

MECHANISM FOR FOLLOW-UP ON  
IMPLEMENTATION OF THE INTER-AMERICAN  
CONVENTION AGAINST CORRUPTION (MESICIC)

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REPUBLIC OF CHILE

FINAL REPORT

(Adopted in the plenary session held on February 6, 2004)

**COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM FOR THE  
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION**

**FINAL REPORT ON IMPLEMENTATION IN THE REPUBLIC OF CHILE  
OF THE CONVENTION PROVISIONS SELECTED FOR ANALYSIS WITHIN THE  
FRAMEWORK OF THE FIRST ROUND<sup>1</sup>**

**INTRODUCTION**

**1. Legal-Institutional Framework<sup>2</sup>**

Chile is a representative democracy and its system of government is that of a republic essentially headed by a President. It is organized as a unitarian state and the administration of its thirteen regions is territorially decentralized.

The organs of the state are basically the Executive, the Congress and the Judicial Branch. The government and its administration are the responsibility of the President of the Republic. As Head of State, the President is responsible for the administration of the Ministries, Government Services, Superintendencies and Governors' Offices.

The governmental powers of the President of the Republic may be political, international, military and financial in nature. The nature of presidential powers is due to their being exercised for the purpose of making decisions to deal with new and unique situations not subject to standards or precedents. The administrative powers of the President of the Republic basically include the power to appoint and remove the Ministers of State, Under-Secretaries, Superintendents, Governors, Diplomatic Representatives and generally officials answering to him; the power to issue regulations, decrees and directives as he deems advisable to enforce laws; and the power to exercise regulatory authority in all those areas not belonging to the legal domain. Through these powers, the President seeks to satisfy the interests of the public, to provide for current needs and to develop governmental programs and policies in a coordinated and efficient way.

The Congress is the legislative body, sharing that task with the Executive. It is also the entity that oversees the actions of government, charged with the task of political criticism. It is bicameral, comprised of the Senate and the Chamber of Deputies.

The Judicial Branch is made up of the courts of justice, which are exclusively empowered to hear civil and criminal matters, to rule on them and to enforce decisions. In no case may the President of the Republic or the Congress exercise judicial functions, take over pending cases, review the reasoning or content of judicial decisions or revive proceedings that have concluded. The Supreme Court, a collegial body comprised of twenty-one ministers of the Court and responsible for the management, correction and economic oversight of all the nation's courts, heads the Judicial Branch.

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<sup>1</sup> This report was adopted by the Committee in accordance with the provisions of Articles 3 (g) and 26 of its Rules of Procedure, at the plenary session held on February 6, 2004 in the framework of its fifth meeting, held at OAS headquarters in Washington, DC, February 2 to 6, 2004.

<sup>2</sup> Document updating the Republic of Chile's response to the questionnaire. Introduction. Pursuant to the request of the Republic of Chile, its response to the questionnaire, along with respective annexes and supplementary information, as well as the documents submitted by Civil Society, in accordance with the Rules of Procedure and Other Provisions, are published on the Mechanism's website at the following internet address: [http://www.oas.org/juridico/english/corresp\\_chile.htm](http://www.oas.org/juridico/english/corresp_chile.htm)

Chile also has other government bodies endowed with constitutional autonomy such as the Central Bank in the area of monetary policy and the Office of the General Comptroller of the Republic in the area of oversight regarding the legality of actions taken by the Executive. The Constitutional Court, the Office of the Attorney General, the National Security Council and the Municipalities are also autonomous in nature.

The activity of the State is carried out through the bodies established in the Political Constitution of the State and in observance of the principles of constitutional supremacy, interpretation consistent with the Constitution, prohibition on arbitrariness, responsibility, and the separation of governmental powers.

Based on the above, the actions of the agencies of the State are subject to what is expressly established in the Political Constitution of the State and in provisions of public law. The most important provisions, after those established in the Constitution, are those that refer to the organization and operations of the Government Administration, the National Congress, the Judicial Branch, the Regional Governments and the Municipal Governments. However, each government agency is also governed by organic laws specifically designed to create and organize it.

State-owned companies have their own by-laws and their economic, productive, commercial and labor relations are governed essentially by the provisions of private law that apply to any company.

Oversight of actions taken by the State is basically effected through the separation of powers and reflected in the existence and operation of a series of inter-institutional and intra-institutional checks. Thus, in addition to the oversight exercised by the citizenry, individually or in an organized way, and by pressure groups, there is a series of formal relationships among and within the functions and institutions of the Government of Chile.

In Chile, oversight of the Executive, understood as both government and administration, is exercised primarily by the National Congress, the Courts of Justice, the Office of the General Comptroller of the Republic, the citizenry and the media. This oversight, such as it is, can be called external as opposed to the oversight operating within the Executive. External oversight of the Executive can be classified as follows:

**Political Oversight:** oversight exercised institutionally by the National Congress pursuant to the constitutional powers that have been exclusively entrusted to it in this area. The National Congress is comprised of the Chamber of Deputies and the Senate; these two chambers share the legislative process. In addition, the Chamber of Deputies has exclusive power to oversee the actions of the Government. The Senate, for its part, hears constitutional charges brought by the Chamber of Deputies and resolves them as a court, gives or denies its consent to specific actions of the President of the Republic, and may declare the incapacity of the President of the Republic. Both houses meet to approve or reject international treaties submitted to the Congress by the President of the Republic prior to their ratification.

**Judicial Oversight:** oversight that potentially and specifically in cases where it is required may be exercised by the courts of justice when their intervention is sought by virtue of a legal action or constitutional appeal, to protect individual guarantees or declare that a law is unconstitutional. In the criminal procedure system, now being reformed, the Office of the Attorney General, a constitutionally autonomous body, is exclusively responsible for investigating actions that constitute offenses, as well as for taking criminal action. In addition, the State Defense Council has the power and role of prosecuting criminal and civil actions on behalf of the State with respect to corruption offenses.

**Administrative-Legal Oversight:** oversight exercised by the Office of the General Comptroller of the Republic, as an autonomous and functionally independent agency of Government Administration. The

Office of the Comptroller has the power to supervise and to safeguard the effect of the rule of law in the administrative sphere, as well as to protect public interests and personal rights that may be compromised by administrative action.

Citizen Oversight: oversight carried out by the citizenry and by intermediaries: guilds, unions and particularly the media.

The external oversight of governmental actions has its counterpart in a system of internal oversight. This system ensures the proper utilization of resources and due compliance with the goals and objectives of Government Administration. Within each agency of the Administration, the Department Heads participate in the oversight system as the first line of responsibility, along with legal, personnel, administrative and finance, internal comptroller and internal audit units. Internal audits are coordinated on an ongoing basis with the Executive, which has a Presidential advisory body for this purpose, the General Government Internal Audit Council.

## **2. Ratification of the Convention and adherence to the Mechanism**

According to the official records of the General Secretariat of the OAS, the Republic of Chile ratified the Inter-American Convention against Corruption on September 22, 1998 and submitted the respective ratifying instrument on October 27, 1998.

In addition, the Republic of Chile signed the Declaration on the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption on June, 4, 2001, on the occasion of the meeting of the OAS General Assembly in San Jose, Costa Rica.

### **I. SUMMARY OF THE INFORMATION RECEIVED**

#### **1. Response from the Republic of Chile**

The Committee wishes to recognize the cooperation it has received throughout the process of analysis from the Republic of Chile, particularly the Department of Organized Transnational Crime of the Special Policy Directorate of the Ministry of Foreign Affairs, and of the General Secretariat of the Presidency. This cooperation was made clear, *inter alia*, in the response to the questionnaire and the constant willingness to clarify or complete the content of the response. With its response, the Republic of Chile submitted the provisions and documents it deemed pertinent, a list of which is attached to this report.

In carrying out its review, the Committee took into account information provided by the Republic of Chile up to the 18<sup>th</sup> of August 2003, as well as the information requested by the Secretariat and the members of the review sub-group, in order to comply with their duties as stipulated in the Regulation and the Rules of Procedure.

## **2. Document submitted by “Corporación Chile Transparente – Chilean Chapter of “Transparency International” as a civil society organization**

The Committee also received within the established timeframe <sup>3</sup> the report sent by “Corporación Chile Transparente” – the Chilean Chapter of “Transparency International.” The report is called “Report from Civil Society.”<sup>4</sup>

### **II. REVIEW OF THE IMPLEMENTATION OF THE SELECTED PROVISIONS IN CHILE**

#### **1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)**

##### **1.1. CONFLICTS OF INTEREST**

##### **1.1.1. Existence of a legal framework and/or of other measures and enforcement mechanisms**

The Republic of Chile has a series of provisions regarding standards of conduct and the respective mechanisms, notably:

- Constitutional provisions applicable to public servants in general, such as those contained in Articles 6 and 7 of the Political Constitution, which establish that the agencies of the State, as well as officeholders and members of government agencies, must act in accordance with the Constitution and provisions issued pursuant to it, and that in order for a [government] action to be valid it must have proper prior authorization, the matter must be within its competence and the action must be carried out in the manner prescribed by law<sup>5</sup>.
- Constitutional provisions applicable to specific public servants, such as those contained in Articles 54 to 57 of the Political Constitution, establishing disqualifications and incompatibilities with respect to senators and deputies, and in Article 76, establishing that judges are personally responsible for the offenses of bribery, substantial failure to observe laws governing proceedings, denial and distorted administration of justice and generally any prevarication committed in the performance of their functions; and in Article 93, which applies to Commanders in Chief of the Army, Navy and Air Force, as well as the Director General of the Carabineros.
- Legal provisions generally applicable to public servants, such as those contained in Law No. 19,653 of 1999, on Administrative Probity of Government Administrative Agencies, which amended and added to various laws, expressly incorporating the principle of administrative probity, which consists of the observance of irreproachable official conduct and honest and

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<sup>3</sup> Decision entitled “Update of Responses to Questionnaire”. This decision was adopted by the Committee of Experts at its meeting on February 13<sup>th</sup>, 2003 as part of its Third Regular Meeting held from February 10 to 13, 2003 at OAS headquarters in Washington D.C., United States of America.

<sup>4</sup> This report was received electronically on August 18, 2003. Additionally, during an informal encounter with member of the Committee and the “Corporación Chile Transparente” – the Chilean Chapter of “Transparency International” made an a presentation regarding its report.

<sup>5</sup> When in this report the terms “Public Official”, “Government Official”, or “Public Servant” are used, it should be understood that, in accordance with the Chilean legal framework, these terms cover all officials or employees of the State or its agencies, in all levels, including members of the armed forces.

faithful performance of ones function or position, with the general interest taking precedence over individual interest. It should be noted that this principle applies not only to government administrative agencies, but also to the Legislative Branch, the Judicial Branch and the constitutional agencies. It also governs with respect to employees and officials of regional and municipal governments.

- Legal provisions applicable to public servants, such as those contained in Law No.18,575, the Constitutional Organic Act on the General Bases for the Administration of the State (LOCBGAE), as amended by Law 19,653, which in Article 11 bis establishes that such officials must observe the principle of administrative probity, in Article 56 establishes disqualifications for entering government administration, in Article 56 establishes incompatibilities for the performance of specific activities applicable to those who perform public functions, and in Article 64 defines behaviors that particularly violate the principal of administrative probity.
- In addition, Law No. 18,834, the Administrative Statute, contains legal provisions applicable to public servants, Article 55 establishes obligations such as the duty to direct the development of ones functions to fulfilling the institution's objectives. Article 78 establishes prohibitions like that on exercising powers, attributions or representation not legally invested or delegated. Articles 79 to 82 establish incompatibilities.
- There are legal provisions regarding administrative actions taken by government, such as those contained in Law 19,880 on Administrative Procedure, Article 12 of which establishes the principle of abstention in the conduct of public officials in applications, formalities and generally any type of administrative procedure when an official cognizant of a procedure is affected by any situation that would keep him or her from being impartial under the terms of the law.
- There are legal provisions applicable to specific public officials such as those contained in Law No. 7,421, the Organic Code of Courts (COT), which contains disqualifications, incompatibilities and prohibitions applicable to officials of the Judicial Branch, and in Law No. 18,918, the Constitutional Organic Law of the National Congress, which applies to senators and deputies; Decree with the Force of Law No. 1 of 1997, which establishes the Armed Forces Personnel Regulations, and Decree with the Force of Law No. 2 of 1968, which contains the Police Personnel Regulations.
- Ethical principles or standards that govern particular public servants, such as the principles of judicial ethics, applicable to the judiciary, the Code of Ethics of the Chamber of Deputies, applicable to Deputies, and the Manual of Ethical Principles applying to the Central Bank of Chile.

