritance and civil claims of crime victims in criminal cases. In both of these instances, poor people equipped with proper legal knowledge could seek legal protections with greater facility, without demands for attention from scarce resources in the courts, and perhaps without the use of lawyers.

Again, the project goal seems pragmatic and appropriate. It is based in notions of individual and community empowerment and avoidance of excessive formality through the use of lawyers. It assumes a high level of literacy, which appears to be well-founded. It assumes that some legal steps can be taken without lawyers, which also seems appropriate. It also assumes a low level of knowledge by poor people of legal rights, which seems particularly true following an era in which silence was the norm and poor people's rights were quietly usurped without their knowledge. If democracy means popular participation, no other goal better serves

democracy.

This objective contemplates the production of 100,000 pamphlets on twenty selected topics, some of which are immediately apparent, and some of which will be developed from the results of the national survey. Production of pamphlets would be divided into four phases of five pamphlets each, all through direction of a single coordinator. At the conclusion of the national study and publication of the last of the pamphlets, identified community leaders would be brought together to discuss the efficacy of the project and further dissemination projects.

Projected Activity in FY1991. Jorge has identified at least two issues which could begin immediate production: hereditary rights and protection of victim's rights in the criminal process, especially in property crimes where recovery of the property is a possibility.

Proposed Budget. Funds could be committed for all or part of the first stage of the goal, now set at \$46,500. That portion of stage one necessary for production of two pamphlets rather than five is estimated at approximately \$17,800.

Other Resources. Some organizations in Chile produce fliers or pamphlets which should be reviewed and discussed prior to commencement of the project. Most prominent among these are the Vicaria, Quercum and the University of Chile law clinic.

In the U.S., Luis Bates has strong contacts at the National Institute for Citizen Education in the Law, located at Georgetown Univ. Law School under the direction of Ed O'Brien. Again, Lucho

should be contacted regarding that organization's experience in its long and successful national "Street Law" program in high schools.

IV. Summary of Expenditure in all Objectives in FY1991.

Objective I	\$18,304
Objective II	5,000
Objective III	-0-
Objective IV	-0-
Objective V	<u>17,800</u>
TOTAL	\$41,104

V. Related or Future Priorities.

The project goals seem appropriate as written. The following suggestions are offered to strengthen the relationship of this proposal to other programmatic objectives, and for related but non-project activities.

1. Formal information and training in the legal problems of poor people, protection of collective rights and alternative dispute resolution should be included in the component on judicial training, since judges can assist in this effort, particularly if the Neighborhood Courts come into being.

2. Some thought should be given to inclusion of a component for development of legislative reform proposals which emerge from the project experience.

The most immediate projects which come to mind are the ill-conceived National Legal Services proposal and the chronic problems with criminal procedure. Moreover, new legislation may well emerge either from the component on alternative dispute resolution or the

activities of the center on collective rights.

In place of the National Legal Services legislation, I would favor the concept of integration of legal services through another means. Instead of putting all organizations under a single entity, I would leave those which exist as is. Instead, I would look for ways to expand the participation of the private Bar in the provision of legal assistance.

Legislation could make the use of postulantes and the abogado de turno more effective, through national coordination of those components and a commitment of public funds to that end for coordination, training and even direct public support. Greater participation by the Colegio and its members would do much to stimulate pride, enthusiasm and moral responsibility for the protection of the legal rights of the poor. Moreover, greater participation from the Bar would more widely distribute the caseload which now threatens to overwhelm the CAJ.