

December 1965

LTC No. 11
THE LAND TENURE CENTER
310 King Hall
University of Wisconsin
Madison, Wisconsin 53706

FREI UNVEILS NEW AGRARIAN REFORM BILL

BY

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This paper is an early analysis of pending Chilean legislation.

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Chilean President Eduardo Frei unveiled his new agrarian reform bill on the anniversary of John Kennedy's death. "It is an appropriate coincidence," he said in a nationwide broadcast, "that our agrarian reform should be launched on the day the world pays homage to a man who opened new frontiers of opportunity for all mankind."

Frei was referring, of course, to the fact that his reform plans are very much in keeping with the Kennedy ideals that gave birth to the Alliance for Progress. Detractors of Frei's year-old Christian Democratic government attack the proposed reform as "Marxist." But Frei insists that he intends to preserve private enterprise in agriculture. He and other government spokesmen have said many times that, far from doing away with private property, the new law will merely extend the privilege of ownership to a wider segment of the rural population.

Expect Delay in Senate

More than a year in the drafting, the new bill now faces a long fight in the Senate, where Frei's Christian Democratic

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Party lacks a majority. Press predictions are that Socialist and Communist Senators will eventually give their grudging support to the measure after trying to make it stronger. Senators of the Radical Party, which supports land reform in principle, are not likely to vote for the bill unless they can soften it up. They are much more moderate than the name of their party would imply. Conservatives and Liberals are unalterably opposed to the bill, though the ideas of land reform and Promoción Campesina (rural social work) have become so popular in Chile that even the far right often uses reform terminology. But words mean different things to different people, as Luis Larraín Marín, President of the ultra-conservative National Society of Agriculture made clear in a recent press interview. He described promoción as a process that should "bring the peasant ever closer to his patrón on the farm, the priest in the Church and the teacher in the little school." More popularly, promoción is thought to make the peasant independent of paternalistic influences.

Cite Need for New Law

Land reform legislation is not new in Chile. A colonization bill was passed in 1928, substantially modified in 1960 and superceded by Law 15020 (which called the process

"reforma agraria" rather than "colonización") in 1962 during the regime of former President Jorge Alessandri. Made public with the new bill was a 42 page "white paper" emphasizing the inadequacy of past measures and the need for new legislation. Prepared by the Agrarian Reform Corporation (CORA), this supporting document attacks the "Alessandri reform" on several grounds. It points out, for example, that the existing law discriminates against the true peasant by insisting that an applicant for land have a savings account and by giving preference to applicants with college degrees in agriculture. (This was true in the point system for choosing settlers set up by the 1960 legislation, but modification in 1962 gave a clear edge to campesinos who live on the farm to be colonized. The old law also requires that a campesino's agricultural experience be certified by his employer, a clause, says CORA, that "preserves the paternalistic system."

Only 1210 parcels of land were distributed in the past seven years and few of those went to campesino families. And since existing legislation does not provide for deferred payment, the government has been forced to pay cash for land. This has meant huge prizes for some land barons, says CORA,

some of whom have received more than commercial value for their land.

The CORA document also criticizes the existing law for its creation of huertos, small (2.5 acres) plots on the fringes of reform colonies. Huertos were meant to accommodate applicants who could not qualify for regular parcels, which average about 40 acres. They have, says CORA, "lead to an enormous frustration and created a pool of unemployed workers who live at a bare subsistence level." CORA summarizes the Alessandri law as one that "promised a great deal and changed nothing at all."

Expropriate Excess Lands; Poorly Operated Farms

The basic cause for expropriation under the new bill is excess size--all farms over 80 "basic irrigated hectares" (BIH) are subject to expropriation. A "basic irrigated hectare" is equivalent to one irrigated hectare of number one land (International Soil Conservation Scale) in the Maipo River basin near Santiago. The proposed law includes a chart showing equivalent sizes for different zones. For example, in the Azapa Valley of Tarapacá, Chile's northernmost province, 40 irrigated hectares are rated equal to 80 BIH. On Isla de Tierra del Fuego, off at the southern tip of the continent, the basic

inexpropriable farm unit can be as much as 23,000 hectares.

The second major class of expropriable lands are "abandoned" or "ineffectively used" farms. The bill defines an abandoned farm as one which has no "annual crops, improved pastures, livestock, forestry or other activities of analogous economic significance. The fact that a farm is fenced or has a caretaker or is cultivated for subsistence does not constitute proof of economic use."

An ineffectively used farm is one of more than 15 hectares on which: a) more than 20 per cent of the irrigated land or 30 per cent of the dry land is not cultivated; b) chemical fertilizers are not used in adequate amounts; c) the total value of improvements does not equal the tax declared value of the land; d) the owner does not comply fully with legislation on salaries, housing, social and job security, education and health of workers.

