



SPECIAL REPORT

# Labour Reform in Chile: Necessary, but is this the best time?

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## I. INTRODUCTION

Pursuing the line of the Government programme, at the end of 2014 President Michelle Bachelet launched one of her election promises, the Labour Reform. Following on from the controversial and widely disputed Tax and Educational Reforms, the Labour Reform package is currently going through parliament in its first constitutional stage towards approval.

Although most of the population agrees with the ultimate aim of the reforms, the way in which they have been presented has generated widespread criticism, mainly because they fall far short of what is expected of reforms on this scale.

The Tax Reform (first reform made by Bachelet) unleashed a spate of clashes between business and the government, proving that a majority in both houses of parliament is not enough to carry things through. Nowadays it is essential to generate a climate of dialogue, citizen awareness and debate to achieve broad acceptance of the initiatives and ensure that they are implemented gradually in consensus with the different sectors of the country.

Certain aspects of this Labour Reform suggest that it may be a little less traumatic than the previous reform process, largely because, unlike the Finance Minister, as soon as the bill was announced the Labour Minister (Javiera Blanco) embarked on a process to inform the different sectors of Chilean society (unions, business, trade associations, among others), through meetings, forums and seminars.

Chile faces the first months of the year with a scenario and projections of low growth, rising unemployment, a global slump on the commodity market and a downturn also in the country's principal copper client, China. Some thought should therefore be given to the question of whether this is the best time to make a Labour Reform focusing on the unionisation of business, which would probably not provide any incentive for productivity or competition.

The "V Study of Business-Government Relations in Latin America, Spain and Portugal"<sup>1</sup> reflected the opinion that one of the institutions held in lowest esteem by those interviewed (politicians and businessmen) were the unions. It is, therefore, rather striking

<sup>1</sup> 5th Study on Business-Government Relations in Latin America, Spain and Portugal at <http://www.dmasillorenteycuenca.com/2014/12/v-estudio-sobre-las-relaciones-empresa-gobierno-en-america-latina-espana-y-portugal/>

Table 1.2 Level of Confidence in Unions

		BUSINESSMEN DATA		
		None or very little confidence (1-2)	Some or good confidence (3-4)	Full confidence (5)
IBERIA	SPAIN	87.4%	12.5%	0.1%
	PORTUGAL	64.3%	34.3%	1.4%
LATAM	ARGENTINA	58.0%	40.7%	1.2%
	BRAZIL	86.0%	13.0%	1.0%
	COLOMBIA	61.1%	38.9%	0.0%
	CHILE	53.8%	43.6%	2.7%
	ECUADOR	88.0%	12.0%	0.0%
	MEXICO	85.0%	14.2%	0.0%
	PANAMA	80.0%	20.0%	0.0%
	PERU	84.2%	15.8%	0.0%
	DOMINICAN REP.	86.4%	12.8%	0.8%

that the latest of the major reforms of the Bachelet government gives so much power to such a poorly valued institution (see Table 1.2).

The pro-union slant to the Labour Reform leads us to think that it will not help the current economic slowdown. On the contrary, it could well cause added tension between workers and employers, generating further imbalance between these two sectors.

