MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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REPUBLIC OF CHILE

FINAL REPORT

(Adopted at the September 16, 2010 Plenary Session)

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

REPORT ON IMPLEMENTATION IN THE REPUBLIC OF CHILE OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND, AND ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN PREVIOUS ROUNDS[1]

INTRODUCTION

1. Report Contents

[1] This report presents, first, a review of implementation in the Republic of Chile of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the Third Round. Those provisions are: Article III, paragraphs 7 and 10, and Articles VIII, IX, X, and XIII.

[2] Second, the report will examine follow-up on the implementation of the recommendations that were formulated to the Republic of Chile by the MESICIC Committee of Experts in the previous rounds, which are contained in the reports on that country adopted by the Committee and published at the following web pages: http://www.oas.org/juridico/english/mec_rep_chi.pdf (first round), and http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc (second round).

2. Ratification of the Convention and Adhesion to the Mechanism

[3] According to the official records of the OAS General Secretariat, the Republic of Chile ratified the Inter-American Convention against Corruption on September 22, 1998, and deposited the corresponding instrument of ratification on October 27, 1998.

[4] In addition, the Republic of Chile signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Chile

[5] The Committee wishes to acknowledge the cooperation it has received throughout the process of review from the Republic of Chile, which was evidenced, *inter alia*, in the response to the questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the Republic of Chile sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: http://www.oas.org/juridico/spanish/mesicic3_chl_sp.htm

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1 This report was adopted by the Committee in accordance with the provisions of Articles 3 (g) and 25 of the Committee's Rules of Procedure, at the September 16, 2010 plenary session, within the framework of the Seventeenth Meeting of the Committee, held at OAS headquarters in Washington, D.C., from September 13 to 16, 2010.

[6] For its review, the Committee took into account the information provided by the Republic of Chile in its reply of February 22, 2010; the information requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure; and the information provided by Chile under the terms of the Rules of Procedure and the Review Methodology.[2]

2. Documents received from civil society organizations

[7] The Committee also received, within the time limit established in the schedule for the third round, documents from the civil society organization *Chile Transparente*, the Chilean chapter of Transparency International, which were submitted in electronic format on February 19, 2010.[3]

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT[4] FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

1.1. Existence of provisions in the legal framework and/or other measures

[8] The Republic of Chile has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[9] – Decree 824 of 1974, the Income Tax Law, Article 31 of which provides that the net income of the persons identified in Article 30 of the Law[i] shall be determined by deducting, from gross income, all the expenses necessary to produce it that have not been reduced by Article 30 thereof, either paid or owed, during the corresponding business cycle, provided that due accreditation or justification thereof is given to the Service.

[10] Article 31 of this Decree also refers to certain special deductions,[5] which are dealt with in accordance with the limits and conditions established therein. These include the following: in section

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2 The United States, in its capacity as a member of the review subgroup for the Draft Preliminary Report on Chile for the Third Round of Review, noted the following: " As part of the United States review, informal meetings were held in Santiago, Chile, between the experts of the United States and Chile, on the margins of another meeting, who were able to directly exchange information. These meetings provided an outstanding opportunity to gather and understand information and, in the view of the United States, significantly advanced the purpose of the evaluation. The United States commends Chile on its initiative in this regard, and noting that these meetings innovated with respect to the methodology of the mechanism, suggests that the Committee encourage leveraging such opportunities for informal dialogue in the future, as provided for in Article VI of the Methodology for the Third Round of Review."

3 Those documents can be found on the internet at:
http://www.oas.org/juridico/spanish/mesicic3_chl_inf_sc.pdf

4 For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

5 Those deductions cover, in general, the following: interest, taxes, losses, uncollectables, depreciation, remunerations, donations, exchange-rate adjustments and losses, organizational and launch expenses, promotional spending, and spending on scientific and technological research.

6, "wages, salaries, and other remunerations paid or owed for the provision of personal services, including legal and contractual bonuses, and, in addition, any amount spent as representation expenses"; in section 7, "donations made for the sole purpose of carrying out free primary or secondary, technical, or university educational programs in the country, both private and state-funded, provided that they do not exceed 2% of the company's taxable revenue or 0.16% of the company's own capital at the end of the corresponding cycle"; in section 10, "expenses incurred in promoting or placing new articles manufactured or produced by the taxpayer on the market, which the taxpayer may be authorized to prorate in up to three consecutive business cycles following the date on which they were incurred."

[11] – Decree 830 of 1974, the Tax Code, Article 6.A.1 of which states that the Director of Internal Taxes shall be responsible for the administrative interpretation of tax rules, establishing provisions, giving instructions, and issuing orders for the enforcement and oversight of taxation; Article 60 states that to verify the accuracy of tax returns or to obtain information, the Service may examine taxpayers' inventories, balances, accounting books, and documents with respect to all matters relating to the elements used as the basis for determining tax or to other elements that appear or should appear in a tax return; and Article 64 stipulates that the Service may assess the taxable base, with the information available to it, should a taxpayer fail to respond to a citation or demands made, or if the response given fails to address the shortcomings detected or if those shortcomings are definitively established.

[12] Article 97 of this Decree establishes the penalties for violations of tax regulations, most notably: Section 4, provides, *inter alia*, that "any person who by simulating a tax operation or through any other fraudulent maneuver, obtains tax reimbursements not due to him shall be punished by between minor-level imprisonment in its maximum degree and major-level imprisonment in its medium degree and a fine of between 100 and 400 percent of the amount defrauded." Section 24, provides, *inter alia*, that "any person who willfully uses donations that the law allows to be taken from the taxable base subject to taxation under the Income Tax Law or to be accredited against that tax for purposes other than those of the agency receiving the donation, in accordance with its statutes, shall be punished by minor-level imprisonment in its medium to maximum degrees."

[13] – Law 20,322 of 2009, which "strengthens and improves tax and customs jurisdiction" and contains the text of the Organic Law of Tax and Customs Courts, Article 1 of which states that these qualified, special jurisdictional agencies that enjoy independence in the performance of their duties and whose functions include hearing and ruling on the complaints described in Article 161 of the Tax Code (penalties for violations of tax rules not punishable by imprisonment).

[14] – Law 20,406 of 2009, which "establishes provisions affording the tax authority access to banking information," the sole article of which states, *inter alia*, that the regular courts may authorize the examination of information relating to the banking operations of specific persons, included all those deemed secret or confidential, in proceedings for offenses related to the compliance with tax obligations, and that the tax and customs courts shall have the same power when hearing proceedings involving penalties under Article 161 (of the Tax Code).[ii]

[15] – Circular No. 58 of 2000, issued by the Director of the Internal Tax Service, for the purpose of updating and informing the Service's operational units of instructions applicable to tax audits; among other aspects, the introductory section states that a tax audit is a procedure intended to oversee taxpayers' due compliance with their main tax obligation and those accessory or formal obligations

contained in the current legal and administrative regulations, with the aim of: (1) ensuring that tax returns faithfully reflect the operations recorded in accounting books and supporting documentation, and that they include all economic transactions made; (2) determining whether taxable bases, credits, exemptions, exceptions, rates, and taxes have been properly calculated and, if differences exist, collecting the tax with the applicable legal late fees; and (3) promptly detecting those who do not meet their tax obligations.

[16] This Circular also states, at section 3, that if a review of a taxpayer's documents reveals irregularities punishable by imprisonment, pursuant to Article 97, sections 4 or 5, or Article 100 of the Tax Code, the procedure provided for in Circular No. 78 of December 23, 1997, is to be followed.[6]

[17] – Circular No. 56 of 2008, issued by the Director of the Internal Tax Service, section 3 of which states that in compliance with Article 31 of Decree 824 of 1974, the Service has issued instructions and given various statements indicating that, for an expense to be ruled necessary for producing income and, consequently, deductible from the taxable base subject to income tax, it must meet the requirements indicated therein,[iii] "particularly the one requiring the truthful accreditation and justification to the Service: that is, the taxpayers must establish the nature, need as regards the business pursued, effectiveness, and amount of the expenditure incurred, with the evidence available to him or with those requested by this agency, and that evidence may be challenged if the Service has grounded reason for suspecting its truthfulness."

[18] In addition, section 4 of this Circular provides as follows: "Thus, whereas gifts for exaction or bribery that may be given to a public official and, in general, to any person, imply corrupting him to obtain something from him, it is clear that in no case may they be accepted as deductible expenses for establishing the taxable base for income tax. That is because, regardless of the circumstances in which they are made, it is legally inconceivable to deem them necessary for the purpose of a business, since no economic activity requires illegal or illicit payments for its pursuit."

1.2 Adequacy of the legal framework and/or of other measures

[19] With respect to the provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee notes that based on the information available to it, they can be said to constitute a set of relevant measures for promoting the purposes of the Convention.

[20] Nonetheless, the Committee believes that the country under review would benefit from considering adopting the measures it deems appropriate to assist the competent authorities in detecting amounts paid through corruption, in the event that they are being used as grounds for obtaining such treatment. See Recommendation 1.4.a in Chapter II of this report.)

6 This Circular regulates in detail the procedure to be followed if irregularities punishable by imprisonment are detected, and it provides for preliminary investigative stages to determine whether those irregularities merely warrant the imposition of fines or should lead to imprisonment, in which case it establishes competence for the initiation of a criminal complaint for tax crime against the person responsible for the incidents detected. On August 13, 2010, the country under review reported that Circular 8 of 2010 remains in force and regulates this procedure.

1.3. Results of the legal framework and/or of other measures

[21] The section of the Republic of Chile's reply to the questionnaire[7] regarding results in the area of enforcement of provisions governing the denial or prevention of favorable tax treatment for payments made in violation of anticorruption laws notes the following:

[22] "On this point, it should be noted that during the 2008 fiscal year, 64% of taxpayers made returns on the basis of the proposal formulated by the Internal Tax Service, for a total of 1.5 million taxpayers and an increase of 12.3% over 2006." (A footnote says: "See 2007 and 2008 public accounts, Internal Tax Service.")

[23] "The growing use of the computer-based system for income tax returns is an objective result, in that this special agency for tax oversight receives and processes information from taxpayers and makes a specific proposal for their returns. Since 24% of taxpayers amend their proposed returns, the Internal Tax Service is able to focus its oversight on the nature of the deductions and expenses reported and to pay closer attention to those that appear suspicious or unjustified, using its power to reject returns filed and, if appropriate, to impose administrative penalties on taxpayers." (A footnote refers to the Tax Code, Articles 161 *et seq*.)

[24] "Note that there are no statistical data, with the required level of specificity, to indicate the objective results of enforcement of the administrative interpretation of Article 31 of the Income Tax Law, set out in Circular No. 56 of 2007 (Annex 1), whereby the Director of the Internal Tax Service confirmed the legal inadmissibility of tax deductions with respect to payments made by any person in violation of anticorruption laws."

[25] "Similarly, there are no results or statistics indicating criminal action brought by the Internal Tax Service against specific taxpayers for obtaining favorable tax treatment through acts that violate anticorruption laws." (A footnote states that: "However, in general it is possible to check how the control of tax crimes operates through the statistics of complaints lodged by the Internal Tax Service. Thus, during 2007, a total of 137 criminal complaints were filed: 106 under the new criminal procedure system, and 31 that have to be dealt with using the previous criminal procedure regime. Similarly, in 2008, 171 complaints were filed under the new system, and 12 under the previous rules, for a total of 183. Finally, the statistics for the year 2009 indicate that 40 complaints have been filed under the new regime, with another 12 under the former regime, for a total of 52. Source. Legal Subdirectorate, Internal Tax Service (SII).")

[26] The Committee considers that the information provided in the previous paragraph serves to establish that in the country under review, complaints have been filed by the Internal Tax Service for the commission of tax crimes, however, because that information has not been broken down in such a away as to indicate which of those deal specifically with favorable tax treatment, nor is any additional information provided that would enable it to conduct a comprehensive appraisal of the results in this area, it will formulate a recommendation for the country under review so that, through the tax authorities responsible for processing applications for favorable tax treatment and the other authorities or agencies with competence for such matters, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See recommendation 1.4.b in Chapter II of this report.)

7 Reply of Chile to the Questionnaire, p. 8

1.4. Conclusions and recommendations

[27] On the basis of the analysis conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III(7) of the Convention:

[28] **The Republic of Chile has considered and adopted measures intended to create, maintain, and strengthen standards for the denial or prevention of favorable tax treatment for payments made in violation of the anticorruption laws, as described in section 1 of Chapter II of this report.**

[29] In light of the comments made in that section, the Committee suggests that the Republic of Chile consider the following recommendation:

[30] Strengthen the standards and measures for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, the Republic of Chile could take the following measures into account:

a) Continue developing the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment, such as the following: (See section 1.2 of Chapter II of this report.)

   i. Manuals, guidelines or directives that will guide them in reviewing those applications, so they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and determine the origin of the expenditure or payment on which the claims are based.

   ii. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.

   iii. Institutional coordination mechanisms that enable them to obtain timely collaboration needed from other authorities for tasks such as verifying the veracity of the supporting documents on which the applications are based.

   iv. Training programs designed specifically to alert them about the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in applications.

   v. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.

b) Select and develop, through the tax authorities responsible for processing applications for favorable tax treatment and the other authorities or agencies with competence in that area, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See section 1.3 of Chapter II of this report.)

2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III(10) OF THE CONVENTION)

2.1. Existence of provisions in the legal framework and/or other measures

[31] The Republic of Chile has a set of provisions related to prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[32] The Commercial Code, which at Article 7, states that businesspersons are those with the legal capacity to enter into contracts who make business their regular occupation; Article 25, which states that all businesspersons are obliged to keep, for their accounting and correspondence, a daybook, a ledger or current-account book, a balance book, and a letter copier book; Article 27, which establishes that the daybook is to record, in chronological order and on a daily basis, the business operations carried out by the businessperson, indicating in detail the nature and circumstances of each such operation; Article 29 of which provides that upon opening their businesses, all businesspersons must include in their balance book an estimated assessment of all their assets – both movable and real property – and of all their assets and liabilities, and that at the end of each year they must set down in that same book a general balance of all their business in accordance with the responsibilities indicated in Book IV of the Code; and Article 30, which states that retail businesspersons[8] shall keep a bound book of numbered pages in which they shall record their daily purchases and sales, for both cash and credit, and that in that same book they shall set out, at the end of each year, a general balance of all their business operations.

[33] This Code also states, at Article 31, that businesspersons are prohibited from: (1) altering the order and date of the operations described in the entries; (2) leaving blank spaces in the body of their entries or beneath them; (3) making interline annotations, strikeouts, or amendments to the entries; (4) deleting entries or parts thereof; (5) pulling out sheets, altering the binding or numbering, or mutilating any part of the books. Article 44 states that businesspersons must preserve their business books until the finalization of the liquidation of their businesses, and that their heirs are subject to the same obligation; and Article 45 stipulates that businesspersons must record a complete and letter-perfect copy of all letters written in connection with their business operations in the book provided for that purpose.

[34] – Law 18.046 of 1981, on Anonymous Corporations, which at Article 51 provides that the regular meetings of closed anonymous corporations must annually appoint two lead account inspectors and two deputies, or alternatively, independent external auditors, who are to examine the accounts, inventories, balances, and other financial statements, and are to report in writing to the following regular meeting on their compliance with that mandate; Article 52 of which states that regular meetings of shareholders of open anonymous corporations must annually appoint an external auditing company governed by Title XXVIII of Law No. 18.045, which must examine the accounts, inventories, balances, and other financial statements of the company and must also report in writing to the next regular shareholders meeting on compliance with that mandate; and Article 73 of which states that the company's accounting entries will be recorded in a permanent fashion, according to applicable law, and shall be kept in accordance with generally accepted accounting principles.

[35] The Law also provides, at Article 74, that anonymous corporations shall annually prepare their general balances as of December 31, or as of the date indicated by their statutes, and it further states that the board of directions shall submit, for consideration by the regular meeting of shareholders, a

8 According to this Article, a retail businessperson is one who sells directly and habitually to the consumer.

reasoned statement on the company's situation during the previous financial year, along with the general balance, the profit-and-loss statement, and the corresponding report filed by the external auditors or account inspectors, as applicable, and that all those documents must clearly reflect the company's capital situation at the close of the financial year and the profits earned or losses suffered during that time.

[36] Article 134 of the Law also stipulates that any experts, accountants, or external auditors who through false reports, statements, or certifications, lead the shareholders or third parties with contracts with the company into errors on the basis of such false information or statements, shall be liable to a punishment of minor imprisonment in its medium to maximum degrees and a fine to the benefit of the nation of up to the equivalent of 4,000 development units (UF).[9]

[37] Supreme Decree 587 of 1982, from the Ministry of the Treasury, which contains the Regulations to the Anonymous Corporations Law, Article 55 of which establishes that in performing their functions, external auditors must examine the accounts, inventories, balances, and other financial statements and give their professional and independent opinion on those documents; it also stipulates that their function entails, *inter alia*, working to reveal the possible existence of fraud and other irregularities that could affect the accurate presentation of the company's financial position or the results of its operations.

[38] In addition, Article 59 of this Decree states that account inspectors and external auditors must preserve confidentiality with respect to company information not officially released to the public to which they have access in performing their functions, and it adds that this provision is without prejudice to their obligation to inform the shareholders on compliance with their mandate and reporting to the competent judicial and administrative authorities, any offenses and irregularities or anomalies that, in their opinion, may exist in the company's administration or accounts.

[39] This Decree also provides, at Article 101, that parent companies must require their subsidiaries to follow accounting systems and criteria that are the same as or compatible with those that they use, in order to comply with the obligation of preparing consolidated balance sheets.

