

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 December 7, 2007 plenary session)

**COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM FOR 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 SECOND ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN THE FIRST ROUND¹**

INTRODUCTION

1. Contents of the Report

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 Second Round: Article III, paragraphs 5 and 8, and Article VI.

Second, the Report will examine follow-up to the recommendations that were formulated to the Republic of Chile by the MESICIC Committee of Experts in the First Round, which are contained in the Report on that country adopted by the Committee at its Fifth meeting, and published at the following web page: http://www.oas.org/juridico/english/mec_rep_chi.pdf

2. Ratification of the Convention and adherence to the Mechanism

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

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

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Chile, and in particular from the Special Policy Directorate of the Ministry of Foreign Affairs, 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.

For its review, the Committee took into account the information provided by the Republic of Chile up to May 25, 2007, and that requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on December 7, 2007, at its Twelfth meeting, held at OAS Headquarters, December 3-7, 2007.

2. Documents by civil society

The Committee also received, within the deadline established in the Calendar for the Second Round adopted at its Ninth meeting,² a document from *Chile Transparente* (the Chilean chapter of Transparency International), which was sent to it by that organization.³

II. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

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

SYSTEMS OF GOVERNMENT HIRING

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

The Republic of Chile has a set of provisions related to the systems of government hiring, among which the following provisions related to the principal systems should be noted:

- Constitutional provisions applicable to all public servants, among which the following should be noted:
 - Article 19, section 17, of the Constitution of the Republic of Chile (CRC) ensures all persons admission to all the public employment and functions, subject to no other requirements than those set by the Constitution and by law.
 - Article 32 of the CRC, paragraph 10 of which states, *inter alia*, that the President of the Republic shall appoint and remove those public officials that the law identifies as serving at his exclusive pleasure and shall fill other civil service positions in accordance with the law.
 - Article 38 of the CRC, the first paragraph of which states that a constitutional Organic Law shall determine the basic organization of the public administration, shall guarantee the civil service career and the technical and professional principles on which it is based, and shall ensure equal opportunities of entry and the training and betterment of its members.
- Statutory and other legal provisions applicable to a majority of public servants, among which the following should be noted:
 - The Constitutional Organic Law on the General Bases of the Administration of the State, No. 18,575, Article 15 of which states that personnel of the state administration are to be governed by the statutory provisions established by law, which will regulate admission, rights and duties, administrative responsibility, and the termination of functions.

Article 10 provides that administrative actions shall be challenged through the remedies established by law, and that a review remedy may always be filed with the same body that issued the corresponding decision, as may, when applicable, a hierarchical remedy be filed with the corresponding superior, notwithstanding the jurisdictional remedies available.

² This meeting was held from March 27 to 31, 2006, at OAS headquarters in Washington DC, United States.

³ Those documents were received through the post and via e-mail on May 25, 2007.

Article 21 states that the basic organization and operation of ministries, intendancies, governors' offices, and public services created to perform administrative functions shall be as set out in Title II, and that those provisions shall not apply to the Office of the Comptroller General of the Republic, the Central Bank, the Armed Forces, the Police and Public Security Forces, Regional Governments, municipalities, the National Television Council, and public companies created by law, which shall instead be governed by the applicable constitutional provisions and by the corresponding organic constitutional laws or qualified quorum laws, as applicable.

Paragraph 2 of Title II, "Of the civil service career," Articles 43 to 51 of which establish a set of rules and principles that govern access to public employment, most notably:

Article 43 states that the Personnel Administrative Statute shall regulate the civil service career, including admission, rights and duties, administrative responsibility, and dismissal of employees from the agencies identified in Article 21, and that when circumstances so require, special statutes may be introduced for specific professions or activities.

Article 44 states that entry to a permanent post shall be made by public competition and that the candidates shall be selected by means of technical, impartial, and appropriate procedures to ensure an objective assessment of their skills and merits.

Article 49 states that notwithstanding the provisions of sections 9 and 10 of Article 32 of the Constitution,⁴ the law may grant specific positions the status of posts that serve at the exclusive pleasure of the President of the Republic or of the authority empowered to make the appointment and it defines employees that serve at exclusive pleasure as those who are subject to the free appointment or removal of the President of the Republic or of the authority empowered to make the appointment. The same article sets various parameters related to the hierarchy of those positions that may be identified as posts that serve at exclusive pleasure.⁵

Article 51 requires the State to constantly monitor the civil service career and compliance with the technical and professional principles set forth in law, and to ensure equal opportunities for admission and the training and betterment of its members.

Articles 54 to 56 define administrative disqualifications and incompatibilities, including cases of conflicts of interest, blood relationships, and persons convicted of felonies or crimes.

- The Administrative Statute, contained in Law No. 18.834, Article 1 of which states that relations between the State and the personnel of Ministries, Intendancies, Governors' offices, and centralized

⁴ Article 32, paragraph 9, of the Constitution empowers the President of the Republic to appoint the Comptroller General of the Republic with the assent of the Senate. Paragraph 10, which deals with positions of trust, appears verbatim in the section above dealing with constitutional provisions.

