Chilean government to implement new anti-bail provisions

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Tough new provisions in Chile's bail laws due to come into effect this month provide a revealing glimpse of the rightwing orientation of the country's ruling Concertacion coalition and its Socialist Party president-elect Ricardo Lagos. In the course of the presidential campaign Lagos increasingly sought to match and outdo his conservative opponent Joaquin Lavin in law-and-order rhetoric, particularly after he failed to win outright in the first round of the elections in December.

The legislative changes, which severely restrict the right to bail, were supported by all parliamentary parties and the judiciary and greeted with great fanfare in the Chilean press. Outgoing president Eduardo Frei promulgated the changes on January 28 but they will only become effective after Lagos takes power this month.

The modifications to the Penal Procedure Code is aimed at undermining what is termed provisional liberty, that is, the “right of all detainees or prisoners” to conditional and temporary release during the proceedings of his or her case.

In the previous law, defendants, accused of minor offences were guaranteed liberty without bail while those accused of more serious crimes could be granted bail. Other than in exceptional cases, where the intervention from a higher court was required, a local judge from the criminal court decided on whether to grant a defendant's release or not.

In cases where provisional liberty was rejected—because “detention or prison is determined absolutely necessary by a judge for the success of the investigation... or when the defendants' release is a danger to the security of society or the victim”—the judge's reasons had to be well founded and recorded. The defendant could also appeal the judge's decision.

The modified law not only obliges local judges to review the criminal record of every defendant but puts the onus on them to substantiate their reasons for granting bail to the Appeals Court immediately above them. The dossier will be kept and used against the defendant if he subsequently appears in a criminal court.

Judges will be prevented from granting bail to any defendant with a criminal record, regardless of the triviality of the crime, as well as anyone considered to be a threat to society, liable to obstruct police investigations or a threat to their alleged victim. Defendants accused of being involved in “groups or gangs” will also be denied freedom.

Last December Interior Ministry sub-secretary Guillermo Pickering claimed that the amendments were necessary because weak penal laws and lax practices of judges that were contributing to soaring crime rates. In the government publication *El Diario Publico*, he denounced the courts for “not collaborating in the struggle against crime initiated by the government and the police.”

His attack was enthusiastically picked up by the media and created the climate to give the bill urgent status and ram it through Congress without amendment. In the event the special status proved unnecessary as no one in the Senate or the Chamber of Deputies opposed the proposal. In fact, the only objections came from several parliamentarians who said it was too little too late and called for harsher punishments, longer sentences and more police patrols.

The vote demonstrated the bipartisan agreement of the Concertacion and its rightwing opponents on making young people, in particular, the scapegoats for the social ills produced by the growing levels of poverty and unemployment resulting from the policies of government and big business.

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According to one estimate, at least 30 percent of Chile's youth and children do not complete primary and secondary school for economic reasons. A report by Chile's Institute of Statistics showed that 28 percent of 15- to 19-year-olds and 19 percent of 20- to 24 year-olds have no work.

Property crimes are among those most rapidly increasing: the number of people detained for petty theft rose by 39.4 percent, for assault or violent theft by 26.4 percent and more serious theft by 24.7 percent. Over the last year at least a quarter of these crimes were reported in the poorest communities and just under two thirds of the offences were committed by people aged 15 to 24.

Far from the judges being “lax,” the number of prisoners in Chile's overcrowded jails is one of the highest per capita in the world. There are currently 29,000 people in jail, double the global per capita average. Of these, 60 percent are between 18 and 26 years of age and only one in five successfully completed primary education.

Incapable of tackling the underlying social problems produced by poverty, joblessness and a lack of basic services, the government's policy is to blame the victims, to intensify police intimidation and to beef up penalties, particularly in poorer working class areas.

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