Table 1.1 Level of Business Confidence in the Institutions

			None or very little confidence (1-2)	Some or good confidence (3-4)	Full confidence (5)	BUSINESSMEN/POLITICIANS CONFIDENCE INDEX (1-5)		
						Businessmen	Politicians	Total
PUBLIC INSTITUTIONS	GOVERNMENT	IBERIA	56.5	42.2	1.2	2.36	3.00	2.41
		LATAM	61.1	37.1	1.8	2.34	2.64	2.40
		TOTAL	60.1	38.2	1.7	2.34	2.67	2.40
	POLITICIANS/ POLITICAL PARTIES	IBERIA	84.2	15.8	0.0	1.71	2.78	1.80
		LATAM	82.4	17.2	0.4	1.80	2.36	1.90
		TOTAL	82.8	16.8	0.3	1.76	2.40	1.88
	JUSTICE	IBERIA	42.8	56.7	0.5	2.64	2.85	2.66
		LATAM	59.4	38.9	1.7	2.37	2.75	2.45
		TOTAL	55.7	42.9	1.4	2.43	2.76	2.49
	THE ARMY/ARMED FORCES	IBERIA	20.9	63.8	15.3	3.34	3.73	3.37
		LATAM	21.2	66.7	12.0	3.22	3.10	3.20
		TOTAL	21.2	66.1	12.8	3.25	3.16	3.23
PRIVATE INSTITUTIONS	BANKS/ FINANCIAL INSTITUTIONS	IBERIA	54.4	43.9	1.7	2.42	2.62	2.44
		LATAM	12.3	76.3	11.4	3.53	2.63	3.35
		TOTAL	21.8	69	9.2	3.28	2.63	3.16
	MEDIA	IBERIA	55.4	43.8	0.8	2.42	2.35	2.41
		LATAM	21.5	75.1	3.4	3.19	2.39	3.03
		TOTAL	29.1	68.1	2.8	3.02	2.39	2.90
	UNIONS	IBERIA	85	14.7	0.2	1.66	2.29	1.71
		LATAM	78.9	20.1	0.7	1.87	2.30	1.96
		TOTAL	80.3	18.9	0.6	1.82	2.30	1.91
	BUSINESS ORGANIZATIONS	IBERIA	47.9	51.2	1.0	2.56	2.93	2.59
		LATAM	11.8	78.5	9.7	3.56	2.94	3.43
		TOTAL	19.9	72.4	7.7	3.33	2.94	3.26

“The main points are geared towards favouring unions”

## 2. PROPOSALS OF THE NEW LABOUR LAW

President Michelle Bachelet has pointed out that the Labour Reform "modifies the Labour Code in the area of collective rights". She added that in modern societies, "Democracy is not limited to the exercise of civil liberties and political freedom, but entails full exercise of economic, social and cultural rights, which include union freedom for the purpose of redistribution".

The intention of the Labour Reform has thus been clear from the outset. Its declared purpose is to **extend collective rights to workers**, enabling the redistribution to them of the revenues from production or service organisations.

In short, the main points **are geared towards favouring unions**, with measures such as:

- Expanding the collective bargaining mechanism for workers
- Establishing a minimum level for collective bargaining
- Forbidding the replacement of striking workers
- Extending unions' right and access to strategic information of the company, in order to promote more balanced, informed bargaining

- Establishing union control in bargaining and freedom to join and pull out of unions
- Recognising employees' right to assemble and negotiate collectively (through bargaining groups) in companies where there are no unions
- Extension of benefits, which means that employers cannot unilaterally extend the benefits of a collective agreement to non-unionised employees, save by prior agreement with the union.
- Raising the hours allowed for union work in large companies.
- Strengthen the rights of women, for example, by improving the information on gender-based salary differences and establishing the obligation to include women in the bargaining committees.

## 3. POINTS OF VIEW

### BUSINESS SECTOR

- **Confederation for Production and Commerce (Confederación de la Producción y el Comercio - CPC):** This organisation, has strongly criticised the bill, declaring that the Labour Reform does not aim to create more

“The Reform goes beyond the legitimate interest in generating greater equality between workers and employers”

and better jobs and remunerations or improve companies' productivity.

Their opposition to the initiative lies, as indicated by its former chairman Andrés Santa Cruz, during his term in the fact that the Government is yet again passing laws exclusively for those it believes will vote for it and he announced that they plan to raise their objections in Congress, since they believe that the bill will not provide more or better jobs or benefit vulnerable sectors.

CPC argue that this reform is not good for workers, but aims only to please the union leaders. From the business point of view, in order to have a good labour agenda, the focus must be on having more and better jobs, more job opportunities, more training and more aid to companies to become more competitive.

In the opinion of this Trade Association, it is more important to establish an agenda that will benefit all workers not just give more power to the union leaders.

The CPC proposal in this regard is to boost training, which it considers to be the only way for workers to achieve higher remuneration and the bill does not contemplate this

at all. Nor does it touch on the matter of penalties for workers who call illegal strikes, arguing that just as employers are fined for anti-union practices, those who promote occupations and violence should also be punished.

Finally, the organisation assures that as it stands at present the Labour Reform without doubt **contributes significantly to generating more uncertainty and will not bring about an upswing in the economy.**

**Other opinions of the business sector: The Chilean Chamber of Construction** considers that the Reform goes beyond the legitimate interest in generating greater equality between workers and employers, promoting conditions that could be detrimental to the viability of small and medium-sized enterprises.

