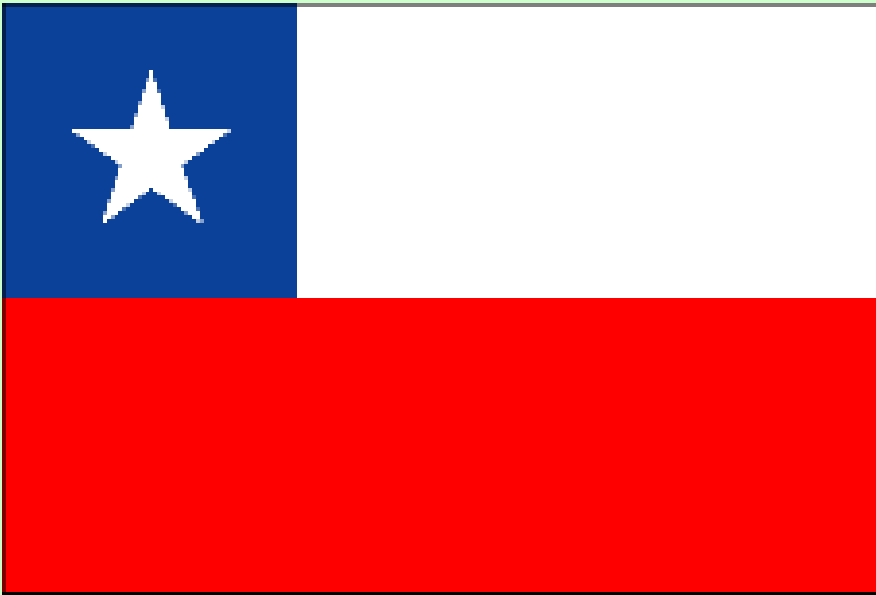


Chile's *Carabineros*: A Challenge to Democracy?

Criminal Procedure Reform without Military Justice Reform



LAS/SALAS Colloquium

29 March 2007

Meredith Fensom

Director, Law & Policy in the Americas Program

Chile's *Carabineros*: A Challenge to Democracy?

Background to Reform

- **Orthodox Inquisitorial System**
- **History of Judicial Independence**
- **Breakdown**

Chile's *Carabineros*: A Challenge to Democracy?

Return to Democracy

- 1990: “Judicial Bench is in Crisis.”
- October 1999: law establishing a *Ministerio Público* published in the *Diario Oficial*
- Criminal justice system shifts to public trials, oral hearings, and adversarial presentation of evidence.

Chile's *Carabineros*: A Challenge to Democracy?

1973-1990

- Military Court jurisdiction expanded
 - By mid-1980s, 95 percent of those in military courts are civilians
- Transformation of *Carabineros*
 - 1927: Created as deterrent to military adventurism, under Ministry of the Interior
 - 1973: Assigned to Ministry of Defense
 - 1991: Rettig Report established *Carabineros* responsible for over 50% of military regime human rights violations resulting in death.

Chile's *Carabineros*: A Challenge to Democracy?



<http://www.carabinerosdechile.cl/>

Chile's *Carabineros*: A Challenge to Democracy?



Chile's *Carabineros*: A Challenge to Democracy?



Chile's *Carabineros*: A Challenge to Democracy?



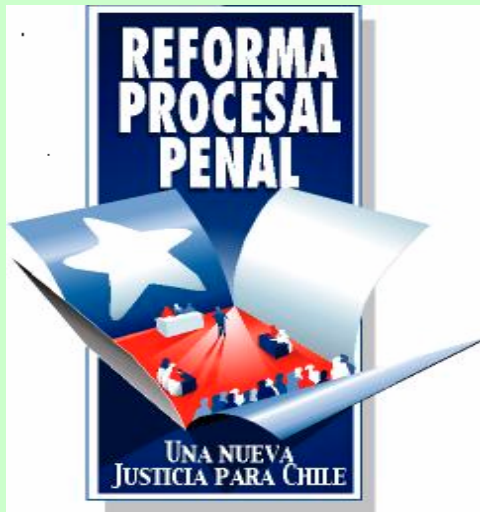
Chile's *Carabineros*: A Challenge to Democracy?