[40] Decree Law 3.538 of 1980, the Organic Law of the Superintendency of Securities and Insurance, Article 4(d) of which empowers that body to examine all operations, assets, books, accounts, files, and documents of the bodies or activities subject to its oversight[10] and to require from them, or from their managers, advisors, or employees, the background information and explanations that it deems necessary for the purposes of its information; it adds that it may request the execution and presentation of balances and financial statements on the dates that it deems appropriate for checking the accuracy and investment of capital and funds and that, additionally, it may request the presentation of any document, books, or background information necessary for oversight purposes without affecting the normal development of the affected party's activities. This provision further states that other than the exceptions authorized by the Superintendency, all books, files, and

9 Approximately US$168,000, given that as on December 31, 2009, the Development Unit was worth US$42.

10 Article 3 of Decree Law 3.538 of 1980 provides as follows: "The Superintendency of Securities and Insurance shall be responsible for oversight of: (a) people who issue or trade in publicly traded securities; (b) stock markets and stock-market operations; (c) associations of securities brokers and the securities-related operations they carry out; (d) mutual funds and the companies that manage them; (e) anonymous corporations and closely-held stock companies placed under its oversight by law; (f) companies dedicated to insurance and reinsurance of any nature and the business thereof; and (g) any other body, corporate entity, or individual indicated by this or any other law. Banks, financial companies, pension management companies, and the bodies, corporate entities, and individuals expressly exempted by law shall not be subject to oversight by this Superintendency."

documents of entities and persons subject to its oversight must be permanently available for examination at its principal place of business.

[41] This Decree also provides, at Article 4(e), that the Superintendency of Securities and Insurance is responsible for setting standards for the preparation and presentation of reports, balances, current statements, and other financial statements by those subject to its oversight, and for determining the principles whereby they are to prepare their accounts. This provision also states that in the absence of a national accounting principle for a specific case, the entity subject to oversight must first consult with the Superintendency and abide by the general standards that it indicates. It also provides that for the same purpose, the Superintendency may also issue instructions and take steps toward correcting any shortcomings observed and, in general, the steps it deems necessary to protect shareholders, investors, and policy holders, as well as the public interest. Finally, the Decree states that the Superintendency may order the rectification or correction of any amount set down in the accounting records when it determines that said value was not recorded in accordance with provisions issued by the Superintendency or with generally accepted accounting rules and principles, and it adds that, in particular, it may order the rectification or correction of amounts set down in specific accounting entries when it establishes that they do not correspond with the real amounts and, in addition, may order the revocation of financial statements for up to the previous four years, in the way in which it determines.

[42] The same Decree, at Article 4, also establishes other powers of the Superintendency of Securities and Insurance, including, at section (i), enacting provisions to ensure the truthfulness of those deeds, books, and documents identified by the Superintendency and requiring, when applicable, that in those deeds, books or documents, records be kept, or that their communications be either partially or wholly incorporated; at section (j), ordering the persons or entities subject to its oversight that it determines to appoint external auditors, who will then report on general balances and, if appropriate, replace the account inspectors and be invested with their same powers and duties; at section (k), overseeing the actions of all external auditors and account inspectors appointed by entities and persons subject to its oversight, issuing rules applicable to the content of their rulings, and requiring them to present any information or background details related to the pursuit of their functions; and, at section (l), appointing external auditors for entities and persons subject to its oversight in order to carry out specifically entrusted tasks, with the powers that it deems necessary.

[43] Article 27 of this Decree also states that anonymous corporations subject to the oversight of the Superintendency that break any of the laws, regulations, statutes, and other provisions applicable to them, or that fail to abide by the rules issued by the Superintendency, may be subject to that agency's imposition of one or more of the following sanctions, without prejudice to other sanctions established in other legal or regulatory texts: (1) admonition; (2) fine, payable to the nation, in an overall amount per company of the equivalent of up to 15,000 development units,[11] with the proviso that repeat infractions of a similar nature may be subject to a fine of up to three times the maximum amount indicated above; and (3) revocation, when applicable, of the company's authorization to do business. This provision adds that the sanctions established in sections (1) and (2) may be imposed on the company, its directors, managers, employees, account inspectors, or liquidators, as determined by the Superintendency.

[44] Finally, Article 28 of the Decree states that people or entities other than those covered by Article 27 but subject to the Superintendency's oversight that break any of the laws, regulations,

11 Approximately US$630.000, given that as on December 31, 2009, the Development Unit was worth US$42.

statutes, and other provisions applicable to them, or that fail to abide by the rules handed down by the Superintendency, may be subject to that agency's imposition of one or more of the following sanctions, without prejudice to other sanctions established in other legal or regulatory texts: (1) admonition; (2) fine, payable to the nation, in an overall amount per company of the equivalent of up to 15,000 development units, with the proviso that repeat infractions of a similar nature may be subject to a fine of up to five times the maximum amount indicated above; and (3) persons appointed or authorized by the Superintendency to exercise specific functions or duties may also receive, from that agency, the following sanctions: (a) suspension from duty for up to one year, and (b) revocation of the authorization or appointment for a serious offense. This provision adds that the sanctions provided for in this article may be imposed on the company, entity, individuals or corporations, managers or representatives, as determined by the Superintendency.

[45] – Law 18.045 of 1981, on the Stock Market, Article 15 of which identifies the cases in which the registration of an entity with the Securities Register can be cancelled, including when such registration was obtained through false information or background details, and which, at Article 59, sections (a) and (d), establishes a penalty of between minor-level imprisonment in its medium degree to maximum-level imprisonment in its minimum degree for anyone who maliciously provides false details or certifies falsehoods to the Superintendency of Securities and Insurance, to a stock market, or to the general public, as well as for accountants and auditors who issue false rulings on the financial situation of a person or entity subject to a security registration obligation. Secondly, Article 60(j) of this statute imposes a penalty of minor-level imprisonment in any degree on any person who deliberately deletes, alters, amends, conceals, or destroys records, documents, other computer media, or background information of any kind and thereby hinders or prevents the Superintendency's oversight.

[46] – Circular No. 980 of 1990, from the Superintendency of Securities and Insurance, in which the agency issues specific instructions regarding procedures for reporting and examining weaknesses within a company's internal accounts oversight system, section (a) of which states that the external auditor must give the Board written notice of any shortcomings detected during his examination.

[47] – Circular No. 496 of 2009, from the Superintendency of Securities and Insurance, in which, with the aim of improving compliance with the functions under Article 59 of Supreme Decree 587 of 1982, whereby external auditors are required to inform the competent judicial and administrative authorities of offenses, irregularities, or anomalies that in their opinion exist in a company's administration or accounts, that agency orders that they are to maintain up-to-date information, available to the audited entity and to the Superintendency, on the following matters: (i) existence, content, and scope of induction and staff training programs related to external auditors' duty of reporting offenses; for auditors registered as individuals, the timing and scope of the training programs or activities given to them on this question must be described; (ii) implementation of good practices or adoption of international standards on this matter; (iii) existence of manuals and/or procedures intended to assess the relevance of reporting offenses to company management and to the competent authorities; and (iv) any other measures adopted by the officers of the auditing entity in order to ensure effective compliance with this obligation.

[48] – Law 20.382 of 2009, Article 240 of which indicates that external auditing companies are subject to the oversight of the Superintendency of Securities and Insurance as regards their external auditing services, which they may only provide if registered and for such time as that registration exists, and which also sets out the situations in which such registration may be canceled, including

serious or repeated breaches of the obligations or restrictions imposed by this Law, its complementary provisions, or other applicable rules.

[49] – Law 13.011 of 1958, which creates the College of Accountants as an institution with its own legal personality, and Article 3 of which states that a practicing accountant is one who has registered his professional qualification with the General Register of Accountants and has paid the College the applicable annual fee; Article 13(g) of which states that the Council General of the College of Accountants of Chile has the power to enact provisions governing the exercise of the profession; and Article 29 of which establishes the sanctions to be imposed by the Provincial Councils on those accountants who, in the exercise of their profession, incur in any action that brings the profession into disrepute, is abusive of its exercise, or is incompatible with professional dignity and culture.

[50] – The Generally Accepted Accounting Principles (PCGA) adopted by the College of Accountants of Chile, under the terms of Article 13 of Law 13.011, through its Technical Bulletins, including, *inter alia*, the following:

[51] (a) Technical Bulletin No. 56, section 1 of which states that the generally accepted accounting principles and standards are the rules and procedures necessary for defining accounting practice as accepted at a given moment in time; section 3 states that the sources of the generally accepted accounting principles and standards in Chile are: (a) technical bulletins issued by the College of Accountants of Chile A.G; (b) the International Accounting Standards ("IAS") of the International Accounting Standards Committee (IASC); (c) the rulings of foreign entities made up of expert accountants that deal with accounting matters; (d) practices or rulings that enjoy adequate recognition as being generally accepted, by reason of representing standard practice within a particular industry, or the intelligent application in knowledge or specific circumstances of rulings that are generally accepted; and section 7 of which establishes that "in the absence of a technical bulletin issuing an accounting principle or standard that is generally accepted in Chile, use shall preferably be made of the corresponding International Accounting Standard ("IAS")," and adds that "in those cases in which neither a technical bulletin nor an IAS exist on a given topic, the recommendation is to implement the relevant accounting principles or standards of the other international agencies indicated in paragraphs 5.c and 5.d." In addition, section 8 states that "when a technical bulletin exists on a matter, but it does not deal with a specific situation which is covered by an IAS, the recommendation is to follow the latter."

[52] Section 3 of this technical bulletin also states that "the International Accounting Standards Committee (IASC) is an independent private entity with the purpose of ensuring uniformity in the accounting principles and standards used by businesses and other organizations to provide financial information around the world," and it adds that "the College of Accountants of Chile A.G. is a member of the International Federation of Accountants (IFAC) and IASC, and it has assumed the responsibility of bringing Chile's provisions into line with international rules and of working for the international acceptance and observance of the International Accounting Standards ("IAS")."

[53] (b) Technical Bulletin No. 1/73, section III.7, "Accounting Principles," reads as follows: "Results: III. 7. In determining the operating results and financial position, all resources and obligations of the period must be taken into account, even when not received or paid, so that costs and expenses can be duly correlated with the corresponding income that they generate."

[54] (c) Technical Bulletin No. 63, section 8 of which states that the bulletin's goal is to regulate the accounting of operations and the presentation of financial statements by nonprofit organizations, in order to ensure that they abide by generally accepted accounting principles.

[55] – The Generally Accepted Auditing Standards in Chile (NAGA), issued by the College of Accountants of Chile, in accordance with Article 13 of Law 13.011, section 101, paragraphs 4 and 5, of which state that the Auditing Commission is a permanent advisory committee of the National Council of the College of Accountants of Chile A.G. and of the Board of the Institute of Auditors A.G., and that said Council has given the Commission specific responsibility for, *inter alia*, proposing technical rulings and auditing rules, for adoption and enactment by the Council, in compliance with current legislation, and that such enactment makes observance of those provisions obligatory in performing audits in Chile. Paragraph 7 of that same section further states that "in the absence of specific rulings in Chile, the independent auditor shall give consideration to the International Auditing Guidelines issued by IFAC, the Statements of Auditing Standards ("SAS") of the American Institute of Certified Public Accountants and other general accepted rulings issued by recognized professional associations."

[56] – Decree 110 of 1979, Regulations for the Granting of Legal Personality to Corporations and Foundations, Article 36 of which states that the Ministry of Justice shall be responsible for oversight of the corporations and foundations referred to in those Regulations, and in exercising that authority it may require such corporations and foundations to present, for its consideration, meeting minutes, approved accounts and records, accounting books, records of inventories and payments, and reports of all kinds dealing with their activities, to set deadlines for them to do so, and to establish corrective measures and sanctions for any offenses detected.

[57] – Decree with the Force of Law 3 of 1997, the General Banks Law, Article 2 of which rules that banking and financial institutions established in Chile are subject to the oversight of the Superintendency of Banks and Financial Institutions (SBIF), and Article 15 of which states that the Superintendent shall set general rules for the presentation of balances and financial statements by banks and financial institutions and for the way in which they are to keep their accounts.

[58] This Decree also establishes, at Articles 157,[iv] 158,[v] and 159,[vi] specific offenses relating to breaches of truthfulness and integrity in the accounting records of banking institutions.

[59] – The Tax Code, Article 100 of which states that any accountant who, in preparing or signing any declaration or balance or as the person responsible for a taxpayer's accounting, incurs in falsehood or willful acts, shall be liable to a fine of between one and ten annual tributary units and may be punished by minor-level imprisonment in its medium to maximum degrees, according to the seriousness of the offense, unless a more severe penalty is applicable as an abettor of a crime by the taxpayer, in which case the latter shall apply. This provision also states that notice shall be given to the College of Accountants for purposes of the applicable sanctions.

[60] – The Criminal Code, Article 247, on the "violation of secrecy," the first paragraph of which provides that "a public employee who, aware of a private person's secrets by reason of his position, reveals such secrets to that person's detriment shall be punishable by minor-level imprisonment in its minimum to medium degrees and a fine of between six and ten times the living wage," adding, in the second section, that "the same penalties shall apply to any person who, in the exercise of any profession requiring a professional title, reveals secrets entrusted to him by reason of such exercise."

[61] – The Code of Ethics of the Auditing Accountant, Article 1 of which states that the manual is to be observed by all accountants exercising the profession in Chile and that the Code of Ethics of IFAC and its annexes are complementary to that Code, which must be followed in the international practice of those professions; and Article 2 of which states that the responsibility of an accountant is not exclusively to satisfy the needs of a client or employer in particular, but is rather a responsibility of the public interest, understood as the common good of the community of individuals and institutions that the professional serves.

[62] Article 5 of the Code identifies confidentiality as one of the principles that accountants must observe; thus, Article 5.5 states that the accountant's relationship with the client is a key element in professional practice and that for that practice to be fully successful, it must be based on a responsible, loyal, and genuine commitment, requiring the strictest professional secrecy. Article 27 further provides that accountants are required to maintain professional secrecy all matters they become aware of in the exercise of their profession, except when that confidentiality is lifted pursuant to legal provisions.

[63] – Law No. 20.393 of 2009, which establishes the criminal responsibility of legal persons for the crimes of money laundering, funding terrorism, bribery of domestic and foreign public officials, and which applies, under Article 2 thereof, to private law corporations and to state-owned companies.

[64] Article 3 of this Law also provides that legal persons shall be responsible for the above offenses when committed directly and immediately, in their interest or for their benefit, by their owners, controllers, persons responsible, chief executives, representatives, or those who perform administrative and supervisory functions, provided that the commission of the crime is a consequence of the company's noncompliance with its managerial and supervisory duties; it also states that under the same circumstances, legal persons will also be responsible for offenses committed by individual persons under the direction or supervision of any of the individuals indicated above. Article 3 of this Law also states that the duties of direction and supervision shall be judged to have been met when, prior to the commission of the offense, the legal entity adopted or implemented organizational, administrative, and supervisory models to prevent crimes such as the one that was committed, in accordance with the terms of Article 4.[vii]

[65] Article 8 of this Law also provides that corporate entities shall be subject to one or more of the following penalties: (1) dissolving the corporate entity or revoking its legal personality;[12] (2) temporary or permanent ban on entering into agreements and contracts with agencies of the State; (3) partial or total loss of tax benefits, or a total ban on receiving such benefits for a given period of time; (4) fine to the benefit of the nation; (5) the accessory penalties described in Article 13.[viii]

[66] – Law 19.913 of 2003, creating the Financial Analysis Unit (UAF), a public agency charged with preventing the use of the financial system and other sectors of the national economy for the commission of money-laundering crimes.

12 Article 8 of Law No. 20.393 states that "this sanction shall not apply to state-owned companies nor to private-law corporate entities that provide a publicly useful service the interruption of which as a result of the enforcement of the sanction could have grave social and economic consequences or inflict serious harm on the community."

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

[67] With respect to provisions related to the prevention bribery of domestic and foreign government officials, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[68] Nonetheless, the Committee considers it appropriate to express certain comments about the usefulness of the country under review supplementing its applicable provisions.

[69] First of all, the Committee believes it necessary for the country under review to consider adopting, in accordance with its legal system and through the means it deems appropriate, the relevant steps so that "professional secrecy" does not pose an obstacle to accountants reporting those acts of corruption that they detect in discharging their duties to the competent authorities. (See recommendation 2.4(a) in Chapter II of this report.)

[70] In connection with this, the Committee finds that as provided for in the Code of Ethics of Auditing Accountants, accountants are required to observe the principle of "confidentiality" (Article 5), they are required to observe "the strictest professional secrecy" in their relations with clients (Article 5.5), and they are obliged to maintain professional secrecy (Article 27). The Committee believes that the terms of those provisions could pose an obstacle to accountants reporting, to the competent authorities, the acts of corruption that they detect in discharging their duties.

[71] Second, the Committee also considers that the country under review may wish to consider holding awareness campaigns that target individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the veracity of those records and the consequences for their violation, in addition to implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work.. (See recommendation 2.4(b) in Chapter II of this report)

[72] Third, the Committee believes that it would be useful for the country under review to consider holding awareness and integrity promotion campaigns that target the private sector and to consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see Recommendation 2.4(c) in Chapter II of this report).

[73] Fourth, the Committee believes that it would be beneficial for the country under review to consider the adoption of such measures as it deems appropriate to make it easier for the organs and agencies responsible for the prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records (see recommendation 2.4 (d) in Chapter II of this report.)