**The National Chamber of Commerce** has declared that they would have liked this reform to have placed greater emphasis on promoting labour adaptability, as the core theme, and the development of more and better human capital.

**The National Mining Society** pointed out that they were concerned about legal modifications

“The initiative contains nothing that will help to improve productivity”

that could impact on the working environment, especially against a backdrop of slowing economic growth.

- **Sociedad de Fomento Fabril (SOFOFA):** Along the same lines as CPC, Sociedad de Fomento Fabril (Society of Manufacturing Development) is concerned about the principal themes of the Reform. Its greatest misgivings are concerned with the union control in bargaining, since in their opinion it could be detrimental to the freedom for joining unions established in the Constitution.

This association has mainly criticised some of the "limitations" of the bill relating to labour adaptability, basically because the reform package contains a number of conditions such as establishing a minimum 35% union membership within the company and ordinary working hours of up to 45 hours/week and 12 hours/day.

They also claim that the package is "vague" as regards what is understood by anti-union practices, making businesses exposed to hefty fines without being aware that they were infringing the law.

The Labour Ministry's proposal to balance the power in bargaining is for unions to have the necessary information on the company's conditions before they sit down to negotiate with employers. This means that the company will have to hand over sensitive information on its financial position and the remunerations of its employees according to their position. SOFOFA believe this violates the respect for workers' privacy and individual rights, since the information is exposed.

Finally, they criticise that the initiative contains nothing that will help to improve productivity, which in their opinion is very important to boost economic growth. They further point out that collective bargaining is a key element to promote non-discrimination. But this bill discriminates against non-unionised workers in favour of unionised workers.

#### TRADE UNIONS

Trade unions are unquestionably the sector most favoured by this Labour Reform. However, the union representatives in large cap enterprises say that although the labour agenda is a step forward, it does not come up to the expectations traditionally

“The aim of collective bargaining is not to strike”

voiced by the unions. They point out that the changes regarding collective bargaining should have included remunerations and workers’ rights.

Most union representatives believe that modifying Article 161, which entitles employers to terminate employment contracts on the grounds of the company’s business needs, is fundamental for retail employees, just as other points related with types of contracts and dismissals, severance pay and bonuses. These concerns have been exposed earlier to both houses of parliament.

Union leaders stress that the aim of collective bargaining is not to strike but to improve employment conditions and that in this regard the new Reform will not generate more strikes than there are at present. For the leaders striking is an instrument to which they have recourse if no agreement is reached to improve employment conditions, but that it is not the ultimate aim in any negotiations.

- **Central Única de Trabajadores (CUT):**  
This is undoubtedly the organisation most interested in the changes proposed in the Labour Reform; its credibility and future are at stake since it has been fighting for these changes for 25 years. The CUT represents the essence of unions and now, through

application of the bill, it seeks to gain strength as an institution.

In their opinion the labour changes currently being promoted by the government will favour workers, but they suggest that there are still issues to be settled.

They have certain discrepancies in three specific aspects: redundancies on the grounds of company needs (Article 161), the minimum level for collective bargaining and the extension of benefits to non-unionised workers, among others.

As regards the minimum for collective bargaining, in the opinion of CUT the employer cannot offer less than what the workers have earned under the previous collective agreement and must contemplate inflation (Consumer Price Index - CPI), to recover what has been lost ;points in which it has discrepancies with the government.

As regards benefits, the union negotiates and any benefits it achieves cannot, in their opinion, be extended by the company to employees who did not participate in the bargaining. The government agrees with this, but has

“Employees in the public sector were not taken into consideration in the Labour Reform”

declared that it has not yet found a way of solving the problem, since it could be unconstitutional.

The chairman of this organisation, Bárbara Figueroa, member of the communist party of Chile (PC), has stated that her appreciation of the bill is positive overall, but that the task to improve employment in Chile has not yet finished, since the full labour rights of many workers still need to be restored, especially in respect of bargaining by branch of activity, intercompany bargaining and granting more rights to the officers of strategic enterprises.

