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3. AUTHOR(S)  
**Thome, J.R.**

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AGRARIAN REFORM LEGISLATION: CHILE

J. R. Thome

IV. The New Agrarian Reform Legislation: Law 16640 of 1967

A. Introduction

On January 20 of 1967, the Chilean congress, with the required two-thirds majority, amended Article 10, Section 10 of the Constitution of 1925. As the following text demonstrates, the enactment of this amendment was crucial if the agrarian reform objectives of the Frei government were to be implemented, particularly as regards the question of deferred compensation.

Amended Article 10, Section 10 of the Constitution.<sup>1</sup>

Article 10 The Constitution guarantees to all inhabitants of the Republic:

(10) The right of property in its various forms.

The law will establish the mode of acquiring property, its use, enjoyment and disposition, and the limitations and obligations which will assure its social function and make it available to all. The social function of property is understood to include the demands of the general interests of the State, public utility and health, the best use of productive resources and energies in the service of all and the improvement of the common living conditions of the people.

When the interest of the national community should require, the law shall be empowered to reserve in the State the exclusive dominion of natural resources, productive goods, or others which might be declared of pre-eminent importance for the economic, social, or cultural life of the country. It will also favor the proper distribution of property and the establishment of family property.

No one shall be deprived of his property except by virtue of the general or special law which authorizes expropriation for the cause of public utility or social interest declared by the Legislator. He who is expropriated shall have a right to indemnization which amount and condition of payment shall be determined by taking into consideration both the social interests and those of the individual. The law shall determine the norms for fixing the indemnity, the court which shall have jurisdiction of appeals as to the amount fixed, which in every case shall pass judgment according to the law, the form of extinguishing the obligation, and the conditions and means by which the expropriator shall take physical possession of the expropriated property.

As to the expropriation of landed estates, the indemnity shall be equivalent to the current assessment for the territorial tax, plus the value of improvements not included in the assessment, and may be paid part in cash and the balance in payments not to exceed 30 years, all in the form and condition determined by the law.

The law shall be empowered to reserve to the national domain of public use all existing waters on the national territory and expropriate, to incorporate into said domain, those which are on private property. In such case, the owners of the expropriated waters shall continue to have use of them as a concession and will only have a right to indemnization when, due to a total or partial extinction of that right, they will be effectively deprived of sufficient water to satisfy, through rational and beneficial use, the same needs that were satisfied prior to the extinction.

The small farm worked by its owner and the house inhabited by him cannot be expropriated without prior indemnity.

A comparison with the 1925 text of Article 10 (supra, p. 20) exhibits considerable differences.<sup>2</sup> Thus, while the 1925 article provided for some limitations on the use of private property, imposed in the interest of public utility, it also required prior compensation

before possession could be obtained of an expropriated property, and the valuation of the property, absent any amicable agreement, was to be determined through the courts, using the commercial value as a basis. The 1967 amendment, on the other hand,

...articulates the theory of social function of property, in an explicit and detailed manner, in its classic sense. The exercise of the right of ownership is spelled out to include acquisition, use, enjoyment, and disposition of property and is put directly subject to limitations which will 'assure its social function.' The social function is then defined to include the requirements of public interest, utility and health, and the use of productive resources to the benefit and service of the collective interests....The legal way is thus cleared for expropriation for failure of a property owner to fulfill the social function of his position. The same paragraph expresses the favor with which the constitution will look upon a more equitable distribution of ownership rights and the establishment of family farms. Implied, certainly, is the suggestion that latifundia are contrary to the social interest and should be divided regardless of their productivity.

...Under the new law the cause for expropriation is expanded from simply reasons of public utility to those of social interest. This seems to mark a change from emphasizing the use to which the expropriated property was to be put and a turning toward emphasis on the beneficial effects of certain kinds of expropriations. This is exemplified by the constitution's manifest concern for the establishment of family farms and the division of Latifundia. As in the 1925 article, such public utility or social interest must be declared by law.

The new formulation of Article 10 (10) still guarantees the right of indemnization but the provisions as to valuation and payment are radically altered. Regarding landed property, the article provides that the value will be equivalent to the current assessment for the territorial tax, plus new improvements. This has the advantage, from the State's point of view, of getting the price below market value in some cases and avoiding litigation of the price which might run

into years of time. Traditionally, expropriation could only be made on condition of full payment of the established price in advance. The new article allows up to thirty years for payment and stipulates that payment will be made in the "form and condition determined by law" as opposed to the old requirements of money payments....[U]nder this provision, payments can be made by bond or over a long period of time to realize the augment in capital due to purchase payments from the new landowners and the anticipated increase in agricultural production.<sup>3</sup>

The new amendment also reasserted the principle that all water was owned by the state and was for the public use, though recognizing that private individuals would be compensated for diminutions of their "acquired" rights. This was a problem area completely ignored by the 1925 amendment. Now, however, the government had the power to enact legislation leading to the complete regulation of the nation's water resources, which in effect it did through the agrarian reform law and subsequent regulatory decrees.<sup>4</sup>

In short, the constitutional amendment opened the way for translating the agrarian reform policy of the Christian Democratic Government into law. This was in effect accomplished several months later, when Agrarian Reform Law No. 16.640 was enacted by Congress on June 30, 1967, signed by President Frei on July 16, and put into effect on July 29, 1967, the date of its publication on the Diario Oficial (the Legal Register).<sup>5</sup>

**B. Acquisition of Lands for Redistribution Under Law 16.640;  
The Process of Expropriation**

Law 16.640 of 1967, also known as the Law of Agrarian Reform, is a very ambitious statute. Notwithstanding other very important and complementary new statutes and programs improving the status of rural

labor, extending rural education, and providing credit and technical assistance to small holders, the heart of the Christian Democratic Party's agrarian reform policy depended and still depends on this law. It was supposed to provide for a cheap, quick and efficient redistribution of farm-estates among landless campesinos and for the nationalization and reallocation of water rights. These and other measures provided by the law were to be the chief legal mechanisms for ending the stagnation in agricultural and cattle production, and integrating nearly three million campesinos into the social, economic, and cultural life of the country.<sup>6</sup>

As a consequence, Law 16.640 is a very complex and lengthy statute. Its official text--160 pages of small type--contains 357 excruciatingly detailed and legalistic articles, which, in addition, cross-refer to each other and to articles in other laws. It is thus a difficult law to understand and to explain.<sup>7</sup> Nevertheless, it is a good law: complete, thorough, and with the basic legal means to achieve a substantial agrarian reform. If it is complex it is because it deals with an extremely complex subject.