2.3. Results of the legal framework and/or of other measures

[74] In the section of Republic of Chile's reply to the questionnaire dealing with the results in this area,[13] it reports that:

13 Reply of Chile to the Questionnaire, p. 22.

[75] *"Regarding banking activity and according to the terms of Title V of the General Banks Law, the Superintendency of Banks and Financial Institutions conducts annual evaluations of the management and solvency of banks, pursuant to Chapter 1-13 of its Updated Compilation of Rules, in which their internal controls are assessed; no such weaknesses were found during the past two years."*

[76] The Committee believes that this information indicates that Chile's Superintendency of Banks and Financial Institutions conducts evaluations of the internal controls of the entities subject to its oversight; but since it has no additional information that would enable it to offer a comprehensive assessment of the results in this area, it will formulate a recommendation to the country under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do is in the appropriate manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See recommendation 2.4(e) in Chapter II of this report)

2.4. Conclusions and recommendations

[77] On the basis of the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III(10) of the Convention:

[78] **The Republic of Chile has considered and adopted measures intended to create, maintain, and strengthen standards for the prevention of bribery of domestic and foreign government officials, as described in Chapter II, Section 2, of this report.**

[79] In light of the comments made in that section, the Committee suggests that the Republic of Chile consider the following recommendation:

[80] Strengthen standards and measures on the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, the Republic of Chile could take the following measures into account:

a) Adopt, in accordance with its legal system and through the means it deems appropriate, the relevant steps so that "professional secrecy" does not pose an obstacle to accountants reporting those acts of corruption that they detect in discharging their duties to the competent authorities. (See section 2.2 of Chapter II of this report.)

b) Hold awareness campaigns that target the individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the veracity of said records and the consequences of their violation, in addition to implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work. (See section 2.2 of chapter II of this report)

c) Consider holding awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as the production of manuals and guidelines

for companies on best practices that should be implemented to prevent corruption (see section 2.2 of Chapter II of this report).

d) Consider adopting the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to ensure the accuracy of accounting records, of sums paid for corruption that are concealed in those records, such as the following (See section 2.2 of chapter II of this report):

   i. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred.

   ii. Handbooks, manuals or guidelines for those organs and agencies that do not yet have them, on how to review accounting records in order to detect sums paid for corruption;

   iii. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based.

   iv. Institutional coordination mechanisms that enable those organs or entities, easily and on a timely basis, to obtain the necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.

   v. Training programs for the officials of these organs and entities responsible for preventing and/or investigating violations of measures intended to guarantee the accuracy of accounting records, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them.

e) Select and develop, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that commercial companies and other types of associations required to establish internal accounting controls do so in the proper manner, procedures and indicators, when appropriate and when they do not exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See section 2.3 of Chapter II of this report.)

3. TRANSNATIONAL BRIBERY (Article VIII of the Convention)

3.1. Existence of provisions in the legal framework and/or other measures

[81] The Republic of Chile has the following provisions related to transnational bribery:

[82] – The Criminal Code, Article 251-bis: "Any person[14] who offers, promises, or gives a foreign public official a benefit of an economic or any other nature, for the benefit of such official or any other person, for him to perform an action or refrain from performing the same with the aim of securing or maintaining, for himself or another, any undue business or advantage within any international transactions, shall be liable to punishment of minor-level imprisonment in its medium to maximum degrees and, in addition, to the fine and disqualification set out in the first section of Article 248-bis.[15] Should the benefit be of a non-economic nature, the fine shall be between one hundred and one thousand monthly tributary units. A similar punishment shall apply to anyone who offers, promises, or gives such a benefit to a foreign public employee in exchange for having performed or incurred in the aforesaid actions and failures to act. - Any person who, in the same circumstances as the previous section, should agree to give the aforesaid benefit, shall be punished by minor-level imprisonment in its minimum to medium degree, in addition to the fines and disqualifications indicated."

[83] The Criminal Code, Article 251-ter: "For the purposes of the above article, a foreign public employee shall be any person with a legislative, administrative, or judicial position in a foreign country, whether appointed or elected, and any person performing a public function for a foreign country, either within a public agency or a public company. The definition shall also apply to any officer or agent of a public international organization."

[84] – Law 20.393 of 2009, which "Establishes the criminal responsibility of legal persons for the crimes of money laundering, terrorism funding, and bribery offenses as indicated," and the first section of Article 1 of which states: "Content of the Law. This law regulates the criminal responsibility of legal persons in the offenses defined in Article 27 of Law No. 19.913, in Article 8 of Law No. 18.314, and in Articles 250 (bribery of domestic public officials) and 251-bis (bribery of foreign public officials) of the Criminal Code; the procedure for investigating and establishing such criminal responsibility; and the determination and execution of the applicable penalties."

[85] This Law provides, in Article 8, as follows: "Penalties. One or more of the following penalties shall apply to corporate entities: (1) Dissolution of the corporate entity or revocation of its legal identity. - This sanction shall not apply to state-owned companies nor to private-law corporate entities that provide a publicly useful service the interruption of which as a result of the enforcement of the sanction could have grave social and economic consequences or inflict serious harm on the community. (2) Temporary or permanent ban on entering into agreements and contracts with agencies of the State. (3) Partial or total loss of tax benefits, or a total ban on receiving such benefits

14 The general part of the Criminal Code contains the following provisions: Article 14. "The following persons are criminally responsible for crimes: (1) the perpetrators; (2) the accomplices; (3) the accessories after the fact." Article 15: "The following are considered perpetrators: (1) those who take part in the execution of the act, either immediately and directly, or by preventing it from being avoided, or by acting to prevent it from being avoided; (2) those who directly force or induce others to carry it out; (3) those who, in a conspiracy for its execution, provide the means with which the act is performed or who are present without participating in it."

15 Article 248-bis states: "A public employee who requests or accepts an economic benefit for himself or for a third person, for not executing or not having executed an act inherent to his position, or for executing or having executed an act in breach of the duties of his position, shall be punished by minor-level imprisonment in its medium degree, and, additionally, by temporary special or absolute disqualification from holding positions or posts of any level and by a fine equal to twice the benefit requested or accepted. – Should the breach of the position's duties entail exerting influence on another public employee in order to secure from that person a decision that could generate a benefit for a third party, the punishment shall be permanent special or absolute disqualification from holding public posts and positions, in addition to the prison terms and fines set forth in the previous paragraph."

for a given period of time. (4) Fine to the benefit of the nation. (5) The accessory penalties described in Article 13.[16]

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

[86] With respect to the provisions in force in the Republic of Chile related to transnational bribery as provided for in Article VIII of the Convention that the Committee has examined, based on the information made available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

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

[87] In the section of the Republic of Chile's reply to the questionnaire dealing with the results in this area,[17] it reports that:

[88] *"Since Law No 20.341, establishing the crime of transnational bribery of public officials, was published on April 22, 2009, there are still no objective results, statistics, or data on ongoing judicial proceedings."*

[89] Taking the foregoing into account, the Committee will formulate a recommendation to the country under review so that, through the organs and agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard. (See recommendation 3.4.a in Chapter II of this report.)

3.4. Conclusions and recommendations

[90] On the basis of the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review of the provision contained in Article VIII of the Convention:

[91] **The Republic of Chile has adopted measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.**

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

a) Select and develop, through the organs and agencies responsible for investigating and/or prosecuting the crime of transnational bribery, and for requesting and/or providing the

16 Article 13 of Law 20.393 of 2009 provides as follows: "Accessory penalties. In addition to the sanctions provided for in the previous articles, the following accessory penalties shall apply: (1) Publication of an extract from the judgment. The court shall order the publication of an extract from the resolution of the conviction in the Official Journal or in another national daily newspaper. The sanctioned corporate entity shall meet the costs of its publication. (2) Confiscation. The proceeds of the crime and other assets, effects, objects, documents, and instruments thereof shall be confiscated. (3) In cases in which the crime committed entails the investment of funds in excess of the income generated by the corporate entity, the surrender to the nation of an amount equal to the investment made shall be imposed as an accessory penalty."
17 Reply of Chile to the Questionnaire, p. 23

assistance and cooperation provided for in connection with it in the Convention, procedures and indicators, when appropriate and when they do not exist, to analyze the objective results obtained in this regard. (See section 3.3 of Chapter II of this report.)

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

4.1. Existence of provisions in the legal framework and/or other measures

[93] The Republic of Chile has the following provision dealing with the criminalization of the offense of illicit enrichment:

[94] – The Criminal Code, Article 241-bis: "A public employee who, during his time in office, obtains a significant and unjustified increase in his net worth, shall be punished by a fine equal to the amount of the undue increase in his net worth and by temporary absolute disqualification from holding public positions or offices in its minimum or medium degrees. – The provisions of the above section shall not apply if the action that led to the undue increase in net worth in itself constitutes one of the offenses described in this Title, in which case the sanctions assigned to the corresponding offense shall apply. – Proving the unjustified enrichment referred to in this article shall invariably be the task of the Public Prosecution Service.[18] – If a suit or complaint is filed and a criminal trial commences, in which the public employee is acquitted of the crime established in this article or if irrevocable dismissal in his favor is ordered for one of the causes listed in sections (a) or (b) of Article 250 of the Code of Criminal Procedure,[19] he shall be entitled to receive, from the person who sued or filed a complaint against him, restitution for the material and moral damages suffered,[20] without prejudice to the criminal liability arising therefrom for the offense proscribed in Article 211 of this Code."[21]

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18 On August 13, 2010, the country under review offered the following remarks in connection with this provision of Article 241-bis of the Criminal Code as well as with other aspects related to the grounds on which it is based: "(…) our legal system recognizes the right of presumption of innocence, enshrined in Article 8.2 of the American Convention on Human Rights ("Right to a Fair Trial, 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.") and in Article 14.2 of the Covenant on Civil and Political Rights ("Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."), both provisions that have constitutional status in our country, as provided in Article 5.2 of the Constitution of the Republic (…)."

19 Sections (a) and (b) of Article 250 of the Code of Criminal Procedure read as follows: "Irrevocable dismissal. The guarantee judge shall order irrevocable dismissal: (a) When the action under investigation does not constitute a crime; (b) When the innocence of the accused has been clearly shown."

20 On August 13, 2010, the country under review offered the following remarks in connection with this provision of Article 241-bis of the Criminal Code as well as with other aspects related to the grounds on which it is based: "The legislature sought to establish a system that would work to keep groundless accusations, which are harmful to institutional functioning, from being made against public officials; for that reason, it emphasized or made it explicit that if the proceedings are begun with a complaint or dispute and ultimately the crime of illicit enrichment is not established, civil reparations or criminal action for filing a defamatory complaint would be admissible. – However, both actions available to the public official are nothing more than elaborations on the general system followed in our country, since any person against whom a groundless or arbitrary complaint is made is perfectly entitled to take civil action for damages against the person making the complaint, and to take the steps for pursuing criminal action under Article 211 of the Criminal Code. – In connection with this, it should be noted that the Constitution of the Republic of Chile establishes this general principle in Article 38.2, by stating that: "*any person whose rights have been affected* (including, *inter alia*, the right of reputation, the right of image, etc.) *by the public administration, its agencies, or municipalities, may make a claim before the courts identified by law, irrespective of the responsibility that may correspond to the public official who caused the harm.(...).*"

21 Article 211 of the Criminal Code stipulates: "An accusation or complaint ruled defamatory by a final judgment shall be punishable by minor-level imprisonment in its maximum degree and a fine of between sixteen and twenty monthly tributary units, when it involves a crime; by minor-level imprisonment in its medium degree and a fine of between eleven and fifteen

4.2. Adequacy of the legal framework and/or of other measures

[95] With respect to the provision related to the criminalization of the illicit enrichment as provided in Article IX of the Convention that the Committee has examined based on the information available to it, they may be said to be pertinent for promoting the purposes of the Convention.

4.3. Results of the legal framework and/or of other measures

[96] In the section of Republic of Chile's reply to the questionnaire dealing with the results in this area,[22] it reports that:

[97] *"No information can be provided since there have not been nor are there investigations for the offense in question since the crime was established in our laws; neither have any judgments been handed down for this offense."*

[98] Taking the foregoing into account, the Committee will formulate a recommendation to the country under review so that, through the organs and agencies responsible for investigating or prosecuting the crime of illicit enrichment, and for requesting and/or providing the assistance and cooperation provided for in connection with it in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard. (See recommendation 4.4.a in Chapter II of this report.)

4.4. Conclusions and recommendations

[99] On the basis of the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provision contained in Article IX of the Convention:

[100] **The Republic of Chile has adopted measures on the offense of illicit enrichment as provided in Article IX of the Convention, as described in Chapter II, Section 4 of this report.**

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

a) Select and develop, through the organs and agencies responsible for investigating and/or prosecuting the crime of illicit enrichment, and for requesting and/or providing the assistance and cooperation provided for in connection with it in the Convention, procedures and indicators, when appropriate and when they do not exist, to analyze the objective results obtained in this regard. (See section 4.3 of Chapter II of this report.)

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monthly tributary units, when a simple offense is involved; and by minor-level imprisonment in its minimum degree and a fine of between six and ten monthly tributary units, when a misdemeanor is involved."

22 Reply of Chile to the Questionnaire, p. 25.

5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

5.1. Existence of provisions in the legal framework and/or other measures

[102] The Republic of Chile criminalized the offenses of transnational bribery and illicit enrichment, as provided in Articles VIII and IX of the Inter-American Convention Against Corruption, respectively, following the date on which it ratified that Convention, and it notified the Secretary General of the Organization of American States thereof by means of Verbal Note No. 030 of February 17, 2010, from its Permanent Mission to the OAS.

5.2. Adequacy of the legal framework and/or of other measures

[103] With respect to the notification of the criminalization of transnational bribery and illicit enrichment, as provided in Articles VIII and IX of the Inter-American Convention Against Corruption, respectively, the response of the Republic of Chile to the questionnaire[23] states that:

[104] *"The State of Chile, by means of Verbal Note No. 030 of February 17, 2010, from its Permanent Mission to the Organization of American States, notified the Secretary General of the Organization regarding the enactment of legislation criminalizing the offenses of transnational bribery and illicit enrichment."*

[105] The Verbal Note referred to by the Republic of Chile in its reply was received by the OAS General Secretariat.

5.3. Conclusion

[106] Based on the review set out in the preceding paragraphs, the Committee concludes that the Republic of Chile has complied with the terms of Article X of the Convention.

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

6.1. Existence of provisions in the legal framework and/or other measures

[107] The Republic of Chile has a set of provisions related to extradition, among which the following should be noted:

[108] – Article 54.1.5 of the Chilean Constitution, added by Law No. 20.050, which provides: "The provisions of a treaty may only be repealed, amended, or suspended in the fashion established in the treaties themselves or pursuant to the general standards of international law."

[109] – The Organic Courts Code, Article 52 of which provides that a Justice of the Supreme Court, appointed by that court, is the competent judge for the first-instance hearing of a passive extradition request; and Article 63 of which stipulates that the Courts of Appeal are to hear, as the sole instance, active extradition requests.

[110] – The Code of Criminal Procedure, Article 431 of which, dealing with the admissibility of active extradition, states that when in the processing of criminal proceedings, an investigation begins

23 Reply of Chile to the Questionnaire, p. 26.

for a crime punishable by a prison term of at least one year for which a person located in a foreign country is suspected, the Public Prosecution Service shall ask the guarantee judge to refer the proceedings to the Court of Appeal, in order for that court to ask for that individual to be extradited from that country, should it deem it appropriate. The provision states that a similar request may be made by the plaintiff if it is not made by the Public Prosecution Service, and that the same procedure will be used in the situations listed in Article 6 of the Organic Courts Code.[24] It finally states that extradition shall also proceed in order to enforce, in the country, a final judgment imposing a prison sentence of an effective term of more than one year.

[111] Article 440 of the same Code, dealing with the granting of passive extradition, states than when a foreign country requests that Chile extradite a person found in its territory facing charges or convicted in the requesting country to a prison term of more than one year's duration, the Ministry of Foreign Affairs shall refer the request and the background information to the Supreme Court. In addition, Article 442 of the Code states that before receiving the formal extradition request, the Justice of the Supreme Court may order the arrest of the person sought, if stipulated in the corresponding treaty or if so requested by the foreign requesting state in an application meeting the minimum requirements stipulated in that article;[25] and Article 443 requires that the requesting state be represented in the passive extradition proceedings.

[112] Article 449 of the same Code states that the court shall grant the passive extradition request if the following circumstances are found to exist: (a) the identity of the person sought in extradition; (b) that the crime with which he is charged or of which he has been convicted is one for which extradition is authorized according to the treaties in force, or, in the absence of such treaties, in compliance with the principles of international law; and (c) that the background information for the proceedings indicate that in Chile charges would be filed against the person sought for those offenses.

[113] Finally, Article 450 of the Code sets out the remedies available to challenge a judgment awarding an extradition request; Article 451 states that once the judgment granting extradition is final, the Justice of the Supreme Court will place the person sought at the disposal of Ministry of Foreign Affairs, for him to be handed over to the requesting country; and Article 452 provides that if a final judgment declining the extradition is issued, the Justice of the Court shall communicate that result to the Ministry of Foreign Affairs, enclosing an authorized copy of the judgment in question.

[114] – The 1933 Montevideo Convention on Extradition, to which Chile is a state party,[26] and the Code of Private International Law, adopted in Havana in 1928 ("Bustamante Code"), to which Chile

24 Article 6 of the Organic Courts Code provides that "the following crimes and simple offenses committed outside the territory of the Republic shall be subject to Chilean jurisdiction: "… (2) misappropriation of public funds, fraud, illegal charges and levies, faithlessness in the custody of documents, violation of secrecy, bribery, committed by Chilean public officials or by foreigners at the service of the Republic and bribery of foreign public officials, when committed by a Chilean or by a person who habitually resides in Chile; (8) those listed in treaties entered into with other powers."

25 These minimum requirements are: "… (a) the identification of the person sought; (b) the existence of a final conviction or a warrant for the person sought to be placed under arrest or in custody; (c) the nature of the crime giving rise to the request, and the place and date of its commission, and (d) a formal statement that extradition is to be formally sought. Prior arrest shall be ordered for the period of time established in the relevant treaty or, in the absence of that, for a maximum of two months following the date on which the requesting state was notified that the person sought was taken into detention."

26 The other states that are parties to this Convention are Argentina, Colombia, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and the United States. The text of this Convention may be seen at: http://www.oas.org/juridico/mla/sp/chl/index.html

is also a state party.[27] Both of these conventions provide that if a state does not hand over one of its nationals on the grounds of his nationality, it must prosecute him for the offense with which he has been charged (Article II of the Montevideo Convention and Art. 345 of the Bustamante Code).

[115] – Bilateral extradition treaties signed by Chile,[28] establishing the obligation of prosecuting a national when the authority to refuse to hand him over to the requesting state is exercised.