Democratic Consolidation & Military Subordination

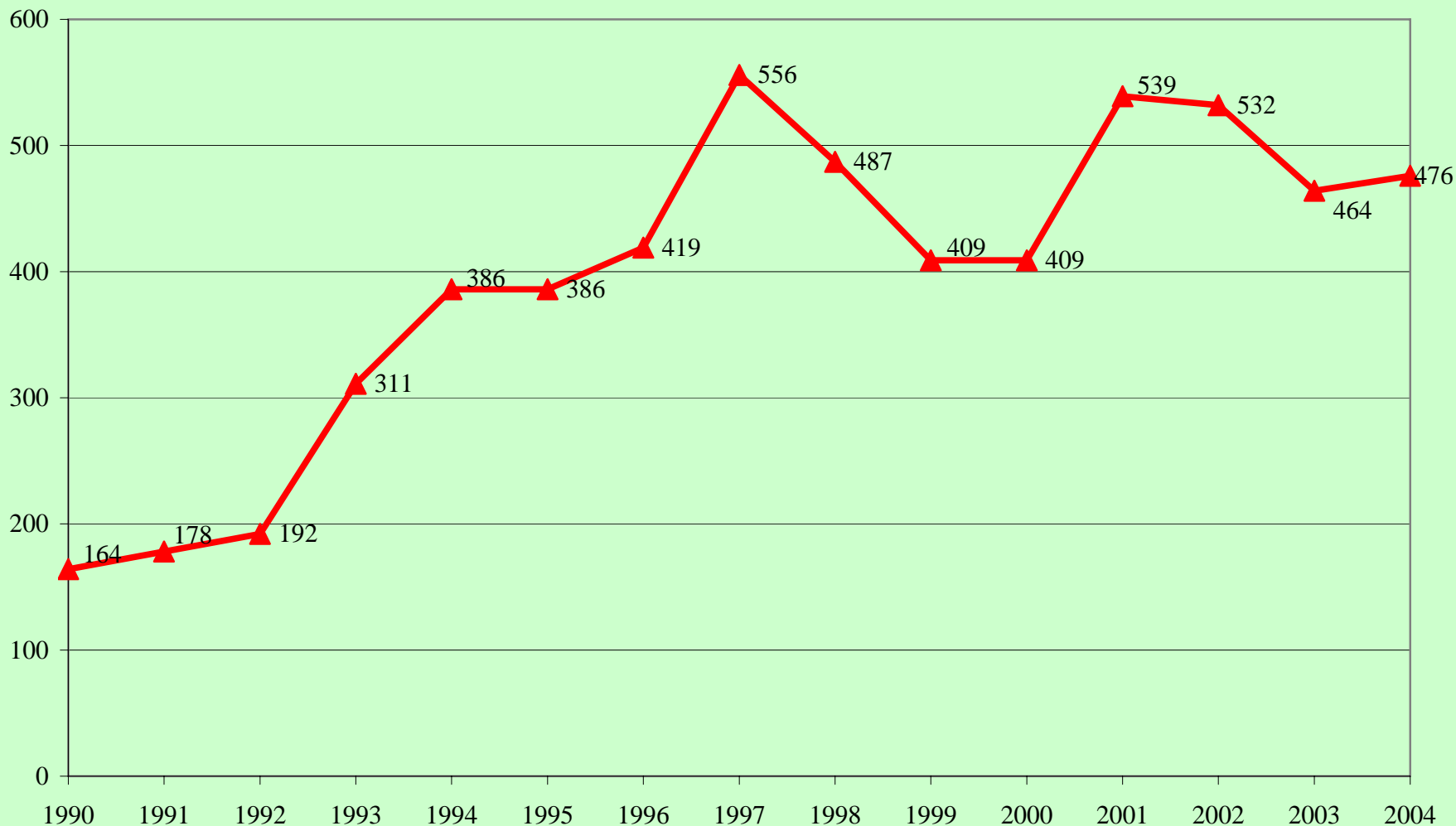
- Democracy
 - Lack of restriction on citizen expression
 - Absence of discrimination against particular political parties
 - Freedom of association for all interests
 - **Civilian control over the military**

Chile's *Carabineros*: A Challenge to Democracy?