- **National Grouping of Tax Employees (Agrupación Nacional de Empleados Fiscales - ANEF):** This association represents an important sector of the labour market, of over 700,000 workers, (8,6% of the Chilean working force) and they appear to be the ones who most lose out in this debate, since by law civil servants are not entitled to join unions, participate in collective bargaining or go on strike. Despite this, they do form groups, negotiate and often obtain more and greater benefits than workers in the private sector.

Employees in the public sector were not taken into consideration in the Labour Reform because including them would mean changing the Constitution. In 2014 they negotiated these issues with the government.

According to this association, the greatest problems affecting civil servants are the low remunerations in comparison with the private sector, the annual renewal of employment contracts and the non-existence of a manual of good labour practices.

They also point out that it is essential to improve the provisions applicable to retiring workers, who receive one-third of their salaries, and protect self-employed workers, who are not entitled to health, retirement or other benefits which do correspond to employees.

#### GOVERNMENT

Michelle Bachelet's Government considers the implementation of the Labour Reform just as important as the Education and Tax Reform, and it has required considerable efforts by the political parties, including agreements and protocols, to push it through.

For this reason, the Labour Minister, Javiera Blanco, insists that they are presenting a bill that is good for the country and not an initiative by some

**“This new reform agenda has clear overtones of a union reform”**

against others or for the benefit of just a few. “This is a bill for Chile, for the middle class, which wants to go to work without conflict, be heard and receive fair pay. This initiative is going to respond to many of those needs,” the Secretary of State has assured.

According to the Secretary of State, “When a union negotiates with an employer, it does so on behalf of those it represents.” Therefore, she claims, this is not a Union Reform. In her opinion, one of the strong points of this bill is union power and control, which is contemplated in the Constitution, giving corporations, unions and foundations special recognition.

The Ministry of Labour considers this an integral initiative based on three core themes: protection of workers, strengthening of institutions and industrial relations. In turn, the government has declared that this Reform is not isolated, but involves the integration of several aspects to secure its implementation.

#### 4. CONCLUSIONS

Considering the points of view of the different parties involved, this new Labour Reform has clear overtones of a union reform and that is how it was proposed from the outset. Moreover, the Government’s reform package promised to increase the unions’ bargaining power and

reduce the differences in the relations between workers and employers.

Although the union membership rate is not low in Chile (14%), –the average in the OECD is 17% and France, for example, has a rate of 7%– 40% of Chilean workers are in companies with fewer than 10 employees and have no union, so this reform would not benefit them. The role of the unions is to channel the voice of the workers, but relationships are different in small companies and issues are discussed in a different way.

The critics of this bill have pointed out on numerous occasions that an opportunity has been missed to include critical aspects of the labour market, concerning participation, productivity and job opportunities for women and youth, especially in the lower income brackets.

Another aspect to be considered is that in Chile, workers with contracts in the private sector account for 52% of the labour force, and considering those in micro and small enterprises, this reform affects at most 30% of the labour force.

The global scenario is pessimistic: the IMF has lowered its world growth expectation for 2015 to 3.5%, with 1.3% for Latin America and China has its lowest GDP in 20 years (7.4%).

“The scenario for 2015 is rather gloomy”

The world prices of commodities have fallen drastically, including copper, which fell to US\$ 2.66/pound in March, far from the almost US\$ 3 considered in the worst case scenarios. To give an even more graphical example, for every cent of a dollar that the average annual price of copper falls, Chile receives US\$ 128 million less for its exports.

In fact, the nation’s budget for 2015 and the financing of the Education Reform, underpinned

by the Tax Reform, were drawn up estimating a price of copper of US\$ 3.12/pound. With this drop in prices the country would see its revenues fall by US\$ 3.8 billion.

In view of the plummeting of the price of copper, called “Chile’s salary” to record levels and the economic downturn in its principal buyer, China, the scenario for 2015 is rather gloomy.

The principal players in this new reform are aware that they can and must make improvements in industrial relations, but the government still has three years in office to implement those improvements progressively.

Now is not a suitable time for companies to increase the possibilities of striking. The discussion is just commencing in parliament and citizens hope that a consensus will be achieved this time and that the law will be passed within the time frames required by the current scenario of economic slowdown.

Figure 4.1 Evolution of the price of copper



Gráfico La Tercera

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