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

[116] The provisions related to extradition that the Committee has examined on the basis of the information made available to it, may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[117] Notwithstanding, the Committee believes it necessary, as provided by Article XIII, paragraph 6, of the Convention, for the country under review to consider adopting the relevant measures to promptly notify a requesting state whose extradition request in connection with offenses under the Convention is denied on the grounds of the nationality of the person sought, or because the requested state deems that it has jurisdiction, regarding the final outcome of the case brought before its competent authorities for prosecution as result of that denial. (See recommendation 6.4.a in Chapter II of this report.)

6.3 Results of the legal framework and/or of other measures

[118] In the section of Republic of Chile's reply to the questionnaire dealing with the results in this area,[29] it reports that:

[119] *"Since 2005, the Supreme Court of Justice has dealt with the following offenses related to the criminal definitions contained in the Inter-American Convention against Corruption. It should be noted that all these extradition requests were processed under the Code of Criminal Procedure; thus, the Chilean Public Prosecution Service did not assume the legal representation of the requesting state: …"*

[120] The country under review then lists five cases of extradition requests made by States Parties to the Inter-American Convention against Corruption, and in two of the cases in which the request was denied, the corresponding decisions make reference to that Convention.

[121] The Committee considers that this information indicates that the country under review has referred to the Inter-American Convention against Corruption in decisions dealing with extradition requests made by states that are parties to that international instrument.

[122] There is no additional information to indicate that the country under review has filed extradition requests with States Parties to the Inter-American Convention against Corruption, in

27 The other states that are parties to this Code are Bolivia, Brazil, Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua., Panama, Peru, and Venezuela. The text of this Code may be seen at:

28 Chile cites these treaties on pages 28 and 29 of its reply to the Questionnaire, and it indicates, for each, the article establishing the obligation of prosecuting a national when the power to refuse to hand him over to the requesting state is used. The treaties may be seen at:

29 Reply of Chile to the Questionnaire, pp. 30 to 32.

connection with the offenses referred to in Article XIII thereof and based on this provision of the Convention.

[123] Based on the foregoing, the Committee will formulate a recommendation to the country under review so that, through agencies or entities charged with processing active and passive extradition requests, it can develop procedures and indicators, when appropriate and when they do not exist, to enable it to present information on the use of the Inter-American Convention Against Corruption as the legal basis for the extradition requests it submits to other States Parties, and as the basis for decisions on such requests made by those other States Parties. (See recommendation 6.4.b in Chapter II of this report.)

[124] It should be noted in connection with results in this area, that the report from the civil society organization *Chile Transparente*, the Chilean chapter of Transparency International, states that:[30]

[125] *"We have found no information that would allow an assessment of the objective results of the enforcement of the extradition rules to be performed."*

[126] In addition, the Committee believes it would be beneficial for the country under review to consider using the Inter-American Convention Against Corruption for extradition purposes in corruption cases, which could involve, among other measures, the implementation of training programs on the enforcement possibilities it offers, designed specifically for the administrative and judicial authorities with jurisdiction over this area. (See recommendation 6.4.c in Chapter II of this report.)

6.4. Conclusions and recommendations

[127] On the basis of the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review of the provision contained in Article XIII of the Convention:

[128] **The Republic of Chile has adopted measures on extradition, as provided Article XIII of the Convention, as described in Chapter II, Section 6, of this report.**

[129] In light of the comments made in that section, the Committee suggests that the Republic of Chile consider the following recommendations:

a) Adopt the relevant measures to promptly notify a requesting state whose extradition request in connection with offenses under the Convention is denied on the basis of the nationality of the person sought, or because the requested state deems that it has jurisdiction, regarding the final outcome of the case brought before its competent authorities for prosecution as result of that denial. (See section 6.2 of Chapter II of this report.)

b) Develop procedures and indicators, when appropriate and when they do not exist, to enable it to present information on the use of the Inter-American Convention against Corruption as the legal basis for the extradition requests it submits to other States Parties, and to ground its decisions on such requests made by those other States Parties. (See section 6.3 of Chapter II of this report.)

30 Report from the civil society organization *Chile Transparente*, the Chilean chapter of Transparency International, p. 13.

c) Consider using the Inter-American Convention against Corruption for extradition purposes in corruption cases, which could involve, among other measures, the implementation of training programs on the enforcement possibilities it offers, designed specifically for the administrative and judicial authorities with jurisdiction over this area. (See section 6.3 of Chapter II of this report.)

III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FOR PREVIOUS ROUNDS

FIRST ROUND[31]

[130] With respect to implementation of the recommendations issued to the Republic of Chile in the report from the First Round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered required further attention in Section IV of the report for that round, and on the basis of the information available to it, referring to progress in their implementation subsequent to that report, the Committee notes the following:

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 interests and enforcement mechanisms

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.

Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the report from the Second Round:[32]

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

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

c) Ensure the applicability of punishments of public servants that infringe upon laws on conflicts of interests.

[131] In its response,[33] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding recommendation 1.1.1 in general, of which the Committee notes as steps contributing to its implementation, the following:

31 The references to sections appearing in italics in the transcribed recommendations and measures refer to the report from the First Round of Review.
32 See pp. 47 to 48 of this report, at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc

[132] – "Constitutional Amendment on Transparency, State Modernization, and Political Quality," Law No. 20.414, published in the Official Journal on January 4, 2010, adds the following new paragraph to Article 8 of the Constitution: "the President of the Republic, Ministers of State, deputies, senators, and all other authorities and officials identified in a constitutional organic law, shall make public declarations of their interests and net worths. That law shall determine the cases and conditions in which those authorities shall delegate, to third parties, the administration of those assets and liabilities that imply a conflict of interest in the performance of their public duties. In addition, consideration may be given to other appropriate measures for resolving them and, in given situations, for ordering the divestment of all or a part of such assets."

[133] – "Draft law requiring certain authorities to establish a blind trust to resolve conflicts of interest and the possible obligation of divesting themselves of assets that could imply conflicts of interest. The government filed the blind trust bill on June 11, 2008, which would regulate the way and circumstances in which blind trusts must be established, the authorities required to do so, and the obligation of divesting those assets that could create conflicts of interest and that could not be resolved by means of a blind trust. In January 2010 the government presented a series of comments on the bill to improve its provisions, including authorizing the Office of the Comptroller General of the Republic to oversee their compliance and to impose sanctions for noncompliance."

[134] The Committee takes note of the steps taken by the country under review to progress with the implementation of the terms of recommendation 1.1.1, insofar as it relates to strengthening the provisions governing standards of conduct for preventing conflicts of interest during the exercise of public functions, as contained in the aforesaid constitutional amendment and draft legislation. However, the Committee believes that it necessary for the country under review to continue to give attention to its implementation, taking into account that the enactment of the organic constitutional law referred to in the constitutional amendment is still pending and that the bill has not yet completed its passage through Congress and become law. With respect to the remaining elements of this recommendation, related to the strengthening of standards of conduct to prevent conflicts of interest following separation from public office and the systems for verifying the information set out in sworn statements of disqualifications and declarations of interests, addressed, respectively in measures (a) and (b) of the recommendation, in the following paragraphs the Committee will evaluate the information on their implementation provided by the country under review.

[135] In its response,[34] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding measure (a) of the recommendation, of which the Committee notes as steps contributing to its implementation, the following:

[136] – "The draft law "Establishing disqualifications from holding positions in private institutions subject to oversight by the corresponding official" of May 4, 2006 (Bulletin No. 4186-07). This bill began as a parliamentary motion; however, by means of instructions for its total replacement given by the executive branch on December 6, 2006, it received a new impulse to further improve the grounds for disqualification set out in Law No. 18.575, the Organic Constitutional Law on the General Bases for the Administration of the State. The bill requires a special quorum because it contains provisions at the organic constitutional law level. Its main ideas are: extending and

33 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 1 to 6.
34 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 1 to 6.

expanding the grounds for disqualification applicable to those who have served as authorities or officers of oversight agencies, preventing them from performing duties that imply a relationship of employment with private-sector institutions subject to the oversight of those agencies; expanding the period of that disqualification from six months to two years; establishing a sanction for breaches of this rule; and granting fair economic compensation to such officials. The aim is that once his employment has ceased, the former official cannot make use of the privileged information that was available to him or exert any influence he may still have over the institution's staff, while at the same time avoiding discouraging qualified private-sector professionals from joining the public administration. Since March 18, 2008, it has been with the Chamber of Deputies, on its first reading, approved in general, and submitted to the Joint Constitution and Labor Committee and the Treasury Committee, for the second stage report, without urgency."

[137] – "The draft law "Regulating Lobbying" of October 28, 2008 (Bulletin No. 6189-06). This bill regulates lobbying activities, and places a ban on lobbying activities for a period of two years following separation from their positions on authorities, members of Congress, and certain public officials."

[138] The Committee takes note of the steps taken by the country under review to progress with the implementation of measure (a) of the recommendation[35] and the need for it to continue to give attention thereto, bearing in mind that the aforesaid proposed bills have not yet become law and that the measure in question, as noted in the report from the First Round, deals with "situations that could entail conflicts of interest and would not be limited to supervisory institutions nor labor relations 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 one's status as a former public official."[36]

[139] In addition, with regard to the implementation of measure (a) of the recommendation, the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states, *inter alia*, that:[37]

[140] *"In any event, we believe it would be advisable to speed up the processing of the bill "Establishing disqualifications from holding positions in private institutions subject to oversight by the corresponding official," since it entails the introduction of improvements that would expand and strengthen the provisions for preventing conflicts of interest. The State should also pay attention to*

35On August 13, 2010, the country under review offered the following remarks: "Regarding the participation of the Office of the Comptroller General of the Republic in this area, it should be noted that with respect to preventively ensuring compliance with laws, consisting of its constitutional check responsibility (*toma de razón*) and also during its auditing of plans, programs, projects, etc., it examines the possible existence of conflicts of interest involving both current and former public officials. Thus, for example, during its examination of procurement processes, it reviews compliance with the principle of equality between bidders enshrined in our legislation and in our administrative jurisprudence, whereby bidders must be on an equal footing to prevent situations such as participants with some specific information – derived, for instance, from their status as former employees of the service seeking bids – from benefiting from that status with respect to the other bidders. Finally, if any such breach is detected, the resultant responsibility is prosecuted or the information is referred to the competent entity." This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

36 See p. 8 of this report, available at: http://www.oas.org/juridico/english/mec_rep_chi.pdf

37 Report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, pp. 15 and 16.

the weaknesses of both the current law and the pending bill, and it should consider extending this disqualification to public officials not involved in oversight duties and to other relationships other than those of relationships of employment in the strictest sense."

[141] In its response,[38] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding measure (b) of the recommendation, of which the Committee notes as steps contributing to its implementation, the following:

[142] – "Technical Document No. 29, version 02, "Framework Auditing Program for Administrative Probity," of 2005, drawn up by the Internal General Government Auditing Council (CAIGG), and intended particularly for the aforesaid units of public agencies and services (called "Internal Auditing Units"), which provides a specific methodology for auditing processes related to probity and the prevention of corruption, which can be used, *inter alia*, for verifying compliance with the obligation of presenting sworn statements of disqualifications and interests."

[143] – "Law No. 20.000 implements this recommendation for the Central Bank of Chile, a constitutionally autonomous body, in that it includes disqualifications and verification systems applicable to people who are addicted to illegal drugs, narcotics, or psychotropics (…)."[39]

[144] – The agreement, adopted on April 19, 2007, by the Board of the Central Bank of Chile, ordered the creation of the Auditing and Compliance Committee of the Central Bank of Chile, as an advisor to the Board, and it approved the committee's statutes, including among its functions that of ruling on the risks involved in enforcing standards of conduct, rules for conflicts of interest, and the Code of Ethics with respect to the members of its staff.

[145] In the progress report[40] presented at the Committee's 16th meeting, the country under review presents furnished additional information to that analyzed by the Committee in the reports from the First and Second Rounds, and to that provided in its reply, on measure (b) of the recommendation. In this regard, the Committee notes, as a step which contributes to progress in its implementation, the following measure:

[146] – "On March 9, 2010, the government submitted a bill to the National Congress (Bulletin No. 6834-07) to strengthen the rules governing statements of interest and declarations of net worth. This bill provides for penalties – which currently do not exist – for authorities and officials who fail to meet the obligation of updating their statements and declarations upon leaving office. In addition, it gives the Office of the Comptroller General of the Republic the express power to oversee the truthfulness and completeness of statements of interest and net worth, including the possibility of requesting information from other public agencies – such as the Internal Tax Service and the Superintendency of Securities and Insurance – and from banks and other financial institutions."

[147] The Committee takes note of the steps taken by the country under review to progress with the its implementation of measure (b)[41] of the recommendation and the need for it to continue to give

38 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 1 to 6.
39 This law was published in the Official Journal of 5.01.2006.
40 See p. 2 of this report, at: http://www.oas.org/juridico/spanish/inf_avance_chl.pdf
41 On August 13, 2010, the country under review noted that "…it is the systematic practice of the Office of the Comptroller General of the Republic to review the timely filing of these statements, and to ensure that the Internal Control Units oversee this topic…," and it then cites, as examples, Final Auditing Reports Nos. 13 and 58 of 2010, and No. 244 of 2009, together

attention thereto, bearing in mind that the aforesaid bill to strengthen the rules governing statements of interests and declarations of net worth has not yet been passed into law and that the measure, as indicated in the report from the First Round, was based on information on results whereby "it can be inferred [...] that a high percentage of personnel units have not given due attention to checking and reviewing the information contained in the sworn statements of on disqualification and the statements of interests."[42]

[148] In addition, with regard to the implementation of measure (b) of the recommendation, the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states that:[43]

[149] *"Regarding measure (b) suggested by the Committee (...) no progress can be seen in the follow-up on the First Round recommendations beyond what was observed in the Second Round civil society report, in that there is to date no legal provision establishing a mechanism for the review or verification of the content of statements of interests (and of net worths) or of their veracity, completeness, and accuracy."*

[150] In its reply, the country under review made no reference to measure (c)[44] of the recommendation, and accordingly, the Committee reiterates the need for additional attention to be given to thereto.

[151] In addition, with regard to the implementation of measure (c) of the recommendation, the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states that:[45]

[152] "*Regarding measure (c), (...) the law provides for disciplinary sanctions for knowingly including imprecise data and inexcusably omitting pertinent information required by law in statements of interests, solely with respect to officers of the public administration (Art. 66 of Law*

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with Deed No. 5637 of 2008. Chile also refers to an agreement with the GTZ for strengthening the technical relationship between the Internal Control Units and the Comptroller General's Office, and to the updating of Technical Document No. 29 on the "Administrative Probity Framework Auditing Program," "which specifically targets the aforesaid offices of public agencies and services – called "Internal Auditing Units" – to be applied with emphasis on verifying compliance with the obligation of submitting sworn statements of grounds for disqualification and of interests." This information is not analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

42 See p. 8 of this report, available at: http://www.oas.org/juridico/english/mec_rep_chi.pdf.

43 Report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, p. 16.

44 On August 13, 2010, the country under review noted that "…another systematic task of the Comptroller General's Office is the preventive oversight of this topic through the constitutional check of legality and also during simultaneous and subsequent audits"; it then cites, as examples, Deed No. 13.940 of 2010, Final Auditing Report No. 101 of 2009, and Ruling No. 37.361 of 2010. Chile explains, in addition, that: "The board of the Council for Transparency has recommended that the agencies and services of the public administration adopt the good practice of making permanently available to the public, through its Active Transparency web pages, the statements of interests and net worth of those public employees and officers required to submit such statements. See, in this regard, section 1.4 of General Instruction No. 4 on Active Transparency, published in the Official Journal on February 3, 2010 (http://www.consejotransparencia.cl/instrucciones-generales/consejo/2010-04-16/205931.html)"; Chile then refers to a clarification on what good practices entail, "made in General Instruction No. 7, published in the Official Journal on May 25, 2010 (http://www.consejotransparencia.cl/instrucciones-generales/consejo/2010-04-16/205931.html)". This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

45 Report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, p. 16.

18.575) and of the Public Prosecution Service (Art. 47 of Law 19.640). However, in connection with the comments made in the previous paragraph, since there are no legal mechanisms to control the content of such statements, the possibility of enforcing sanctions for the actions described is extremely limited."

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

[153] The Committee did not formulate recommendations to the Republic of Chile in this area.

1.3. 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

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.

Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the report from the Second Round:[46]

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.

[154] In its response,[47] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding the implementation of measure (a) of the above recommendation. In this regard, the Committee notes, as a step which leads to the conclusion that this measure has been satisfactorily considered, the following:

[155] – *"*(…) Following the amendment introduced by Law No. 20.205, which "Protects public employees who report irregularities and breaches of the principle of probity" (Article 1, No. 1), published in the Official Journal of July 24, 2007, this provision emphasizes the obligation of reporting "*in particular*" any actions that contravene the principle of administrative probity as regulated by the Organic Constitutional Law on the General Bases for the Administration of the State, Law No. 18.575."

[156] "(…) The aforesaid Law No. 20.205, which "Protects public employees who report irregularities and breaches of the principle of probity," published in the Official Journal of July 24, 2007, amended Law No. 18.834, the Administrative Statute Law (Article 90 A), by establishing administrative rights of protection for whistleblowing civil servants. Those rights are: not to face disciplinary measures involving suspension or dismissal, for a period of 90 days, following the

46 See pp. 47 and 48 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc

47 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 7 to 8.

conclusion of the summary investigation or proceedings begun as a result of their report; not to be removed from their place of work or from the position they hold, in the absence of their written authorization; and, finally, not to be liable for annual prequalification, if the report was lodged with respect to a hierarchical superior.

[157] The Committee takes note of the satisfactory consideration by the country under review, of measure (a) of the recommendation, without entering into a detailed analysis of the content of Law No. 20.205; and, in addition, bearing in mind that the question of protecting whistleblowers in corruption cases was dealt with in greater detail by the Committee in the report from the Second Round, it will therefore discuss that issue below, in the chapter of this report dealing with the follow-up of the recommendations formulated on this point for the country under review in that round, using these recommendations as a point of reference.