⁵ Article 49 of Law 18.575 provides that: "Notwithstanding the provisions of sections 9 and 10 of Article 51 and of Article 32 of the Constitution of the Republic, the law may grant specific positions the status of posts belonging to the exclusive trust of the President of the Republic or of the authority empowered to make the appointment. However, the law may only grant such status to positions in the three highest hierarchical levels of the corresponding body or service. One of these hierarchical levels shall be, within ministries, that of the Regional Ministerial Secretaries and, within public services, that of sub-directors and regional directors. Should the agency or service in question not have such positions, the law may grant exclusive trust status only to those positions in the two highest hierarchical levels. For this purpose, the positions referred to by the constitutional provisions cited in the previous section shall not be considered. Additionally, the law may also grant exclusive trust status to all staff members of the office of the President of the Republic. Exclusive trust officers shall be those subject to the free appointment and removal of the President of the Republic or of the authority empowered to make appointments."

and decentralized public services created to perform an administrative function are to be regulated by the provisions of that Statute, with the exceptions identified in the second section of Article 21 of Law No. 18.575.⁶

Article 3 defines terms such as public position, personnel staff, contract employment, salary, payment, and civil service career. Of these, the following are worthy of particular note:

- Public position: One provided for in staffs or as a contract employment in the agencies listed in Article 1, by means of which an administrative function is performed (paragraph a).
- Personnel staff: The set of permanent positions assigned by law to each institution, to be set up in accordance with Article 5 (paragraph b).
- Contract employment: Employment of a temporary nature within the personnel of an institution (paragraph c).
- Civil service career: A comprehensive system for regulating public employment, applicable to holders of staff positions, based on hierarchical, professional, and technical principles, which guarantees equality of opportunities for entry, the dignity of public office, training and promotion, job stability, and objectivity in assessments based on merit and seniority (paragraph f).

Article 5 provides that for the purposes of the civil service career, each institution may only have personnel staffs comprising directors, professionals, technicians, administrators, and auxiliaries.

Article 6 states that the civil service career begins with the admission of the permanent holder of a staff position and extends up to those positions immediately below those that serve at exclusive pleasure in the hierarchy.

Article 8 states that the positions of department heads and their hierarchical equivalents within ministries and public services shall be career posts. It also establishes special rules for filling those positions, which are to be submitted to competitive processes.

Article 10 states that contract employment positions shall expire no later than December 31 of each year and may be extended provided that the request for extension was made with at least 30 days' notice. The same article also rules that the number of contract employment officers within an institution may not exceed 20 percent of its total number of personnel staff positions. It also sets the conditions for the workdays of such jobs, along with the corresponding grades on the scale set by the Remunerations Law.

Article 11 states that higher-education professionals and technicians or experts in various fields may be hired on a fee basis to perform contingent tasks that are not the customary function of institution, by means of a resolution adopted by the corresponding authority, and it sets the conditions for the hiring of foreign citizens and the provision of specific services by means of the same mechanism.

⁶ The exceptions contained in Article 21 of Law No. 18.575 are the following: the Office of the Comptroller General of the Republic, the Central Bank, the armed forces, the police and security forces, regional governments, municipalities, the National Television Council, and public companies created by law; these shall instead be governed by the applicable constitutional provisions and by the corresponding organic constitutional laws or qualified quorum laws, as applicable.

The article also states that persons hired on a fee basis shall abide by the rules established in the corresponding contracts and that the provisions of the Statute shall not apply to them.

Article 12 establishes the requirement for entry to the State Administration, including compliance with the Recruitment and Mobilization Law, when applicable.⁷

Article 14 states that positions are to be filled by appointments or promotions, and that when promotions in career positions cannot be applied, the rules on appointments shall apply. The article also states that when new career positions are created, new staffing structures including them are set up, or restructurings or functions giving rise to new positions of that kind take place, the first appointments shall invariably be made by public competition.

Paragraph 1 of Title II of the Statute, Articles 17 to 24 of which establish the bases for entry to the civil service career, which are set out in greater detail in the Regulations on Administrative Statute Competitions (DTO-69), dealt with below.

Article 20 of the Administrative Statute provides that the authority responsible for making the appointment is to publish an announcement with the competition rules in the Official Journal, on the 1st or 15th days of each month, or the next working day should those days be holidays, irrespective of any other dissemination methods it may deem appropriate to adopt. The article also says that the delay between the publication in the Official Journal and the date for the submission of applications may not be shorter than eight days and that the announcement must contain, at the least, the name of the requesting institution, the characteristics of the position, the job requirements, details of the qualifications needed, the date and place for the reception of applications, the dates and venues of the competitive examinations that are to be held, if any, and the day on which the results of the competition are to be announced.

Article 21 states that competitions shall be prepared and conducted by a selection committee and it indicates how that committee is to be set up, requirements for membership and reasons for disqualification, the role of the Committee in the process, those cases in which the competition may be ruled either partially or wholly void, and the duration of the eligibility of those eligible candidates whom it selects as suitable for filling future recruitment needs in the corresponding agency.

Article 25 creates a system of probationary employment as part of the selection process for the admission of career staff, application of which is at the discretion of the head of the service in question, and the article also sets ground rules for the system.

⁷ Article 12 of the Administrative Statute provides as follows: "To enter the State Administration, the following requirements must be met:

- (a) Chilean citizenship. However, in exceptional cases identified by the authority responsible for the appointment, contract employment positions may be given to foreign citizens with scientific or other special knowledge. The corresponding decrees or resolutions issued by the authority shall be duly grounded, clearly specifying the specialty required for employment and requiring the submission of the candidate's certificate or degree. In any event, all other things being equal, preference shall be given to Chilean citizens.
- (b) Compliance with the Recruitment and Mobilization Law, when applicable.
- (c) Health compatible with performance of the position's duties.
- (d) Completion of basic education and possession of the educational level or technical or professional qualification required by law for the nature of the position in question.
- (e) Nondismissal from a public position as a result of deficient assessment or disciplinary measure, unless at least five years have passed since the date of termination.
- (f) No disqualification from holding public positions or office, and no conviction for felonies or crimes."

Article 60 states that a set of regulations is to contain additional provisions intended to ensure the objectivity, transparency, nondiscrimination, and technical and operational quality of the competitions for admission, promotion, and any other purpose for which they are held.