The Republic of Chile also has mechanisms to enforce the aforementioned standards of conduct, notably:

- Constitutional and legal provisions on meeting moral suitability requirements before entering public service, such as not having been convicted for a crime or simple offense (Articles 13, 25, 34, 44 and 113 of the Political Constitution; Article 11 et seq. of Law No. 18,834; and Article 56 of Law No. 18,575) and legal provisions providing for evaluation of the performance of duties (Articles 27 et seq. of Law No. 18,834).
- Constitutional provisions the purpose of which is to enforce the constitutional responsibility of senior government officials (President of the Republic, Ministers, Magistrates of the Supreme Tribunals of Justice, Comptroller General of the Republic, Generals and Admirals of the Armed

Forces, Superintendents, Governors and other authorities) for violation of the Constitution and the law (Articles 48 and 49 of the Political Constitution).

- Legal provisions the purpose of which is to enforce the administrative responsibility of public servants, establishing disciplinary measures for those who fail in their duties and obligations, and procedures for implementing these measures (Articles 114 to 139 of Law No. 18,834).
- Legal provisions the purpose of which is to enforce the criminal responsibility of public servants, defining criminal conduct associated with acts of corruptions such as usurpation of powers, prevarication, violation of secrets, improper use of privileged information, and incompatible dealings; and establishing procedures for applying the respective penalties (Title V, Book II of the Criminal Code, Articles 220 to 260, amended by Law No. 19,645 of 1999; and the Criminal Process Code and Code of Criminal Procedure).
- Legal provisions contained in the Code of Military Justice, which deals, among other things, with disciplinary jurisdiction over all individuals acting in the administration of military justice at the trial level who have the power to enforce disciplinary measures that the law confers on higher-ranking judges. It also sets sentences for military crimes.
- Legal provisions that provide measures designed to ensure that those who aspire to holding public office are not disqualified, and to prevent them from performing public duties in incompatible situations, such as Article 57 of Law No. 18,575, which requires those seeking public office to submit a sworn statement indicating that they are not subject to any disqualification, and Articles 59 to 62 of the same law, which require public officials at a certain level in the hierarchy to submit a Public Statement of Economic and Professional Interests.
- Legal provisions that assign responsibilities to departments charged with internal oversight of government administration, with respect to ensuring compliance with standards of conduct designed to prevent conflicts of interest, such as Article 63 of Law No. 18,575, without prejudice to external oversight functions that may be exercised by other bodies such as the Office of the General Comptroller of the Republic.
- Legal provisions relating to the training needed to understand the indicated standards of conduct, such as Article 17 of Law No. 18,575, which establishes that the government administration shall provide training and upgrading for its personnel to give them the instruction and knowledge necessary for the performance of public office.

#### **1.1.2. Adequacy of the legal framework and/or of other measures and enforcement mechanisms**

With respect to constitutional and legal provisions in the area of standards of conduct that are intended to prevent conflicts of interest and the mechanisms to enforce them, it can be said that together they make up a harmonious body of measures relevant for promoting the purposes of the Convention.

Such measures generally refer to public servants, and also contain provisions for special cases such as senior government officials, such as the President of the Republic, Ministers, Magistrates of the Supreme Tribunal of Justice, the Comptroller General of the Republic, Generals and Admirals of the Armed Forces, Superintendents and Governors.

It should be pointed out that there are practical mechanisms to prevent unqualified persons from entering government service and to bar the performance of public duties in incompatible situations. These include

the sworn statement on the absence of disqualifications and the statement of interests. These two mechanisms make it possible to detect and take timely measures to deal with circumstances in which conflicts of interest could arise.

The Committee also notes the will and efforts of the Member State under study to supplement currently existing standards of conduct and enforcement mechanisms. This is reflected in the “Lobbying Bill” currently in the Congress, the object of which is to provide a set of values and rights to regulate the process of influencing or participating in public decision-making.

However, the Committee considers it appropriate to make some observations regarding the advisability for the Republic of Chile to consider supplementing the legal provisions that refers to the aforementioned rules and mechanisms.

The legal provisions with the broadest scope in the area of standards of conduct to prevent conflicts of interest are contained in Law No. 19,653 of 1999 on Administrative Probity of Government Administrative Agencies. This is because, in addition to covering all public servants, this law expressly includes the concept of administrative probity as an essential principle of Chile’s legal system, as the country asserts in its response.<sup>6</sup> This law, which amended and added to various legal instruments, clearly points to the creation, maintenance and strengthening of such standards, as referred to in Article III of the Inter-American Convention against Corruption, and its relevance for achieving such purposes can be affirmed. However, the following suggestion can be made:

- Article 2 of this law (adding the new Title III, Articles 54 to 70, to Law No. 18,575) provides for disqualifications and incompatibilities that contain important provisions to prevent conflicts of interest prior to entering public service and during the performance thereof. Nonetheless, with respect to situations that could arise after leaving public service, the Committee feels that it would be useful for the Republic of Chile to consider supplementing and strengthening the provisions established with respect to the final paragraph of Article 58<sup>7</sup> of Law No. 18,575, bearing in mind the following:

The Article cited reads: “Similarly, the activities of former authorities or officials of a supervisory institution that involve a labor relationship with private sector entities subject to the supervision of that institution are incompatible. This incompatibility shall continue for six months after leaving office.”

The Committee feels it would be advisable for the Republic of Chile to consider expanding and strengthening that provision so that it leaves room for situations that could entail conflicts of interest and would not be limited to supervisory institutions nor labor relationships with entities subject to supervision. To this end, consideration could be given to measures such as prohibiting those who held public office from dealing in any way with official matters of which they were cognizant or from appearing before entities in which they had recent ties and, generally, all situations that could lead to the improper utilization of ones status as a former public official.

With the above consideration in mind, the Committee will formulate a recommendation in this regard.

### **1.1.3. Results of the legal framework and/or other measures and enforcement mechanisms**

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<sup>6</sup> Response from the Republic of Chile, page 3.

<sup>7</sup> This Article (58) corresponds to Article 56 of the new compilation text contained in Law 18,575, which has modified by Law 19,653 of 1999.

Chile's response in this respect<sup>8</sup> notes that "The results of the standards and mechanisms described are included in major statistical data. Chilean government statistics normally refer to elements proper to management and quantitative and qualitative measurements of specific phenomena or effects of corruption are not normally broken down. Nonetheless, there are statistical data that can help provide an understanding of the status of activities to prevent conflicts of interest."

The statistical data referred to in the preceding paragraph<sup>9</sup> include information to the effect that "...during the year 2002, 21.73% of personnel units carried out some verification action regarding the truthfulness of the sworn statements on disqualification that public officials submit, and 51.17% of them carried out review actions regarding the sworn statements of interests."

It can be inferred from the above information that a high percentage of personnel units have not given due attention to checking and reviewing the information contained in the sworn statements on disqualification and the statements of interest. With this in mind, the Committee will formulate a recommendation.

Information is also provided<sup>10</sup> on the number of officials who have received training since the Law of Administrative Probity was passed, indicating that during the years 2000, 2001 and 2002 training was provided on "administrative probity and transparency in public administration" (a total of 3,182) and on "administrative responsibility and administrative standards in general" (a total of 840).

This information is indicative of the importance that has been assigned to training on the subject of standards of conduct to prevent conflicts of interest, something that merits recognition from the Committee.

With respect to the other existing provisions on the subject, there is no information that would allow us to make a comprehensive assessment of results. Although some data are given regarding the percentage of "legal departments of government agencies" that received requests for information, and the annual average of administrative inquiries and summary investigations conducted by the Office of the Comptroller General and reports made to the courts, this information is not broken down, as is noted in the response. With this situation in mind, the Committee will formulate a recommendation.

It should be added that the document "Corporación Transparencia por Chile"<sup>11</sup> notes on this subject that "In our judgment these standards and mechanisms have not met with the anticipated degree of compliance, basically due to difficulties in investigating violations, the lack of preventive instruments to detect the occurrence of events in advance and the fact that the Office of the General Comptroller of the Republic currently only has the power to make suggestions regarding penalties."

The Committee feels that since there is no additional information regarding the above assertion, it is appropriate to record it in this report as an opinion expressed on the subject by "Corporación Transparencia por Chile".

## **1.2. STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS**

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<sup>8</sup> Response to questionnaire from the Republic of Chile, page 10

<sup>9</sup> Response to the questionnaire from the Republic of Chile, page 10

<sup>10</sup> Response to the questionnaire from the Republic of Chile, page 11

<sup>11</sup> Document from "Corporación Transparencia por Chile," page 49.

### **1.2.1. Existence of a legal framework and/or of other measures and enforcement mechanisms**

The Republic of Chile has a series of provisions regarding standards of conduct and the respective mechanisms, notably:

- Constitutional provisions, like those contained in Articles 48, 49, 81 and 87 of the Political Constitution, which establish reciprocal and external controls among the different branches of government; Article 62, which indicates proposed laws that are the exclusive initiative of the President of the Republic, including those that incur tax expenses; Article 64, which provides procedures for processing the Budget Law and establishes that the National Congress may not approve any new spending chargeable to national funds without indicating at the same time the sources of the funds needed to cover that spending; and Article 90, the final section of which provides that the Armed Forces and Carabineros are essentially forces of obedience, not of deliberation, and that, in addition, the Armed Forces are professional, hierarchical and subject to discipline.
- Law No. 19,653, on Administrative Probity in Government Agencies, which incorporates the principle of administrative probity and is applicable to all government agency employees and officials at all levels.
- Law No. 18,575, on the General Bases for the Administration of the State, applicable to public servants which contains provisions on probity, responsibility, efficiency, effectiveness, transparency and administrative disclosure, checks on the proper administration of public property, equality for bidders in government contracts and equality with respect to contract terms and conditions. To be noted are the violations of the principle of administrative probity established in Article 64 (3) and (4), with respect to using a government agency's money or assets in any way for ones own benefit or that of third parties, and engaging in activities, spending working hours, or using the agency's staff or resources for ones own benefit or for purposes other than those of the agency.
- Law No. 10,336, the Constitutional Organic Law of the Office of the Comptroller General of the Republic, applicable to public servants, which contains standards on the collection and payment of public funds, on the responsibility of officials, on guarantees, reporting, examination and auditing of accounts, investigations and inquiries, and reports.
- The Administrative Statutes, which establish standards of conduct for public servants and obligations, prohibitions and conflicts of interest to ensure the correct use of public funds. These are basically found in Law No. 18,834, the Administrative Statute; in Law No. 18,883, the Statute on Municipal Employees; Law No. 19,070, the Statute on Professional Educators; Law No. 19,378, the Statute on Municipal Primary Health Care; Law No. 18,948, establishing the legal basis for the Armed Forces; Decree with the Force of Law No. 1 of 1997, the Armed Forces Personnel Regulations; and Decree with the Force of Law No. 2 of 1968, the Personnel Regulations of the Carabineros of Chile.
- There are also legal provisions in Decree Law No. 1,263 of 1975, the Law on Financial Administration of the State; in Law No. 19,986, amending the previous decree; in the Public Sector Budget Law (for the year 2003, Law No. 19,842); in Law No. 19,886, or the "Public Procurement Law;" and in other special regulations on specific matters, such as Decree Law No. 799 of 1974 governing the use and circulation of government vehicles. The budget, administration of funds and accounting for each of the institutions composing the Armed Forces

follow Decree No. 1,263 of 1975, which provides standards governing the Financial Administration of the State, except that legal exceptions to these standards (Decree No. 1,570 of 1976) in force at the time of the promulgation of the decree remain in force. It should be noted that the so-called "Public Procurement Law" will take effect for the Armed Forces on January 1, 2005, though this date may be moved forward by a Supreme Decree issued by the Ministry of National Defense.

The Republic of Chile also has mechanisms to enforce the aforementioned standards of conduct, notably:

- Constitutional provisions the purpose of which is to enforce the constitutional responsibility of senior government officials (President of the Republic, Ministers, General Comptroller of the Republic, Generals and Admirals of the Armed Forces, Superintendents, Governors and other authorities) for violation of the Constitution and the laws (Articles 48 and 49 of the Political Constitution).
- Legal provisions the purpose of which is to enforce the administrative responsibility of public officials, establishing disciplinary measures for those who fail to perform their duties and obligations, and procedures for applying the measures (Articles 114 to 139 of Law N. 18,834).
- Legal provisions the purpose of which is to enforce the criminal responsibility of public officials, defining criminal behaviors associated with acts of corruption such as extortion, misappropriation of public funds and tax fraud, and establishing procedures for applying the respective penalties (Criminal Code, Book II, Title V, Articles 220 to 260, amended by Law No. 19,645 of 1999; and the Criminal Process Code and Code of Criminal Procedure).
- Legal provisions contained in the Code of Military Justice, which deals, among other things, with disciplinary jurisdiction over all individuals acting in the administration of military justice at the trial level who have the power to enforce disciplinary measures that the law confers on higher-ranking judges. It also sets sentences for military crimes.
- Legal provisions the purpose of which is to enforce the extracontractual civil liability of officials and former officials who are or were responsible for the holding, use, safekeeping or administration of public funds or property in order to maintain the integrity of public assets, as contained in Articles 85 et seq. of Law No. 10,336, the Constitutional Organic Law of the Office of the Comptroller General of the Republic, which establish the reporting and auditing of accounts.
- Legal provisions on the process of formulating, approving, executing and overseeing the Annual National Budget (such as those contained in Decree Law 1,263 of 1975 and in Law Nos. 19,896 and 19,875 of 2003) and the "Protocols for improving transparency and effectiveness in government action."<sup>12</sup> Also to be noted here are improvement projects like the SIGFE project (Government Financial Management System).<sup>13</sup>
- Provisions contained in the Annual Budget Laws, such as Budget Law No. 19,842, covering the public sector for the year 2003, which has provisions such as the one that provides that "confidential expenditures" of the Ministry of National Defense shall be set by Supreme Decree and signed by the Minister of Finance, and that they must be accounted for overall, in confidential form, to the Comptroller General of the Republic.