[158] In addition, with regard to the implementation of measure (a) of the recommendation, the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states, *inter alia*, that:[48]

[159] *"Regarding the recommendation issued and the measure suggested by the Committee, in connection with (a)…, Law No. 20.205, which protects public employees who report irregularities and breaches of the principle of probity, in force since July 24, 2007, can be seen to constitute partial progress. That law amends provisions of the Administrative Statute (Law No. 18.834) and of the Administrative Statute for Municipal Officers (Law No. 18.833), to include the obligation of reporting breaches of the principle of probity of which public employees become aware in discharging their functions. That obligation is added to the pre-existing obligation, that of reporting irregularities and simple offenses. In addition, it includes provisions that establish the rights of public employees who report breaches of the principle of probity and irregularities, which are intended to preserve the job stability of whistleblowers (the right not to face disciplinary measures leading to suspension or dismissal, not be removed from their places of work if their written authorization is not given, and not to be subject to annual prequalification)."*

[160] In its response,[49] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding the implementation of measure (b) of the above recommendation. In this regard, the Committee notes, as steps which lead to the conclusion that this measure has been satisfactorily considered, the following:

[161] – "Regarding measure (b), referred to above, we report that since 2008, various agencies have carried out a series of outreach and training activities, intended to inform public officials about their duty of reporting crimes, offenses, and irregularities, particularly those that are in breach of the principle of administrative probity (set out in Article 61.k of Law No. 18.834, the Administrative Statute; in Article 58.k of Law No. 18.883, the Administrative Statute for Municipal Officers; and in Articles 175 *et seq*. of the Code of Criminal Procedure), and of the new rights that protect whistleblowers. – The most important outreach and training activities carried out in recent times, which paid particular attention to this topic, were the following: (…)"

48 Report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, pp. 16 and 17.

49 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 8 to 9.

[162] The country under review then goes on to describe these activities in detail, along with those referred to in the progress report presented at the 16th meeting of the Committee, including, notably:[50]

[163] "Five-year Training Program on Probity and Transparency of the National Civil Service Directorate. This five-year program, approved in 2007, aims to provide all officers and employees of the public administration with training on probity and transparency. It has been designed and implemented by the National Civil Service Directorate, an agency attached to the Ministry of the Treasury."

[164] The Committee takes note of the satisfactory consideration by the country under review of measure (b) of the recommendation, which, by its nature, requires a continuation of efforts in its implementation.

[165] In addition, with regard to the implementation of measure (b) of the recommendation, the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states that:[51]

[166] *"Law 20.205 contains no provisions aimed at the adoption of the Committee's recommended measure (b) as regards training and raising the awareness of public officials in connection with their duty of reporting, to the competent authorities, those acts of corruption in public service of which they become aware."*

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

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.

Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the report from the Second Round:[52]

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.

50 See pp. 8 and 9 of the section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," and page 2 of the progress report presented to the 16th meeting of the Committee.
51 Report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, p. 17.
52 See pp. 49 and 50 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc

[167] In its response,[53] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding the implementation of measure (a) of the above recommendation. In this regard, the Committee notes, as steps which lead to the conclusion that this measure has been satisfactorily considered, the following:

[168] – "(…) Law 20.088, published in the Official Journal on January 5, 2006, which imposed on certain public servants the obligation of making a "Statement of Net Worth"; (b) Decree No. 45/06, of the Ministry General Secretariat of the Presidency, published in the Official Journal on March 22, 2006, "Regulation for the Statement of Net Worth and Assets of Law No. 20.088"; and (c) Ruling No. 17.152 of April 17, 2006, from the Office of the Comptroller General of the Republic, issuing instructions for compliance with the obligation of making such Statements, which were recently reiterated by Ruling No. 4.864 of January 30, 2009."[54]

[169] The Committee takes note of the satisfactory consideration, by the country under review, of measure (a) of the recommendation, without entering into a detailed analysis of the contents of the provisions referred to in connection therewith by the country under review.

[170] In its response,[55] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding measure (b) of the recommendation, of which the Committee notes as a step contributing to its implementation, the following:

[171] – "(…) Law No. 20.414 – "Constitutional Amendment on Transparency, State Modernization, and Political Quality," of December 2009. This amendment adds the following new paragraph to Article 8 of the Constitution: "the President of the Republic, Ministers of State, deputies, senators, and all other authorities and officials identified in a constitutional organic law, shall make public declarations of their interests and net worths."

[172] The Committee takes note of the step taken by the country under review to progress with the implementation of measure (b) of this recommendation as set out in the constitutional amendment described above, and of the need for it to continue to give attention thereto, bearing in mind that enactment of the constitutional organic law referred to in that amendment is still pending.

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53 Section of the reply, titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 10.

54 Under Law 20.088 of 2006, the following persons are required to submit declarations of interests and statements of net worth: the President of the Republic, ministers of state, undersecretaries, mayors and governors, regional ministerial secretaries, senior service chiefs, ambassadors, members of the State Defense Council, the Comptroller General of the Republic, generals and senior officers of the armed forces and equivalent ranks in the public security forces, mayors, counselors and regional council members; all these are to submit a statement of interests and net worth within a period of thirty days following their taking of office. – The same obligation applies to other authorities and senior officials, professionals, technicians, and overseers of the state administration at the department head level, or its equivalent, and above. The following are also required to submit statements of net worth: members of the National Congress, members of the Courts of Justice, members of the Constitutional Court, members of the Public Prosecution Service, members of the Free Competition Defense Tribunal, Central Bank board members, members of the Elections Evaluation Board, members of the Regional Electoral Tribunals, and directors representing the state in anonymous corporations in which it has a sufficient holding to appoint one or more directors.

55 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 11.

[173] In addition, with regard to the implementation of measure (b) of the recommendation, the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states, *inter alia*, that:[56]

[174] *"With regard to measure (b) as suggested by the Committee, the recent Constitutional Amendment on transparency, state modernization, and political quality (Annex No. 9) enshrined at the constitutional level the public disclosure of statements of interests and net worths made by the President of the Republic, Ministers of State, deputies, senators, and other authorities and officers stipulated in an organic law. (...)"*

[175] In its response,[57] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding measure (c) of the recommendation, of which the Committee notes as steps contributing to its implementation, the following:

[176] – "(…) (c) The Internal General Government Auditing Council (CAIGG) issued Technical Document No. 29, version 02, on 2005, on "Framework Auditing Program for Administrative Probity," intended for the aforesaid "*offices responsible for internal oversight*" of public agencies or institutions (known as "Internal Auditing Units"), providing them with a specific methodology for auditing processes related to probity and the prevention of corruption, which can be used, *inter alia*, for verifying compliance with the obligation of presenting such statements; and (d) the Office of the Comptroller General of the Republic recently issued Ruling No. 4.864 of January 30, 2009, noting the provisions governing the administrative responsibility of those subject to performing those duties. The information indicates that, ultimately, the truthfulness and completeness of those statements are subject to the principle of good faith of the part of the person making the statement, but that, at the same time, they are also subject to the social oversight that can be carried out, on account of their status as public declarations, and without prejudice to access to public records of assets, investments, and corporations."

[177] "(…) Obligations of the authorities of the Central Bank of Chile in connection with statements of net worth. Pursuant to the final section of Article 14 of the Organic Constitutional Law of the Central Bank of Chile, replaced by Law 20.088, and the Regulations to Law 20.088 (D.S. No. 45 of 2006, from the Ministry General Secretariat of the Presidency), the members of the board and general manager of the central bank must make statements of two kinds: (…)" – "For authorities of the Central Bank of Chile, the penalty for including imprecise figures or inexcusably omitting relevant information from the statement is grounds for judicial removal in accordance with Article 15 of its Organic Law."

[178] In the progress report[58] presented at the 16th meeting of the Committee, and in connection with measure (c) of the recommendation, the country under review provides additional information to that analyzed by the Committee in the reports from the First and Second Round and to that provided in its reply. In this regard, the Committee notes, as a step which contributes to progress in its implementation, the following measure:

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56 Report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, p. 19.
57 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 11 and 12.
58 See pp. 2 and 3 of this report at: http://www.oas.org/juridico/spanish/inf_avance_chl.pdf

[179] – "On March 9, 2010, the government submitted a bill to the National Congress (Bulletin No. 6834-07) to strengthen the rules governing statements of interest and declarations of net worth. This bill provides for penalties – which currently do not exist – for authorities and officials who fail to meet the obligation of updating their statements and declarations upon leaving office. In addition, it gives the Office of the Comptroller General of the Republic the express power to oversee the truthfulness and completeness of statements of interest and net worth, including the possibility of requesting information from other public agencies – such as the Internal Tax Service and Superintendency of Securities and Insurance – and from banks and other financial institutions."

[180] The Committee takes note of the steps taken by the country under review to progress with the implementation of measure (c) of the recommendation and the need for it to continue to give attention thereto, bearing in mind that the aforesaid draft legislation on strengthening the provisions governing statements of interests and of net worth has not been passed into law.

[181] In addition, with regard to the implementation of measure (c) of the recommendation, the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states, *inter alia*, that:[59]

[182] *"Regarding measure (c) as suggested by the Committee, there has been no progress that would allow us to state that the systems for analyzing the content of statements have been optimized, and so we believe that the suggested measure has not been implemented, (...)" – "Specifically, there is no system for the oversight of statements that would enable the truthfulness, completeness, and accuracy of their contents to be verified. Although making statements public guarantees that any member of the public may review them, the information analysis that they demand could be extremely difficult for an individual; making statements public is not an adequate guarantee of their completeness, and public access to them is in no way a replacement for an effective oversight system."*

3. OVERSIGHT BODIES RESPONSIBLE FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4, AND 11 OF THE CONVENTION)

Recommendations suggested by the Committee that require information on their implementation or which required further attention within the framework of the report from the Second Round:[60]

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.

[183] In its response,[61] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding the establishment of "mechanisms that allow for improved institutional coordination of oversight bodies." In this regard, the Committee notes, as steps which lead to the conclusion that this measure has been satisfactorily considered, the following:

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59 Report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, p. 19.
60 See pp. 50 to 51 of this report, at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc
61 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 13 and 14.

[184] "It should also be noted that these oversight bodies, in their exercise of their own powers, have created institutional coordination procedures, through pacts or administrative agreements, on those topics and occasions that they have deemed necessary, in order to promote synergies and facilitate the discharging of their duties. Mention could be made of the following: (…)." The State under review then referred to three inter-institutional agreements, from which the following should be noted:

[185] "(…) The "Cooperation and Coordination Institutional Agreement" among oversight bodies. This is an agreement, signed on December 2, 2008, between the judicial branch, the Public Prosecution Service, the Constitutional Court, the Office of the Comptroller General of the Republic, and the State Defense Council, to enable them to jointly address the symptoms of corruption and avoid violations of probity. It establishes, *inter alia*: (a) exchanges of information and background details on the different issues involved in preventing breaches of probity in the courts and other bodies they represent; (b) development of training and skill-improvement exercises among their employees on the same topics; and (c) pursuing other initiatives toward that objective, based on the general or specific plans and projects they may agree on toward those ends."

[186] The Committee takes note of the satisfactory consideration, by the country under review, of the element of the recommendation regarding the establishment of mechanisms for improved institutional coordination among its oversight bodies, which, by its nature, requires a continuation of efforts in its implementation.

[187] In its response,[62] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding the element of this recommendation for supplementing "*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,"* of which the Committee notes as steps contributing to its implementation, the following:

[188] "(…) Article 7.j of Law No. 20.285, on Transparency and Access to Public Information. This provision supplements the above, in that it establishes that all state agencies and services are required to report, on their institutional web sites, about the citizen participation mechanisms they have implemented, such as the "Participatory Public Accounts" scheme.

[189] "(…) Presidential Instruction No. 8, *For Citizen Participation*, of August 27, 2008.[63] It requires agencies and services of the public administration to carry out the following specific actions: (a) give annual public reports, directly to the citizenry, of the handling of their policies, plans, programs, and actions, and the use of their budgets; (b) establish consultative Civil Society Councils, to be made up in accordance with the principles of diversity, representativeness, and pluralism; and (c) provide the public with relevant information on their policies, plans, programs, actions, and budgets, ensuring that it is timely, complete, and generally accessible."

[190] The Committee takes note of the steps taken by the country under review to progress with the implementation of this element of the aforesaid recommendation, and of the need for it to continue to give attention thereto, bearing in mind that the purpose of that element is to supplement the system of

62 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 13 and 14.
63This footnote indicates that this provision is available on the internet at:
http://www.participemos.cl/docs/Instruct_presidencial_part_ciud.pdf.

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, which deals with mechanisms for encouraging participation by civil society and nongovernmental organizations in efforts to prevent corruption.

[191] In addition, regarding the implementation of this element of the recommendation, in the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, the following comment is offered:[64]

[192] *"The Committee's recommendation deals with oversight bodies as specifically regards Article III.11 of the Convention: that, regarding mechanisms for encouraging participation by civil society and nongovernmental organizations in corruption prevention. In connection with this recommendation, there has been no progress regarding which we believe it relevant to offer comments."*

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

4.1 Mechanisms for access to information

Recommendation 4.1:

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.

Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the report from the Second Round:[65]

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*

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.*

[193] In its response,[66] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding the implementation of

64 Report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, p. 20.
65 See pp. 51 and 52 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc

measure (a) of the above recommendation. In this regard, the Committee notes, as steps which lead to the conclusion that this measure has been satisfactorily considered, the following:

[194] – "(…) Articles 6 and 7 of Law No. 20.285, on Transparency in the Exercise of Public Functions and Access to Information from the Agencies of the State Administration, published in the Official Journal on August 20, 2008. This provision legally enacted the Active Transparency introduced by the aforesaid Presidential Instruction No. 8, increasing the number of topics on which the agencies and services of the state administration are required to report from five to thirteen. Thus, pursuant to Article 7, the information they must publish covers: (a) their organizational structure; (b) the powers, functions, and authorities of each of their internal units and offices; (c) the regulatory framework applicable to them; (d) staff numbers, and contract-based and fee-based workers, with their corresponding earnings; (e) contracts for the provision of goods, for the provision of services, for support actions and works projects, and for studies, advisors, and consultancies related to investment projects, indicating the contractors and identifying the main partners and shareholders in the companies providing those goods or services, as applicable; (f) transfers of public funds made, including all sums handed over to individuals or corporations, either directly or through competitive procedures, without those individuals or corporations making a reciprocal provision of goods or services; (g) deeds and resolutions affecting third parties; (h) formalities and requirements to be met those interested in accessing the services provided by the agency in question; (i) the design, allocated amounts, and access rules for subsidy programs and other benefits overseen by the agency in question, in addition to lists of the names of beneficiaries of current social programs; (j) mechanisms for citizen participation, if applicable; (k) information on budget allocations, and spending reports, in the terms set out in the corresponding Budget Law for each year; (l) results of audits carried out on the agency's spending of its budget and, if applicable, the relevant clarifications; and (m) all the agencies in which they participate, are represented, or are involved, regardless of the nature and legal basis thereof."

[195] – "(…) Articles 10 and 44 of Law No. 20.285, on Transparency in the Exercise of Public Functions and Access to Information from the Agencies of the State Administration, published in the Official Journal on August 20, 2008. These provisions substantially improve the right of access to information held by the State, safeguarding secrecy or confidentiality on an exceptional basis in those areas where it is legitimately necessary (Articles 10 to 30). In addition, a new autonomous public agency was created, the *Transparency Council*, with tenured membership, intended to ensure and uphold both the right of access to information and the duty of Active Transparency and invested, *inter alia*, with the power to conduct oversight, establish regulations, and impose sanctions (Articles 31 to 44)."

[196] – "(…) D.S. No. 13/2009 from the Ministry General Secretariat of the Presidency, approving the regulations to Article 1 of Law No. 20.285, on Transparency in the Exercise of Public Functions and Access to Information from the Agencies of the State Administration. The regulations for this law are enacted for its necessary execution in accordance with the terms of Article 32.6 of the Constitution of the Republic."

[197] The Committee takes note of the satisfactory consideration, by the country under review, of measure (a) of the recommendation, without entering into a detailed analysis of the contents of the provisions referred to by Chile in connection therewith.

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66 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 17 to 20.

[198] In addition, with regard to the implementation of measure (a) of the recommendation, the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states, *inter alia*, that:[67]

[199] *"Regarding this measure suggested by the Committee, there has been substantial progress with the measures already studied in the follow-up on recommendations during the Second Round of review. Law No. 20.285 (Annex No. 10), on Access to Public Information, published on August 20, 2008, comprehensively regulates this right. This law, in turn, creates the Law on Transparency in Public Functions and Access to Information from the State Administration. The law enshrines the principle of transparency in public functions (Articles 3 and 4).[15] It enforces the principle – but not all the provisions – with respect to the Office of the Comptroller General of the Republic, the National Congress, the Central Bank, the Public Prosecution Service, the Constitutional Court, the electoral justice system, public companies created by law, state companies, and corporations in which it has a shareholding in excess of 50% or controls a majority of the board."*

[200] In its response,[68] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding the implementation of measure (b) of the above recommendation. In this regard, the Committee notes, as steps which lead to the conclusion that this measure has been satisfactorily considered, the following:

[201] – (…) Grounds for denying information. In line with the terms of Article 8.2 of the Constitution of the Republic, Article 21 of Law No. 20.285, on Transparency in the Exercise of Public Functions and Access to Information from the Agencies of the State Administration, establishes that "*The only grounds for secrecy or confidentiality under which access to information may be wholly or partially denied are the following: 1. When its disclosure, communication, or knowledge affects the proper functioning of the agency in question, particularly: (a) if it undermines the prevention, investigation, or prosecution of a crime or misdemeanor or if it is part of the background information necessary for legal defense; (b) if it is background information or discussions prior to the adoption of a resolution, measure, or policy, even if the grounds for the measure are to be made public once adopted; (c) requests of a general nature that involve a large number of administrative undertakings or information, or that attending to which would unduly distract public officials from the performance of their regular duties. 2. When disclosure, communication, or knowledge would affect the rights of people, particularly as regards their security, health, private lives, or rights of a commercial or economic nature. 3. When disclosure, communication, or knowledge would affect national security, particularly as regards national defense or the maintenance of public order and public security. 4. When disclosure, communication, or knowledge would affect the national interest, particularly as regards public health or the country's international relations and economic or commercial interests. 5. When involving documents, data, or information ruled secret or confidential by a qualified quorum law, pursuant to the grounds indicated in Article 8 of the Constitution*."