Article 160 enshrines the right of appeal to the office of the Comptroller General of the Republic enjoyed by candidates in a public competition for entry to a position in the State Administration in which breaches of legality occur.

- Decree No. 69, which creates the Regulations on Administrative Statute Competitions (DTO-69), governing competitions held by ministries and services subject to Law No. 18,834, the Administrative Statute Law.

- Law No. 19,882, "Law on the New Labor Treatment Governing Public Employee Personnel Policies," Title III, Article 26, of which creates the National Civil Service Directorate and establishes its Organic Law.

Title VI, Paragraph 1 (Articles 35 to 40), sets the general standards and bases for a system of Senior Public Management, to apply to those officers who serve at the exclusive pleasure of the competent authority and who hold senior managerial positions in agencies or public services or their organizational units and whose functions are predominantly the execution of public policies and the direct provision of services to the community, which are to be called "senior management positions." Similarly, Article 36 states that the Senior Public Management system is to apply in public services governed by Title II of Law No. 18,575, and it establishes the exceptions that exist thereto.⁸

Paragraph 2 of Title VI (Articles 41 to 47) creates the Senior Public Management Council within the structure of the National Civil Service Directorate, defines its membership, and identifies its functions, which include:

- Conducting and regulating candidate selection processes for the system's senior service managers.
- Participating on the Selection Committee for second-level managers.
- Hearing claims lodged by participants in selection processes for the Senior Public Management system.

Paragraph 3 of Title IV (Articles 48 to 56) establishes the bases for the selection of senior public managers, most notably the provisions of Articles 48 and 56, to wit:

⁸ The exceptions identified in Article 36 of Law 19,882 are the following: Subsecretariats, Office of the President of the Republic, Electoral Service, State Defense Council, Chilean Mint, Directorate of Public Security and Information, General Directorate of International Economic Relations, Foreign Investments Committee, Production Development Corporation, Superintendency of Securities and Insurance, Superintendency of Banks and Financial Institutions, Internal Tax Service, Budget Directorate, Gendarmerie of Chile, National Minors' Service, General Directorate of Public Works, Planning Directorate of the Ministry of Public Works, Office of Agrarian Studies and Policies, Social Security Superintendency, Labor Directorate, National Health Fund, National Energy Commission, National Sports Institute of Chile, National Women's Service, National Youth Institute, National Indigenous Development Corporation, National Senior Citizens' Service, National Environment Commission, National Civil Service Directorate, National Council for Culture and the Arts and state institutions of higher education.

Article 48 states that to fill these vacancies, the Senior Public Management Council, through the National Civil Service Directorate, will organize a public selection process, widely publicized by means of notices published in national newspapers, in electronic media through official web sites or others established for the purpose, and in the Official Journal. These notices will provide adequate information about, *inter alia*, the position's functions, the professional profile, the skills and qualifications needed, the pay-scale level, the deadline for applications, and the way in which qualifications are to be evidenced. This article also prohibits all forms of discrimination constituting exclusions or preferences based on grounds other than merit, qualifications, competence, and skills required for the performance of the position in question and it adds that all candidates shall participate in the selection process in accordance with uniform procedures and under equal conditions.

Article 56 establishes the right of candidates to lodge appeals, once a selection process has ended, with the Council when they believe it suffered from defects or irregularities that could affect their equal participation in it pursuant to the terms of this Law, and it sets deadlines and conditions for such appeals. The article also states that only once such claims have been resolved may candidates appeal to the Office of the Comptroller General of the Republic, in compliance with Article 154 of Law No. 18.834.

- Statutory and other legal provisions applicable to all public servants in the legislative branch, among which the following should be noted:

- The Constitutional Organic Law of the National Congress, Law 18.918, Article 2 of which establishes, *inter alia*, that provisions governing appointments, promotions, duties, rights, responsibilities, dismissals, and, in general, all statutory rules related to the staff of the Senate and the Chamber of Deputies, including the requirements for serving in such positions, shall be set out in a set of internal regulations for each legislative chamber, proposed by the Interior Regime Committees of the Senate and of the Chamber of Deputies, respectively, and approved in the manner established by each chamber for the passage of draft legislation. The article adds that for the National Congress Library and the shared services, the regulations shall be adopted in accordance with the procedures set for the passage of draft legislation, based on a proposal made by the Library Commission or the Bicameral Commission, as appropriate, and that all these regulations shall require that entry to the service shall be invariably on the basis of a public competition. It also states that any matter not specifically addressed in these internal regulations shall be additionally governed by the rules applicable to personnel of the public administration, and it sets staffing numbers for the personnel of the Senate and the Chamber of Deputies.

Article 4 states that both chambers shall have sole authority for issuing their own regulations for governing their internal organization and functions.

- The Regulations of the Senate, Article 218 of which provides that the Senate shall have the staff and contract personnel necessary to perform its functions; that employees shall be appointed following the testing of their efficiency in public competitions; that in certain cases fee-billed services may be contracted; that the Senate's staff numbers and income shall be set by law; that Senate staff shall be appointed or contracted by the Internal Regime Commission, from proposals made by the Secretary; that promotions of staff employees shall also be ordered by that Commission, also on proposals made by the Secretary; that staff members in the three highest levels of the hierarchy shall have the status of positions that serve at the exclusive pleasure of the Senate; that the staff regulations will set the requirements to be met for entry to Senate employment and for

the occupation of the various posts, will regulate the procedure for making appointments, and will create a promotion system; and that the dismissal of Senate personnel shall be governed by the labor rules applicable to public administration personnel, which provisions shall also apply on an additional basis in all other matters.