Control Private Subdivision

To guard against evasive "paper subdivision" the bill permits expropriation of any farm that was part of a larger property (more than 80 basic hectares) as of November 27, 1962 and that has not been operated continuously as a separate unit since the subdivision took place. Future private

subdivisions (after Nov. 22, 1965) will have to be approved by CORA. Permission can be granted only for parcels that are sold to campesinos.

Commonly owned lands, with several exceptions, are also subject to expropriation. This includes lands owned by corporations or by one or more persons who, according to existing law, should have divided the property. An example is a perpetually undivided inheritance, although certain of these, such as the comunidades of the north and the Mapuche Indian lands of the south, can be exempted by presidential decree. These are lands that have been commonly owned and operated for generations. Another exception is land belonging to peasant cooperatives, and in fact any communally owned farm is exempt if it is not larger than 80 basic hectares, and is operated directly by one or more of the owners, none of whom has interest in another farm.

Farms not operated by their owners are expropriable, regardless of size, if rental contracts are not fully legal. Lands with uncertain or unclear titles are also subject to expropriation.

The last group of expropriable lands are those which will benefit from irrigation works now being built, or to be

built in the future, with government funds.

Owners Keep up to 320 Basic Hectares

A landowner affected by expropriation will be allowed to keep up to 80 basic hectares if his farm is not abandoned or ineffectively used and as much as 320 basic hectares if he meets the following conditions:

- a) Cultivates 95 per cent of his irrigated land and 80 per cent of his arable dry land.
- b) Uses modern technology.
- c) Practices soil conservation.
- d) Instigates an acceptable profit-sharing plan for workers.
- e) Pays at least two and a half times the legal minimum wage, including profit shares.
- f) Complies with regulations for housing and sanitation for workers.

If a farm is declared abandoned or ineffectively used, the entire property can be expropriated. The same is true if the land is essential to a public works project, such as a dam. In this case, however, the expropriated owner will receive land of equivalent value, up to 80 basic hectares, in another area.

Create National Agricultural Council and Agrarian Reform Courts

Decisions concerning expropriations will be made by a five-man National Agricultural Council headed by the Minister of Agriculture. Serving with him will be the Executive Vice Presidents of the Agrarian Reform Corporation (CORA) and the Institute for Agricultural Development (INDAP) as well as the heads of two Ministry bureaus--the Bureau of Agriculture and Fisheries (DIAP) and the Bureau of National Lands and Properties (Dirección de Tierras y Bienes Nacionales).

Basing their decisions on facts gathered by Ministry technicians, the council will issue Acts of Proceedings establishing the cause of expropriation.

To keep part of his land an expropriated owner will petition CORA and present evidence that his operation meets the requirements for exemption. He can claim either 80 or 320 hectares. A two-thirds vote of the Advisory Board of CORA will approve the exemption.

If it is turned down, the owner can take his case before the National Agricultural Council, and in turn before the Provincial Agrarian Reform Court. The bill establishes one of these courts in the capital city of each province. Each has three members named by the President: a Judge of Major Civil

Affairs (Juez de Letra de Mayor Cuantía) and two agricultural technicians (who hold a college degree in agriculture), one selected from the existing provincial bureaucracy and the other from a list of three names submitted by the National Association of Agricultural Technicians (Asociación Nacional de Ingenieros Agrónomos).

The bill also sets up Agrarian Courts of Appeals in five major cities, consisting of two judges from the existing Court of Appeals and one agricultural technician. These courts will hear appeals of cases decided by the provincial courts. Appointments in both courts are for one year terms.

Take Immediate Possession

These courts will hear a variety of complaints, including disputes over CORA appraisals of improvements, the size of the farm left to the owner, the cause of the expropriation, and so on. If the owner can show clearly plausible evidence that CORA has proceeded illegally the court will delay the actual taking over of his farm until a final decision is reached. However, where there is no clear evidence of illegal procedure, CORA takes possession immediately, even though litigation continues on several points. If the decision eventually goes against CORA the land will be returned or the price adjusted,

depending on the nature of the complaint.

This provision for taking immediate possession is a crucial one for the reform. Experience under the existing law has shown that normal expropriation litigations languish in the courts for years. In the meantime production on the farm in question falls drastically. The owner invests as little as possible; even sells off capital, since he is not sure of keeping the farm. And CORA is not permitted to take it over to keep production up.

Pay on the Installment Plan

Changing the rules for taking over land in spite of pending litigation will require a constitutional amendment, as will deferred payment, which the bill also contemplates. A major criticism of the "Alessandri Reform" has been that it did not amend the constitution to allow for deferred payment. Actually, the amendment was passed by Congress during the Alessandri regime, but the enabling legislation that would have effected it never was even proposed.

The new bill proposes that expropriated lands be paid for at tax assessed value, which, with last year's re-appraisals, approximates 100 per cent of commercial value. The price will also include appraised value of permanent improvements not

included for tax purposes. Since in the past only land, the owner's home and the vineyards have been taxed, most improvements have never been appraised. Movable capital, such as animals and machinery, are not subject to expropriation under the bill and will not be included in the price. The value of expropriable improvements will be set by CORA and eventually reviewed by the agrarian courts, but CORA will take possession as soon as it has set a reasonable tentative price and deposited the required cash down payment with the court.