In addition, Law 16.640 has spawned a vast number of complementary statutes, regulatory decrees, and other legal regulations, resolutions, and the like. A book published only slightly over a year after the enactment of the law lists 61 of these legal texts,<sup>8</sup> which do not include the internal orders, contracts, and the like of CORA, the agrarian reform agency. A complete summary and analysis of all these legal provisions is beyond the scope of this paper.<sup>9</sup> Our purpose here is to examine the basic legal mechanism provided by Law 16.640

and supplementary laws and decrees, and on which the rest of the agrarian reform process depends: the acquisition or expropriation of rural properties for the purpose of redistribution.

One of the major obstacles of agrarian reform processes in other countries, and indeed in Chile under Law 15.020 of 1962, has been the complexity and excessive duration of the expropriation procedures. Law 16.640 established legal provisions which were supposed to enable CORA to acquire the necessary land in the easiest possible way, while at the same time providing affected landowners with adequate legal remedies.<sup>10</sup> The application of these provisions, however, brought forth problems not foreseen by the drafters of the law. In this paper, we shall examine and analyze the various Law 16.640 provisions regarding the process of expropriation, the problems in their application, the manner in which these problems were handled, and subsequent legislation which is supposed to resolve some of these problems.

Finally, we shall conclude that although Law 16.640 has, for different reasons, not provided as quick and streamlined procedures as its framers desired, it has nevertheless allowed fairly substantial land distributions.

### The Process of Expropriation<sup>11</sup>

For purposes of clarity and organization, the process has been divided into different categories. With few exceptions, they are all interrelated and contain both substantive and procedural elements.

#### 1. The Expropriation Procedure

Law 16.640 was supposed to provide a quick-taking expropriation procedure which would permit the adequate planning of agrarian reform

projects, such as land distribution and cooperatives, and shorten the period during which the property, because of the insecurity of the landowner, would remain unproductive. Under this procedure, the landowners were to receive adequate judicial protection of their rights, particularly as regards indemnification or compensation of their expropriated lands. It was foreseen that if any conflicts should arise they would not in most cases postpone the taking of possession by CORA, so that it could proceed with its land settlement programs (asentamientos).

In this subsection, we shall briefly describe the procedure that was established to expropriate rural properties. Following subsections will analyze some of the more important legal considerations that have been faced during this process.

#### Steps to expropriate a rural property<sup>12</sup>

a) At the branch office (one of the 12 Zonal Offices of CORA).

Acting on information from one or more of various sources, agronomists and other staff of the Technical and Production Department of the Zonal Office will conduct field (soil, production, etc.) studies and gather other socio-economic data on an area or specific property which is potentially expropriable. The Department then prepares a report and sends it to the CORA central office in Santiago.

b) At the head office (CORA, Santiago).

Further studies by the Technical and Legal Directorates of CORA are conducted. An Acuerdo de Expropiación (Expropriation Decree) is then prepared and submitted to the Consejo of CORA for its approval.<sup>13</sup> This requires a majority vote of the Consejo. The Acuerdo must contain

all the basic information concerning the expropriated property, including: its location; its property tax roll number; the legal grounds for its expropriation or acquisition; and the form of compensation.<sup>14</sup> Notice of the Acuerdo must be provided to the affected parties, both through personal delivery and through publication in the Diario Oficial (Official Gazette) on the first legal day of a month, which constitutes the legal date of notice.

Once publication is effected, the Acuerdo is recorded as an encumbrance in the appropriate Registry of Property. This makes null any subsequent changes in the ownership or tenure rights of the property, including sharecropping, usufruct and other like arrangements.<sup>15</sup>

Furthermore, once the Acuerdo is published in the Diario Oficial, Law 16.640 prohibits, under civil and penal sanctions, all acts which tend to destroy or reduce the value of the land and its accretions.<sup>16</sup>

c) Recourses of the landowner against the Acuerdo.<sup>17</sup>

Provided he act within 30 days of its publication in the Diario Oficial, an affected landowner can oppose the Acuerdo either by petitioning the Consejo to reconsider its decision, or, under certain circumstances, by challenging it before a Provincial Agrarian Tribunal. Judicial review by the Agrarian Tribunal usually prevents CORA from taking possession of the property until a final judgment is issued.

d) Assessment by CURA of the expropriated land and the improvements. This assessment must be approved by the Consejo.<sup>18</sup>

e) Taking possession of the expropriated property.<sup>19</sup>

CORA deposits at the Superior Civil Court with jurisdiction

that part of the compensation that must be paid in cash, in accordance with CORA's own determination. The deposit must be made within one year of the date of the Acuerdo.

Once the deposit is made, the Court will notify the corresponding Registry of Property to record CORA as the new owner of the property. At this time, CORA is legally entitled to enter into possession of the property and may request the use of public force if so required. Nevertheless, if at this time there are unharvested crops (frutos pendientes) in the farm, CORA will postpone taking possession until the end of the agricultural year so that they can be harvested by the owner. However, CORA can, in most cases, still decide to take possession, provided it indemnify the owner in cash for any damages, or allow him to enter the property to harvest the crops.

The above are the basic steps in expropriating a rural property for the purpose of agrarian reform. More often than not, however, CORA does not follow the entire legal procedure to its end, but rather enters into a negotiated agreement with the landowner. As can be seen from the following discussion, the agreement will usually save both CORA and the landowner much waste of time and expense.

2. Private Lands Subject to Acquisition and Redistribution;  
Grounds for Expropriation, Exceptions and Reserves<sup>20</sup>

If a fairly substantial agrarian reform is to be accomplished, it is quite obvious that as much land as possible must be made available for such purposes. Consequently, the legal classification of which privately owned properties are subject to expropriation as well as the various criteria that condition their acquisition, provide a

fairly accurate measure of the potential reach of any agrarian reform process.

In Chile, the broad and conceptual legal bases for expropriating rural property are found in the new Section 10 of Article 10 of the Constitution (supra, p. 39), and by Article 2 of Law 16.640.