- The Senate Staff Regulations, which sets the requirements for entry to the Senate and for holding the various positions, regulates the procedure for making appointments, and establishes a promotion system.

Article 2 states that Senate employees may belong to the service staff or work on a contract basis.

Article 5 provides that entry to posts service either as staff or on a contract basis shall invariably be by means of public competition, in accordance with the procedure set in Article 14.

Article 8 stipulates that the Secretary of the Senate, following the agreement of the Internal Regime Commission, may enter into fee-based service contracts for the performance of specific functions, and that persons so contracted shall for no legal purpose have the legal status of a service employee or officer and shall be governed by the terms of their corresponding contracts.

Article 14 states that competitions shall consist of a technical, objective procedure used for personnel selection, and that the results shall be placed before the Senior Head of the Service, who will adopt a resolution in accordance with the Internal Regime Commission. Competitions shall assess the background information submitted by candidates and any tests taken, if so required, in accordance with the characteristics of the vacancy that is to be filled. All competitions must consider, at the least, the following factors: studies or training courses, work experience, and specific skills for the performance of the function. The Service will previously identify those factors, establish their weighting, and set the minimum score to be considered a suitable candidate.

Article 15 states that the Service is to publish a notice with the competition rules in Official Journal and, in addition, when so decided by the Internal Regime Commission, shall also publish it in national newspapers.

- The Regulations of the Chamber of Deputies, Article 219 of which creates the Internal Regime, Administration, and Regulations Commission and defines its powers.⁹

Article 314 states that the Chamber of Deputies shall have the personnel numbers set for its staff and that the Internal Regime, Administration, and Regulations Commission, using the powers granted to it by Article 219, shall make the corresponding staff appointments and shall authorize

⁹ Article 219 gives the following powers to the Internal Regime, Administration, and Regulations Commission: "1. Report on draft Chamber Regulations or on proposed amendments thereto. 2. Establish measures for the optimal functioning of the Chamber in terms of its staff, contract, or fee-based personnel, and oversee their performance. 3. Make appointments – staff, contract, and fee-based – from proposals made by the Secretary. 4. Apply applicable disciplinary measures. 5. Take the steps necessary for the optimal administration of the building and its associated offices. 6. Approve the preliminary draft of the Chamber's budget. 7. Propose to the plenary the membership of the Accounts Review Commission. 8. Propose to the plenary the nature and amount of parliamentary allocations, as agreed on with an absolute majority of the members present. For this, the Commission shall send each deputy, with at least 30 days' notice, the report containing its proposal. 9. Approve official travel both within the country and abroad, and agree on funds or amounts, in accordance with a set of regulations that will be adopted by the plenary, of which the deputies must give due account, and the staff members who are to be sent away on service. 10. The powers given to it by the Constitutional Organic Law of the National Congress, the law, and these regulations. 11. In general, take all appropriate steps for the optimal and adequate functioning of the Chamber."

contracts for the necessary periods of time and conditions, following proposals made by the Secretary, for the optimal functioning of the Chamber.

Article 315 provides that staff personnel selection shall be made by means of a public competition, in accordance with the rules enshrined in the Regulations.

Article 316 states that the Secretary, Deputy Secretary, and Head Commissions Secretary shall be appointed and removed by the Chamber, by means of a secret ballot and an absolute majority of the members present, and that all other employees shall be appointed and removed in the fashion proscribed by law.

- The Personnel Statute of the Chamber of Deputies, Article 6 of which defines the forms of employment of the Chamber's personnel: staff, contract personnel, and fee-based. The same article establishes staff employees are those who permanently hold a staff position; contract employees are those whose positions correspond to inherent but temporary functions in the service of the Chamber, which functions are to expire on December 31 of each year, liable for an extension of one additional year, and the number of which may not exceed 40% of the total number of staff positions; and that those contracted on a fee basis are professionals or technicians from higher education or in specific areas, hired to perform contingent tasks that are not the customary function of the Chamber or to perform specific tasks, governed not by the Statute but by the terms of their corresponding contracts.

Article 7 states that the positions of Secretary, Deputy Secretary, and Lawyer Secretary Head of Commissions are posts that serve at the exclusive pleasure of the Chamber. Officials holding those positions shall be appointed and removed by the Chamber, by secret ballot and by an absolute majority of the serving deputies. It also states that the position of Finance Director is a post that serves at the exclusive pleasure of the Internal Regime, Administration, and Regulations Commission, and that the official holding that position shall be appointed and removed, at the proposal of the Secretary, by an absolute majority of all the members of that Commission. Other officers shall be appointed, promoted, and removed by the Regime Commission, at the proposal of the Secretary, in the fashion established by the Statute.

Article 24 states that public competitions shall involve an objective, technical procedure, used to select the candidates that the Secretary is to propose to the Regime Commission for appointments, following assessment of the background details they provide and the tests they undergo in accordance with the nature of the position to be filled. It adds that such competitions shall be announced by the Secretary by notices published in the Official Journal and in a national daily newspaper on the 1st or 15th of each month (or the first working day afterwards should those days be holidays), at least 15 days in advance thereof, and any other methods of dissemination deemed appropriate. This article also identifies the minimum information to be contained by such announcements, and that all persons meeting the general and specific requirements shall be eligible to compete.