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<sup>12</sup> Response to the questionnaire from the Republic of Chile, pages 13 and 14

<sup>13</sup> Response to the questionnaire from the Republic of Chile, page 16

- Legal provisions that assign responsibilities to the Office of the General Comptroller of the Republic, the Court of Accounts, and the Internal Audit Units of government administrative agencies, with respect to ensuring compliance with standards to ensure the conservation and proper use of public resources (Law No. 10,336, the Constitutional Organic Law of the Office of the Comptroller General of the Republic); and the measures provided in Decree No. 12 of 1997, whereby the President of the Republic created the General Government Internal Audit Council, as a presidential advisory body to strengthen the management of government agencies and collaborate in developing an adequate system of internal controls.
- Legal provisions relating to the training needed to understand the aforementioned standards, such as Article 17 of Law No. 18,575, which establishes that the government shall provide training and upgrading for its personnel to give them the instruction and knowledge necessary for the performance of public office.

### **1.2.2. Adequacy of the legal framework and/or of other measures and enforcement mechanisms**

The standards and mechanisms in the area of the conservation and proper use of public resources that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

In effect, the Republic of Chile has standards that govern the matter in detail and that also establish political, administrative, criminal and civil responsibilities applicable to those who violate them, and assign powers and determine procedures to enforce such responsibilities, thus ensuring the existence of mechanisms suitable for enforcing such standards in all the branches, agencies and institutions of the State.

### **1.2.3. Results of the legal framework and/or other measures and enforcement mechanisms**

Chile's response on this subject<sup>14</sup> initially indicates that the results are found in the execution of the respective budgets and that information is available on the DIPRES web site ([www.dipres.cl](http://www.dipres.cl))."

Then the same response<sup>15</sup> notes that "With respect to mechanisms for collecting statistical data, there is an annual report on Public Finance Statistics with data on budget expenditures from 1992 to 2001, which have been recorded following internationally accepted standards and are available, together with the Budget Law and instructions for its execution for years 1999 and thereafter, the Law on Financial Administration of the State and the provisions on Management Improvement Programs, as well as other relevant documents, on the DIPRES web site ([www.dipres.cl](http://www.dipres.cl)). The Report on Financial Management of the State for the same period is also attached."

The Committee feels that the above information indicates that the Republic of Chile has applied the budgetary provisions it has as measures to ensure the conservation and proper use of public resources.

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<sup>14</sup> Response to the questionnaire from the Republic of Chile, page 15

<sup>15</sup> Response to the questionnaire from the Republic of Chile, pages 15 and 16

The response also notes<sup>16</sup> that “Other important data on results indicate that during 2000 the Office of the General Comptroller of the Republic recovered a total of \$191,438,264 for the public treasury, which is equal to approximately US\$273,483.00.”

The Committee feels that the above information is useful for establishing that the Republic of Chile has applied its provisions so as to recover asset losses to its public treasury, although it is not possible based on the information to determine what percentage the indicated amount represents in terms of the total amount that should be recovered.

Finally, the report adds<sup>17</sup> that “With respect to prevention work carried out by the administration’s internal audit units, according to statistical samples from the CAIGG, internal auditing activities carried out are basically represented by management audits, financial audits and process audits. Less numerous in terms of total audit activities are activities relating to computer audits, project audits and particularly audits intended to verify fraud, irregularities or corruption. According to the same statistical sources, the government services grouped in each ministry carried out an average of 88 internal audit actions during the year 2001, with a slightly higher level of activity planned for 2002, with an annual average of 93.66 internal audit actions within each ministry.”

The Committee feels that the above information indicates active development of oversight functions carried out by the administration’s internal audit units as indicated in the information, although that information is not broken down in a way that permits evaluation of the results of audit activities carried out.

### **1.3. MEASURES AND SYSTEMS REQUIRING PUBLIC OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS OF WHICH THEY ARE AWARE**

#### **1.3.1. Existence of a legal framework and/or of other measures and enforcement mechanisms**

The Republic of Chile has a series of provisions regarding the aforementioned standards of conduct and mechanisms, notably:

- The Code of Criminal Procedure. Article 84 (3) establishes the obligation of public employees to report crimes or simple offenses they become aware of in the performance of their duties, and particularly those they observe in the official conduct of their subordinates. Article 105 of the Code provides, with respect to the Judicial Branch, that the competent judge must, without waiting for any accusation or complaint institute an inquiry *de officio* whenever, based on personal knowledge, confidential reports, notoriety or any other means, he or she receives information that a crime or simple offense has been committed in a public action.
- The Criminal Process Code. Article 175 (b) provides that prosecutors and other public employees shall be required to report all crimes they become aware of in the performance of their duties and particularly, as applicable, those they observe in the official conduct of their subordinates. Article 176 establishes 24 hours following the time one becomes aware of an offense as the deadline for reporting. Article 177 establishes that failure to report shall incur the penalty provided in Article 494 of the Criminal Code or the penalties indicated in special provisions.

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<sup>16</sup> Response to the questionnaire from the Republic of Chile, page 16

<sup>17</sup> Response to the questionnaire from the Republic of Chile, page 16

- The above-mentioned Code of Criminal Procedure, Article 308 of which provides that in appropriate serious cases the court may provide for special measures to protect the safety of a witness requesting such measures, and that the Office of the Public Prosecutor shall take the measures needed to protect the witness. Given the obligation of public employees to provide information to prosecutors, pursuant to Article 180 of the Code, the above-mentioned protective measures are applicable to public employees as witnesses.
- Law No. 18,834, the Administrative Statute. Article 55 (k) establishes that public officials are required to file timely reports with the justice system on crimes or simple offenses and to report to the competent authority actions of an irregular nature they become aware of in the performance of their positions. Articles 114 et seq. establishes the administrative responsibility of those who fail to meet their obligations.
- Law No. 18,883, the Administrative Statute on Municipal Employees. Article 58 (k) provides that every public official shall be required to report crimes or simple offenses on a timely basis to the Office of the Attorney General, or the Police if there is no Prosecutor's Office in the community where the Municipality has its headquarters, and to report to the Mayor actions of an irregular nature he or she becomes aware of in their performance of his or her position. Articles 188 et seq. establish the administrative responsibility of those who fail to meet their obligations.

### **1.3.2. Adequacy of the legal framework and/or of other measures and enforcement mechanisms**

The provisions and mechanisms relating to measures and systems to require public officials to report to the competent authorities regarding acts of corruption in public office that the Committee has examined are relevant to promoting the purposes of the Convention.

These standards and mechanisms are supplemented by constitutional guarantees, such as those contained in Article 19 of the Political Constitution, which provide for the State's protection of the physical and psychological integrity of all persons, as well as by other legal guarantees, such as those contained in Law No. 18,575, which establishes the legal basis for the public administration of the State and provides for permanent jobs for public servants, contributing to the protection of these employees in cases where they denounce acts of corruption.

The Committee wishes, in addition, to note the promotion of a climate of transparency in public administration, reflected not only in the provisions of Law No. 19,653 on Administrative Probity, but also in means of access to governmental information made available to citizens by governmental entities. Special mention is due to the use of new technologies in this context.

However, the Committee feels that the assessment contained in section 4.c. of the response from the Republic of Chile<sup>18</sup> should be taken into account. It indicates that "The factors that have a negative influence on the reporting of corrupt acts by public officials, besides the problem of proof, notably include a type of misguided official "loyalty" and inadequate protection for the person making the accusation, in addition to the potential liabilities for them due to the facts in question." This makes clear the advisability for the Republic of Chile to consider creating awareness among public officials regarding compliance with the duty to report and of strengthening mechanisms to protect those who make accusations. With this consideration in mind, the Committee will formulate a recommendation.

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<sup>18</sup> Response to the questionnaire from the Republic of Chile, page 18, footnote, page 65

### **1.3.3. Results of the legal framework and/or other measures and enforcement mechanisms**

One of the sections in Chile's response on this subject<sup>19</sup> notes that "Conduct that constitutes corruption is normally the subject of accusations even though such accusations do not always originate with public officials. Accusations regarding major corruption generally come from officials themselves, from the press and from members of Congress."

Later the response indicates<sup>20</sup> that "With respect to small-scale corruption, there are no precise statistics regarding accusations from public officials with respect to acts of corruption, probably due to the complexities that such recordkeeping entails. In any case, it happens not infrequently that the administrative inquiries instituted by government agencies themselves and by the Office of the Comptroller General of the Republic, as applicable, on specific corruption matters, result in reports filed with the courts. There are some government agencies that may have more specific information and use it for internal purposes, as is the case, for example, with the Chilean Investigations Police, which received 199 complaints in 1998 regarding irregular actions by its officials and 242 complaints in 1999."

The report also refers to some "emblematic" cases of corruption that, according to the report, reflect eagerness to combat corruption based on accusations from within the administration itself or from persons linked to it, in which according to Chile's response to the Secretariat's draft preliminary report, the State Defense Council has played a role, showing the existence of a climate favorable to the investigation of alleged corruption offences. Nevertheless, on the basis of the information provided it is not possible to make a comprehensive assessment of the results of the provisions and mechanisms with respect to measures and systems to require public officials to report to the competent authorities regarding acts of corruption in public office. With this circumstance in mind, the Committee will formulate a recommendation.

It should be added that the document "Corporación Transparencia por Chile"<sup>21</sup> makes the following observation on this subject:

"Most corruption cases are not revealed through the regular conduits or if they are do not produce significant effects. Rather it is thanks to the work of the press that it has been possible to investigate them. We believe that in this area the Government of Chile has not promoted or facilitated the reporting of acts of corruption but rather indirectly provides a series of mechanisms that weaken or intimidate honest public officials. A draft law designed to encourage the reporting of acts of corruption and providing protection for those making accusations in good faith, submitted by a group in the legislature, has been lying dormant in Congress for the last three years and, despite pleas, has not been supported by the Executive Branch."

The Committee feels that the Republic of Chile's response to the above assertion should be taken into account. It states the following:<sup>22</sup> "In effect, although reports do not always find their source in government officials, the State, through the State Defense Council, is party to the principal judicial proceedings on corruption in Chile, regardless of the source of the accusation, to which should be added the prosecution of all cases of minor corruption indicated in the previous paragraph. In addition, in a broad sense, the State, including not only the Executive Branch but the Legislative and Judicial as well,

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<sup>19</sup> Response to the questionnaire from the Republic of Chile, page 18

<sup>20</sup> Response to the questionnaire from the Republic of Chile, page 18

<sup>21</sup> Document from "Corporación Chile Transparente," pages 49 and 50

<sup>22</sup> Response to the questionnaire from the Republic of Chile, page 22

has been the principal actor in combating corruption, reporting and pursuing activities that constitute corruption.”

The Republic of Chile has further indicated that the main purpose of the State Defense Council, according to the provisions of Article 2 of Decree D.F.L. No. 1 of 1993, of the Ministry of Revenue is the judicial defense of the interests of the State, and that, according to the information provided in the response,<sup>23</sup> the Council currently represents the Chilean government in 21,651 criminal cases, 1.69% of which represent potential corruption offenses (47% for the criminal offense of defrauding the Treasury, and the remaining 53% for various offenses such as misappropriation of public assets, improper allocation and other offenses).

Finally, the Committee feels that the response from the Republic of Chile reflects the efforts that the country is making in this area, to which the response refers in several sections, one of which notes the following:<sup>24</sup> “Without diminishing the actions of the branches of government and government agencies in combating corruption, we should note the State’s concern for improving the mechanisms for combating crime in general and abuses of authority in particular. In the first case, a far-reaching reform in the administration of the criminal justice system is underway in Chile, including changes not only in the courts and procedures but also in the auxiliary services and collaborators in the administration of justice. In the second case, mechanisms have been proposed for reporting actions involving abuse of authority through the establishment of specialized entities, such as the Presidential Advisory Commission for the Protection of Individual Rights, currently in operation and the basis for the future Ombudsman, now going through the legislative process in the National Congress.”