Article 2 provides that

[I]n order that agricultural property may fulfill its social function, the total or partial expropriation of those rural properties which are found in any of the situations specified in Articles 3 and 4 to 13, inclusive, of the present law, is hereby authorized and declared to be of public utility.<sup>21</sup>

Articles 3 to 14, then, provide the legal grounds or criteria for determining which rural properties are "...not adequately meeting the obligations inherent in the social function," and are thus subject to expropriation.<sup>22</sup>

As can be seen in Table 1, the most commonly applied grounds for expropriation are:

a) Article 3 (excess size): all rural properties in excess of 80 basic irrigated hectares (BIH) in size, regardless of the efficiency of operation. However, the terms of compensation are less favorable when the expropriation decree also declares the abandonment or inadequate exploitation of the farm (discussed below).<sup>23</sup>

b) Article 10 (voluntary transfers): properties which are voluntarily offered to CORA and are necessary for carrying out an agrarian reform (land settlement) program.<sup>24</sup>

c) Article 6 ("corporate" ownership): with certain exceptions, such as small cooperatives, and land reform settlements, all farms owned by a corporation or other "legal persons" are subject to total expropriation (Article 6).

d) Transitory Provisions, Articles 1-3 (pending cases): properties over which expropriation proceedings were pending at the time Law 16.640 came into effect (Transitory provisions, Articles 2 and 3).<sup>25</sup>

e) Article 5 (unauthorized subdivisions): properties originally larger than 80 BH which were subdivided after November 4, 1964 in order to avoid being affected by agrarian reform.<sup>26</sup>

f) Article 4 (low productivity): abandoned or poorly exploited farms are expropriable in their entirety.<sup>27</sup>

The other grounds for expropriation, such as absentee ownership and location within a land reclamation or irrigation project, have seldom, if ever been applied.<sup>28</sup> Minifundia, or properties too small for economic exploitation, are also subject to expropriation, but only for the purpose of land concentration projects.<sup>29</sup>

As the following pages will establish in more detail, the major reasons for the more prevalent use of Article 3 expropriations are the simplicity of its application, and the fact that judicial review over it is very restricted. Most of the other grounds for expropriation are more difficult to establish and are subject to much more thorough judicial review. This is particularly true for Article 4 expropriations. The growth of the "declarations of abandonment or inadequate exploitation" attached to Article 3 expropriations is probably due to the promulgation of Decree 281 of July 1968, which contained the regulations for determining abandonment and inadequate exploitation. Once CORA developed experience in working with these regulations, it became advantageous to attach the declaration to the

excess size expropriations, as it has the effect of reducing the cash payment from 10 percent to one percent. Moreover, this declaration is also not reviewable by the courts.

At the same time, the increasing number of farms which are voluntarily offered to CORA (Article 10, "expropriations") probably indicates a realization by landowners that they in fact run a risk of being expropriated. Thus, they might as well offer their farms voluntarily and obtain the better terms that go along with this. For CORA it again signifies a more rapid acquisition of lands for its programs.

There are, however, some rural properties which are either specifically or potentially excluded from expropriation.<sup>30</sup> Subject to various conditions or limitations, Law 16.640 specifically exempts those rural properties smaller than 80 BIH; family farms;<sup>31</sup> experimental farms; and those used for timber operations.<sup>32</sup>

The second group consists of those properties which the President of the Republic can exclude through special decrees. They include those with soil habilitation or improvement plans approved by the Ministry of Agriculture, as well as vineyards who bottle their own wines and satisfy other stringent conditions.<sup>33</sup>

Law 16.640 also grants some expropriated landowners the right to retain a portion of the affected property. This "reserve right", as it is called, only applies to expropriations effected under Article 3 (excess size) and Article 6 ("company" ownership). In the second case the right applies only when the property is owned by a "personal association" (e.g., limited liability partnerships), and other conditions are satisfied.

The basic reserve right is equivalent to 80 BIH; however, if compliance with very stringent conditions regarding productivity and labor relations, etc., can be demonstrated by the landowner, the reserve will be extended to 320 BIH.<sup>34</sup> There are no known cases where this has occurred.

With the exception of Article 10, all other grounds of expropriation do not include reserve rights. As Article 10 deals with lands voluntarily offered by the landowner to CORA, the amount retained depends on the bargain the landowner can strike with CORA. Although no specific data is available on this point, it is obvious that in most cases the reserve retained by the landowner will be equivalent to 80 BIH; that is, the amount a landowner can retain when his property is expropriated for excess size.<sup>35</sup>

### 3. Compensation Schemes<sup>36</sup>

The fact that a large number of rural properties are subject to expropriation does not, by itself, constitute a sufficient pre-condition to the implementation of a substantial agrarian reform process. As has often been pointed out, the Latin American nations cannot afford to base the compensation of expropriated properties on their market value or to pay for them in cash, and still have an agrarian reform that will benefit a large number of the landless campesinos.<sup>37</sup>

Moreover, agrarian reform implies much more than the purchase and resale of real estate, it also involves a redistribution of wealth and power. Paying for expropriated properties in cash or basing the payment on market value is also inconsistent with this objective.<sup>38</sup>

It is thus necessary to examine the legal norms and mechanisms that regulate the payment of compensation for expropriated properties, in order to determine whether or not they permit a vigorous agrarian reform.

In Chile, the amendment to Article 10 of the Constitution and Law 16.640 of 1967 provide a legal framework that satisfactorily meets the above conditions. Within this framework, some of the legal norms and mechanisms are common to all expropriated properties, regardless of the particular cause or grounds for the expropriation. An example is the constitutional provision, incorporated in Article 42 of the Law, limiting the compensation to be paid any expropriated landowner to a value equivalent to the current appraisal of the land for property tax purposes, plus the market value of new "improvements" not included in the appraisal, both to be determined as of the date of the promulgation of the expropriation decree for the particular property. Furthermore, "improvements" incorporated into the expropriated property subsequent to November 4 of 1964--the date President Frei took office--are to be compensated in cash.<sup>39</sup> The purpose of this provision was to prevent or discourage a reduction in investments by landowners fearing expropriation.

There are, however, some significant differences in the form of compensation according to the grounds used as a basis for the expropriation. When the acquisition is due to excess size (Article 3) or "corporate" ownership (Article 6), or when the land is voluntarily offered to CORA (Article 10), the landowner is paid 10 percent in cash, and the balance in 25 year Class "A" bonds.<sup>40</sup> Nevertheless, if CORA can show that a property so acquired was either abandoned or inadequately exploited, then the form of compensation shall be the same as if it had been expropriated because of abandonment or poor exploitation. That is, the compensation shall be one percent or five percent in cash respectively, with the balance in 30-year Class "C" bonds.

The question may be asked: if the expropriated property could be classified as abandoned or inefficient, why not expropriate on these grounds (Article 4), which would allow acquisition of the whole property, rather than using the other cited grounds, which require that a reserve be left with the landowner? There are two basic reasons for this seemingly irrational behavior: first, and as we shall see later, an expropriation on grounds of abandonment or poor exploitation (Article 4) gives the landowner recourses to judicial review which are not available under the other grounds. This could delay the process for years;<sup>41</sup> secondly, CORA prefers to acquire its properties through amicable settlements with the landowners, rather than following the entire expropriation process to its lengthy conclusion. It can very effectively convince a landowner whose property is in effect abandoned or poorly exploited to reach a quick and amicable settlement by agreeing to classify the ~~acq~~ acquisition process as one of excess size (Article 3) or voluntary transfer (Article 10) rather than of abandonment. (Article 4). In this way, the landowner gets to retain a portion of his farm, equivalent to 80 BIH, and CORA saves time and legal expenses. These maneuvers are possible because all acquisitions by CORA of privately owned lands must fall under one of the cited articles (3 to 14); thus the landowners' bargaining powers are quite restricted. In effect, the bulk of CORA's acquisitions fall under the category of expropriations for excess size or voluntary transfers, with a significantly large proportion of "certification of abandonment or inadequate exploitation." [See Table 1]

Table 1. Expropriations by CORA from July 1967 through December 1969. Number of Properties Expropriated and Legal Grounds Used.