Article 25 states that devising the rules and conducting competitions shall be the task of a Commission appointed by the Secretary and comprising five staff officers, one of whom shall be the head of the area where the vacancy is located. The Personnel Chief shall act as its secretary, without

voting rights. The article also describes how competitions are to be conducted, the grounds for disqualification, and the situations in which a competition is to be declared void.¹⁰

Article 26 provides: that the Regime Commission shall select one of the candidates put forward by the Secretary, in a resolution indicated the position and the date on which duty in that post is to begin; that the Secretary shall notify the candidate of the appointment by certified mail, and the candidate shall indicate his/her acceptance thereof before the deadline indicated; and that should the candidate fail to do so, the Regime Commission shall appoint another of the proposed candidates. Once the acceptance has been made, the Secretary shall issue a resolution assigning the appointee interim status for a period of six months, at the end of which, subject to a favorable report by the Secretary, the Regime Commission will ratify the appointment. Should the Secretary issue a negative report, another of the candidates referred to in the final section of Article 25 may be appointed on an interim basis, subject to the terms of the preceding paragraphs, or the competition may be declared void. Once the appointment has been ratified by the Regime Commission, the Secretary shall issue the corresponding resolution for registration at the office of the Comptroller General of the Republic and at the relevant services of the Chamber.

- The Personnel Statute of the Library of the National Congress, Article 1 of which states: "*The staff of the Library of Congress shall be governed by the provisions of this Statute and, additionally, by the applicable provisions of the public administration.*" This Statute provides for career officials, contract employees, and fee-based hiring, and its provisions are very similar to those of the Administrative Statute set out in Law No. 18.834.

- Statutory and other legal provisions applicable to public servants of the judicial branch, among which the following should be noted:

- Decree Law 3346, containing the text of the Organic Law of the Ministry of Justice, Article 2 of which states that the Ministry of Justice shall be responsible, *inter alia*, for advising the President of the Republic in the appointment of judges, officers of the administration of justice, and other employees of the judiciary, and in his/her special authority for overseeing the professional conduct of judges.

¹⁰ Article 25 provides that: "Devising the rules and conducting competitions shall be the task of a Commission appointed by the Secretary and comprising five staff officers, one of whom shall be the head of the area where the vacancy is located. The Personnel Chief shall act as its secretary, without voting rights.

"The rules shall include, at the least: personal background; relevant tests and examinations; studies, and training, refresher, and further education courses; work experience and specific skills for the job, indicating the way in which these will be proved and assessed. The evaluation of these factors and the minimum score to be considered a suitable candidate shall be determined previously.

"The competition rules shall give preference to those officers already serving in the Chamber. The Competition Commission, when so required by the characteristics of the post to be filled, may hire external advisory services to assist in preparing the competition or in applying specific tests. Those agencies shall be registered in a file kept by the Personnel Chief, and the selection thereof shall be by means of a bidding process.

"Employees included on the conditional list or who have been sanctioned with a disciplinary measure not addressed at their most recent performance assessment or imposed subsequent thereto may not participate in public competitions. Candidates must present the knowledge tests and technical examinations deemed necessary and appropriate by the Commission, in accordance with the rules set by this statute. The Commission will communicate the result of the competition to the Secretary, who may only declare it totally or partially void on account of an absence of suitable candidates, a circumstance deemed to exist totally when no candidate attains the minimum score defined in the rules and partially when the number of candidates achieving that score is lower than the number of vacancies to be filled.

"The Secretary shall submit to the Regime Commission a shortlist with the names of three candidates with the best scores, ranked in descending order. If there is more than one position of the same nature, the proposal may include up to two additional candidates over and above the total number of posts to be filled."

- The Organic Courts Code, Article 506 of which creates the Administrative Corporation of the Judiciary, responsible for the administration of human resources and the provision of the judiciary's services.

Paragraph 1 of Title X (Articles 244 to 247), establishing the statuses with which judges may be appointed – full, interim, or deputies – and setting the conditions for those.

Paragraph 2 of Title X (Articles 248 to 261) sets out the requirements, disqualifications, and incompatibilities for service as the various types of judicial official: judges, justices, prosecutors, etc. The reasons for disqualifications include blood relationships and conflicts of interest.

Paragraph 3 of Title X (Articles 262 to 266) deals with appointments and hierarchy of officers of the judiciary. The Hierarchy of the judiciary is a general list of its members by seniority, comprising two branches: the Primary Hierarchy, which is divided into categories, and the Secondary Hierarchy, which is divided into series and categories. There is also a special hierarchy for subordinate personnel or employees' hierarchy. The hierarchies are prepared annually by the Supreme Court and are published in the Official Journal during the first 15 days of March; they are used to meet the requirements of appointments of judicial officers, of promotions to a higher category (years of service), and of preference (based on seniority) in the drawing up of shortlists of three or five names for appointments to positions of a higher category. This paragraph also sets the bases for judicial appointments and personnel competitions.

Article 279 governs full appointments to a vacancy in the Primary Hierarchy, including the competitive process, deadlines, conditions, and notification, to be made via telex, fax, or cable to all the country's appeal courts, which are then to notify all the courts within their jurisdiction by means of appropriate channels. Failure to issue such communication shall not invalidate the competition, irrespective of the responsibility of the secretary. In addition, the secretary shall insert a notice publicizing the opening of the competition in the Official Journal. Interested parties meeting the requirements set by law for the position shall submit their résumés and other personal background information.¹¹

Article 294 provides that appointments shall be made from a proposed shortlist of three names that,

¹¹ Article 279 provides that: "To conduct a full appointment to a vacant position in the Primary Hierarchy, the court in question shall announce a competition for a period of ten days, extendable for a further similar period should the number of candidates registered be insufficient to make up the lists to be submitted to the President of the Republic, for the purposes indicated in Article 263. This shall not apply to appointments to the positions of Supreme Court justices or judicial prosecutors, which shall proceed without a prior competition.