[202] "Thus, a denial of information can only be based on the grounds indicated, or on others established by qualified quorum laws, and all possibilities of a denial based on the discretion of the authority responsible for the agency with which the request is lodged are discarded. The final

67 Report from the civil society organization *Chile Transparente*, the Chilean chapter of Transparency International, pp. 20 and 21.

68 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 2 and 21.

decision on the admissibility of grounds for exception lies with the Transparency Council, as an autonomous agency of the public administration."

[203] – "(…) The repeal of DS No. 26, of 2001. In addition, Supreme Decree No. 26 of 2001, from the Ministry General Secretariat of the Presidency, on "Regulations for the Secrecy or Confidentiality of Actions and Documents of the State Administration," was expressly repealed by Supreme Decree No. 134 of January 5, 2006, from the same Ministry. Thus, following publication of Constitutional Amendment Law No. 20.050, described above, with this repeal the executive branch of government sought to adapt the operations of the public administration to the new constitutional reality."

[204] The Committee takes note of the satisfactory consideration, by the country under review, of measure (b) of the recommendation, without entering into a detailed analysis of the content of the provisions referred to by Chile in connection therewith.

[205] In addition, with regard to the implementation of measure (b) of the recommendation, the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states, *inter alia*, that:[69]

[206] *"(...) Law 20.285 expressly repealed the provisions of Articles 13 and 14 of the Law on the Basis of the State Administration, which allowed the establishment of secrecy or confidentiality in accordance with the regulations (...)"*

[207] In its response,[70] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding the implementation of measure (c) of the above recommendation. In this regard, the Committee notes, as steps which lead to the conclusion that this measure has been satisfactorily considered, the following:

[208] – "(…) Five-year Training Program on Probity and Transparency of the National Civil Service Directorate. In connection with this the comments made previously in connection with this program are restated."[71]

[209] – "(…) Training public officials in the transparency issues addressed in the Law on Transparency and Access to Public Information. As part of the implementation process of Law No. 20.285, on access to public information, during 2009 the Probity and Transparency Commission of the Ministry General Secretariat of the Presidency organized outreach days dealing with the law's provisions for almost 3,000 civil servants across the country."

[210] – "(…) Training offered by the Transparency Council. This agency was created by Law No. 20.285 of 2008, as an autonomous public body with tenured membership. Its purpose is to promote transparency in public functions, to oversee compliance with the provisions governing transparency and disclosure of information held by the agencies of the public administration, and to uphold the right of access to information (Article 32). It was officially established in October 2008. The Law assigns the Council a range of functions, including: "*(g) Conduct, either directly or through others, training activities for public officials on topics of transparency and access to information,"* and *"(h)*

69 Report from the civil society organization *Chile Transparente*, the Chilean chapter of Transparency International, p. 22.
70 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 2 and 21.
71 The country under review previously reported on this program under measure (b) of recommendation 1.3.1. That information has been addressed in the section of this report dealing with that recommendation.

Conduct public outreach and information activities on the topics over which it has jurisdiction" (Article 33). Thus, following the enactment of this law, the implementation of training and outreach programs on mechanisms for access to public information held by the administration is the responsibility of this new autonomous body, and not of the administration currently in office."

[211] The Committee takes note of the satisfactory consideration by the country under review of measure (c) of the recommendation, which, by its nature, requires a continuation of efforts with respect to its implementation.

[212] In addition, with regard to the implementation of measure (c) of the recommendation, the report from the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states, *inter alia*, that:[72]

[213] *"With regard to this measure suggested by the Committee, the tasks it indicates are primarily the responsibility of the Transparency Council under Articles 32 and 33 of the Law on Transparency in Public Functions and Access to State Administration Information."*

4.2 Mechanisms for consultation

Recommendation 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.

Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the report from the Second Round:[73]

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.[74]

[214] In its response,[75] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding measure (a) of the recommendation. In this regard, the Committee notes, as steps which contribute to progress with the implementation, the following measures:

[215] – "(…) Law 20.417, published in the Official Journal on January 26, 2010. This law, with its most recent amendments, includes a paragraph that contains several provisions and is intended

72 Report from the civil society organization *Chile Transparente*, the Chilean chapter of Transparency International, p. 22.
73 See pp. 52 and 53 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc
74 The Republic of Chile reports that the Draft Law on Citizen Partnership and Participation in the Public Administration is at an advanced stage in its first reading, with the Internal Government Committee of the Chamber of Deputies.
75 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 22 to 24.

particularly to regulate community participation in environmental impact evaluation procedures (Title II, Paragraph 3) (…)"

[216] – "(…) With reference to indigenous people, the Republic of Chile, by means of Decree 236, published in the Official Journal on October 14, 2008, ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries, which came into force on September 15, 2009. Article 6 of the Convention requires states to consult the peoples concerned, through appropriate procedures, whenever consideration is being given to legislative or administrative measures that could affect them directly."

[217] – "(…) Third, note should be taken of Law No. 20.402, published on December 3, 2009, amending Decree Law No. 2.224 of 1978. This new law created the Ministry of Energy and empowered it to set, by means of resolutions, the minimum standards of energy efficiency to be met by products, machines, instruments, equipment, artifacts, devices, and materials that use any form of energy resource prior to their sale in the country (Article 4.h of the Decree Law).[76] It also provided that the Ministry of Energy shall enact regulations to establish a participation mechanism for sectors of the public interested in determining the energy efficiency standard, for the purposes of information, consultation, and reaching a resolution."

[218] The Committee takes note of the steps taken by the country under review to progress in its implementation of measure (a)[77] of the recommendation and the need for it to continue to give attention thereto, bearing in mind that as regards the provisions cited above, the Committee's comment that they deal with very specific topics – which was the grounds on which that recommendation was issued – is still applicable.[78]

[219] In its response,[79] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds regarding the implementation of measure (b) of the above recommendation. In this regard, the Committee notes, as steps which lead to the conclusion that this measure has been satisfactorily considered, the following:

[220] – "Regardless of the legally regulated consultative processes for environmental and indigenous affairs noted above, on August 27, 2008, the President of the Republic issued, as already stated, "*Presidential Instruction No. 08, for Citizen Participation in the Public Administration*." This provision, applicable to all Ministers of State, orders that within a period of eight months, the following specific actions be taken within the agencies and services of the public administration: *(a)*

76 Article transcribed in this footnote.

77 On August 13, 2010, the country under review submitted statistical data on the consultations admitted by the Transparency Council "during 2009 and to date in 2010", and, with regard to the implementation process of the Transparency Law in the agencies of the public administration, it reports that the Council designed a public consultation for gathering ideas on the clarity, accessibility, and usefulness of the information published through Active Transparency, describing the three methods for gathering information that were defined for that purpose (online public consultation; interviews; and focus groups). It also notes that, "In addition to the information gathering methods described above, the General Instructions on Active Transparency were sent to the users of the Transparency Council's Promotion and Clients Units, as well as to the Liaisons (officers responsible for transparency) within the central administration and certain municipalities." This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

78 See p. 27 of this report at: http://www.oas.org/juridico/spanish/mec_inf_chi.pdf.

79 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 2 and 21.

Establish general rules for participation, which should provide a way in which people can influence the development of public policies that affect them; (b) Give annual public reports, directly to the citizenry, of the handling of their policies, plans, programs, and actions, and the use of their budgets; (c) Establish consultative Civil Society Councils, to be made up in accordance with the principles of diversity, representativeness, and pluralism; (d) Provide the public with relevant information on their policies, plans, programs, actions, and budgets, ensuring that it is timely, complete, and generally accessible."[80]

[221] "Consequently, under this Presidential Instruction, both the "Annual Public Account" and the "Civil Society Councils" it refers to are mechanisms for citizen participation that are to be introduced in all the component agencies and services of the state administration, expanding accountability and the opportunities for participation regarding the vast array of matters dealt with by the public administration."

[222] The Committee takes note of the satisfactory consideration by the country under review of measure (b) of the recommendation, which, by its nature, requires a continuation of efforts with respect to its implementation.

[223] In its response,[81] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding measure (c) of the recommendation, of which the Committee notes as a step contributing to its implementation, the following measure:

[224] – "Regarding measure (c), adoption of a basic law on citizen participation in the public administration, the following comments are offered: Regardless of the existing provisions governing plebiscites and consultative processes on environmental and indigenous matters referred to above,[82] on June 22, 2004, the executive branch of government submitted to the National Congress a bill on Citizen Partnerships and Participation in the Public Administration (Bulletin No. 3562-06).[83] This bill is essentially geared toward regulating citizen participation in public policy matters. It thus introduces amendments to the Organic Constitutional Law on the General Bases for the Administration of the State (No. 18.575) in order to establish, in particular: (1) the principle of citizen participation in the public administration (Article 3, section 2); (2) the right to this participation, and its correct regulation (Article 69); and (3) a series of duties incumbent on the agencies of the administration, namely: (a) enacting general regulations for citizen participation (Article 70); (b) informing on public policies (Article 71); (c) issuing annual reports and responding to observations, comments, or questions arising therefrom (Article 72); (d) indicating matters of public interest and assessing and

80 This footnote indicates that this Presidential Instruction can be found at: http://www.participemos.cl/docs/Instruct_presidencial_part_ciud.pdf.

81 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," pp. 22 to 24.

82 In this footnote the following comment is offered: "Articles 1, 32.4, 118.2, 118.4, 118.5, and 118.7, 119.2, and 128 of the Constitution of the Republic (national plebiscites); Articles 1.2, 63.n, and 93 to 104 of Law No. 18.695, the Organic Constitutional Law of Municipal Governments (local plebiscites); Articles 26, 28, and 29 of Law No. 19.300, the Law on General Bases of the Environment (citizen consultations); and Articles 34 and 35 of Law No. 19.253, Establishing Provisions for the Protection, Promotion, and Development of Indigenous Peoples, and Creating the National Indigenous Development Corporation (citizen consultations)."

83 In this footnote the following comment is offered: "Note that this draft legislation was preceded by a prior phase of consultations, which took place between 2001 and 2003. This process involved a large number of the country's social organizations, whose opinions and proposals were the basis for the drafting of its articles. Later, in June 2004, the initiative was referred to the Chamber of Deputies. The lower house's Internal Government Committee then received various representatives of civil society at a hearing, and a public dialogue on its contents was held on August 25, 2006."

evaluating the opinions expressed (Article 73); and (e) establishing Civil Society Councils (Article 74). It has already concluded its first and second readings and, since November 4, 2008, it has been with the Joint Committee to resolve the differences that arose between the two houses."

[225] The Committee notes the step taken by the State under review to progress in its implementation of measure (c) of the recommendation and the need for it to continue to give attention thereto, bearing in mind that this proposed bill on Citizen Participation in the Public Administration has not yet been passed into law.

4.3 Mechanisms for encouraging participation in the public administration

Recommendation 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

Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the report from the Second Round:[84]

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"*

[226] In its response,[85] the State under review, in addition to "reiterating what it reported on this point in its earlier answers to the corresponding questionnaire," submits information in addition to that analyzed by the Committee in its reports from the First and Second Rounds, regarding measure (a) of the recommendation. In this regard, the Committee notes the following measure as a step contributing to its implementation:

[227] "(…) what it reports regarding the measures suggested in paragraphs (A) and (B) of No. 4.2 above, on citizen participation."

[228] The Committee takes note of the steps taken by the State under review to progress in its implementation of measure (a) of the recommendation and the need for it to continue to give attention thereto, bearing in mind the comments already made in this report regarding the provisions to which the country refers in connection with measure (a) of recommendation 4.2, indicating that they address very specific topics. In addition, measure (a) of recommendation 4.3 targets the establishment of mechanisms, in addition to those that already exist, to strengthen the participation of nongovernmental and civil society organizations in the public administration, and, most particularly, in efforts to prevent corruption and to promote awareness and use of the mechanisms established for participation.

84 See p. 54 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc
85 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 25.

[229] In its response,[86] the country under review indicates that, in connection with measure (b) of the recommendation, it "again notes that Law No. 20.048, published in the Official Journal on August 31, 2005, amending the Criminal Code and the Code of Military Justice as regards the offense of contempt, expressly eliminated this particular case, so that slander or libel against public authorities and officials are subject to the provisions of general criminal law."

[230] The Committee takes note of the satisfactory consideration, by the country under review, of measure (b) of the recommendation, without entering into a detailed analysis of the contents of the provision referred to by the country in connection therewith.

4.4 Participation mechanisms for follow-up of public administration

Recommendation 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.

Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the report from the Second Round:[87]

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.

[231] In its response,[88] in addition to "reiterating what it reported on this point in its earlier answers to the corresponding questionnaire," the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding measure (a) of the recommendation. In this regard, the Committee notes the following measure as a step contributing to its implementation:

[232] "(…) what it reports regarding the measures suggested in paragraphs (A) and (B) of No. 4.2 above, on citizen participation."

[233] The Committee takes note of the steps taken by the country under review to progress in its implementation of measure (a) of the recommendation and the need for it to continue to give attention thereto, bearing in mind the comments already made in this report regarding the provisions to which the State refers in connection with measure (a) of recommendation 4.2, indicating that they address very specific topics. In addition, the goals of measures (a) and (b) of recommendation 4.4 are, respectively, for public servants to allow, facilitate, or assist nongovernmental and civil society organizations in the pursuit of activities for following up on their official business, and for the design

86 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 25.
87 See pp. 55 and 56 of this report at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc
88 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 25.

and carrying out if programs to publicize mechanisms for participation in monitoring public administration, and, where appropriate, to train and enable nongovernmental and civil society organizations to have the necessary tools to use the said mechanisms.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendations suggested by the Committee that require information on their implementation or which required further attention within the framework of the report from the Second Round:[89]

Recommendation 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.

[234] In its response,[90] the country under review, in addition to "reiterating what it reported on this point in its earlier answers to the corresponding questionnaire," notes that as regards recommendation 5.1, Article 20-bis of the Code of Criminal Procedure expressly allows and regulates the procedure for the "Processing of requests for international assistance" in the investigation of crimes, and adds in a footnote that this provision establishes that:

[235] "Requests from competent authorities in foreign countries for the discharging of formalities in Chile shall be referred directly to the Public Prosecution Service, which shall request the intervention of the guarantee judge of the location where they are to be carried out, when so required by the nature of those formalities in accordance with Chilean law." Article added to the Code of Criminal Procedure by Law No. 20.074, Amending the Procedural and Criminal Codes, published in the Official Journal of November 14, 2005.

[236] In addition to the above, in connection with recommendation 5.1, the country under review presents information additional to that analyzed by the Committee in the reports from the First and Second Round, of which the Committee notes the following measure:

[237] (…) Treaty of Judicial Assistance in Criminal Matters between the Republic of Chile and the Swiss Confederation of 2006, signed in Santiago, Chile, on November 24, 2006. This instrument seeks for formalize cooperation between the two states to facilitate the investigation, prosecution, and punishment of crime. To do this it regulates mechanisms and conditions for judicial assistance on criminal matters between the two countries, including the submission of items, documents, records, case files, and evidence, and allows statements to be taken using videoconferencing. It was submitted to the National Congress on April 8, 2008. On July 3, 2008, it was passed by the Chamber of Deputies. It is currently with the Senate, at its second reading" (…).

[238] In the progress report[91] presented at the 16th meeting of the Committee, the country under review provides the following information in relation to recommendation 5.1, in addition to that

89 See pp. 56 to 58 of this report, at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc
90 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 25.
91 See p. 5 of this report, at: http://www.oas.org/juridico/spanish/inf_avance_chl.pdf

analyzed by the Committee in the reports from the First and Second Round and to that submitted in its reply:

[239] – "New provisions have arrived with the publication of the Agreement on Mutual Legal Assistance in Criminal Matters between the MERCOSUR states parties and the Republic of Bolivia and the Republic of Chile, adopted in Buenos Aires, Argentina, on February 18, 2002, promulgated by Ministry of Foreign Affairs Supreme Decree No. 78 of May 7, 2009, and published in the Official Journal on October 17 of that year."

[240] The Committee takes note of the satisfactory consideration, by the country under review, of recommendation 5.1, which, by its nature, requires a continuation of efforts with respect to its implementation.

Recommendation 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.*

[241] In its response,[92] the country under review does not present additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding recommendation 5.2. The Committee therefore reiterates the need for the country under review to pay additional attention thereto.

Recommendation 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.

[242] In its response,[93] the country under review does not present additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding recommendation 5.3. The Committee therefore reiterates the need for the country under review to pay attention thereto.

92 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 29.
93 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 29.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation suggested by the Committee that requires information on its implementation or which required further attention within the framework of the report from the Second Round:[94]

Recommendation 6:

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.

[243] In its response,[95] the country under review does not present additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding recommendation 6. The Committee therefore reiterates the need for the country under review to pay additional attention thereto.

7. GENERAL RECOMMENDATIONS

Recommendations suggested by the Committee that require information on their implementation or which required further attention within the framework of the report from the Second Round:[96]

Recommendation 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.

[244] In its response,[97] the country under review presents additional information to that analyzed by the Committee in the reports from the First and Second Rounds, regarding the implementation of recommendation 7.1. In this regard, the Committee notes, as steps which leads to the conclusion that this measure has been satisfactorily considered, the following:

[245] – "(…) Five-year Training Program on Probity and Transparency of the National Civil Service Directorate. In connection with this the comments made previously in connection with this program are restated."[98]

[246] – (…) Institutional training programs. This refers to the training activities to be carried out annually by all agencies and services of the public administration, for their employees, on the specific needs detected and defined by their respective internal committees.