Expropriation Dates	Article 3		Article 4	Article 5	Article 6	Article 10	Transitory Articles	Sub-Total	No Data Available	Total No. of Expropriations
	A1)	B2)								
July 67-Dec 67	51	7	1	4	12	4	8	87	19	106
Jan 68-June 68	26	3	2	-	5	34	15	85	4	89
July 68-Dec 68	30	19	-	-	15	53	14	131	-	131
Jan 69-June 69	29	20	1	5	5	56	2	118	13	131
June 69-Dec 69	16	47	-	7	8	54	4	136	47	183
TOTALS	152	96	4	16	45	201	43	557	83	640

Sources: Corporación de Reforma Agraria, Dirección de Planificación y Control; Diarios Oficiales (Compiled by German Lührs and Joseph R. Thomé).

- 1) By reason of excess size alone
- 2) Excess size plus declaration of abandonment or inadequate exploitation.

The remaining types of land acquisition also have different forms of compensation, ranging from 100% cash for minifundia farmed personally by the owners to one percent in cash and the balance in 30-year bonds for lands subject to the jurisdiction of the Law of Southern Property. Because of their rarity, they will not be discussed here.

#### 4. Judicial Review; The Agrarian Tribunals<sup>42</sup>

A special system of agrarian trial and appeal tribunals or courts was established by Law 16.640 with exclusive jurisdiction over any and all conflicts arising from the application of the law, particularly as regards questions of expropriation. There is one trial agrarian tribunal in each province, for a total of 25, and 10 appeal agrarian tribunals.

A unique characteristic of these tribunals is their technical nature. Each trial tribunal is made up of one judge and two agronomists, while the appeal tribunals are staffed by two regular appeal judges and one agronomist.<sup>43</sup>

The establishment of this special court system represented a conscious attempt to keep all land reform conflicts out of the jurisdiction of the regular civil court system, which is notoriously slow and conservative, and thus prevent long, drawn out and expensive litigation. The goal was to get the expropriated properties into CORA's possession as quick as possible. To these ends, Article 151 of Law 16.640 stipulates that there are no appeals from judgments of the Agrarian Appeal Tribunals.<sup>44</sup> Furthermore, the technical expertise of the members of the agrarian tribunals, and their concentration on agrarian reform conflicts, together with special procedural rules, were supposed to ensure a more rapid process, while at the same time guaranteeing the basic rights of affected individuals.<sup>45</sup>

In practice, however, these goals have not been fully achieved. The Supreme Court, for instance, was quick to accept jurisdiction over land reform conflicts where the landowners claimed that the transitory articles of Law 16.640 were unconstitutional even though these cases were being heard before Agrarian Tribunals.<sup>46</sup> Although the Court in these and most other cases found that the applications of Law 16.640 did not violate the constitution, nevertheless the appeals served to unduly postpone the taking of possession of the affected properties by CORA, thus delaying the agrarian reform process.<sup>47</sup>

While it can very properly be argued that the Supreme Court should always have jurisdiction over cases where unconstitutional action is alleged, there are other cases where the Supreme Court appears to have stretched the use of the Recurso de Queja (Writ of Discipline) to interpret other clauses contained in the transitory articles of Law 16.640. In particular, there are several cases where the Court granted appeals under the above writ and proceeded under grounds of "equity" to prevent CORA from taking possession of properties with unharvested crops, even though the law seemed clearly to favor CORA's quick taking.<sup>48</sup>

In addition, the goal of obtaining more technical and relevant judgments through the use of agronomists as judges has not worked according to the blueprint. The agronomists, faced with the procedural complexities of a trial, have tended to unhesitatingly follow the lead of the members of the agrarian tribunals from the judiciary.<sup>49</sup>

Nor has the goal of a quick trial been attained. The fact is that the basic principle that makes all trial proceedings in Chile extremely slow has not been eliminated from the supposedly summary

proceedings of the agrarian courts: judges are passive; they only act when petitioned to do so by one of the parties. As a consequence, where it was foreseen that an entire process before the agrarian court would only take 32 days, in reality it is more likely to last several months or even years.<sup>50</sup>

Aside from the effects already discussed, the special rules for obtaining judicial review by the agrarian courts of those expropriations initiated after the promulgation of Law 16.640 have also produced a definite impact on the process of agrarian reform in Chile. That is, the particular legal grounds (Articles 3-14) used to justify an expropriation to a large degree determines the type and extent of review available to the affected landowners. This in turn has affected the application of the law by CORA.

Once the acuerdo de expropiación--the official expropriation decree promulgated by CORA's Board of Directors--has been published in the Diario Oficial, an affected landowner can, within 30 days, petition the Board to reconsider its decision, regardless of the grounds cited for expropriation.<sup>51</sup> On the other hand, judicial review of the grounds of expropriation is available only when they are carried out under articles 4, 5, 7, 9, and, in certain cases, article 6. Expropriations for excess size (Article 3) are therefore not subject to challenge before the Agrarian Tribunals, or indeed before any other court or tribunal.<sup>52</sup>

The crucial difference here is that the Tribunals can and often suspend the taking of possession by CORA of those properties whose grounds of expropriation are being reviewed, until such time as the final judgment is issued.<sup>53</sup> In addition, of course, any expropriation

reviewed by the Tribunals results in increased expenses for CORA, both in direct expenditures and in occupying the time of personnel who could better be used in other activities.

Together with other factors already discussed, this situation has encouraged the use of Articles 3 and 10 expropriations, both of which are rarely susceptible of judicial review by the Agrarian Tribunals. In effect, the available data (Table 1) indicates that as of December 31, 1969, those expropriations whose grounds are subject to judicial review (Articles 4 and 5) constituted less than five percent of the total number of expropriations.