Criminal Procedure
Reform without
Military Justice
Reform

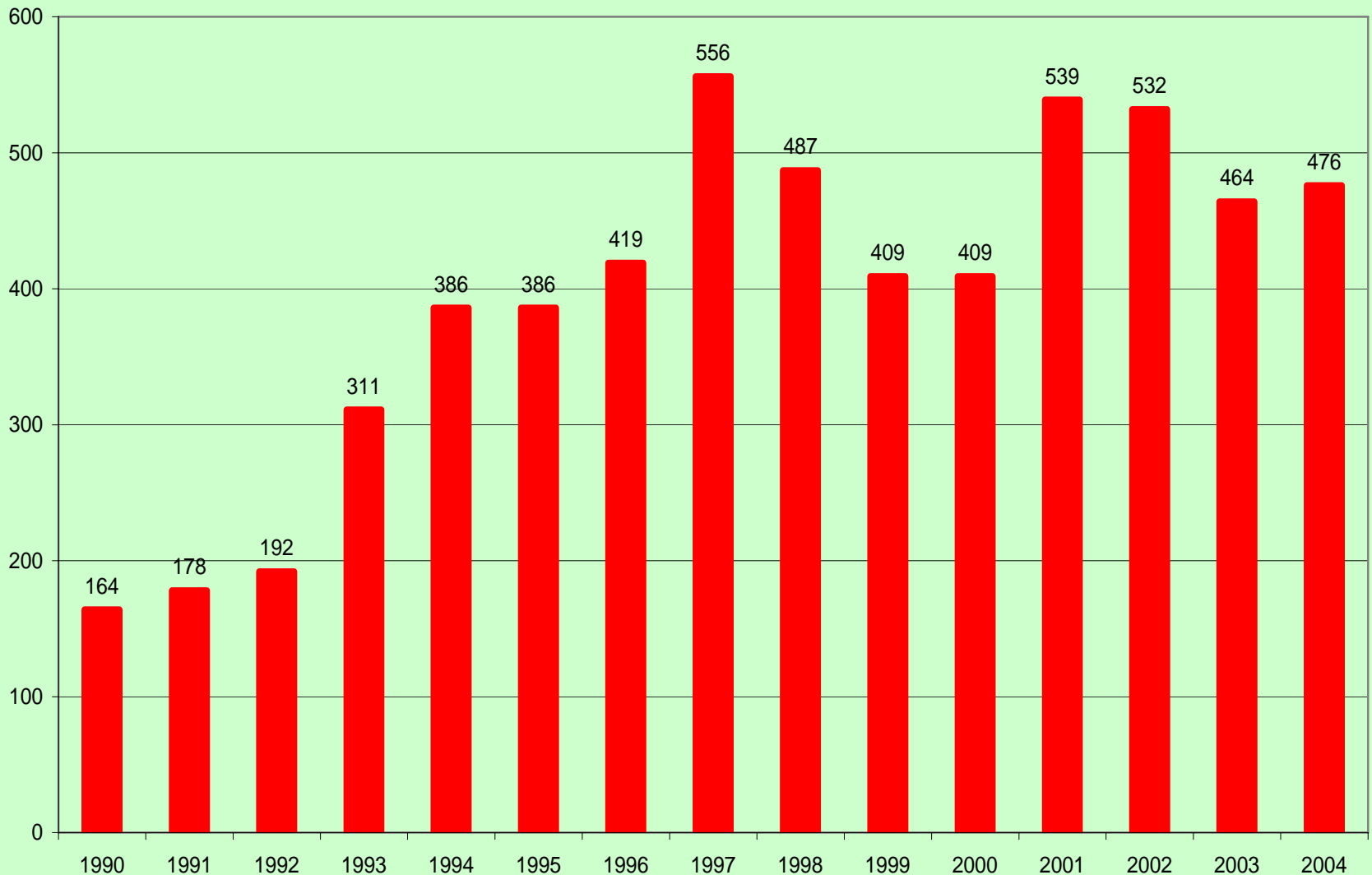


Charges of Police Violence brought before Military Courts, IV, V, VI and Metropolitan Regions, Chile



Source: Gonzalo Álvarez & Claudio Fuentes, *Denuncias por actos de violencia policial en Chile 1990-2004*, Observatorio N° 3, junio, 2005, programa de seguridad y ciudadanía FLACSO-Chile.

6,083 charges of police violence have been filed in the military courts of the IV, V, VI and Metropolitan Regions of Chile since the country's return to democracy in 1990



Source: Gonzalo Álvarez & Claudio Fuentes, *Denuncias por actos de violencia policial en Chile 1990-2004*, Observatorio N° 3, junio, 2005, programa de seguridad y ciudadanía FLACSO-Chile.

A black and white photograph showing Michelle Bachelet in the center, smiling and looking to her left. She is wearing a light-colored blazer over a dark top. To her left, a woman in a white jacket and sunglasses is visible. To her right, a young girl in a striped shirt looks towards the camera. In the background, a crowd of people is gathered, some holding flags. A sign in the lower right of the photo reads "GAMENOS JUDOS".

ESTOY CONTIGO

PROGRAMA DE GOBIERNO

MICHELLE BACHELET

2006-2010

Chile's *Carabineros*: A Challenge to Democracy?

International Convention Obligations

Trial of members of the armed forces accused of human rights violations in military courts is incompatible with international law norms. The expanded jurisdiction of military courts to also include civilians is extremely problematic in a democratic society. The trying of civilians by military courts, if at all, must be an exceptional circumstance and take place under conditions which genuinely afford due process guarantees and the right to a fair trial.

Chile's *Carabineros*: A Challenge to Democracy?

Legal & Social Change

- Understanding relationship between law & society critical; societal context affects implementation of laws and vice versa
- Legal change produces repercussions in society; social change can provoke further legal change