"The court secretary or administrator of the court holding the competition shall serve notice of its commencement by telex, fax, or cable to all the country's appeal courts, which are then to notify all the courts within their jurisdiction through appropriate channels. Failure to issue such communication shall not invalidate the competition, irrespective of the responsibility of the secretary. In addition, the secretary shall insert a notice publicizing the opening of the competition in the Official Journal. The period of time indicated in the first paragraph shall commence on the date of the notice's publication date.

"Interested parties meeting the requirements set by law for the position shall submit their résumés and other personal background information.

"The selection of persons to appear on the proposals or shortlists for the deputy or interim holding of a position on the Primary Hierarchy shall be restricted to those officials employed within the jurisdictional territory of the relevant court. Only in the absence thereof shall a free choice be available from among other officials meeting the required conditions.

"However, proposals or shortlists for interim or deputy appointments as rapporteurs or secretaries of the Court of Appeals may include, in the absence of officials meeting the general requirements set for those functions, others from the fifth and sixth categories, irrespective of the jurisdictional territory to which they belong and the length of their service within that category."

following the holding of a public competition, is drawn up by the court where employment is to take place. The three-name shortlist shall be drawn up in consideration of the personal background and professional and technical qualification of the candidates and, in addition, one or more tests shall be conducted to objectively identify the skills and knowledge of non-career candidates. This task may be assigned to the Judicial Academy or to the Administrative Corporation of the Judiciary. All other situations shall be governed by the rules set out in Article 279 of the Organic Courts Code.

Article 295 establishes the requirements for candidacies to the Employees' Hierarchy: a) Chilean nationality; b) compliance with the Recruitment and Mobilization Law, when applicable; c) health compatible with performance of the position's duties; d) completion of secondary education or equivalent; e) no previous dismissal from a public position in the judiciary or in the state administration as a result of a deficient performance or disciplinary measure; f) no disqualification from holding public positions or office, and no convictions for felonies or crimes.

Title XVI of the Organic Courts Code regulates the Administrative Corporation of the Judiciary and is of particular interest given the legal definition contained in Article 506: "*The administration of the human, financial, technological, and material resources allocated for the operations of the Supreme Court, Appeals Courts, Magistrates' Courts, Juvenile Courts, and Labor Tribunals shall be the task of the Supreme Court through the Administrative Corporation of the Judiciary, with its own legal identity, which shall report solely to the Supreme Court and shall be based in the same city as that court's operations.*" It is governed by the provisions of the Organic Courts Code, agreements on the topic adopted by the Supreme Court, and the rules on the financial administration of the state. Finally, the article also states that is responsible for issuing, in accordance with the guidelines set down by the Supreme Court, policies for personnel selection and evaluation and for the administration of material and human resources; for adopting indicators for the handling, design, and analysis of statistics; and for approving the budgets submitted to it by the courts.

Article 551 states that claims against resolutions adopted by single-member and bench courts in exercising their economic powers may only be made to the hierarchical superior. Claims must be filed within a period of three days, with the court that adopted the resolution. The court then escalates the complaint, with all the background information, within the following 48 hours. The hierarchical superior must then resolve it definitely or, if a bench court is involved, on a contingent basis. It also states that: "*(. . .) If the claim addresses the composition of a shortlist and is rejected by the higher court, that court shall return the background documents to the lower court and refer the shortlist to the Ministry of Justice.*"

- Law No. 15.632, Article 9 of which states that: "*Appointments of contract-based subordinate personnel for the courts of law shall be made by the President of the Republic, after the court where employment is to take place has made a single-name proposal; the requirements indicated in paragraph 21 of Title I M of Legally Binding Decree 338 of April 6, 1960, on the Administrative Statute, shall apply to these operations, with the exception of the provision contained in paragraph 20 of Article 14. In the contracting of employees listed in the sixth category of Article 292 of Organic Courts Code, the studies set out in the paragraph of Article 14 shall not apply. Employees on the Subordinate Staff Hierarchy who are assigned on a contract basis to a court shall preserve full rights to their positions.*"

- Supreme Court Agreement 320 of November 14, 1995, dealing with contract positions and their renewal, provides as follows: "*The plenary of this Supreme Court, with the new amendments that Law No. 19.390 of this year made to Articles 499 and 294 of the Organic Courts Code, has agreed that*

contract hirings, and the extensions thereof, of personnel of the judiciary's Employees' Hierarchy, shall be decided by the same authorities as are responsible for making such appointments: that is, by the President of this court for employees who are to serve at this court, and the Presidents of the corresponding Appeals Courts in all other cases. Contract renewals shall occur automatically 30 days prior to their expiration, by means of an exempt resolution adopted by the President of the Supreme Court or by the Presidents of the Appeals Courts, as applicable, and shall be forwarded to the office of the Comptroller General of the Republic for filing and subsequent monitoring. Courts are not required to communicate with the Appeals Courts to request contract renewals; in contrast, they must do so for the cancellation of those contracts. Information conveyed to you for its subsequent conveyance to the courts under your jurisdiction."

- Statutory and other legal provisions applicable to public servants in oversight bodies, among which the following should be noted:

- The Law on the Organization and Powers of the Office of the Comptroller General of the Republic, Law No. 10.336, Article 1 of which establishes that: *"The Office of the Comptroller General of the Republic, independent of all ministries, authorities, and office of the state, shall serve to (. . .) oversee compliance with the provisions of the Administrative Statute (. . .)"*

Article 3 states that the Comptroller General shall be appointed by the President of the Republic, subject to the Senate's agreement, and that the other employees of his office shall serve at the exclusive pleasure of the Comptroller, who may appoint, promote, and remove them in full independence of any other authority.