It would seem, then, that the bulk of the judicial review by the Agrarian Tribunals does not involve the actual grounds for expropriation, but rather other matters which are not as important and do not interrupt the taking of possession by CORA. These include claims that CORA assigned a compensation scheme different from that stipulated by law, that the required reserve right was not granted, and that the assessment by CORA of the "improvements" was erroneous. Although national data was not acquired, findings from the province of Valparaíso confirm this hypothesis and further show that relatively few expropriation conflicts find their way into the Agrarian Tribunals--in the case of Valparaíso, the number is only 23 percent.<sup>54</sup> (Table 2)

##### 5. The Taking of Possession

It is quite clear that the drafters of Law 16.640 were very conscious of the need to reduce as much as possible the time period between the decision to expropriate and the actual taking of possession

Table 2. Number and Type of Claim Filed by Expropriated Land Owners With the Agrarian Tribunal of the Province of Valparaiso: July 1967 - March 1969

Complaints Over Assessment of Improvements	Complaints Over Form of Compensation	Complaints Over Reserve Rights	Complaints Over Grounds of Expropriation	Total Complaints	Total Number of Expropriations In Same Period
3	1	1	1	6	26

of the affected property by CORA.<sup>55</sup> The Law tried to achieve this objective by providing that CORA could take possession of an expropriated property after ~~depositing~~ with a Civil Court an amount equivalent to the part of the compensation that has to be paid in cash.<sup>56</sup> As we have already seen, this quick-taking procedure could be suspended or postponed in very few cases: when certain grounds of expropriation were used, when the expropriated property was specifically exempt by law or decree, and when there were unharvested crops in the affected property. Most of these "suspensions" required the action of the Agrarian Tribunals.

For various reasons, however, this goal has not been achieved, at least in those cases where the landowners decide to "fight" the expropriation. In effect, several years can pass after the promulgation of the expropriation decree before CORA can actually obtain physical possession of the affected property. A particularly tragic and recent example is the case of the fundo "La Piedad," located in the Province of La Piedad. Three years after the expropriation proceedings were initiated, CORA finally obtained judicial authority to possession of the farm. Together with some of his hired hands, the landowner, who had previously tried every possible legal and political means to prevent the expropriation, physically assaulted the CORA party sent to take possession, resulting in the death of the CORA Chief Delegate for the area.<sup>57</sup>

Table 3.\* Expropriations Under Law 15.020 (January 1965 - June 1967):  
Duration of Expropriation Processes Still Pending as of  
October 30, 1968 ~~Asentamientos~~ not yet organized

Lenth of Cases	Pending Number of Cases	Number of Settled Cases (Asentamientos Organized)	Total Expropriations Under 15.020
Under 6 months	19		
Over 6 and less than 12	19		
Over 12 and less than 18	8		
Over 18 and less than 24	59		
Over 24 months	103		
<b>TOTALS</b>	<b>208</b>	<b>278</b>	<b>478</b>

\*Compiled by J. R. Thome and Hector Mora from data provided by CORA, Dirección de Planificación y Control.

**Table 4. Expropriations Under Law 16.640: Length of Time From Expropriation Decree to Constitution of Asentamiento (Data as of October 30, 1968)**

<b>Length of Process</b>	<b>Number of Expropriation Cases</b>	<b>Cases Where Asentamiento Organized</b>	<b>Cases Where Asentamiento Not Yet Constituted</b>
Under 6 months	89	11	78
Over 6 and less than 12	111	8	103
Over 12 and less than 18	20		20
Over 18	-	-	-
<b>TOTALS</b>	<b>220</b>	<b>19</b>	<b>201</b>
No Data	28		
<b>TOTAL</b>	<b>248</b>		

Although no exact data are available on the length of expropriation processes, a fairly definite idea can be obtained by examining the date of the expropriation decree for each property, and comparing it with the date of the organization of the asentamiento (the contract arrangement under which campesinos are settled on the expropriated land for a three-year period prior to a definite distribution of land titles). As can be seen in Tables 3 and 4, by October 10, 1968, very few of the properties expropriated under Law 16.640 had reached the asentamiento stage. CORA, as of this time, was still concentrating on constituting asentamientos on those properties expropriated under Law 15.020, that is, between January 1965 and June 1967. Yet, of the 478 properties so expropriated, as of October 30, 1968, 208 were still waiting for the asentamiento stage; 103 of these for over two years.<sup>58</sup>

In short, the supposedly quick taking procedure established by Law 16.640 was not working as expected, a situation not lost on concerned government officials. According to Senator Aylwin, "one of the most serious problems obstructing the expeditious application of the Agrarian Reform Law arises from the difficulties produced by the procedure established for the taking of possession of the expropriated property."

Some of these "difficulties" can be directly traced to CORA itself. In the first place, CORA has often waited almost a year (the maximum period allowed by the law) from the date of the expropriation decree before depositing the amount required for taking possession. This was probably due to scarcity of funds--the endemic

inflation in Chile may also have played a role--the longer payment of a fixed cost can be delayed, the cheaper it becomes. It also appears that CORA has in many cases taken a long time in coming up with the necessary valuation figures, particularly as regards "improvements." Again, this may have been due to a shortage of sufficiently trained personnel. It can also have been the result of extended negotiations with affected owners as both parties tried to reach amicable agreements.

Many of the "difficulties," however, are a direct result of the particular legal procedure established by Law 16.640, and the legal loopholes that soon became apparent. Under Articles 39 and 40, CORA could not take possession until it deposited with the Superior Civil Court an amount equivalent to what it had to pay in cash (1-10 percent of the valuation), and until the judge ordered the inscription of title in CORA's name at the appropriate Registry of Property. Landowners, aided by the conservative and very traditional nature of most civil court judges in Chile, were quick to object to CORA's deposit on the grounds that the valuation was incorrect. Many judges accepted these complaints for consideration, which then became subject to regular civil court procedures, notorious for their complexity and duration. In many cases, this involved appeals to higher tribunals. Not until a final judgment was forthcoming on this issue could CORA proceed to enter into possession of the property.<sup>60</sup>

In face of these and other problems, the Government introduced a new bill to Congress to amend Law 16.640 as required. The bill was passed, and became Law 17280 of January 17, 1970. As regards the taking of possession, the new statute substituted new Articles 39, 40 and 41 for the original ones in Law 16.640. Among many important

changes, the new articles provide that the deposits are to be made at the appropriate Municipal Treasuries rather than at the Civil Courts; that absent any tax assessment on the land, CORA may make its own for the purpose of determining the deposit (subject to subsequent tax assessment by Internal Revenue Service); and that CORA can obtain the inscription of titles of expropriated properties to its name by presenting the necessary documents at the Registry of Property, rather than doing this through a judge; and that after complying with the above conditions CORA can enter into possession of its own accord, and request and obtain the assistance of the local public authorities. In addition, the new Article 41 provides that the taking of possession is no longer to be delayed by the existence of unharvested crops. The Article establishes a new compensation scheme to take care of this situation.

Finally, the new Law establishes that all expropriations pending at the time of its enactment are to be subject to its provisions, thus enabling CORA to start all over again, under better conditions, to acquire possession of properties in the process of expropriation.

It is too early yet to determine the effects of the new amendments, although they certainly seem to efficiently close many loopholes. If nothing else, they were bitterly attacked in the conservative press, indicating the displeasure of affected landowners.