## **2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)**

### **2.1. Existence of a legal framework and/or of other measures**

The Republic of Chile has a series of provisions relating to the indicated systems, notably:

- Article 41 of Ministry of Finance Decree with Force of Law No. 7 of 1980, the Organic Law of the Internal Tax Service, which requires those who enter that agency to submit, before their appointment, a sworn statement of their assets and those of their spouse, even if separated, and this statement must be renewed each year.
- Article 18 of Ministry of Finance Decree with Force of Law No. 1 of 1994, the Organic Statute of the Treasury Service, which requires those who enter the management, professional, technical and administrative levels of the Treasury Service to submit, before their appointment, a sworn statement of their assets and those of their spouse with fully separated assets, with the detail to be determined by the General Treasurer.
- Law No. 18,840, the Constitutional Organic Law of the Central Bank, which requires Board Members and the General Manager of that institution to submit, before assuming and when leaving their positions, a statement referring to their asset situation and the professional and economic activities in which they participate, and the fact that they are not subject to incompatibilities for the performance of the position.

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<sup>23</sup> Response to the questionnaire from the Republic of Chile, page 19

<sup>24</sup> Response to the questionnaire from the Republic of Chile, page 19

The Republic of Chile also has provisions on the “Statement of Interests,” notably:

- Law No.19,653 of 1999 on Administrative Probity of Government Administrative Agencies, which amended and added to various laws. Article 2, which adds Title III, Articles 54 et seq. to Law No. 18,575, establishes that government officials, at the grade levels indicated in the law, must submit, independently of any asset statement imposed by special law, a statement of interests that must contain an individual accounting of the professional and economic activities in which they participate.
- Law No. 18,918, the Constitutional Organic Law of the National Congress; Law 7,421, the Organic Code of Courts; and Law 18,840, the Constitutional Organic Law of the Central Bank of Chile, as amended by No. 19,653 of 1999. These laws require the submission of statements of interests by deputies and senators, those on the primary schedule and those in the second series of the secondary schedule of the Judicial Branch, and board members and the General Manager of the Central Bank, respectively.
- Law No. 19,640, the Constitutional Organic Law of the Office of the Attorney General, which governs the statement of interest with respect to the Attorney General, regional prosecutors and assistant prosecutors.
- Decree No. 99 of 2000 of the General Secretariat of the Office of the Presidency, which governs the statement of interests from officials and employees in public administration, regulating aspects such as their scope, which officials must submit them, the definition of what should be understood by professional and economic activities, deadlines for submission and updating statements, content and format for submission, disclosure, and the penalties provided for failing to submit statements on a timely basis, for including incorrect relevant data, or for inexcusably omitting relevant information.

The Republic of Chile also has provisions that refer to both statements of net worth (includes income, assets and liabilities), and interest statements, such as those contained in Presidential Instruction No. 008 of November 28, 2003, through which the President instructs the government’s ministers, under-secretaries, superintendents, governors and heads of agencies to (a) update their statements of net worth and interest statements pursuant to the law and the content of these statements be reviewed, and (b) to immediately submit the statements of net worth that he ordered them to make before there was a legal regulation so requiring, and to update those previously submitted.

## **2.2. Adequacy of the legal framework and/or of other measures**

The Committee feels that it is important to make a distinction between regulations referring to the obligation to submit a statement of net worth (including income, assets and liabilities) and regulations referring to the obligation to submit a statement of interests.

With respect to the former, statement of net worth (contained in Decrees with Force of Law Nos. 7 and 1 of 1980 and 1984, respectively, and in Law No. 18,840), the Committee feels that they are directly related to the Convention provision that is the subject of this analysis, as contemplated in Article III, paragraph 4 thereof, which refers to “systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as established by law and, where appropriate, for making such registrations public.” These regulations on asset statements, although considered pertinent for purposes of

that provision of the Convention, are limited in scope, in that, as the Republic of Chile indicates in its response,<sup>25</sup> they apply to individuals who perform functions<sup>26</sup> in specific government agencies.

With respect to the latter, statement of interests (basically contained in Law No. 19,653, in the aforementioned laws amended by it, and in Decree No. 99 of 2000), which refer to the statement of interests and, as indicated by the country under review in its response, are general and applicable to all government officials at a certain level in the hierarchy, the Committee feels that although they are relevant to promoting the purposes of the Convention, and comprehensively regulate aspects relating to that statement, they could well be supplemented so as to include aspects directly relating to Article III, paragraph 4 of the Convention, such as those relating to the income, assets and liabilities of persons submitting statements.

The Committee makes this observation, considering that upon analysis said provisions and the form on which the statement of interest must be completed,<sup>27</sup> do not consider the aforementioned aspects.

It should be added that the document presented by “Corporación Chile Transparente,”<sup>28</sup> makes the following observation on this subject:

“The recommendation, then, is specifically to change the current legislation so as to incorporate an asset statement in addition to the statement of interests, considering that:

- 1) Although the statement of interests seeks to prevent individuals from profiting from methods such as influence-peddling, it is very difficult to prove this personal profit without demonstrating an increase in assets, which would be more rapidly and effectively detected with something like an asset statement.
- 2) It should be kept in mind that government office is intended to serve the people. From this perspective, the public must gain confidence in government institutions. The asset statement tries to achieve effective social oversight over public administration.
- 3) The arguments made by the Senate regarding how complicated it is to determine what to include in an asset statement and how, arguments used when the Congress was debating passage of Law No. 19,653, seem to have been overcome within the Senate itself, as shown by the current Joint Bill for passage of a draft agreement on approval of a Code of Conduct for Senators. Title II, called the Duties of Senators with respect to economic life, establishes in Article 8 that senators are required to submit two sworn statements: a statement of interests and a statement of assets. As for the latter, the same article indicates what must be mentioned, and it should be noted that it also contains the statement of obligations or liabilities “that should be disclosed given the purpose of these statements of interests and assets.”

In addition, the Committee feels that the Republic of Chile has made clear its willingness to evaluate the advisability of supplementing its provisions in this area, by indicating in the document updating its response<sup>29</sup> that “With respect to other measures, as indicated in the response to question 2.d., the

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<sup>25</sup> Response to the questionnaire from the Republic of Chile, page 20

<sup>26</sup> Response to the questionnaire from the Republic of Chile, page 20

<sup>27</sup> Form: “Statement of interests for officials and authorities governed by Supreme Decree No. 99 of 2000, of the General Secretariat of the Office of the Presidency.”

<sup>28</sup> Document from “Corporación Chile Transparente,” pages 56 and 57

<sup>29</sup> Document updating the response to the questionnaire from the Republic of Chile, page 25

mechanism of public statements of interest is under review to determine the need to expand or improve it.”

The willingness of the Republic of Chile to take further steps to address these issues as indicated is also reflected in the provisions of Presidential Instruction No. 008 of November 28, 2003.

With the above considerations in mind, the Committee will formulate recommendations in this regard.

### **2.3 Results of the legal framework and/or of other measures**

Chile’s response on this subject,<sup>30</sup> notes the following:

“In order to satisfy the requirement that the law imposed on the Office of the General Comptroller of the Republic to allow subsequent consultation of the statements of interest it receives, this external oversight agency implemented a computer system that allows it to keep check of such documents and view them using digital methods. As of July 15 of this year, this amounts to 27,003 documents.

The system allows one to compare the position and the institution where the person making the statement works with the profit-making or non-profit legal entities in which the same person participates, or in which he or she collaborates or to which he or she makes contributions, so as to establish potential situations that might violate the principle of administrative probity.”

Chile’s response to the comments of the review subgroup and the Secretariat, and in the Subgroup meeting held on January 30, 2004, clarifies both that the application of the system referenced in the preceding paragraph, as well as registers related to the statements of interests are published.

The response then provides information regarding the number of sworn statements submitted and submissions and updates made since the first statement.

The Committee feels that although the information in the statement of interests indicates the possibility that this mechanism may be used for the purposes indicated therein with respect to establishing potential situations that violate the principle of administrative probity, the information does not allow for a comprehensive evaluation of the results thereof.

No information is provided with respect to asset statements.

With the above circumstances in mind, the Committee will formulate a recommendation.

## **3. OVERSIGHT BODIES IN RELATION TO THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)**

### **3.1. Existence of a legal framework and/or of other measures**

The Republic of Chile has a series of provisions with respect to oversight bodies responsible for carrying out the functions concerning compliance with the measures considered in paragraphs 1, 2, 4, and 11 of Article III of the Convention, notably:

- Constitutional provisions like those contained in Article Nos. 87 and 88 of the Political Constitution, which conceive of the Office of the General Comptroller of the Republic as an autonomous government oversight body.

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<sup>30</sup> Response to the questionnaire from the Republic of Chile, pages 22 and 23

- Legal provisions like those contained in Law No. 10,336, the Constitutional Organic Law of the Office of the Comptroller General of the Republic, applicable to the public administration of the State<sup>31</sup> which contains the organization and supervisory powers of that agency; and Decree with Force of Law No. 1 of 1993, the Organic Law of the State Defense Council, which conceives of this body as a decentralized public service, endowed with legal status, under the direct oversight of the President of the Republic and independent of the various Ministries, the major purpose of which is the judicial defense of the interests of the State.
- Administrative provisions like those contained in Decree No. 12 of 1997, whereby the President of the Republic created the General Government Internal Audit Council as a presidential advisory body to collaborate in the development of an adequate system of internal controls; and in Decree No. 65 of 2001, whereby the President of the Republic created the Presidential Advisory Commission for the Protection of Individual Rights, as an advisory body to ensure the defense and promotion of individual rights and interests vis-à-vis actions or omissions of government administrative agencies, with respect to the satisfaction of public needs.

In light of the foregoing, the Committee wishes also to take into account, according to the response provided by the Republic of Chile<sup>32</sup>, the existence of other oversight bodies in addition to those mentioned above, such as the Supreme Court in the case of the judicial branch; the houses of Congress in the case of the legislative branch; the President of the Republic in the case of the executive branch; and the the Ministry of Finance's Budget Directorate in the case of budget matters.

Mention should also be made, in accordance with Chile's response<sup>33</sup>, to the oversight of the constitutionality of laws, decrees with the force of law and some administrative actions carried out by the Constitutional Court, as well as the work of oversight bodies within the administration itself such as the Superintendencies of Social Security, Pension Fund Administrators, Banks and Financial Institutions, Securities and Insurance, Health Care Institutions, Electricity and Fuels, and Sanitary Services; the National Economic Regulatory Agency; the Internal Tax Service; the Labor Directorate; the Central Bank and the Public Ministry as applicable.

### **3.2. Adequacy of the legal framework and/or of other measures**

Based on the information available to it, the Committee notes that in this area the Republic of Chile has provisions relevant for promoting the purposes of the Convention.

The Committee feels that the provisions that the Republic of Chile has in the area of oversight bodies responsible for carrying out functions concerning compliance with the provisions of paragraphs 1, 2, 4, and 11 of Article III of the Convention are supplemented by other provisions that also assign powers for controlling effective compliance with these provisions to the highest authorities in each government agency, as alluded to by the country under review in its response,<sup>34</sup> which reflects the system of internal and external controls adopted by the legal-institutional system.

The control exercised by these bodies covers the public administration of the State, including the Armed Forces, to which, as the Member State under study explained in its response to the comments of the

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<sup>31</sup> The armed forces are included within the Public Administration of the State.

<sup>32</sup> Document updating the response to the questionnaire from the Republic of Chile, page 33

<sup>33</sup> Document updating the response to the questionnaire from the Republic of Chile, Introduction, and page 33

<sup>34</sup> Response to the questionnaire from the Republic of Chile, pages 23 and 24

analysis subgroup and Secretariat, the regulations indicated in various parts of the present report applied to the Armed forces.

Nonetheless, with respect to the system of external controls over public administration, the Committee feels that it would be advisable for the Republic of Chile to consider supplementing the system by institutionalizing some agency or agencies or body or bodies endowed with the necessary autonomy so that, in consonance with the powers assigned to other agencies, it could develop functions concerning compliance with the provisions contemplated in paragraph 11 of Article III of the Convention.

The Committee feels that the country under review has made clear its willingness to move ahead in this respect, by noting in its response<sup>35</sup> that “In the case of Article III, number 11, there are various higher-level oversight bodies that participate in each specific mechanism but no single or central entity that could be categorized as such. Together with this characteristic of Chile’s institutional legal system in this area, the Presidential Advisory Commission for the Protection of Individual Rights is an important precedent for the future creation of an Ombudsman in Chile, which would assume responsibilities in this area should the measure be approved.”

As noted in its response to the comments of the analysis subgroup and Secretariat, the efforts of the Member State under study are also reflected in the submission to the legislative process, on November 17, 2003, of a Constitutional Reform Bill that would create an Ombudsman.

With the above considerations in mind, the Committee will formulate a recommendation.

### **3.3. Results of the legal framework and/or of other measures**

The response from the Republic of Chile<sup>36</sup> notes in this respect that “...the results that these bodies have achieved in fulfilling the referenced functions are incorporated in the statistical data for each chapter in this questionnaire. Additional information can be found on or through the Internet sites of the principal institutions cited.”

With the above in mind, the Committee also refers to what has already been stated in earlier chapters of this report with respect to the referenced statistical data.