[247] In the progress report[99] presented at the 16th meeting of the Committee, the country under review provides the following information in relation to recommendation 7.1, additional to that analyzed by the Committee in the reports from the First and Second Round and to that submitted in its reply:

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94 See p. 58 to 59 of this report, at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc
95 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 29.
96 See pp. 59 to 60 of this report, at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.doc
97 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 30.
98 The information provided by the country under review regarding this program can be found in the section of this Report dealing with measure (b) of recommendation 1.3.
99 See pp. 5 to 7 of this report, at: http://www.oas.org/juridico/spanish/inf_avance_chl.pdf

[248] – "National training plan of the Directorate of Public Purchasing and Contracting (ChileCompra). This involves a permanent series of actions intended to promote excellence in procurement among the various agencies and services of the public administration." The State then presents a statistical chart listing its training activities since September 2009 and up to the date of the report cited above (March 2010) and states that "in terms of training for the State's providers, during 2009 more than 135,000 such actions were carried out at the enterprise centers (CE), a 48.4% increase over the 2008 figure, chiefly due to rises of 110% in technical assistance and of 18% in PC use."

[249] The Committee takes note of the satisfactory consideration, by the country under review, of recommendation 7.1, which, by its nature, requires a continuation of efforts with respect to its implementation.

Recommendation 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.

[250] In connection with recommendation 7.2, the country under review notes in its reply[100] that "there is no legal or practical framework for the topics addressed by this section." In light of the above, the Committee notes the need for the Republic of Chile to pay additional attention to its implementation.

Recommendation 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.

[251] In connection with recommendation 7.3, the country under review notes in its reply[101] that "there is no legal or practical framework for the topics addressed by this section." In light of the above, the Committee notes the need for the Republic of Chile to pay additional attention to its implementation.

100 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 30.
101 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 30.

SECOND ROUND[102]

[252] Based on the information available to it, the Committee offers the following observations with respect to the implementation of the recommendations formulated to the Republic of Chile in the report from the Second Round:

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III, PARAGRAPH 5 OF THE CONVENTION)

1.1. Systems of Government Hiring

Recommendation 1.1.1:

Strengthen the systems of government hiring within the general system of the public administration.

Measures suggested by the Committee:

a) Review the policy for contract appointments, including the legislative amendments deemed appropriate, in order to ensure that hirings of public officials under such mechanisms are carried out according to a merit-based system, thus ensuring compliance with the principles of openness, equity, and efficiency as set out in the Convention.

b) Monitor the way in which Article 11 of the Administrative Statute is applied, as regards the fee-based hiring of professionals or technicians from higher education or experts in specific areas to perform contingent tasks that are not the customary function of the institution, in order to ensure that this system does not lead to successive renewals thereof, and that these exceptions are not used as a means to avoid merit-based public competitions.

c) Take the steps necessary to expand the obligatory use of electronic communications media, such as the internet, for publishing vacancy notices and competition rules and results.

d) Make the necessary changes so that probationary employment system is applied with uniform criteria throughout the public administration, in order to promote the principles of equity and efficiency as set out in the Convention.

e) Review the exceptions to the Senior Public Management system set out in Article 36 of Law 19.882, in order study the viability of extending its application to other government agencies and offices.[103]

f) Strengthen the National Civil Service Directorate as the system's central administrative authority, providing it with the resources necessary for proper performance of its functions and also giving it greater powers in the design of public sector staff administration policies,

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102 The references to sections appearing in italics in the transcribed recommendations and measures refer to the report from the Second Round of Review.

103 In the Report on Chile for the Second Round of Review, a footnote corresponding to this measure of recommendation 1.1.1, was included, and reads as follows: *"The Republic of Chile, in its comments on the Preliminary Draft Report, states that Transitory Article 14 of Law No. 19.882 provides that the incorporation of public services into the Senior Public Management System will take place progressively, in accordance with the following calendar: (a) during 2004, 48 public services were incorporated; and (b) between 2006 and 2010, at least 10 services should be incorporated each year, with the process concluding no later than 2010. However, the Government of Chile decided to bring that timetable forward and, consequently, in June 2007, all the services identified in Law No. 19.882 had been incorporated into the Senior Public Management System. Since this took place after the deadline for replying to the questionnaire, in accordance with the established methodology the Committee has not examined it. In the same comments document, Chile reports that on December 20, 2006, the Chamber of Deputies received a bill intended to improve the Senior Public Management System, incorporating further public services into the system. Since this legislation is not yet in force, the Committee has not examined it."*

in working with public services in their decentralized provision, as a part of the state's modernization process, and in promoting and supporting the professionalization and development of the personnel or staff units of ministries and services, with a view to creating personnel selection, admission, and evaluation policies that are coherent throughout the organization and that allow the comprehensive professionalization of public service.

[253] In its response,[104] and as regards measures (a), (b), (c),[105] and (f) of this recommendation, the country under review "reiterates what it reported on those points in its earlier answers to the corresponding questionnaire." Accordingly, because the Committee does not have any additional information to that reviewed in the report from the Second Round with respect to the issues addressed by those measures, the Committee takes note of the need for the Republic of Chile to pay additional attention to their implementation.

[254] In its response,[106] in connection with measure (e) of the foregoing recommendation, the country under review refers to the same draft legislation cited in the footnote dealing with that recommended measure included in the report from the Second Round. In light of the fact that that bill has not yet been passed into law, the Committee notes the need for the Republic of Chile to pay additional attention to this measure.

Recommendation 1.1.2:

Strengthen the system of government hiring of public officials in the legislative branch.[107]

104 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 32.

105 On August 13, 2010, the country under review offered the following remarks: "Article 7 of the Transparency Law requires that the agencies and services of the public administration publish and keep, on the Active Transparency web site, its actions that affect third parties. The Transparency Council's General Instruction No. 4, on Active Transparency, published in the Official Journal on February 3, 2010, establishes that this category includes announcements of staffing competitions. Agencies are therefore required to publish those announcements on their web pages, in that they are actions that affect third parties. The requirement is intended to ensure that such procedures receive due publicity. Unjustified noncompliance with the obligation of publicizing staffing competition announcements can be punished by the Transparency Council, under Article 47 of the Transparency Law, with a fine of between 20% and 50% of the offender's pay." This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

106 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 32.

107 On August 13, 2010, the country under review offered the following remarks: "The Organic Constitutional Law of the National Congress, Law 18.918, was amended by Law No. 20.447 of July 3, 2010." It then cites Article 2 of Law No. 18.918 and adds: "Article 66.c of the Organic Constitutional Law of the National Congress, as most recently amended, makes the General Secretaries of each chamber responsible for its legal and extra-legal representation and, in the future, for the appointment, promotion, and removal of personnel who do not enjoy the entire trust of either the chamber or the Internal Regime Committee. – Similarly, Article 8-bis of the Senate's Staff Rules states that the Senate may not appoint or contract people related to one of its officers by marriage, by blood in up to the fourth degree, or by affinity up to the second degree. It should be noted that this provision was included in the Staff Rules as a way to uphold the principles of transparency, equity, and probity in all forms of hiring into which the Senate enters." The information on Law No. 20.447 of July 3, 2010, (Article 66 C) and the provision included in the Senate Staff Rules (Article 8-bis) has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review. Article 2 of Law 18.918 was already referred to in the Second Round report.

Measures suggested by the Committee:

a) *Monitor the way in which the legislative branch applies the rules governing fee-based hiring for specific, contingent tasks that are not the customary function of the institution, in order to ensure that this system does not lead to successive renewals thereof, and that these exceptions are not used as a means to avoid merit-based public competitions.*[108]

b) *Expand the nationwide publication of vacancies arising within the Senate to ensure the participation of a greater number of candidates, using for this, in addition to the Official Journal and national newspapers, modern communications media such as the internet.*[109]

c) *Make the necessary modifications to the Statute of the Chamber of Deputies so that all vacancies that arise, including vacancies for contract personnel, are without exception filled by means of public merit-based competitions, in order to promote the principles of openness, equity, and efficiency as set out in the Convention.*

d) *Make the necessary modifications to the Statute of the Chamber of Deputies or to the relevant regulations to require the use of modern means of communication, such as the internet, to publicize the public competitions for vacancies that arise.*[110]

e) *Consider the possibility of studying the viability of introducing a system similar to that Senior Public Management System in the legislative branch.*

[255] In its response,[111] and in connection with the above recommendation, the country under review "reiterates what it reported on those points in its earlier answers to the corresponding questionnaire." Accordingly, because the Committee does not have any additional information to that reviewed in the report from the Second Round with respect to the issues addressed by those measures, the Committee takes note of the need for the Republic of Chile to pay additional attention to their implementation.

Recommendation 1.1.3:

Strengthen the system of government hiring of public officials in the judicial branch.

108 On August 13, 2010, the country under review offered the following remarks: "Regarding this comment, the Senate has made the following observation: This is not a problem with inadequate regulation, but a control matter related to compliance with the rules – that is, their actual enforcement. It should therefore be noted that the fee-based contracts entered into by the Senate cover work that meets the indicated requirements and account for a proportion, varying over time, of less than 2% of its permanent and contract staff numbers. Figures for several years can be found in DIPRES, or in the transparency section on www.senate.cl." This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

109 On August 13, 2010, the country under review offered the following remarks: "Although the Senate's Staff Rules do not require competitive processes to be published on the internet, in accordance with the principle of transparency the practice was adopted some time ago, and so all competitions are published on the web site www.senate.cl, transparency section, in addition to their publication in newspapers.". This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

110 On August 13, 2010, the country under review offered the following remarks: "The Chamber of Deputies publishes, on its web page, announcements of competitive processes and the applicable rules, in addition to their publication in newspapers.". This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

111 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 32.

Measures suggested by the Committee:

a) *Expand the publication of all vacancies arising within the judicial branch by the obligatory use of electronic means of communication, such as the internet, in order to more broadly disseminate those vacancies and obtain a larger number of applications.*

b) *Make the necessary legal revisions to approve a challenge remedy for all stages of the selection process, accessible to all candidates, including external ones, to positions arising within the judicial branch, with recourse or option to a second instance.*

c) *Make the necessary modifications so that all vacancies that arise, including vacancies for contract personnel, are covered by means of a selection procedure based on merit-based public competitions, thus ensuring observance of the principles of openness, equity and efficiency as set out in the Convention.*

[256] In its response,[112] and in connection with the above recommendation, the country under review "reiterates what it reported on those points in its earlier answers to the corresponding questionnaire." Accordingly, because the Committee does not have any additional information to that reviewed in the report from the Second Round with respect to the issues addressed by those measures, the Committee takes note of the need for the Republic of Chile to pay additional attention to their implementation.

Recommendation 1.1.4:

Strengthen the system of government hiring of public officials in the Office of the Comptroller General.

Measures suggested by the Committee:

a) *Consider amending Article 3 of Law No. 10.336, so that the entire staff of the Comptroller's Office is not made up of discretionary appointments by the Comptroller, and to study the feasibility of establishing an administrative career.*[113]

b) *Make the necessary modifications so that the minimum requirements for holding a position are not sidestepped, even in cases in which appointments are given to officials of the public administration.*

[257] In its response,[114] and in connection with the above recommendation, the country under review "reiterates what it reported on those points in its earlier answers to the corresponding questionnaire." Accordingly, because the Committee does not have any additional information to that reviewed in the report from the Second Round with respect to the issues addressed by those measures, the Committee takes note of the need for the Republic of Chile to pay additional attention to their implementation.[115]

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112 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 33.

113 In connection with this, the Republic of Chile reports in its comments document that: "Exempt resolution 01471, adopted in 2003 by the Office of the Comptroller General, sets out staff policies and provides that staff shall be recruited by means of competitive procedures. These provisions also prescribe policy on performance evaluation, promotion, rotation, and termination." This Exempt Resolution does not establish a career system. Since this information was presented after the deadline for responding to the questionnaire, and a copy was not available, its provisions were not analyzed.

114 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 34.

115 The country under review requested that a note be entered in connection with recommendation 1.1.4, regarding the strengthening of systems for hiring public officials at the Comptroller General's Office. That note reads as follows: "Chile states that the hiring system of the Comptroller General's Office meets all the provisions of the Convention, and so the

1.2. Systems for the government procurement of goods and services

Recommendation 1.2.1:

Strengthen the procedures for public tender with competitive bidding and procurement in general.

Measures suggested by the Committee:

a) *Expand its training programs for the personnel responsible for managing purchases of goods and services.*[116]

b) *Set qualification and skill requirements for those who select and assess bids, including the requirement of using updated technical criteria, metrics, or standards for purchasing, in order to continue promoting the principle of efficiency as set out in the Convention.*[117]

c) *Enact the provisions needed to ensure that the personnel who conduct assessments be different from those who draw up the terms of reference for public contracting.*

d) *Establish in the corresponding regulations specific causes for the disqualification or incompatibility of those responsible for evaluating or assessing public procurement operations.*

[258] In its response,[118] and in connection with the above recommendation, the country under review "reiterates what it reported on those points in its earlier answers to the corresponding questionnaire."

[259] In the progress report[119] presented at the 16th meeting of the Committee, in connection with recommendation 1.2.1, the country under review submits the following additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measures as steps that lead it to conclude that measure (a) of that recommendation has been satisfactorily considered:

[260] – "The Directorate of Public Purchasing and Contracting has implemented a series of training initiatives intended to strengthen the public procurement system. For this, its official web site is used

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recommendation must be deemed met as regards "studying the viability of establishing an administrative career system," since such a system exists and has been applied to its officials in full since 1989, in compliance with DL 3.651 of 1981 and the institution's jurisprudence set out in Ruling 28.614 of 1989, which requires it to do so. This has been strengthened through Resolution EX No. 01471 of 2003, which establishes its staffing policies and states that personnel selection must be carried out by means of competitive processes. In addition, recommendation 1.1.4.b as regards ensuring that "the minimum requirements for holding a position are not sidestepped" must be deemed met, in that with the enactment of DL 3651 of 1981 the positions of inspectors (who might have been exempted from those requirements) were removed from the institution's staff, and through Ruling 41.564 of 2007, which is obligatory jurisprudence for the institution itself, the Comptroller General concluded that officials of the Comptroller's Office could no longer be exempted from the position requirements, since that power expired in 1980.". On August 13, 2010, the country under review, in addition to setting out its arguments in connection with recommendation 1.1.4, similar to those indicated in the above note, cited the provisions contained therein, along with, as an example, a notice of a competitive process for filling certain professional positions, published the newspaper *El Mercurio* on February 1, 2009, along with a deed containing the results of an evaluation process for certain professional positions dated April 28, 2009. This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

116 D.S. (H) No. 20/2007, which introduced amendments to the Regulations on the Purchasing Law (contained in D.S. (H) 250/2004), came into force after the deadline for returning the questionnaire and was therefore not analyzed.

117 Ibid.

118 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 34.

119 See pp. 5 to 8 of this report, at: http://www.oas.org/juridico/spanish/inf_avance_chl.pdf

as the technological platform.[120] It thus offers a constant supply of workshops, courses, and manuals for purchasers and suppliers, support documents, audiovisual materials for auditors, lawyers, and the public market, and a training web site for individual learning.[121] In addition, seminars dealing with probity, transparency, and the modernization of the State are organized, and these are reported on the official web page.[122] From September to date, the training activities already described in section II.7 of this document have been carried out."[123]

[261] The Committee takes note of the satisfactory consideration by the country under review of measure (a) of recommendation 1.2.1, which, by its nature, requires a continuation of efforts with respect to its implementation.

[262] In the progress report[124] presented at the 16th meeting of the Committee, in connection with recommendation 1.2.1, the country under review submits the following additional information to that analyzed by the Committee in the report from the Second Round. In this regard, the Committee notes the following measures as steps that lead it to conclude that measure (b) of that recommendation has been satisfactorily considered:

[263] – "It should also be noted that on October 6, 2009, Supreme Treasury Decree No. 1763 of 2008 was published in the Official Journal, which introduces major amendments of the regulations to the Law on Public Purchasing and Contracting contained in Supreme Treasury Decree No. 250 de 2004, significantly, as regards the matter of this section, the following: The establishment of commissions to evaluate bidding processes worth in excess of 1000 UTM, comprising at least three internal or external public officials, in order to ensure impartiality and competition among bidders, and enabling the tendering agency to seek the advice of recognized experts in the technical matters to be reviewed; the composition of these commissions must be published in the information system of the Directorate of Public Purchasing and Contracting (Art. 37 Regs.); specification of evaluation criteria, factors, subfactors, weightings (Art. 38 Regs.); regulation of contacts with bidders during evaluation (Art. 39 Regs.)."

[264] The Committee takes note of the satisfactory consideration, by the country under review, of measure (b) of recommendation 1.2.1, without entering into a detailed analysis of the contents of the provisions referred to by Chile in connection therewith.

[265] In the progress report[125] presented at the 16th meeting of the Committee, in connection with recommendation 1.2.1, the country under review presents the following additional information to that analyzed by the Committee in the report from the Second Round:

[266] – "Also amended were the grounds for disqualification from registration in the Public Register of Suppliers of Goods and Services; the new rules (Art. 92 Regs.) establish the following grounds: (i) conviction for any of the bribery offenses set out in the Criminal Code; (ii) one or more tax debts

120 This footnote indicates: See: www.chilecompra.
121 This footnote indicates: See: www.chilecompra.cl/formacion.html.
122 This footnote states that: "During 2008, these included: Seminar on Transparency, Probity, and the Modernization of the State, held on April 30, 2008, in the Zofri convention center in Iquique, and the Seminar on Probity, Transparency, and Modernizing Public Procurement, organized by the Regional Ministerial Secretariat of the Treasury, the Biobío regional government, and the Supply Network *(Red de Abastecimiento)*, held on August 1, 2008."
123 These activities were already described in the section of this Report dealing with follow-up of the recommendations from the First Round, in connection with recommendation 7.1.
124 See p. 8 of this report, at: http://www.oas.org/juridico/spanish/inf_avance_chl.pdf
125 See p. 8 of this report, at: http://www.oas.org/juridico/spanish/inf_avance_chl.pdf

worth a total amount of more than 500 UTM for more than one year, or of between 200 UTM and 500 UTM for a period in excess of 2 years, in the absence of a accord for payment; (iii) social security or health debts for more than 12 months with respect to employed workers, as certified by the competent authority; (iv) submission to the National Register of Suppliers of one or more false documents, ruled as such by a final judicial judgment; (v) having been ruled bankrupt by a final judicial resolution; (vi) having been removed or suspended from the National Register of Suppliers by means of a grounded decision issued by the Directorate of Purchasing; and (vii) conviction for anti-union practices or for breaches of the basic workers' rights. In addition, the amendments embrace the principle of procedural economy, with the provision which states that "requirements of a merely formal nature shall not be made" (Art. 20 Regs.) and, in connection with the awarding of public tenders, they state that "when an award is not made within the deadline specified in the bidding documents, the agency shall record in the information system the reasons for that noncompliance and it shall set a new deadline for the awarding of the contract, and the tendering rules shall provide for such a possibility" (Art. 41 Regs.)."