In any case, more recent data show that CORA appears to have improved its own internal administrative procedures and is now moving faster in organizing the asentamientos. Thus, by March 31, 1970, CORA had established 597 asentamientos, covering almost 2.5 million

hectares, in which 19,478 peasant families had been settled. Nevertheless, there are 57 pre-asentamientos still in existence (lands over which expropriation proceedings have been initiated but the asentamientos have not yet been organized). These cover 141,126 hectares, with 1,327 campesinos residing in this area.<sup>62</sup>

#### 6. Conclusions

A substantial agrarian reform--that is, one that effectively redistributes rural properties among landless campesinos and integrates the peasant class into the social, political and economic life of the country, while at the same time maintaining adequate production levels--is a very complex and difficult process. It at the least involves much more than an adequate eminent domain or expropriation process--certainly the political will to complete the process, the efficiency of the administrative machinery encharged with implementing the law, and the amount of resources, both financial and technical, available for the program, are among the other factors which are at least as important in determining the success of an agrarian reform process.

Nevertheless, expropriation is the basic legal mechanism on which the rest of the agrarian reform process depends. Far too many "land reforms" have been doomed to failure by Constitutional provisions or legislation which did not allow or provide for efficient and broad ranging expropriation processes. Three examples come immediately to mind: the Colombian land reform law of 1961, the Peruvian law of 1964; and the Chilean law of 1962.

If an expropriation process, at least in Latin America, is to provide the legal framework necessary for a substantial agrarian reform, it must at least:

1. make the bulk of privately owned rural property subject to expropriation;
2. establish a compensation scheme of deferred or long-term payments based on a valuation other than market price; and
3. have a quick-taking procedure which enables the reform agency to obtain possession of the land in the shortest time possible, while at the same time providing affected landowners with adequate legal remedies.

In Chile, the expropriation process, as established by Law 16.640 and its regulatory decrees and implemented by CORA, has adequately met the first two of the minimum "legal conditions." However, the procedure for taking possession of expropriated properties has not proven to be nearly as expeditious or uncomplicated as planned. As we have seen, certain apparently innocuous legal formalities established by Law 16.640 have, with the cooperation of the courts, been utilized by landowners to suspend the taking of possession for months and even years. Moreover, CORA itself has in the past contributed to such delays through its administrative practices.

Consequently, it cannot yet be said that Chile is in the process of a massive or substantial agrarian reform. On the other hand, it is certainly much more than a mere colonization program or one of token expropriation and redistribution. In the five years since the present agrarian reform process was initiated, for example, expropriation processes have been initiated over some 1,000 properties with a total area of three million hectares. Almost one-third of this area

is found in the three most heavily populated and important provinces of Chile: Santiago, Valparaíso and Aconcagua. On these three million hectares, some 20,000 families have been settled on 600 asentamientos (temporary land reform settlements) covering an area of nearly 2 1/2 million hectares. During 1969, the first definitive titles of ownership were distributed, mostly on a cooperative rather than individual basis, benefiting some 800 families. Moreover, according to official government figures, agricultural and cattle production in the whole country has been increasing at the cumulative rate of 3.8 percent since 1965, well above prior rates and certainly contrary to the oft-expressed fears that agrarian reform usually results in a short-run drop in production.<sup>63</sup> The costs of this agrarian reform process, which include much expensive infrastructure, are not yet clear, although some estimates go as high as \$10,000 per family.<sup>64</sup>

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Table 5. Properties Over Which Expropriation Process Has Been Initiated; January 1965 through January 1970 <sup>Expropriation Decrees Issued Under Both Laws 15.020 and 16.640</sup>

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1) Total Number of Expropriation Decrees (Each Decree = One Property)	1,140
2) Area of Properties (Hectares)	
a) Irrigable Land	251,723.9
b) Non-irrigable Land	2,853,572.9
c) Total	3,105,296.1

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Table 6. Number of Pre-Asentamiento As of March 31, 1970  
(Properties Which CORA has Expropriated but Asentamientos  
Not Yet Organized)

1) Number	66
2) Area (Hectares)	
a) Irrigable	10,997.8
b) Non-irrigable	130,128.9
c) Total	141,126.7
3) Number of Families Living in Properties	1,327

Table 7. Asentamientos Established as of March 31, 1970

1) Total Number of Asentamientos	597
2) Number of Properties Affected (Each Asentamiento = one or more Expropriated Properties)	868
3) Area of Asentamientos (Hectares)	
a) Irrigable Land	196,499.4
b) Non-irrigable Land	2,292,553.5
c) Total	2,489,052.9
4) Number of Families Settled in Asentamientos	19,428

Source for all tables: Corporación de la Reforma Agraria. Dirección de Planificación y Control, Sección Control y Estadística.

In any case, a good start has been made, and a solid base established for a more thorough process of agrarian reform. Moreover, steps have been taken to improve the legal and administrative procedures which affect the process of expropriation. Although it is too early yet to measure its effects, Law 17.280 of January 17, 1970, for instance, seems like a very satisfactory solution to most of the legal complexities blocking a more rapid expropriation process.

FOOTNOTES

1. Translation by O'Connor, op. cit., pp. 29-30.
2. No reference is made to the 1963 amendment (supra, p.24, f.n. 54) as it was never implemented.
3. O'Connor, op. cit., p. 32, 34, 35.
4. The water-law aspects of agrarian reform, although of extreme importance in Chile, which is very dependent on irrigation, will not be discussed in this paper. For various analyses and case studies of this subject, see Daniel Stewart, "Aspects of Chilean Water Law in Action: A Case Study" (Ph.D. diss., University of Wisconsin, 1967); Michael Lyon, "The Agrarian Reform Law of Chile: A Description of its Basic Elements" (unpublished paper, University of Wisconsin, 1968); Rubens Medina, "Some Aspects of Legal Control over Water Use for Agriculture in Central Chile: A Case Study" (Ph.D. diss., University of Wisconsin, 1970); Douglas Jensen, "Chile's New Water Code and Agrarian Reform: A Case Study," "Land Tenure Research Paper No. 41 (University of Wisconsin: Land Tenure Center, April 1970).
5. Ley de Reforma Agraria No. 16.640, Edición Oficial (Santiago: Editorial Jurídica de Chile, 1967), p. 162. Hereinafter the text will only cite the articles to the Law, without making references to the official edition.
6. Frei, Message, 5.
7. A list of the various "titles" or sections of the law will provide an idea of its complexity:
  - Title I. Lands for the Agrarian Reform
  - Title II. The Expropriation Decree and its Effects; Compensation Schemes
  - Title III. Reorganizing Property in Irrigation Areas
  - Title IV. Destination and Distribution of Lands
  - Title V. Water Regulation
  - Title VI. Agrarian Reform Bonds
  - Title VII. The National Agrarian Council