With respect to the additional information that according to the response can be found on the web pages of the principal institutions cited, the Committee feels that such information does not allow for making a comprehensive evaluation of results in terms of each of the provisions provided in paragraphs 1, 2, 4, and 11 of Article III of the Convention, considered individually, and is thus not sufficiently broken down. With this circumstance in mind, the Committee will formulate a recommendation.

## **4. MECHANISMS TO PROMOTE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS INTENDED TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11)**

### **4.1. GENERAL PARTICIPATION MECHANISMS**

#### **4.1.1. Existence of a legal framework and/or of other measures**

The Republic of Chile has a series of provisions with respect to the referenced mechanisms, notably:

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<sup>35</sup> Response to the questionnaire from the Republic of Chile, page 24

<sup>36</sup> Response to the questionnaire from the Republic of Chile, page 24

- Legal provisions like those contained in Law No. 16,888 (the amended and systematized text is contained in Law No. 19,418), on Neighborhood Boards and Other Community Organizations, which govern the establishment, organization, purposes, powers, oversight and dissolution of such boards, which are community units of a territorial nature representing people residing in a single neighborhood, the purpose of which is to promote the development of the community, to defend the interests and safeguard the rights of those residents and to collaborate with central government and municipal authorities.
- There are also legal provisions in Law No. 19,300, the Basic Environmental Law and its Regulations, establishing, among other measures, community participation in the environmental impact assessment procedure, in the issuance of environmental regulations and in the approval of decontamination plans.
- Administrative provisions like those contained in Presidential Directive No. 30 of 2000 on citizen participation, whereby the President of the Republic orders the central administration to implement participatory mechanisms involving civil society. In a document attached thereto, it establishes ministerial and regional agreements with respect to participation and charges the General Secretariat of the Government with monitoring implementation, evaluating compliance and providing methodological support and training for the various public institutions that must put the directive into practice.
- Administrative provisions are also found in Decree No. 65 of 2001, whereby the President of the Republic created the Presidential Advisory Commission for the Protection of Individual Rights as a presidential advisory body, whose powers include acting as the entity coordinating the information offices and complaints about government bodies and agencies.

#### **4.1.2. Adequacy of the legal framework and/or of other measures**

Based on the information available to it, the Committee notes that the Republic of Chile has regulations and measures like those indicated above with respect to the participation of civil society and nongovernmental organizations in public activities, which seek in principle to encourage the prevention of corruption or directly or indirectly have that effect.

Despite the above and bearing in mind the classification referred to in the methodology for analysis of the implementation of Article III, paragraph 11<sup>37</sup> of the Convention, in each of the respective sections, the Committee will express some considerations and in the final chapter will formulate some specific recommendations with respect to this subject.

#### **4.1.3. Results of the legal framework and/or of other measures**

Chile's response in this respect<sup>38</sup> provides information "on citizen participation in association with implementation of the year 2000 Presidential Directive on citizen participation," basically with reference to the following aspects:

- Information on training for leaders and members of Civil Society Organizations (CSOs), describing various activities carried out in that field and the implementation of a program that

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<sup>37</sup> Methodology for the review of the implementation of the provisions of the Inter-American Convention against Corruption selected within the framework of the first round, Chapter V, D, (Document SG/MESICIC/doc.21/02).

<sup>38</sup> Document updating the response to the questionnaire from the Republic of Chile, pages 27 and 28

seeks to develop and strengthen the social capacities of such organizations and establishes three broad subject areas, i.e., organizational management and development, development of citizenship, and social integration and cultural development.

- Information on the implementation and development of Information, Complaints and Suggestions Offices (OIRs), which are governed by Decree No. 680 of 1990, and “provide an opportunity for citizen interaction with and access to government divisions, contributing to the formation of a modern government in the service of its citizens.”<sup>39</sup>

The response emphasizes<sup>40</sup> that according to data from the “DOS 2002-2003 Survey,” the Executive branch has 1,500 OIRs, 800 information telephones, 400 government Internet sites, and 21 mobile offices throughout the country.

The response also indicates<sup>41</sup> that more information can be obtained from an examination of the Year 2000 Comprehensive Balance Sheet from the General Secretariat of the Government and the web pages [www.segegob.cl](http://www.segegob.cl) and [www.participemos.cl](http://www.participemos.cl).

The Committee feels it is appropriate to recognize, based on the above information, the importance that has been given in the Republic of Chile to training the members of civil society on subjects relating to citizen participation, and at the same time to emphasize the existence of opportunities for citizens to interact with government divisions, and the availability and utilization of new technologies to facilitate such interaction.

It should be added that “Corporación Chile Transparente,”<sup>42</sup> alluding to the government-backed bill that seeks to create the position of Ombudsman, states the following: “While this bill is pending in the legislature, the President has decreed the creation of a Commission for Defense of Citizens’ Rights (sic), comprised of a chairman appointed by the President, and a number of commissioners who, in effect, have been handling an increasing number of cases over the last 18 months.”

The Committee feels that the above information, provided by the referenced civil society organization in its document in a section called “Forms of active participation with greater focus on transparency,”<sup>43</sup> merits being taken into account in recognizing the efforts made by the Republic of Chile in this area.

## **4.2. MECHANISMS FOR ACCESS TO INFORMATION**

### **4.2.1. Existence of a legal framework and/or of other measures**

The Republic of Chile has a series of provisions relating to the referenced mechanism, notably:

- Law No. 19,653 of 1999 on Administrative Probity of Government Administrative Agencies, which amended Law No. 18,575 by adding Articles 11 bis and 11 ter. These articles provide, *inter alia*, that public office shall be carried out with transparency, in such a way that it allows and promotes knowledge of the procedures, content and bases of decisions made in the exercise thereof. Also established are the right of any interested party to access the administration’s

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<sup>39</sup> Document updating the response to the questionnaire from the Republic of Chile, page 28

<sup>40</sup> Document updating the response to the questionnaire from the Republic of Chile, page 28

<sup>41</sup> Document updating the response to the questionnaire from the Republic of Chile, page 27

<sup>42</sup> Document from “Corporación Chile Transparente,” page 65

<sup>43</sup> Document from “Corporación Chile Transparente,” pages 64 to 66

information, the grounds on the basis of which one may refuse to hand over requested documents or information, and the mechanisms to enforce the right of access.

- Law No. 19,300, the Basic Environmental Law, Title 2, paragraph 3 of which, on the subject of community participation in the Environmental Impact Assessment Procedure, provides for the publication of an abstract of the Impact Study submitted so that civil society will be informed of the content of the study and of the tenor of the accompanying documents and may submit observations to the competent agency.

#### **4.2.2. Adequacy of the legal framework and/or of other measures**

The provisions relating to access to information that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

Nevertheless, the Committee feels that it would be useful for the Republic of Chile to consider supplementing and strengthening these provisions so that the right to information would include areas such as public policies and to strengthen the guarantees provided on the exercise of that right.

With respect to extending the right to information to other areas such as public policies, it should be noted that the Chilean government itself makes clear its willingness to move ahead in this respect when referring to a government-backed Draft Basic Law on Citizen Participation in Public Administration, in the following terms:<sup>44</sup>

“In this draft law, the State recognizes the right of citizens to obtain information on public policies. In this regard, it is established that government administrative agencies are required to release information regarding their programs, policies, actions, and budgets, ensuring that the information is sufficient, timely, complete and fully accessible to the citizens. Government agencies must publish on a web page or equivalent medium all the programs, policies and actions they carry out each year. They must also publish their budgets and annual accounting. Information methods are not limited to those mentioned; seminars, workshops or assemblies may be used as well. Government agencies must give an annual public accounting of their management and budgetary execution. For this purpose, they must release a public document to the citizens through widely circulated communications media and through their respective web pages.”

With respect to the guarantees provided on the exercise of the right to information, the Committee notes that although Article 11 bis, added to Law No. 18,575 by Law No. 19,653 of 1999, establishes that the “the only grounds on the basis of which one may refuse to hand over requested documents or information” are those expressly defined in the same law, one of the grounds, providing for such refusal based on privilege or secrecy established in regulatory provisions, leaves open the possibility that regulations will be used to distort or limit a right that has been established by law.

The above does not mean that the Committee feels that regulations or resolutions issued based on the aforementioned Law are contrary to Chile’s legal system. Moreover, it is not its place to render an opinion on this issue. The Committee only wishes to call attention to the advisability of the Republic of Chile considering strengthening the guarantees on the exercise of a right that given its importance should be regulated by law with respect to its essential aspects, as is the case with the limitations on that right.

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<sup>44</sup> Response to the questionnaire from the Republic of Chile, page 26

It should be added that the document submitted by “Corporación Chile Transparente”<sup>45</sup> has some criticisms regarding the way the right of access to information is conceived in Law No. 19,653. Some of these criticisms relate to the qualification that specific information may be considered reserved through regulation, the grounds for refusal based on the notion that “disclosure impedes or obstructs the due performance of the functions of the agency to which the request is submitted,” and the possibility that an interested third party could oppose the release of information without showing cause.

Criticisms are also made in that document<sup>46</sup> with respect to Supreme Decree No. 26 of 2001 of the General Secretariat of the Presidency; basically referring to the fact that the decree incorporated grounds for reserve in addition to those contained in the law and established broad criteria for application of such qualification. This was said to be reflected in the issuance of more than 58 resolutions from various sectoral government agencies that have conferred secret status on the documents in their power.

The referenced document<sup>47</sup> also includes some acknowledgements relating to the judicial precedents that have been established since Law No. 19,653 took effect. These basically refer to inclusion of the right of access to public information as an integral part of the principle of administrative probity, validation of the contributing role that civil society and nongovernmental organizations play in the oversight of matters of public interest, citizenship as the only requirement for purposes of interest in requests for access, the declaration of non-compliance on the part of an administrator with respect to the obligation to respond on a timely basis to requests for access, the identification of “public service companies” with those that, regardless of their private nature, collaborate with the State in meeting the public interest, and the obligation of an authority to confirm secrecy and to review the unfounded opposition of third parties.

Finally, the document from the aforementioned civil society organization<sup>48</sup> makes some recommendations relating to the aspects that were the subject of its criticism, namely to training for public officials and representatives of civil society on the principles and content of the legislation, and to the dissemination and promotion of the right of access to information at all levels of society.

With respect to the suggestions made by “Corporación Chile Transparente,” the Committee refers to the comments already made on the exercise of the right to information. It also feels that, given how important it is to an understanding of the scope of that right that public officials and citizens know about the regulations regarding that right and the availability of new communication technologies to facilitate the exercise thereof, it would be useful for the Republic of Chile to consider implementing training and dissemination programs in this regard.

Bearing in mind the considerations it has expressed, the Committee will formulate recommendations in this regard.

#### **4.2.3. Results of the legal framework and/or of other measures**

Chile’s response in this regard<sup>49</sup> notes that “Currently, 200 government agencies have web pages where they report on their institutional mission, budget, annual balance sheet, and those areas in which they carry out activities. In addition, there are 119 interactive procedures the State carries out with its citizens and 219 procedural forms and applications are available to anyone on the net. Numerous users visit the

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<sup>45</sup> Document from “Corporación Chile Transparente,” pages 68 to 74

<sup>46</sup> Document from “Corporación Chile Transparente,” pages 74 and 75

<sup>47</sup> Document from “Corporación Chile Transparente,” pages 75 and 76

<sup>48</sup> Document from “Corporación Chile Transparente,” pages 76 and 77

<sup>49</sup> Document updating the response to the questionnaire from the Republic of Chile, page 30

web pages each day. The Judicial Branch and the Congress also have web pages and abundant information.”

The Committee feels that although the above information allows it to appreciate the availability and use of new technologies in the government’s interaction with society, an aspect that deserves recognition, it does not allow for a comprehensive evaluation of the results of other provisions the Republic of Chile has on the subject of access to information. With this circumstance in mind, the Committee will formulate a recommendation.

### **4.3. CONSULTATIVE MECHANISMS**

#### **4.3.1. Existence of a legal framework and/or of other measures**

The Republic of Chile has a series of provisions relating to the referenced mechanisms, notably:

- DFL No. 458 of 1975, the General Law on Urban Planning and Construction. Article 43 establishes a procedure for preparing and approving the community master plan that municipalities must adopt with respect to different uses of land, which includes a phase for providing information and consulting with the community regarding the proposed project and gives interested parties an opportunity to make observations.
- Law No. 19,300, the Basic Environmental Law which, among other measures, provides in Title 2, paragraph 4 that the regulations establishing the procedure to be followed for issuing environmental quality standards must include phases for consultations with competent public and private organizations.

#### **4.3.2. Adequacy of the legal framework and/or of other measures**

The regulations on consultative mechanisms that the Committee has reviewed, based on the information available to it, are relevant for promoting the purposes of the Convention.

However, the Committee feels that these regulations relate to very specific subjects such as land use and the environment.

Without overlooking how important it is that consultative mechanisms are considered for such matters, the Committee feels it is advisable for the Republic of Chile to consider providing such mechanisms for other subjects of general interest such as the design of public policies and the approval of legal provisions and to use methods suitable for consulting community opinion such as public hearings in developing such mechanisms.