Article 6 provides that the exclusive powers of the Comptroller include reporting on the right to salaries, gratifications, allocations, severance payments, retirement pensions, liquidations, dependents' benefits, and, in general, on matters related to the Administrative Statute and to the functioning of the public services under his oversight, in order to ensure the correct enforcement of the governing laws and regulations.

Article 8 provides that the final resolutions issued by the Comptroller within his sphere of competence shall admit no appeals to any other authority.

Article 44 rules that the staff of the Office of the Comptroller General shall be divided into the Professional and Technical Staff, the Administrative Staff, and the Auxiliary Staff, each with its corresponding subcategories.

Article 46 states that Comptroller General shall establish several hierarchies of staff within the office, according to their assigned tasks or specialties, and may freely appoint the members of the professional and technical staff. The article adds holding a position in category (g) or higher (meaning officers within Administrative Staff categories A to G requires a professional degree issued by a university or one issued by the School of Political and Administrative Sciences, or an accountant's certification, or registration with the College of Journalists, according to the nature of the functions to be performed. Valid degrees for this purpose are those of the University of Chile and those awarded by other universities recognized by the state. To enter the office of the Comptroller in any other position, the minimum requirement shall be completion of the sixth year of secondary education, or equivalent studies, with the exception of auxiliary staff positions, for which compliance with Law on Obligatory Primary Education 19 is required. These requirements may be omitted in filling the

positions of inspectors and section heads, provided they are filled by promoting personnel within the Comptroller's Office itself or by appointments awarded to officers of the public administration.

Article 49 states that appointments and promotions of Comptroller's Office personnel shall be made in accordance with the provisions of this law, with promotions required to be given to employees of the Office.

Article 50 provides that the Comptroller may appoint contract personnel, in accordance with service needs, with the funds legally available for the purpose, and that contract employees who, in the Comptroller's opinion, have proved their efficiency, shall be given preference in filling vacancies that arise in the lower staff grade.

Article 51 provides that the Comptroller shall be responsible for distributing the personnel around the various departments and offices of the Comptroller's Office and for appointing those officers who are serve as department or subdepartment heads, general secretaries, and attorneys.

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

With respect to the constitutional and legal provisions that refer to the principal systems of government hiring in the Republic of Chile that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of complementing, developing and amending certain legal provisions that refer to those systems.

- With respect to the system for hiring public servants under the central system, the Committee considers the following:

First, the Committee notes that although there are rules for the filling of staff positions by means of competitions, they are not obligatory for filling vacancies that arise and are filled by contract officials. In connection with this, on page 4 of its Response to the Questionnaire, the country under review said that:

“One significant element to be considered is the situation of public officials on contract service in the country, who account for around 50% of the administration. Public servants employed by the administration on a contract basis represent approximately fifty percent of the total staff. Contract officers may enter the public administration directly, by the decision of the authority empowered to make appointments, meeting only the legal requirements set out in the corresponding staff laws for the levels in question. This could well be a situation that warrants correction, since it involves a broad range of contracting operations subject to procedures that are largely discretionary.”

“In some cases, the authority with the power to make the appointments decides to hold widely disclosed, public, open competitions to fill contract positions. However, such decisions are discretionary and are not grounded in any statutory or regulatory mandate.”

While the Committee recognizes the efforts made by some of the authorities empowered to make appointments in organizing open and widely publicized public competitions to fill contract positions, as reported by the State undergoing review, such decisions are discretionary and obey no legal or

regulatory instructions. Consequently, in order to ensure the observance of the principles of openness, equity, and efficiency enshrined in the Convention, the Committee suggests that the state under review considers reassessing its policy of contract-based appointments, including the amendments of its legislation that it deems relevant, in order to ensure that the contracting of such public officials is carried out by means of a merit-based system. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.1 (a) in section 1.1 of Chapter III of this Report.)

Secondly, the Committee sees that Article 11 of the Administrative Statute states that professionals or technicians from higher education or experts in specific areas may be hired on a fee basis to perform contingent tasks that are not the customary function of the institution, by means of a resolution adopted by the relevant authority, and that such persons shall be governed not by the Statute but by the terms of their corresponding contracts.

However, there is no provision establishing the conditions and guidelines on how such employees are to be hired, nor are any time limits imposed other than those stipulated in the pertinent contracts. This lack of regulation could lead to situations of inequality, and to the hiring of personnel whose services could be extended indefinitely as “contingent” or “non-customary,” but not subject to the same conditions and obligations as contract or career staff, and not enjoying the same benefits. The country under review would benefit from monitoring 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. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.1 (b) in section 1.1 of Chapter III of this Report.)

Fourth, the Committee notes that Article 20 of Administrative Statute provides that the authority responsible for making the appointment is to publish a notice with the rules of the competition in the Official Journal. In addition the Committee sees that the country undergoing review has taken steps to publicize public vacancies through the use of new technologies. The Committee believes it would be beneficial for the Republic of Chile to make even greater use of electronic means of communication for this purpose, in order to further promote the principles of openness, equity, and efficiency. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.1 (c) in section 1.1 of Chapter III of this Report.)

Fifth, the Committee sees that Article 25 of the Administrative Statute establishes a system of probationary employment as part of the selection process for entry to the career staff. It notes, however, that the enforcement of this system remains at the discretion of the head of the corresponding service. In order to promote the principle of equity as set out in the Convention, it would be necessary to consider amending this system so that probation is applied with uniform criteria throughout the public administration. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.1 (d) in section 1.1 of Chapter III of this Report.)

Sixth, the Committee notes that Law No. 19.882 created the National Civil Service Directorate and also established the general standards and bases for a Senior Public Management System, to cover officials that serve at the exclusive pleasure of the competent authority who serve as office heads in the administration of public bodies or services or in their organizational units and whose functions are primarily to execute public policies and provide services directly to the community, also known

as “senior public managers.” This system applies in public services governed by Title II of Law No. 18.575, with the exceptions¹² therein.