Title VIII. The Provincial Agrarian Courts

Title IX. Agencies which Cooperate with the Agrarian Reform Process; private Subdivision of Rural Lands

Title X. General Dispositions

Title XI. The Agrarian Sector and its Institutions

Title XII. The General Water Directorate

Title XIII. Other Water Agencies

Title XIV. Miscellaneous Dispositions, Transitory Dispositions

8. See, Antonio Vodanovic, Recopilación de Leyes, Decretos con Fuerza de Ley, Reglamentos y Decretos Agrarios (Santiago: Editorial Nascimento; 1968), p. 285.
9. For a very thorough explanation of Law 16.640 see: Instituto de Capacitación e Investigación en Reforma Agraria (ICIRA), Exposición Metódica y Coordinada de la Ley de Reforma Agraria de Chile (Santiago: Editorial Jurídica, 1968).
10. Frel, Message, op. cit., p. 27.
11. Some of the following discussion draws extensively on German Lührs, "Expropiaciones Bajo las Leyes 15.020 y 16.640," unpublished seminar paper, Madison, 1970.
12. From the following sources: Departamento de Investigación, Organización, Planificación y Coordinación de las Instituciones del Sector Público Agrícola de Chile, A Nivel de Terreno (Santiago: ICIRA, 1966), Anexo 22; CORA, Cuatro Años de Reforma Agraria (Santiago, 1968), pp. 10, 13, and 23-26; Law 16.640, Articles 32-57, 212; Conversations with various CORA officials.

13. The Consejo, or Council of CORA, is made up of the following persons: the Minister of Agriculture, the Executive Officer (Vice-Presidente) of CORA, the Executive Officer of INDAP, one campesino representing the beneficiaries of CORA's programs, one campesino representing the Comités de Asentamiento (Land Settlement Councils) and two delegates named by the President of the Republic (Article 212, Law 16.640).
14. All private land acquired by CORA must follow this process, even if offered voluntarily by the owner, in order to limit them to the compensation and other conditions expressed by the Law.
15. Articles 33, 34 and 57, Law 16.640.
16. Article 34. Nevertheless, there are no provisions preventing the owner from stripping the farm of movable or personal property, such as cattle or machinery. This omission has on occasion created problems for CORA. About the only power CORA has to prevent the removal of this type of property is the provision that such goods must be compensated in cash. By bargaining with the owners over the value of these goods, CORA has managed, in most cases, to prevent the stripping of necessary implements from the expropriated farm. Michael Lyon, "The Agrarian Reform Law of Chile: A Description of its Basic Elements," unpublished report (Santiago: ICIRA, 1968), p. 42.
17. Articles 35-38, Law 16.640.  
It is usually at this stage that the landowner and CORA enter into negotiations.
18. Article 42, Law 16.640.

19. Articles 39-41, Law 16.640.

20. Law 16.640 also made available to CORA most lands in the public domain or owned by government agencies, and which were susceptible to agricultural use. With the exception of lands owned by welfare agencies, which have to be compensated under the same terms as private property, all other public lands are to be transferred gratuitously to CORA. Certain public lands are exempted from these provisions (Articles 27 and 28).

Since by the time Law 16.640 was promulgated most public lands had already been transferred to CORA, they will not be the subject of further discussion.

21. Law 16.640, op. cit., p. 6. Translation by author.

22. Frei, "Message," p. 18.

23. The conversion to the equivalent areas throughout the different zones of Chile is performed through coefficients provided in a set of tables contained in Article 172 of the Law.

The hectárea de riego básica is a measure of land area which permits the comparison of various types and qualities of land in diverse regions. The measure is a constant standard of productivity expressed in hectares (2.471 acres). An hectárea de riego básica was fixed to equal one hectare of irrigated land in a particular area of the province of Santiago; then for virtually all other land in Chile the number of hectares in an hectárea de riego básica was fixed by comparing the productivity of these lands with the productivity of land where one hectare of land equals one hectárea de riego básica (hereafter abbreviated hrb). For example, if land where one hectare equals one hrb produces one harvest a year, and land in another zone produces

two harvests of the same crop per year, this second zone will probably have only 1/2 hectare in each hrb.

\* "Although the table of the number of hectares in an hrb for various types of lands in the various regions was generally based on the **productivity of the land**, there were deviations from the productivity criterion because of political pressure and certain policy reasons. For example, the south of Nile does not have the tenancy problems in the acute form found in the central region, nor is its production as inefficient. To obtain the votes of congressmen from the south, the hectares in an hrb in that region were greater than the criterion of productivity would justify." Lyon, op. cit., p. 10.

24. Strictly speaking, such acquisitions are not expropriations but simple purchase agreements. However, they are categorized as "expropriations" by the law in order to subject them to the evaluation, compensation and other conditions to which other expropriated properties are subjected. Thus, CORA is prevented from purchasing properties at market value, but at the same time is given some flexibility in acquiring otherwise non-expropriable properties. Moreover, the provision encourages landowners who fear expropriation to offer the land to CORA voluntarily, as it provides better compensation terms than most of the other expropriation provisions. See Articles 42-45, and discussion below.
25. That is, these properties are subject to the same compensation schemes, reserve rights and other conditions as are those properties expropriated under Law 16.640. As noted above, the threat presented to landowners by these provisions was essential in allowing CORA to acquire a substantial number of farms prior to the enactment of Law 16.640.

26. The burden of proof lies with the landowner. November 4, 1964 is the date President Frei was inaugurated.
27. Those properties smaller than 80 hectares as of November of 1964 will only be subject to this provision three years after the publication of the law.

According to Article 1(a), subsequent regulations will provide the criteria for determining the minimum economic, technical and social conditions which must be met in order that a property not be classified as "poorly exploited." Nevertheless, Article 1(a) further provides that there is always a presumption of poor exploitation when a landowner cultivates less than 80% of the normal irrigable area, or 70 percent in the case of dry land, or when he violates one or more of certain specified labor law provisions at least twice during the two-year period preceding the expropriation resolution. Decree 281 of May 15, 1968, as published in the Diario Oficial of June 4 and July 27, 1968, contains the regulations referred to above, which include very complex and elaborate criteria, and a point system to determine whether these criteria have been met.

28. Articles 7, and 12 to 14 respectively. The application of these articles are of course subject to various conditions and exceptions which will not be discussed here.
29. Articles 11 and 67, Law 16.640. The term minifundia is defined by Article 1(g) of Law 16.640. The reassignment will be either in the form of a family farm, or a share of a cooperative farm. Few, if any, minifundia have been expropriated to date.