It should be noted that Chile itself makes clear in its response<sup>50</sup> its willingness to move ahead in this direction, stating with respect to a government-backed Draft Basic Law on Citizen Participation that it “establishes that government agencies are required to consult the opinion of the citizenry prior to adopting decisions on subjects generally affecting the citizens or of interest to them, understanding this to mean matters affecting or impacting citizens’ rights and duties. In order to achieve this end, government agencies shall seek to learn the views of civil society organizations that have recognized experience with respect to the subject or matter involved. The opinion of civil society may be obtained through citizen consultations and citizen proposals.”

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<sup>50</sup> Response to the questionnaire from the Republic of Chile, page 27

It should be added that the document submitted by “Corporación Chile Transparente,”<sup>51</sup> states with respect to this subject that “Most of the legal provisions designed to expand the levels of citizen participation in the functions of the country’s various ministries, systematized by the government, refer to expanding citizen access to information on public programs, citizen petition rights and, to a lesser extent, the ability to be consulted by the public authority.”

With respect to the above, the Committee refers to the comments already made regarding the advisability for the Republic of Chile to consider supplementing the existing consultative mechanisms by establishing procedures, as appropriate, to provide opportunities to carry out public consultations in areas in addition to those already contemplated.

With the above considerations in mind, the Committee will formulate recommendations on the subject.

#### **4.3.3. Results of the legal framework and/or of other measures**

Chile’s response on this subject notes that “There is no information as yet to determine objective results.” With this circumstance in mind, the Committee will formulate a recommendation.

### **4.4. MECHANISMS TO ENCOURAGE ACTIVE PARTICIPATION IN PUBLIC ADMINISTRATION**

#### **4.4.1. Existence of a legal framework and/or of other measures**

Chile’s response<sup>52</sup> notes on this subject that “Since the 1990s our country has shown strong political will to promote the participation of civil society in the various spheres of public administration. This is reflected in the various laws that have been described earlier in this document. In December 2000, the President of the Republic issued a Presidential Directive establishing the guiding principles of the participation the country wants to encourage as well as the obligation of regional governments to prepare a Regional Citizen Participation Plan, which will be incorporated in the regional development strategy.”

The Committee finds that, as indicated in the above section from the response of the country under review, Chile has a series of provisions relating to the referenced mechanisms, which are basically those that have been described in section 4.1.1. of this report, on participatory mechanisms in general. Notable among these provisions are those contained in Law No. 16,888 (the amended and systematized text of which is found in Law No. 19,418) on neighborhood boards and other community organizations; in Law No. 19,300, the Basic Environmental Law; in Presidential Directive No. 30 of 2000 on citizen participation; and in Decree No. 65 of 2001, whereby the President of the Republic created the Presidential Advisory Commission for the Protection of Individual Rights.

#### **4.4.2. Adequacy of the legal framework and/or of other measures**

The provisions relating to the referenced mechanisms that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

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<sup>51</sup> Document from “Corporación Chile Transparente,” page 61

<sup>52</sup> Response to the questionnaire from the Republic of Chile, page 27

However, the Committee feels it is advisable for the Republic of Chile to consider strengthening and continuing to implement mechanisms that encourage civil society and nongovernmental organizations to participate in public administration.

The Committee notes that the country under review wants to move ahead in the indicated direction, in that, in addition to the existing provisions, particularly those contained in Presidential Directive No. 30 of 2000, paragraph 1 of which expressly states that citizen participation is an essential aspect of any democratic system, new provisions are being proposed that are directly related to encouraging the participation of civil society in public administration, such as those contained in the government-backed Draft Basic Law on Citizen Participation, to which we have referred in other sections of this report. It should be noted that the document submitted by “Corporación Chile Transparente,”<sup>53</sup> notes the following with respect to this subject:

“The principal government measures to promote active citizen participation in government administration and thus and specifically in its probity and transparency, are found in Article 4 (e) of the Presidential Directive, which provides that “agencies should develop guidance for citizens, giving priority to the participation of the final users of policies, programs or services, i.e., the users, consumers and beneficiaries.” They are also found in subparagraphs (f) and (g) of the 11 sections of Article 5 of the Directive, which refer respectively to incorporating citizen participation initiatives in agreements on improving public administration and establishing citizen participation agreements in public policies and programs. Article 6 states the purpose of “implementing a citizen participation process as a requirement for admission in the National Investment System” that evaluates public investment projects, through the preparation of a pilot project to be used as a model for the design of those initiatives. Article 7 provides that regional governments must develop a Regional Citizen Participation Plan that will be incorporated in the Regional Development Strategy. Although these provisions have continued to be relatively more programmatic than practical, and are not specifically directed to fostering citizen oversight of government probity, their general nature is potentially important to citizen oversight on these subjects.”

In addition, the Committee, based on information collected by the Secretariat as provided in the methodology for the review of the implementation of the selected provisions,<sup>54</sup> notes the existence within the legal system of the country under review some provisions that in a report<sup>55</sup> from the Rapporteur for Freedom of Expression 2002 of the OAS are generally called “contempt laws.” Such laws could hinder the participation of civil society and nongovernmental organizations in efforts intended to prevent corruption.

The Committee feels it is appropriate to refer to the relevant sections of the referenced report,<sup>56</sup> which it should be noted does not refer to Chile in particular but rather a number of countries of the Americas in general, and in the case of Chile indicates the following:

“30. In 2001 Chile abolished the crime of *desacato* provided in Article 6(b) of the State Security Act. The amendment was introduced by the “Freedom of Opinion and Information and Exercise of Journalism Act” (Act No. 19,733) published in the official gazette on June 4, 2001. Apart from Article 6(b), the Act also repealed other articles of the State Security Act, which dates from 1958; among them, Article 16, which

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<sup>53</sup> Document from “Corporación Chile Transparente,” page 61

<sup>54</sup> Methodology for the review of the implementation of the provisions of the Convention selected within the framework of the first round, Chapter VI (Document SG/MESICIC/doc.21/02).

<sup>55</sup> Report from the Special Rapporteur for Freedom of Expression 2002, Chapter V. This report can be consulted on the OAS web site.

<sup>56</sup> Report from the Special Rapporteur for Freedom of Expression 2002, Chapter V, page 9. This report can be consulted on the OAS web site.

authorized the interruption of publications and broadcasts and the immediate confiscation of publications considered offensive; and Article 17, which extended liability to criminal prosecution to encompass the editors and the printers of the accused publication. Under the new laws, civilian, not military, courts shall hear cases of defamation brought by military personnel against civilians. Furthermore, the 1967 Abusive Publicity Act was abolished. Under this Act a court could prohibit journalistic coverage of a judicial proceeding. The law also guarantees professional confidentiality and protection of sources.

31. Without diminishing the above, the offense of contempt is still in effect both in the Criminal Code and in the Code of Military Justice. The Rapporteur was informed that the Executive Branch sent Congress a bill amending these codes with respect to the contempt provisions. The Rapporteur repeats the ideas he expressed in the press release issued at the conclusion of his visit to the country, i.e., that the bill represents another step forward but he urges the government to quickly turn it into law. The Rapporteur was also informed that there is a bill in Congress to amend the criminal classification of offenses against honor and privacy. According to this chapter, that initiative, “is welcome if it meets the parameters set out hereinabove; however, it would be advisable for it not to delay the discussion and adoption of the bill that abolishes the offense of *desacato*.”

The Committee wishes to emphasize the willingness of the country under review to solve the problem posed by the aforementioned “*desacato* laws,” which is reflected not only in the fact that it has already repealed some of them but also in the promotion of government-backed bills to repeal those that still exist. This willingness is also expressly recognized in the referenced report from the Rapporteur for Freedom of Expression, who noted in the pertinent section<sup>57</sup> that “[it]...remains ... to explain that the countries mentioned in this section are implementing legislative reform processes in accordance with the recommendations of the Commission and of the Office of the Special Rapporteur, for which reason the states that have not yet embarked on such processes are urged to emulate those initiatives.” For this reason, the Committee feels that the only recommendation is to encourage Chile to continue moving ahead with repeal or modification of the referenced provisions because it is felt that they could constitute a disincentive to participation by civil society due to the fear that can be created by the possibility of committing the so-called “offense of *desacato*.”

With the above considerations in mind, the Committee will formulate recommendations in this regard

#### **4.4.3. Results of the legal framework and/or of other measures**

Chile’s response on this subject<sup>58</sup> notes that “There is no information as yet that would allow us to obtain the objective results that have been achieved through implementation of this presidential directive. In addition, the document itself indicates that as of January 1, 2003 the directive on citizen participation should be fully operational. Thus, it will be possible to have information in this regard shortly thereafter.”

In updating its response,<sup>59</sup> Chile provides information regarding the results of the Presidential Directive mentioned in the preceding paragraph, to which the Committee already referred in section 4.1.2 of this report, emphasizing the importance that has been given in Chile to training the members of civil society on subjects relating to citizen participation, the existence of opportunities for citizens to interact with government divisions, and the availability and utilization of new technologies to facilitate that interaction.

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<sup>57</sup> Report from the Special Rapporteur for Freedom of Expression 2002, Chapter V, page 8. This report can be consulted on the OAS web site.

<sup>58</sup> Response to the questionnaire from the Republic of Chile, page 27

<sup>59</sup> Document updating the response to the questionnaire from the Republic of Chile, pages 27 and 28

It should be noted that the document submitted by “Corporación Chile Transparente”<sup>60</sup> lists the measures adopted by the different ministries of the country under review with respect to encouraging citizen participation. This reflects the progress that has been made in this area.

Nonetheless, sufficient information is not available with which to comprehensively evaluate the results of all the provisions that the country under review has in this area. With this circumstance in mind, the Committee will formulate a recommendation.

#### **4.5. PARTICIPATION MECHANISMS IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION**

##### **4.5.1. Existence of a legal framework and/or of other measures**

Chile’s response notes on this subject that “Currently, the Budget Directorate maintains information on its web page relating to the yearly balance sheets and the fulfillment of goals. This allows civil society to monitor the public administration of the Ministries and Public Services. Any citizen can check that each institution’s projected goals and objectives have been effectively met. In addition, the Draft Basic Law on Citizen Participation in Public Administration establishes that government agencies must give an annual public accounting of their management and budget execution. For this purpose, they must disclose a public document to the citizens through widely circulated communications media and through their respective web pages.”

In effect, the Committee finds that the country under review has mechanisms in this area such as the mechanism mentioned in the previous section of its response, as well as provisions relating to such mechanism like those contained in Presidential Directive No. 30 of 2000 on citizen participation. Paragraph 4 of the directive establishes guiding principles for that participation, such as transparency in management through greater information and openness to the citizenry; the inclusion of participation as a variable for analysis in the evaluation of public policies and programs, particularly in the evaluation of their beneficiaries; and in the creation of mechanisms that ensure relevant and timely response to petitions, complaints and appeals that people may submit or file.

##### **4.5.2. Adequacy of the legal framework and/or of other measures**

The provisions relating to the referenced mechanisms that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

However, the Committee feels it is advisable for the Republic of Chile to consider strengthening and continuing to implement mechanisms that encourage civil society and nongovernmental organizations to participate in the follow-up of public administration.

The Committee notes that Chile is willing to move ahead in the indicated direction, in that, in addition to the existing provisions, particularly those contained in Presidential Directive No. 30 of 2000, new provisions are being proposed with respect to the participation of civil society in the follow-up of public administration, such as those contained in the government-backed draft Basic Law on Citizen Participation, to which we have referred in other sections of this report.

With the above considerations in mind, the Committee will formulate recommendations in this regard.

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<sup>60</sup> Document from “Corporación Chile Transparente,” pages 62 to 64

#### **4.5.3. Results of the legal framework and/or of other measures**

Chile's response notes in this regard<sup>61</sup> that "As yet no mechanisms have been developed that would allow us to record the objective results obtained with implementation of the oversight indicated in point a). As already noted, the Draft Basic Law on Citizen Participation, the instrument that will enable civil society to fully oversee public administration, is not yet a reality." With this circumstance in mind, the Committee will formulate a recommendation.

### **5. ASSISTANCE AND COOPERATION (ARTICLE XIV)**

#### **5.1. MUTUAL ASSISTANCE**

##### **5.1.1. Existence of a legal framework and/or of other measures**

The Republic of Chile has a series of provisions and measures for the mutual assistance referred to in Article XIV, 1) of the Convention, notably Chapter VI A of the Political Constitution of the State; Law No. 19,640, the Constitutional Organic Law of the Office of the Attorney General; the Criminal Process Code; and the Code of Civil Procedure, as well as procedures at the judicial, executive and police levels referred to by Chile in its response.<sup>62</sup>

It also has "judicial cooperation treaties," which are mentioned in the response to the comments of the analysis subgroup and Secretariat.

##### **5.1.2. Adequacy of the legal framework and/or of other measures**

Based on analysis, the Committee concludes that on the whole the provisions and measures that the Republic of Chile has in this area are appropriate for promoting the purposes of the Convention.