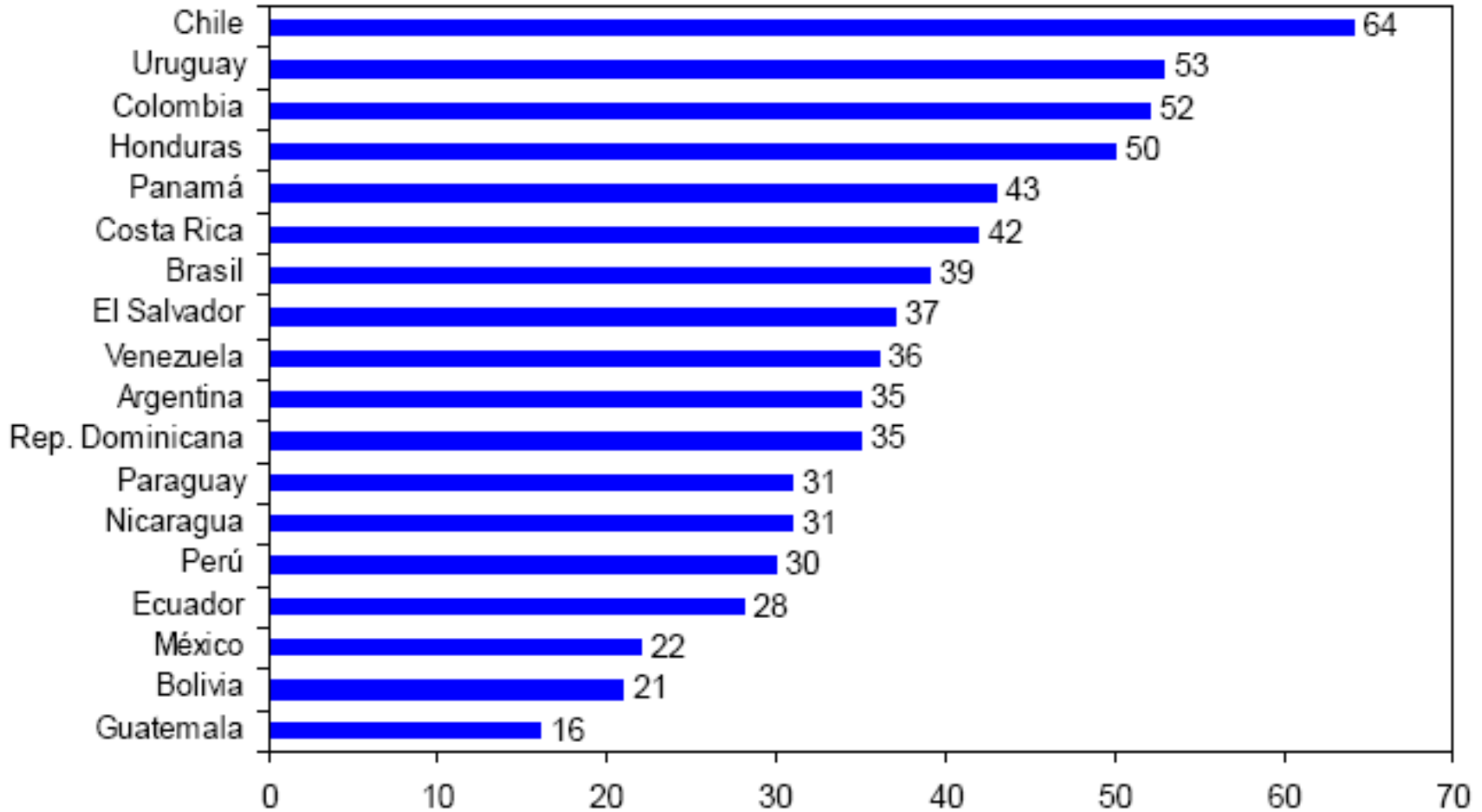
Chile's *Carabineros*: A Challenge to Democracy?

Citizen Security & Human Rights

- Perceived tension
- Safeguarding of citizen security & protection of human rights viewed as zero sum game, mutually incompatible goals
- Reduction of police powers an obstacle to public order?
- Demilitarization not a military specific issue