The size of the down payment will vary depending on the cause of expropriation. If the cause is "excess size" the owner gets 10 per cent in cash. If the farm is declared "ineffectively used" he gets 5 per cent and if it is "abandoned" he gets 1 per cent in cash. In each case he receives government bonds for the remainder, which will then be redeemed in 25 annual installments. The value of the bonds amortized each year is adjusted upward by 80 per cent of the rise in cost of living, for the first 200 hectares of land expropriated. For progressively larger expropriations the adjustments are progressively smaller. Bonds for a third 100 hectares are adjusted at 60 per cent, a fourth at 40 per cent. Bonds corresponding to expropriated lands in excess of 400 basic hectares will be

adjusted at only 20 per cent of inflation. Bonds for abandoned or ineffectively used farms will be adjusted at half the normal rate in each size category.

Create Family Farms

The bill stipulates that expropriated lands will be divided into "family farm units" and sold to campesinos, who will have 30 years to pay. Each annual payment will be readjusted to 70 per cent of the rise of the cost of living and will include interest at three per cent. The interest, however, will be calculated on the basis of an inflationary adjustment of only 50 per cent.

The size of a family farm unit is flexible. The actual size in each case will be determined by CORA, based on location, topography, soil capacity, and climate. The aim is to create units that can be farmed by the labor available to an average family with little or no hired help.

A campesino is defined as "a worker or employee whose habitual and continuous work is realized in the fields, such as a squatter, renter, sharecropper, caretaker or owner of lands that do not exceed one family unit. In no case will a professional with a university degree be considered a campesino." This clause reflects the present government's dissatisfaction

with past "reforms" which, prior to the 1960 legislation, distributed many parcels to lawyers, politicians, merchants, and other professionals rather than to peasants and from while shutting out other professions. 1960-62/gave a preference to prospective settlers with a university degree in agriculture.

To qualify for land under the new reform a campesino must be at least 18 years old and a Chilean citizen. He must be landless or own less than a family farm unit, and he must show skill in farm work. Preference will be given to workers who have been on the land in question for three years or longer, to squatters who have openly and peacefully worked the land for at least five years, to minifundistas, sharecroppers, etc., who farm less than a family unit, to persons with special farming skills, and to married men or other heads of families.

Recipient Cannot Divide Parcel

To keep his farm the new owner must live on it and work it personally, keep up the payments and belong to a cooperative. He must not sell, divide or give away land without permission from CORA. This applies even when the owner dies. Unless CORA is able to redivide the property into two or more family units, it will have to remain in the hands of a single heir, who will buy out the others. The bill does not set up

precise rules for adjudicating inheritances, but authorizes the president to establish them by decree.

Besides keeping the farm intact, the new owner must agree not to mortgage it except to specially authorized lending institutions. He must also conserve the soil and exploit the farm well--a badly run farm can be taken over by CORA and sold to a new recipient.

Lands can also be sold to peasant cooperatives in cases where subdivision is impractical. Mountain pastures, forests and large vineyards, for example, may be very difficult to divide and operate in small pieces. Lands which have traditionally been held in common, such as the comunidades of the north and the Indian reducciones of the south will continue to be owned cooperatively, as will new units created for these people. Further, any group of recipients can form a cooperative and petition CORA for a common title.

Obligations and limitations for cooperatives are the same as for individual owners.

Three Year Limit on State Ownership

The bill stipulates that CORA cannot keep land longer than three years before giving definite title to either an individual or a cooperative, except in cases where technical difficulties delay subdivision. What CORA does with the land

during this time is not stipulated, but Frei described a plan to create temporary cooperative units called "Asentamientos Campesinos" (peasant settlements) on each expropriated farm. Workers already on the farm will form a committee which, together with CORA technicians, will run the farm for two, and in some cases, three years. The idea is to keep the existing operation as intact as possible and to maintain full production while the work of parcelization proceeds. In the past, production has virtually stopped until houses, fences, sheds, ditches and other parcelization works were completed and the land turned over to individual farmers. With the asentamiento Frei hopes to keep the farms running and to let the campesinos themselves make most of the needed transformation. The asentamiento period will also aid in the final selection of parceleros by letting the campesinos show what they can do.

Expropriate Private Waters

A major part of the bill deals with water rights. It aims to supercede and change existing legislation so as to leave all national waters firmly within the public domain and subject to government regulation. Thus, as a part of land reform, or in any circumstance where water is distributed unfairly or wasted, the Water Bureau can step in to regulate water use.

So as not to discourage private investment in water works,
the bill stipulates that investments made after November 4,
1964 will be reimbursed in cash in the case of expropriation.