Notwithstanding the above, the Member State under study makes clear in its response to the comments of the analysis subgroup and Secretariat that its internal legislation does not regulate the organization or particulars of "international legal cooperation;" that the mutual assistance provided currently generally takes the form of international letters rogatory; and that the letters rogatory do not make it possible to carry out all the tasks that may be required for the mutual assistance.

In the above-mentioned document, the Member State under study also explains that it is party to some bilateral and multilateral treaties that provide for international cooperation. However, it also makes clear that there is interest on the part of the country to supplement existing legislation in this area, as well as to become a party to other international instruments that could make it possible for the Chilean government to adopt measures that would make mutual assistance more effective, and granting relevant authority to appropriate institutions to enable them to carry out international cooperation that may be requested in relation to the investigation of crimes, which is currently limited to certain areas.

The Committee recognizes the efforts that have been made in this area by the Member State, as well as the will it has shown to continue progressing in mutual assistance. Bearing in mind what it has expressed in the preceding paragraph, the Committee will formulate a recommendation.

##### **5.1.3. Results of the legal framework and/or of other measures**

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<sup>61</sup> Response to the questionnaire from the Republic of Chile, page 28

<sup>62</sup> Response to the questionnaire from the Republic of Chile, page 29

Chile's response in this regard notes the following:<sup>63</sup>

“The government of Chile has in effect made requests for information and received similar requests from other countries. These requests occur at the judicial level and with the participation of the Ministry of Foreign Relations, the Supreme Court and, then, the court with jurisdiction in criminal matters (constitutional protections or oral argument) or the prosecutor with the Office of the Attorney General, as appropriate.

It should be specified that statistics and records are not broken down by type of crime and thus there are no specific figures for requests for mutual assistance in connection with the crimes indicated in Title V of Book II of the Penal Code, i.e., crimes associated with corruption. All types of requests for information have been made, with favorable responses almost without exception, with a response time of 3-6 months, which has generally been considered satisfactory.”

Information is then provided on the number of requests and extraditions for the years 2000, 2001 and 2002, which, as stated in the response, is not broken down.

However, the Committee feels that the information provided by the Republic of Chile allows for a general view on how the reviewed State responds to mutual assistance requests.

## **5.2. MUTUAL TECHNICAL COOPERATION**

### **5.2.1. Existence of a legal framework and/or of other measures**

The Republic of Chile has provisions and measures for the exchange of mutual technical cooperation with other States Parties to the Convention, pursuant to the provisions of Article XIV, 2), of the Convention. To be noted among these are Article 37, No. 17 of the Political Constitution of the State, and the agreements on technical assistance, exchange and mutual cooperation, for the prevention and detection of corrupt practices, signed by the General Government Internal Audit Council, as mentioned in the response.<sup>64</sup>

### **5.2.2. Adequacy of the legal framework and/or of other measures**

Based on analysis, the Committee concludes that on the whole the provisions and measures that the Republic of Chile has in this area are relevant for promoting the purposes of the Convention.

### **5.2.3. Results of the legal framework and/or of other measures**

Chile's response<sup>65</sup> mentions cooperative activities such as preparatory working sessions to formalize and carry out collaboration and mutual technical cooperation activities with representatives from the agencies of other countries and from international organizations, and the links that the Office of the Comptroller General of the Republic has established with such organizations.

Nonetheless, that response<sup>66</sup> also notes that “For various reasons including the already noted external perception of the phenomenon of corruption in Chile, our country has not developed technical cooperation programs with the support of international cooperation agencies or bodies, except for a few

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<sup>63</sup> Response to the questionnaire from the Republic of Chile, pages 29 and 30

<sup>64</sup> Response to the questionnaire from the Republic of Chile, page 30

<sup>65</sup> Response to the questionnaire from the Republic of Chile, pages 31 and 32

<sup>66</sup> Response to the questionnaire from the Republic of Chile, page 32

isolated cases. However, it is hoped and desirable that there will be greater support in 2004 for projects now being designed and some projects in which the execution phase has already begun.” With this circumstance in mind, the Committee will formulate a recommendation.

## **6. CENTRAL AUTHORITIES (ARTICLE XVIII)**

### **6.1. Existence of a legal framework and/or of other measures**

The Republic of Chile notes in its response<sup>67</sup> that it has informed the OAS that it generally uses the designated Central Authorities in accordance with treaties in effect and, in the absence of treaties or in cases where no designation has been made, the function is carried out on a residual basis by the Ministry of Foreign Relations, and it adds that with respect to the Inter-American Convention against Corruption, the Ministry of Foreign Relations, as noted, is currently acting as the Central Authority, although the OAS will be informed in due time of the Central Authority permanently designated for such purposes. It then provides the information on the officials in that ministry that concern themselves with assistance and cooperation.

### **6.2. Adequacy of the legal framework and/or of other measures**

The Ministry of Foreign Relations, which as noted in the preceding paragraph is the entity currently acting as the central authority for purposes of assistance and international cooperation as referred to in the Convention, has the legal powers and resources needed to carry out that function, bearing in mind what the response indicates on this subject.<sup>68</sup>

Despite the above, since the response itself indicates that the OAS will be informed of the central authority permanently designated for these purposes, the Committee will formulate a recommendation in this regard.

### **6.3. Results of the legal framework and/or of other measures**

Chile’s response on this subject does not provide information on the results from the actions of the Ministry of Foreign Relations as the central authority for purposes of the assistance and cooperation referred to in the Convention. With this circumstance in mind, the Committee will formulate a recommendation.

## **III. CONCLUSIONS AND RECOMMENDATIONS**

Based on the analysis performed in Chapter II of this report, the Committee makes the following conclusions and recommendations regarding the implementation in the Republic of Chile of the provisions of Articles III, 1, and 2 (standards of conduct and mechanisms to enforce them); III, 4 (systems for registering income, assets and liabilities); III, 9 (oversight bodies, only in those areas relating to the exercise of functions by such bodies with respect to compliance with the provisions of paragraphs 1, 2, 4 and 11 del Article III of the Convention); III, 11 (mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption); XIV (assistance and cooperation);

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<sup>67</sup> Response to the questionnaire from the Republic of Chile, page 32

<sup>68</sup> Response to the questionnaire from the Republic of Chile, page 32

and XVIII (central authorities) of the Convention, which were selected within the framework of the first round.

## **1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)**

### **1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce compliance**

**The Republic of Chile has considered and adopted measures to create, maintain and strengthen standards of conduct to prevent conflicts of interest and mechanisms to enforce compliance, as stated in Chapter II, Section 1.1 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Chile consider the following recommendation:

- 1.1.1 Strengthen the provisions with respect to the standards of conduct intended to prevent conflicts of interest during and after leaving public office, and the systems for reviewing the content of sworn statements on disqualifications and statements of interests.

In meeting this recommendation, the Republic of Chile could consider the following measures:

- a. Supplement the restrictions provided in the law for those who leave public service, including, when appropriate, other situations that could constitute conflicts of interest following the departure of the public official, applicable for a reasonable period of time after said departure (see section 1.1.2. of Chapter II of this report).
- b. Strengthen systems that make it possible to ensure that agency personnel and internal control units carry out on a timely basis and when appropriate the verification or review of the information contained in the sworn statements on disqualifications and statements of interests (see section 1.1.2. of Chapter II of this report).
- c. Ensure the applicability of punishments of public servants that infringe upon laws on conflicts of interests.

### **1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to public officials in the performance of their functions and mechanisms to enforce compliance.**

**The Republic of Chile has considered and adopted measures intended to create, maintain and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as stated in Chapter II, Section 1.2 of this report.**

- 1.2.1 The Committee recognizes with satisfaction that the Republic of Chile has relevant norms and mechanisms in order to assure the proper conservation and use of resources entrusted to public officials in the performance of their functions and mechanisms to enforce compliance.

**1.3. Standards of conduct and mechanisms relating to measures and system to require public officials to report to competent authorities regarding acts of corruption in public office of which they are aware**

**The Republic of Chile has considered and adopted measures intended to create, maintain and strengthen standards of conduct and mechanisms relating to measures and systems that require public officials to report to appropriate authorities regarding acts of corruption in public office of which they are aware, as stated in Chapter II, Section 1.3 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Chile consider the following recommendation:

- 1.3.1. Strengthen the mechanisms the Republic of Chile has to require public officials to report to the competent authorities regarding acts of corruption in public office of which they are aware.

In meeting this recommendation, the Republic of Chile could consider the following measures:

- a. Strengthen the mechanisms protecting public officials who report acts of corruption, so that they have guarantees against the threats and retaliation to which they may be subject as a result of fulfilling this obligation.
- b. Train and increase the awareness of public officials regarding the purpose of the duty to report to the competent authorities regarding acts of corruption in public office of which they are aware.

**2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)**

**The Republic of Chile has considered and adopted, certain measures to create, maintain and strengthen systems for registering income, assets and liabilities by those who perform public functions in the positions established by law and for the disclosure of such statements when appropriate, as stated in Chapter II, Section 2 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Chile consider the following recommendation:

- 2.1. Expand and supplement systems for registering income, assets and liabilities, through relevant legal norms, and adopting relevant measures for publishing, when appropriate.

In meeting this recommendation, the Republic of Chile could consider the following measures:

- a. Expand and supplement the existing provisions on asset statements and statements of interests, so that the standards and measures that require government officials at a certain level in the hierarchy to report their interests include aspects relating to their income, assets and liabilities.

- b. Regulate the conditions, procedures and other aspects related to publicizing the declarations of net worth (including income, assets and liabilities), as appropriate.
- c. Optimize systems for reviewing the contents of declarations of net worth and interests with the objective of detecting and preventing conflicts of interest.

### **3. OVERSIGHT BODIES RELATED TO THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)**

**The Republic of Chile has considered and adopted measures intended to create, maintain and strengthen oversight bodies that carry out functions relating to the effective enforcement of the provisions selected for review within the framework of the first round (Article III, paragraphs 1, 2, 4 and 11 of the Convention), as stated in Chapter II, Section 3 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Chile consider the following recommendation:

- 3.1. Establish mechanisms that allow for improved institutional coordination of oversight bodies, and supplement the system of external oversight of government administration by institutionalizing an agency or body, or agencies or bodies endowed with the necessary autonomy, as appropriate, so that, in consonance with the powers assigned to other bodies, it could develop functions relating to fulfilling the provisions of Article III, paragraph 11 of the Convention.

### **4. MECHANISMS TO PROMOTE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11)**

**The Republic of Chile has considered and adopted measures intended to create, maintain and strengthen mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts to prevent corruption, as stated in Chapter II, Section 4 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Chile consider the following recommendations:

#### **4.1 Mechanisms to ensure access to information**

- 4.1.1. Supplement the mechanisms to ensure access to government information by expanding the subjects they cover; strengthening the guarantees provided for exercising this right; and implementing training and dissemination programs in this regard.

In meeting this recommendation, the Republic of Chile could consider the following measures:

- a. Expand the subjects of government administration about which citizens have a right to be informed, so that they include aspects relating to public policies, to the execution thereof, and their results.

- b. Strengthen the guarantees on exercising the right to access to government information, so that access thereto cannot be denied for grounds other than those defined by law, or on grounds on the basis of involving broad discretion. In this respect, it is requested that consideration be given to the modification of the laws or the Supreme Decree No. 26 of 2001, of Ministry of the General Secretariat of the Presidency (see section 4.2.2, Chapter II).
- c. Implement training and dissemination programs on the mechanisms for accessing government information, in order to facilitate their understanding by public officials and citizens and optimize the utilization of technology available for such purposes.

## **4.2 Consultative mechanisms**

- 4.2.1 Supplement the existing consultative mechanisms, establishing procedures, as applicable, to allow for public consultations prior to the design of public policies and final approval of legal provisions.

In meeting this recommendation, the Republic of Chile could consider the following measures:

- a. Carry out transparent processes to allow consultations with interested sectors with respect to the design of public policies and the development of draft laws, decrees or resolutions in the sphere of the Executive Branch.
- b. Hold public hearings or develop other suitable mechanisms to allow public consultation in areas in addition to those already contemplated.
- c. Continue its efforts with the objective of enacting a Basic Law on Citizen Participation in Public Administration.

## **4.3 Mechanisms to encourage participation in public administration**

- 4.3.1 Strengthen and continue to implement mechanisms that encourage civil society and nongovernmental organizations to participate in public administration and continue to move ahead with repealing or modifying provisions that may discourage such participation

In meeting this recommendation, the Republic of Chile could consider the following measures:

- a. Establish mechanisms, in addition to the existing ones, to strengthen the participation of civil society and nongovernmental organizations in public administration, and especially, in efforts to prevent corruption, and promote knowledge of the participation mechanisms established and how to use them.
- b. Continue moving ahead with repeal or modification of the so-called “*desacato* laws” (see section 4.4.2. of Chapter II of this report).

## **4.4 Participation mechanisms in the follow-up of public administration**

- 4.4.1 Strengthen and continue implementing mechanisms to encourage civil society organizations and nongovernmental organizations to participate in the follow-up of public administration.