30. For a complete examination of this subject, see ICIRA, Exposición Metodica, op. cit., pp. 22-34.
31. Article 1(h) defines the family farm as that area of land which is operated personally and allows a family group to live and prosper due to its rational use.
32. Articles 15, 26 and 27, Law 16.640.
33. Articles 22 to 25, *id.*
34. Articles 6, 16, 30 and 20-21, Law 16.640. The reserve right is computed by taking into account all the rural properties owned by the expropriated landowner. Thus, it can only be used once. For the rules determining the portions of the expropriated farms covered by the reserve, etc., see Article 30.
35. There are of course exceptions to this norm. For example, there is likely to be no reserve, or a reserve smaller than 80 BIH when the property is smaller than 80 BIH, when it is obviously abandoned or poorly exploited, or when the owner is anxious to sell out.
36. Articles 42 to 55, Law 16.640.
37. Julio Silva Solar and Jacques Chonchol, El Desarrollo de la Nueva Sociedad en América Latina (Santiago: Editorial Universitaria, 1965) p. 139. Kenneth Karst, "Latin American Land Reform: The Uses of Confiscation," Michigan Law Review 63:2 (December 1964).
38. Joseph R. Thome, "The Process of Land Reform in Latin America," Wisconsin Law Review 9 (1968).
39. The appraisal of the improvements is made by CORA, based on their market value as of the date of the expropriation decree. Landowners dissatisfied with the appraisal have thirty days to file an appropriate complaint with the Agrarian Tribunal.

40. There are three classes of bonds, "A," "B" and "C," amortized in 25, 5, and 30 annual quotas respectively. Each of the three classes is divided in two series. An expropriated owner receives 70 percent in bonds of the first series, which are readjusted annually in accordance with the official consumer price index, and 30 percent in bonds of the second series, which are not readjusted to reflect inflation. Each annual amortization quota, which follows the 7/3 proportion, shall include a three percent interest return on the nominal value of the bonds. As regards the first series, the nominal value is increased for this purpose by 50 percent of the readjustment figure cited above. The bonds are not negotiable, but can under certain conditions be used to purchase stocks or to satisfy tax bills or public assessments. Articles 131 to 134, Law 16.640.

For regulations concerning exchanging the agrarian reform bonds for corporate stock, see: Ministerio de Agricultura, Decreto 85, Diario Oficial, April 13, 1970.

41. A landowner expropriated under Article 4 (abandonment, etc.) can challenge the validity of this basis in the Agrarian Court, and suspend the administrative expropriation process until a final judgment on this issue is issued. This recourse is not available for Article 3 expropriations.
42. Articles 136 to 154, Law 16.640; Law 16.889 of August 14, 1968; Decree with Force of Law (DFL) No. 2 of October 3, 1967; Supreme Decrees 245 and 246 of April 30, 1968.
43. These Agrarian Tribunals are a direct descendant of the Special Expropriation Tribunals created by Law 15.020 of 1962 (Articles 26 and 29).

44. Except for disciplinary matters, through the Recurso de Queja (Writ of Discipline), provided by Article 86 of the Constitution. Article 3 of DFL No. 2 of October 3, 1967 (Diario Oficial of October 25, 1967) specifically makes this writ applicable to the Agrarian Tribunals.
45. Frel, "Message," pp. 28-29. For succinct and critical commentaries on the regular civil court system in Chile, see Eduardo Novoa, "La Reforma del Poder Judicial," Mensaje, Vol. 185, December 1969, pp. 600-609.
46. See, for example, In re Alamos Iguait, Supreme Court of Justice, January 4, 1968, Revista de Derecho y Gaceta de los Tribunales, Volume LXV, No. 1, January to March 1968, Part 2, p. 2; In re Violeta Grebe, Supreme Court of Justice, January 12, 1968, Id., p. 45; and In re Alberto Guzmán, January 20, 1968, Id., p. 78. These cases refer to transitory articles 2 and 3 of Law 16.640, which deal with properties over which expropriation proceedings under Law 15.020 were pending as of the date Law 16.640 was enacted.
47. For a case where the Supreme Court found the application of the transitory articles unconstitutional, see Sentence of August 13 1968, cited in Derecho y Legislación de Reforma Agraria, No. 1 (Santiago: ICIRA, 1969), p. 102.
48. See cases cited in Derecho y Legislación de Reforma Agraria, op. cit., pp. 104-105.
49. In an attempt to resolve this problem, special "crash" courses in procedural law have been instituted for the agronomist members of the agrarian courts. No data are available on the results of this program.

50. German Lührs, op. cit., p. 2. See, for example, Enrique Covarrubias vs. Cora, Rol. No. 30, Id.
51. Article 35, Law 16.640.
52. Unless, of course, it is alleged that CORA is acting in an unconstitutional manner, as explained above. Any problems regarding the application of the conversion table contained in Article 172 are to be resolved by the National Agrarian Council (Article 172, Law 16.640). This Council is made up of the Ministers of Agriculture and Lands and Colonization, the Executive Officer of CORA, and two delegates of the President of the Republic (Article 135).

An expropriated landowner may also have recourse to the Agrarian Tribunal when he is not granted his reserve right (Articles 30 and 36), or when the expropriation decree either affects lands specifically declared inexpropriable by the Law itself, or establishes a form of payment different from that required by law (Articles 38, 50, 145). These recourses to judicial review deal with clearly arbitrary or mistaken applications of the law, and thus are not readily available.

While the Chilean Constitution calls for the creation of Administrative Tribunals to handle conflicts between government agencies and private individuals, these Tribunals have never been established.

53. Article 37, Law 16.640. The Tribunal will suspend the process when the landowner's claim has a plausible basis, without prejudice of the final judgment. German Lührs, op. cit., p. 12.

54. Source, German Lührs, op. cit., p. 21.
55. Frei, "Message," p. 28.
56. Articles 39-41, Law 16.640.
57. The decree of expropriation for this farm had been promulgated on June 12, 1967.
58. The CORA data on the number of asentamientos has always been rather uncertain and sometimes self-contradictory. Nevertheless, it is clear that the organization of asentamientos has lagged far behind the number of expropriation decrees.
59. Cited in German Lührs, "Proyecto de Ley Modificatorio de la Ley 16.640," unpublished report (Santiago: ICIRA, 1969), p. 1.
60. See Informe de la Comisión de Agricultura y Colonización del Estado, cited in Lührs, id.
61. See, for example, Edmundo Eluchaus Malherbe, "La Ley de Reforma Agraria--Violación Constitucional," El Mercurio, January 23, 1970.
62. Data from Corporación de Reforma Agraria, Dirección de Planificación y Control, Sección Control y Estadística, March 31, 1970.
63. División de Agricultura, ODEPLAN (Oficina de Planeamiento Nacional), as cited in El Mercurio, International Edition, for June 1-7, 1970.
64. Página Económica, El Mercurio, International Edition for May 25-31, 1970.