TRUST IN POLICE, TOTALS BY COUNTRY 2005

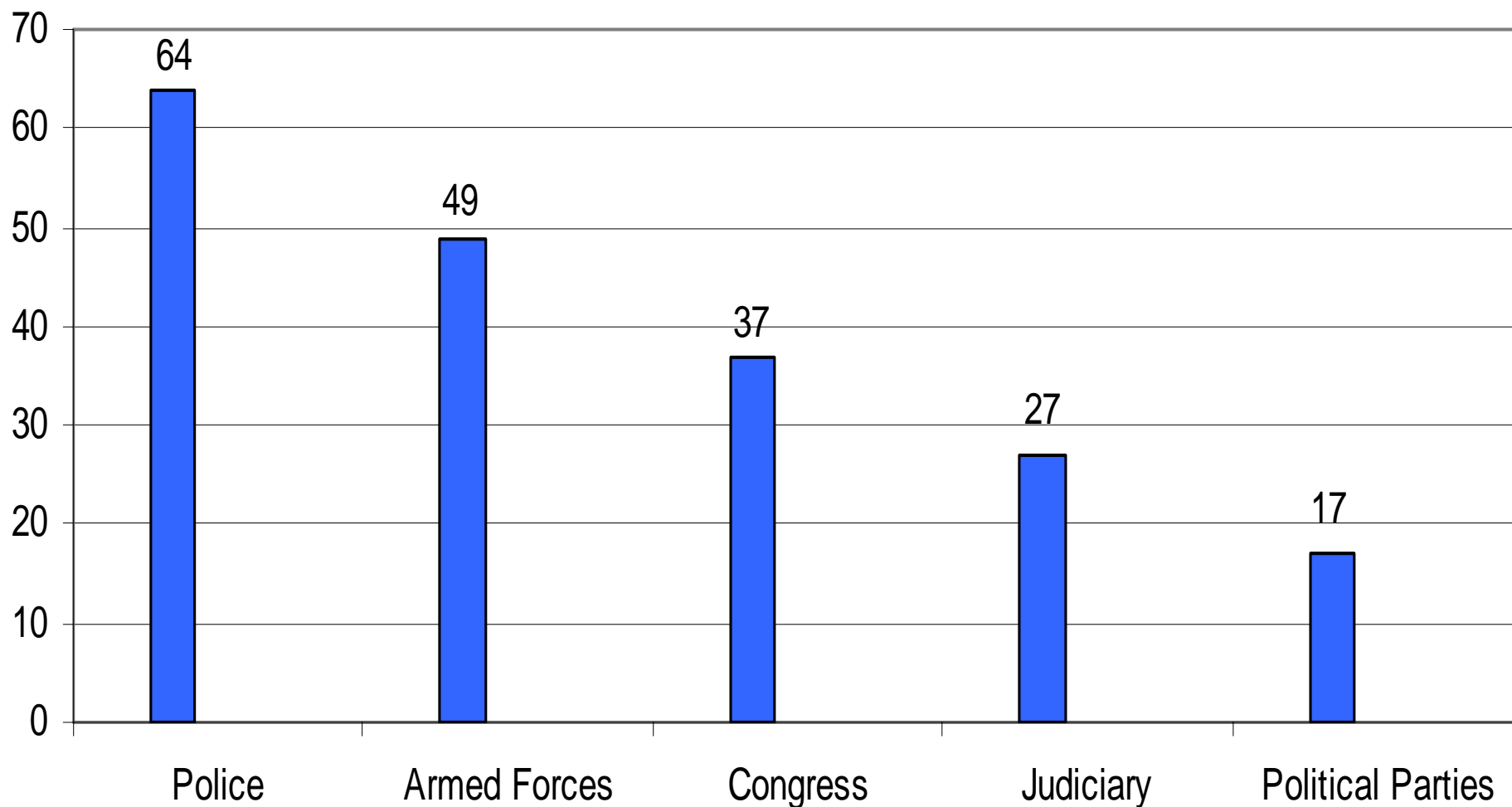
Q: *Would you say you have a lot, some, a little or no confidence?*
Percentage of respondents who said “a lot” or “some.”



Trust in Groups/Institutions, Totals for Chile 2005

Q: Would you say you have a lot, some, a little or no confidence?

Percentage of respondents who said "a lot" or "some."



Chile's *Carabineros*: A Challenge to Democracy?

Recognition of the Problem as a Pre-Condition for Change

- Agenda setting, through campaigns to increase public awareness;
- Legal reform, through legislative passage;
- Monitoring activities over police institutions to ensure policy compliance



DEFENSORIA PENAL PÚBLICA

Defensoría
Sin defensa no hay Justicia

Todo persona imputado tiene derecho a:

CONOCER EL MOTIVO DE SU DETENCIÓN
De acuerdo a la reforma de manera específica y clara acerca de los hechos que se le imputan y los derechos que le otorga la Constitución y las leyes.
(Artículo 73, letra c, C.P.R.)

Todo persona imputado tiene derecho a:

SER DEFENDIDA POR UN ABOGADO
"Ser asistida por un abogado desde las etapas de la investigación"
(Artículo 73, letra c, C.P.R.)



fensom@law.ufl.edu
www.law.ufl.edu/cgr/lpap