In meeting this recommendation, the Republic of Chile could consider the following measures:

- a. Promote methods, when appropriate, so that public officials can allow for, facilitate or assist civil society and nongovernmental organizations in developing activities for the follow-up of their public activities.
- b. Design and put into operation programs to publicize participation mechanisms in the follow-up of public administration and, when appropriate, provide training and the necessary tools so that civil society and nongovernmental organizations can use such mechanisms.

## **5. ASSISTANCE AND COOPERATION (ARTICLE XIV)**

**The Republic of Chile has adopted measures dealing with mutual assistance and mutual technical cooperation, in accordance with the provisions of Article XIV of the Convention, as described and analyzed in Chapter II, Section 5 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Chile consider the following recommendations:

- 5.1 Supplement existing legislation in mutual assistance, as well as to become a party to other appropriate international instruments that would facilitate mutual assistance, and granting relevant authority to appropriate institutions to enable them to carry out international cooperation that may be requested in relation to the investigation of crimes, which is currently limited to certain areas.
- 5.2 Define those specific areas in which the Republic of Chile may need or could usefully receive mutual technical cooperation for preventing, detecting, investigating and punishing acts of corruption, and based on that analysis, design and implement a comprehensive strategy that would allow the country to seek out other States party and not party to the Convention and institutions or bodies involved in international cooperation in order to obtain the technical cooperation it has determined it needs.
- 5.3 Continue efforts to exchange technical cooperation with other States Parties on the most effective methods and means for preventing, detecting, investigating and punishing acts of corruption.

## **6. CENTRAL AUTHORITIES (ARTICLE XVIII)**

**The Committee wishes to recognize with satisfaction that the Republic of Chile has complied with Article XVIII of the Convention by designating the Ministry of Foreign Relations as the central authority for purposes of the international assistance and cooperation prescribed in the Convention, and it is operational according to the information supplied by the government in its response.**

In view of the comments made in section 6 of Chapter II of this report, the Committee suggests that the Republic of Chile consider the following recommendation:

- 6.1 Inform the General Secretariat of the OAS at the proper time of any change in the designation of the central authority or authorities for purposes of the international assistance and cooperation provided for in the Convention.

## **7. GENERAL RECOMMENDATIONS**

Based on the analysis and contributions made throughout this report, the Committee suggests that the Republic of Chile consider the following recommendations:

- 7.1 Strengthen and expand, as appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.
- 7.2 Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.
- 7.3 Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.

## **8. FOLLOW-UP**

The Committee shall consider the periodic reports from the Republic of Chile regarding progress made in implementing the above recommendations, in the framework of the plenary sessions of the committee, in accordance with the provisions of Article 30 of the Rules.

In addition, the Committee will review the progress made in implementing the recommendations made in this report, in accordance with the provisions of Article 31 and, when appropriate, Article 32 of the Rules of Procedure.

The Committee wishes to note the Republic of Chile's request, made through a written communication directed to the Secretariat of the Committee on February 6, 2004, that this report be published on the Mechanism's Internet website or by any other means of communication, pursuant to Article 25 (g) of the Rules of Procedure.

**APPENDIX TO THE PRELIMINARY DRAFT REPORT  
ON THE IMPLEMENTATION IN THE REPUBLIC OF CHILE OF THE PROVISIONS OF THE  
CONVENTION SELECTED FOR REVIEW WITHIN THE FRAMEWORK OF THE FIRST  
ROUND**

The Republic of Chile submitted, along with its reply, annexes containing the following provisions and documents:

- ATTACHMENT 1) Constitution of the Republic
- ATTACHMENT 2) Decree 262 of 1977 – Per diem regulations for the civil service
- ATTACHMENT 3) Decree 1263 of 1975 – Organic Decree Law on the financial administration of the State
- ATTACHMENT 4) Decree Law 799 of 1974 – Repealing Law 17.054 and enacting in its stead provisions regulating the use and driving of state vehicles
- ATTACHMENT 5) Law 18.918 of 1990 – Constitutional Organic Law of the National Congress
- ATTACHMENT 6) Law 18.382 of 1984 – Complementary provisions on financial administration, personnel, and budgetary impact
- ATTACHMENT 7) Law 18.591 of 1987 – Complementary provisions on financial administration and on budgetary and financial impact
- ATTACHMENT 8) Code of Criminal Procedure
- ATTACHMENT 9) Organic Courts Code
- ATTACHMENT 10) Decree 1 of 1991 – Setting the per diem dollar amounts for personnel performing duties abroad

- ATTACHMENT 11) Decree 1312 of 1999 – Creating the public purchasing and procurement information system
- ATTACHMENT 12) Law 18.803 – Granting public services the authorization indicated
- ATTACHMENT 13) Decree Law 1939 of 1977 – Rules on the acquisition, administration, and disposal of state property
- ATTACHMENT 14) Decree 65 of 2000 – Creating the Advisory Committee for Protecting People’s Rights
- ATTACHMENT 15) Law 19.300 of 1994 – Adopting the law on the general bases of the environment
- ATTACHMENT 16) Law 19.653 of 1999 – On administrative probity applicable to the agencies of the public administration
- ATTACHMENT 17) Law 19.738 of 2001 – Provisions to fight tax evasion
- ATTACHMENT 18) Law 19.774 of 2001 – Adopting the 2002 public sector budget law
- ATTACHMENT 19) Decree 98 of 1991 – Establishing methods to be followed in the provision of personal services
- ATTACHMENT 20) Decree (DFL) 1 of 1993 – Setting down the restated, coordinated, and consolidated text of the Organic Law on the State Defense Council
- ATTACHMENT 21) Decree 2421 of 1964 – Setting down the restated text of the Law on the organization and powers of the Office of the Comptroller General of the Republic
- ATTACHMENT 22) Law 18.575 of 1986 – Constitutional Organic Law on general bases for the administration of the State
- ATTACHMENT 23) Law 18.840 of 1989 – Constitutional Organic Law on the Central Bank of Chile
- ATTACHMENT 24) Law 19.640 of 1999 – Establishing the Constitutional Organic Law of the Public Prosecution Service (MP)
- ATTACHMENT 25) Decree 291 of 1993 – Setting down the restated text of Law 19.175, Constitutional Organic Law on regional administration and government
- ATTACHMENT 26) Presidential instructions on citizen participation
- ATTACHMENT 27) Appendix to the presidential instructions on citizen participation – Ministerial citizen participation commitments in public policies and programs 2000-2001
- ATTACHMENT 28) Draft law on the basis for citizen participation in the public administration

- ATTACHMENT 29) Regulations for the training of prosecutors and officers of the Public Prosecution Service
- ATTACHMENT 30) Regulations on the responsibility of the Public Prosecution Service
- ATTACHMENT 31) Regulations for the hiring of nonmaterial services by the Public Prosecution Service
- ATTACHMENT 32) Personnel Regulations for officers of the Public Prosecution Service
- ATTACHMENT 33) Decree (DFL) 1 de 1994 – Setting down the restated, coordinated, consolidated, and updated text of the Organic Statute of the treasury service
- ATTACHMENT 34) Decree (DFL) 7 of 1980 – Setting down the text of the Organic Law of the Internal Tax Service and amending the legal provisions indicated
- ATTACHMENT 35) Law 18.883 of 1989 – Adopting the administrative statute for municipal officers
- ATTACHMENT 36) Law 19.296 of 1994 – Establishing rules on associations of officers of the public administration
- ATTACHMENT 37) Law 19.628 of 1999 – On protecting private life
- ATTACHMENT 38) Law 19.738 of 2001 – Provisions to fight tax evasion
- ATTACHMENT 39) Law 19.799 of 2002 – On electronic documents, electronic signatures, and services to authenticate such signatures
- ATTACHMENT 40) Code of Criminal Procedure
- ATTACHMENT 41) Decree (DFL) 106 of 1960 – Setting provisions to govern the Budget Directorate
- ATTACHMENT 42) Decree (DFL) 7912 of 1927 – Organizing the Secretariat of State
- ATTACHMENT 43) Decree creating the General Internal Auditing Council of the Government (1997)
- ATTACHMENT 44) Law 17.997 of 1981 – Constitutional Organic Law on the Constitutional Court
- ATTACHMENT 45) Law 18.834 of 1989 – Adopting administrative statute
- ATTACHMENT 46) Official circular No. 1228 of 2000 – Instructions regarding new form 1122 to be used for the sworn statement of personal, family, and property background
- ATTACHMENT 47) Decree 1 – 19.653 (English-language version) – Establishes the Restated, Coordinated and Harmonized Text of The Constitutional Organic Law No. 18.575, Relating to the Government General Bases

- ATTACHMENT 48) Decree 99 of 2000 (English-language version) – Regulation on The Statement of Interests of Government Authorities and Officials
- ATTACHMENT 49) Decree (DFL) 1 – 19.653 (French-language version) – Etablit Texte Remanie, Coordonne et Systematyse de la Loi Organique Constitutionnelle No. 18.575 Portant sur les Bases Generales de l'Administration de l'Etat
- ATTACHMENT 50) Decree 99 of 2000 (French-language version) – Reglamente Relatif à la Declaration d'Interets des Autorites et des Fonctionnaires de l'Administration Publique
- ATTACHMENT 51) Decree 26 of 2001 (French-language version) – Reglamente sur le Caractere Secret ou la Confidentialite des Actes et des Documents de l'Administration de l'Etat
- ATTACHMENT 52) Decree (DFL) 1 de 1997 – Setting down the restated, coordinated, and consolidated text of Law No. 19.070, approving the Education Professionals Statute, and of the laws complementing and amending it
- ATTACHMENT 53) Law 19.378 of 1995 – Establishing the Municipal Health Primary Care Statute
- ATTACHMENT 54) Official deed 4407 of 2003 – Transcribing the bill to amend Decree Law No. 1263 of 1975, the Organic Decree on the financial administration of the State, and establishing other rules for managing budgets and personnel
- ATTACHMENT 55) Law 19.863 of 2003 – On the pay of government authorities and critical public administration positions, and reserved expenses
- ATTACHMENT 56) Law 19.880 of 2003 – Establishing bases for the administrative procedures that govern acts by public administration bodies
- ATTACHMENT 57) Law 19.875 of 2003 – Amending Article 19 of Law No. 18.918, Constitutional Organic law of the National Congress, in order to make the Special Joint Budget Committee a permanent body
- ATTACHMENT 58) Decree 1825 of 1998 – Adopting the qualification regulations for personnel governed by the Administrative Statute
- ATTACHMENT 59) Res. S/N of 1998 from the Chamber of Deputies – Adopting amendments to the regulations of the Chamber of Deputies
- ATTACHMENT 60) Decree 26 of 2001 (English-language version) – Regulation on Reserved or Classified Status of Government Acts and Documents
- ATTACHMENT 61) Criminal Code
- ATTACHMENT 62) Decree (DFL) 1 – 19.704 of 2002 – Setting down the restated, coordinated, consolidated, and updated text of Law No. 18.695, Constitutional Organic Law on Municipalities

- ATTACHMENT 63) Law 19.886 of 2003 – Law containing bases for administrative service provision and procurement contracts
- ATTACHMENT 64) Law No. 19.829 – Amending the Criminal Code with respect to the crime of bribery
- ATTACHMENT 65) Bill: Calculation of income and estimates of expenditure for the public sector budget for the year 2003
- ATTACHMENT 66) Protocol attached to the submission of the draft public sector budget law for 2003
- ATTACHMENT 67) Law 19.862 of 2003 – Establishing registers of corporations and other bodies receiving public funds
- ATTACHMENT 68) Law 19.882 – Regulating the new personnel policy for the officials indicated
- ATTACHMENT 69) Assessment of the 2001 financial management of the public sector and projections for 2002
- ATTACHMENT 70) Monetary policy of the Central Bank of Chile: Goals and transmission
- ATTACHMENT 71) Results-based management and budget control system: the Chilean experience
- ATTACHMENT 72) Draft Constitutional reform that creates the Office of the Public Defender
- ATTACHMENT 73) Code of Ethics – Central Bank of Chile

In response to the requests made by the Committee's Technical Secretariat the Republic of Chile also sent the following annexes:

1. Decree 99 of 2000 (Spanish-language version) – Regulations for declaring the interests of public administration authorities and officials
2. Decree 58 of 1997 – Setting down the restated, coordinated, and consolidated text of Law No. 19.418, on neighbors' committees and other community organizations
3. Decree 680 of 1990 – Adopting instructions for the creation of information offices for members of the public within the public administration
4. Decree 26 of 2001 (Spanish-language version) – Regulation on secrecy and confidentiality of public administration acts and documents
5. Decree (DFL) 458 of 1976 – Adopting the new General Law on town planning and construction
6. Decree (DFL) 1 of 1997 – Personnel Statute for the Armed Forces
7. Law 18.948 – Constitutional organizational rules for the Armed Forces
8. Law 18.961 of 1990 – Constitutional organizational rules for the "Carabineros"

9. Law 19.915 – Public Sector Budget for 2004

10. Draft Law on Lobbying