[267] With respect to the foregoing, the Committee considers that the content of the provisions to which it refers does not address the aspects addressed in measures (c) and (d) of recommendation 1.2.1, bearing in mind that they provide grounds for the disqualification of state suppliers and not of "those responsible for evaluating or assessing" public procurement operations. Consequently, the Committee considers it necessary for the country under review to pay additional attention thereto.

Recommendation 1.2.2:

Strengthen control mechanisms within the government procurement system

Measure suggested by the Committee:

> - *Make the amendments necessary to introduce citizen monitoring mechanisms for contracting activities, such as citizen watchdogs, so as to continue strengthening the principles of openness, equality, and efficiency as set out in the Convention.*.

[268] In its response,[126] and in connection with the above recommendation, the country under review "reiterates what it reported on those points in its earlier answers to the corresponding questionnaire." Consequently, since it has no information in addition to that already analyzed in the Second Round report on the issues addressed by that recommendation, the Committee notes the need for the Republic of Chile to pay additional attention to its implementation.

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III, PARAGRAPH 8 OF THE CONVENTION)

Recommendation 2:

Strengthen its systems for protecting public servants and private citizens who, in good faith, report acts of corruption.

Measure 2.1 suggested by the Committee:

Adopt, through the corresponding authority, a comprehensive set of regulations for the protection of public officials and private citizens who in good faith report acts of corruption, including the

126 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 35.

protection of their identities, in accordance with the Constitution and the basic principles of its domestic legal system. [127]

a) Specific provisions on mechanisms for reporting acts of corruption, including measures to protect of those who in good faith report acts of corruption and their families.[128]

b) Attention and protection measures for those who in good faith report acts of corruption and their families, which may or may not be identified as crimes and which may be liable for investigation by judicial or administrative venues.

c) Provisions to punish noncompliance with protection rules and/or obligations.

d) Measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve his superior or co-workers.

e) Mechanisms to facilitate international cooperation in the above areas, when appropriate, including technical assistance and mutual cooperation established by the Convention, as well as the exchange of experiences, training and mutual assistance.

[269] In its response,[129] in addition to noting that as regards the above recommendation it "reiterates what it reported on those points in its earlier answers to the corresponding questionnaire," the State under review provides the following information in addition to that analyzed by the Committee in the Second Round report. In this regard, the Committee notes the following measure as a step contributing to its implementation:

[270] – "In particular, with the entry into force of Law No. 20.205, Protecting Public Employees who Report Irregularities and Breaches of the Principle of Probity, amending Law No. 18.834 (the Administrative Statute), Article 90-A was added to it. This provision grants rights to whistleblowing civil servants, including freedom from disciplinary suspension or dismissal for a period of 90 days after conclusion of the summary investigation or proceedings, as applicable. In addition, whistleblowers may not be transferred from their duty station or post, without their written authorization. Finally, they may not be subject to annual prequalification, should the person against whom the complaint is made be his hierarchical superior." – "In addition, the same guarantees are extended to municipal employees, in that the law in question also amended Law No. 18.883, the Administrative Statute of Municipal Officers."

[271] The Committee takes note of the step taken by the State under review to progress with the implementation of measure 2.1 of this recommendation and of the need for it to continue to give

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127 The Committee notes that Chile submitted information on its new Law No. 20.205 after the deadline for responding to the questionnaire had passed, since it came into force on July 24, 2007. For that reason, a detailed analysis of its provisions was not performed.

128 On August 13, 2010, the country under review offered the following remarks: "In order to undertake the criminal prosecution of crimes with a high social impact, and, at the same time, to protect victims and witnesses, the Public Prosecution Service has implemented a project aimed at providing specialized, immediate, and effective protection to those who have given or will give statements during criminal trials, ether as victims, witnesses, or experts, as well as to their family members, when facing situations of extraordinary risk as part of a complex case." It then explained this project on pages 44 and 45 of its comments document. This information has not been analyzed in this report because it was submitted after the deadline set by the Committee for the presentation of information for review (see Section I of this report, "Summary of the Information Received") but it will be taken into account for the follow-up on the implementation of the recommendations to be carried out during the next round of review.

129 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 35.

attention thereto, bearing in mind that Law No. 20.205 contains measures to protect the employment of public officials who report acts of corruption, but it does not represent a comprehensive regulation addressing all the issues indicated by the Committee in connection with that measure and also applying to private citizens who report acts of corruption.

[272] In addition, with regard to the implementation of measure (c) of the recommendation, the report of the civil society organization *Chile Transparente*, the Chilean Chapter of Transparency International, states, *inter alia*, that:[130]

[273] *"Compared to the measure suggested by the Committee and the elements indicated in sections (a) to (e) above, Law 20.205 suffers from the following shortcomings: - • The law only establishes protection for complaints lodged by public officials covered by the Administrative Statute or by the Administrative Statute for Municipal Officers. - • Neither this law nor any other current Chilean statute – not even the protection mechanisms for victims and witnesses provided for in criminal procedure, which are not applicable to the new models of whistleblowing established by Law 20.205 – protects reports of acts of corruption made by employees not subject to those statutes, belonging to other agencies of the State, or by private citizens. Thus, the vast majority of citizens have no mechanisms to encourage them to report acts of corruption (when they are not also reports of criminal offenses) and no protection against the reprisals they could face for lodging such reports. - • Claims alleging other acts of corruption not related to the performance of public functions are not covered by the protection. - • Although the law provides for protecting the identity of the whistleblowing official, it does not extend the same protection to his family. - • To protect whistleblowers, the law only establishes measures addressing job security; it provides no mechanisms to afford whistleblowers or their families special attention or assistance. - • Except as regards the confidentiality of the whistleblower's identity, the law provides no measures or sanctions for noncompliance with the provisions and/or obligations governing protection at administrative venues. - • It establishes no sanctions for those who take reprisals against whistleblowers. - • Law 20.205 introduces no measures to protect the physical integrity of whistleblowers (or their family members) in connection with their reports of irregularities or breaches of administrative probity. – Consequently, Law 20.205 does not offer truly comprehensive regulations for protecting those who report acts corruption, and we therefore hold that the Committee's recommendation on this point has been only partially implemented (...)"*

3. ACTS OF CORRUPTION (ARTICLE VI, PARAGRAPH 1 OF THE CONVENTION)

Recommendation 3.1:

Adapt and/or strengthen, as appropriate, criminal laws so as to include the elements of acts of corruption provided in Article VI(1) of the Convention.

[274] In its response,[131] and in connection with the above recommendation, the country under review "reiterates what it reported on those points in its earlier answers to the corresponding questionnaire." Accordingly, because the Committee does not have any additional information to that reviewed in the report from the Second Round with respect to the issues addressed by that recommendation, the

130 Report of the civil society organization *Chile Transparente*, the Chilean chapter of Transparency International, pp. 31 and 32.

131 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 36.

Committee takes note of the need for the Republic of Chile to pay additional attention to its implementation.

4. GENERAL RECOMMENDATIONS

Recommendation 4.1:

Design and implement, when appropriate, training programs or processes for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.

[275] In its response,[132] and in connection with the above recommendation, the country under review "reiterates what it reported on those points in its earlier answers to the corresponding questionnaire and what it reported in connection with number 7 above."

[276] Taking the foregoing into account, the Committee refers back to the comments made in the section of this Report dealing with recommendation 7.1 from the First Round and, on the basis of the training programs that the country under review identifies in connection therewith and which would also be of relevance to recommendation 4.1 from the Second Round, it believes that this recommendation has been addressed by the country under review.

[277] The Committee takes note of the satisfactory consideration, by the country under review, of recommendation 4.1, which, by its nature, requires a continuation of efforts with respect to its implementation.

Recommendation 4.2:

Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein.

[278] In its response,[133] and in connection with the above recommendation, the country under review "reiterates what it reported on those points in its earlier answers to the corresponding questionnaire and what it reported in connection with number 7 above."

[279] Bearing this in mind, the Committee refers back to its comments in the section of this Report dealing with the implementation of First Round recommendations 7.2 and 7.3 and, on the basis of the remarks made by the country under review in connection with each – that "there is no legal or practical framework for the topics addressed by this section" – which would also apply to Second Round recommendation 4.2, the Committee believes that this recommendation requires additional attention by the country under review.

132 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 36.
133 Section of the reply titled "Analysis of the Chilean legal and practical framework related to the recommendations made by the Committee of Experts in the First and Second MESICIC Rounds of Review," p. 36.

END NOTES

[i] Article 30 of Decree 824 of 1974 refers to the gross income of a person or corporation who trades in goods or pursues activities subject to this category of tax (which in general applies to income from investments or business dealings that require capital or in which capital plays a greater role than personal effort). Under Article 50 of that same Decree, the rule on deductible expenses set out in Article 31 also applies to persons whose incomes come from the pursuit of the liberal professions or from any other lucrative profession or occupation not included in the first category or in the dependent income from work.

[ii] On August 13, 2010, the country under review made the following remarks: "Law 20.406 of 2009 introduced rules allowing the tax authorities access to banking information. In this way, the Service may request the information on banking operations from given persons, including all those subject to secrecy or confidentiality, that is essential for verifying the truthfulness and completeness of tax returns, or, if applicable, the failure to present such returns. The Service may request that same information to meet the following requirements: (i) Those sent by foreign tax administrations, when provided for by an international agreement for exchanges of information signed by Chile and ratified by Congress. (ii) Those arising in exchanges of information with the competent authorities of the contracting states as provided for in the arrangements in force to avoid double taxation signed by Chile and ratified by Congress. – Requests for banking information subject to secrecy or confidentiality made by the Director shall be subject to the following procedure: (1) The Service, through its National Directorate, notifies the bank of its request for it to hand over the information within the stipulated period, which may not be less than forty-five days following the date of the notification. (2) Within five days of receiving the notification, the bank informs the account holder of the information requested, of the existence of a request from the Service, and of its scope. (3) The account holder is to respond to the bank's request within 15 days. If the account holder, in his reply, authorizes the bank to hand information over to the Service, the bank is to comply with the request within the stipulated period and with no additional formalities. – The bank proceeds in a similar fashion in those cases in which the taxpayer has given advanced authorization to provide the Service with secret or confidential information. In the absence of such authorization, the bank may not comply with the request nor may the Service demand that it be obeyed, unless the Service gives notification of a judicial resolution authorizing it as explained below. – If the banking information is not handed over, the Service may file a request for judicial authorization for access to banking information covered by secrecy or confidentiality with the corresponding Tax and Customs Court. The Tax and Customs Judge will resolve the authorization request by summoning the parties to a hearing, to be held no later than 15 days after the date notice of the hearing was given. Using the merits of the background information supplied by the parties, the judge is to resolve the authorization request at the hearing itself or within a period of five days, unless he deems it necessary to open up proceedings for the presentation of evidence for a maximum period of five days. – Appeals are admissible against the judgment handed down regarding the authorization request. – No remedies are admissible against the resolution of the Court."

[iii] The requirements indicated in section 3 of Circular No. 56 of 2008 are the following: "(a) Directly related to the business or activity pursued; (b) Expenses necessary to produce the income, taken as meaning what is needful, indispensable, or required for a given aim, in contrast to what is superfluous. Consequently, the concept of necessary expenses must be understood as those disbursements that are inevitable or obligatory for the pursuit of the business, considering not only the nature of the expense but also the amount thereof – in other words, the extent to which the expense was necessary to produce the income of the financial year, the taxable liquid income of which is being calculated; (c) Not already reflected as an integral part of the direct cost of the goods and services needed to obtain the income; (d) Expenses actually incurred by the taxpayer, whether at the end of the financial year they have been paid or are owed. Thus, to duly comply with this requirement, the expense must originate in a real and effective purchase or provision, and not in a mere appreciation by the taxpayer; and (e) Finally, faithfully accredited and justified to the Internal Tax Service: in other words, the taxpayer must prove the nature, need, effectiveness, and amount of his expenditure with the evidence available to him, and the Service may challenge them, if it has grounds for believing them to be untruthful."

[iv]. Decree 3 of 1997, Article 157, provides as follows: "Directors and managers of an institution subject to

the Superintendency's oversight who knowingly make false declarations regarding the ownership or composition of the company's capital, or who approve or present an altered or false balance statement, or who conceal the situation thereof, particularly as regards amounts paid to directors or employees, shall receive a penalty of minor-level imprisonment in its medium to maximum degrees and a fine of between one thousand and ten thousand tributary units. – Should the institution be declared bankrupt, the individuals who performed such actions shall be deemed guilty of fraudulent bankruptcy."

[v]. Decree 3 of 1997, Article 158, provides as follows: "Founding shareholders, directors, managers, officers, employees, or external auditors of an institution subject to the Superintendency's oversight who alter or mutilate figures or information in balance sheets, books, statements, accounts, correspondence, or any other document, or who conceal or destroy such items, with the aim of diverting or avoiding the oversight that the Superintendency is to exercise in accordance with the law, shall receive a penalty of minor-level imprisonment in its medium to maximum degrees. – The same penalty shall apply if, with the same goal, they provide, sign, or present such altered or mutilated records. This provision does not preclude the enforcement of the terms of Articles 14 to 17 of the Criminal Code."

[vi]. Decree 3 of 1997, Article 159, provides as follows: "Should a financial institution fail to include in its accounts an operation of any kind that affects the company's capital or responsibility, its general manager or the person serving as such shall be punishable by minor-level imprisonment in its medium to maximum degrees."

[vii]. Article 4 of Law No. 20.393 of 2009 reads as follows: "Crime prevention model. For the purposes of section three of the above article, bodies corporate may adopt the prevention model referred to therein, which is to contain, at the least, the following elements: (1) Appointment of a prevention officer. (a) The corporate body's top administrative authority, be it a board of directors, a managing partner, a manager, a chief executive, an administrator, a liquidator, its representatives, owners, or partners, as applicable according to the administrative structure of the entity in question, hereinafter "the administration of the corporate body," shall appoint a prevention officer, who shall remain in that position for a period of up to three years, with that mandate liable to extensions of equal length. (b) The prevention officer shall have autonomy vis-à-vis the administration of the corporate entity, its owners, its partners, its shareholders, or its managers. He may, however, perform comptrollership or internal auditing functions. In corporate entities whose annual income does not exceed one hundred thousand development units, the owner, partner, or controlling shareholder may personally assume the duties of the prevention officer. (2) Definition of means and powers of the prevention officer. The administration of the corporate entity shall provide the prevention officer with adequate means and powers to discharge his functions, among which the following, at the least, shall be considered: (a) The material means and resources needed for the appropriate performance of his functions, in consideration of the size and economic capacity of the corporate entity. (b) Direct access to the administration of the corporate entity to report, on a timely basis and through appropriate channels, of the measures and plans implemented in pursuit of his mandate and to give account of his functions, reporting at least every six months. (3) Establishment of a crime prevention system. The prevention officer, in conjunction with the administration of the corporate entity, shall establish a system to prevent crimes in that entity, considering, at least, the following: (a) The identification of those of the entity's activities or processes, be they habitual or sporadic, in which the risk of committing the offenses identified in Article 1 arises or is heightened. (b) The establishment of specific protocols, rules, and procedures which will allow the individuals involved in the activities or processes indicated in the previous paragraph to plan and carry out their tasks and duties in a way that prevents the commission of those offenses. (c) The identification of procedures for managing and auditing financial resources that will enable the entity to prevent their use in the aforesaid offenses. (d) The existence of internal administrative sanctions and of procedures for reporting or pursuing monetary liability against individuals who fail to abide by the crime prevention system. – Those obligations, bans, and internal sanctions must be indicated in the regulations enacted for the purpose by the corporate entity, and notice of them must be given to all its workers. These internal regulations must be explicitly included in the labor and service contracts of all workers, employees, and service providers of the corporate entity, including its most senior executives. (4) Supervision and certification of the crime prevention system. (a) The prevention officer, in conjunction with the

administration of the corporate entity, shall establish methods for the effective enforcement of the crime prevention model and its oversight in order to detect and correct shortcomings and to keep it updated in accordance with changing circumstances within the entity. (b) Corporate entities may obtain the certification of their adoption and implementation of crime prevention models. Such certificates will indicate that the model in question covers all the requirements indicated in sections (1), (2), and (3) above pursuant to the situation, size, business, income level, and complexity of the corporate entity. – These certificates may be issued by external auditing companies, risk classification companies, or other bodies registered with the Superintendency of Securities and Insurance that can perform such tasks in accordance with the regulations issued for the purpose by that oversight agency. (c) Individuals participating in the certification activities carried out by the entities described in the previous paragraph shall be understood to be performing a public function under Article 260 of the Criminal Code."

[viii]. Article 13 of Law 20393, "Accessory Penalties," provides as follows: In addition to the sanctions provided for in the previous articles, the following accessory penalties shall apply: (1) Publication of an extract from the judgment. The court shall order the publication of an extract from the resolution of the conviction in the Official Journal or in another national daily newspaper. The sanctioned corporate entity shall meet the costs of its publication. (2) Confiscation. The proceeds of the crime and other assets, effects, objects, documents, and instruments thereof shall be confiscated. (3) In cases in which the crime committed entails the investment of funds in excess of the income generated by the corporate entity, the surrender to the nation of an amount equal to the investment made shall be imposed as an accessory penalty."