On this point, the Committee notes that there is an exhaustive list of exceptions to the Senior Public Management system. The Committee believes that the State under review would benefit from a review of these exceptions in order to examine the feasibility of extending the Senior Public Management system to other government organs and agencies. It will offer a recommendation in this regard.¹³ (Recommendation 1.1.1 (e) in Section 1.1 of Chapter III of this Report).

With regard to the practical observance of the principles of openness, equity, and efficiency within the hiring of public officials, the representatives of civil society, on page 3 of their report, said that:

“ (. . .) it is urgent that the National Civil Service Directorate be given greater powers in the design of public sector staff administration policies, 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.”

In that regard, the Committee believes that the Republic of Chile would benefit from strengthening the National Civil Service Directorate. The Committee will formulate recommendations in this regard. (Recommendation 1.1.1 (f) of section 1.1 of Chapter III of this Report.)

Finally, the Committee notes that the entry procedures for new public administration hires are not formally established. The Committee will formulate a recommendation in this regard. (General Recommendation 4.1 in Chapter IV of this Report).

- With respect to the system of government hiring of public servants in the legislative branch, the Committee takes note of the following:

¹² The exceptions identified in Article 36 of Law 19,882 are the following: The subsecretariats, Office of the President of the Republic, Electoral Service, State Defense Council, Chilean Mint, Directorate of Public Security and Information, General Directorate of International Economic Relations, Foreign Investments Committee, Production Development Corporation, Superintendency of Securities and Insurance, Superintendency of Banks and Financial Institutions, Internal Tax Service, Budget Directorate, Gendarmerie of Chile, National Minors’ Service, General Directorate of Public Works, Planning Directorate of the Ministry of Public Works, Office of Agrarian Studies and Policies, Social Security Superintendency, Labor Directorate, National Health Fund, National Energy Commission, National Sports Institute of Chile, National Women’s service, National Youth Institute, National Indigenous Development Corporation, National Senior Citizens’ Service, National Environment Commission, National Civil Service Directorate National Council for Culture and the Arts and state institutions of higher education.

¹³ Transitory Article 14 of Law No. 19.882 states 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.

In connection with that, on page 17 of its comments on the Preliminary Draft Report, the Republic of Chile states that it was 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. This took place after the deadline for responding to the Questionnaire.

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.

- First, in regard to the hiring of public officials in service of the Senate, the Committee notes that Article 8 of the Senate Personnel Regulations establishes the fee-based contract mechanism for specific tasks, adding that persons so hired shall for no legal purpose have the legal status of a service employee or officer and shall be governed by the terms of the corresponding contracts.

However, there is no provision establishing the conditions and guidelines on how such employees are to be hired, nor are any time limits or conditions imposed other than those stipulated in the pertinent contracts. This lack of regulation could lead to the hiring of personnel whose services could be extended indefinitely, but not subject to the same conditions and obligations as contract or career staff, and not enjoying the same benefits. The country under review would benefit from better defining and regulating hirings of this kind, in order to uphold the principles of openness, equity, and efficiency as set out in the Convention. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.2 (a) in section 1.1 of Chapter III of this Report.)

The Committee notes that Article 15 provides that vacancy notices are to be published, along with the competition rules, in the Official Journal, and, in addition, when so decided by the Internal Regime Commission, they are also to be published in national newspapers. The Committee believes that the Republic of Chile could consider expanding the nationwide publication of these notices in order to ensure the participation of a greater number of candidates, using for this purpose, in addition to the Official Journal and national dailies, modern communications methods such as the internet. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.2 (b) in section 1.1 of Chapter III of this Report.)

- Second, in regards to the hiring systems of the Chamber of Deputies, the Committee notes that the Rules of Procedure of the Chamber of Deputies provides that personnel selection shall be made by means of public competitions, in accordance with the rules set out in the Regulations. However, the Committee must note that this requirement is not obligatory in filling vacancies for contract-based employees. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.2 (c) in section 1.1 of Chapter III of this Report.)

Moreover, the Committee notes that in addition to staff and contract personnel, the Personnel Statute of the Chamber of Deputies allows for professionals or technicians from higher education or experts in specific areas to be hired on a fee basis to perform contingent or specific tasks that are not the customary function of the institution, and that such persons shall be governed not by the Statute but by the terms of their corresponding contracts. The Committee points out that it found no provision regulating conditions and guidelines for how such employees are hired, nor any provision setting time limits, rehiring conditions, or any other form of regulation other than that contained in the corresponding contracts. This lack of regulation could lead to situations of inequality through the hiring of personnel whose services could be extended indefinitely as “contingent” or “non-customary,” but not subject to the same conditions and obligations as contract or career staff, and not enjoying the same benefits. The Committee underscores the need to consider regulating this kind of contracts, in order to promote the principles of openness, equity, and efficiency as set out in the Convention, and it will formulate a recommendation in this regard. (Recommendation 1.1.2 (a) in section 1.1 of Chapter III of this Report.)

Regarding the publicizing of public competitions, the Committee notes that Article 24 provides that notices are to be published in the Official Journal and in a national daily newspaper, and any other methods of dissemination deemed appropriate. On this point, the Committee believes that the

country under review would benefit from requiring the use of modern electronic communications channels to publicize its competitions, instead of making their use optional. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.2 (d) in section 1.1 of Chapter III of this Report.)

Finally, the Committee notes that the Senior Public Management system does not apply to organs of the legislative branch. In that regard, the Republic of Chile could consider the possibility of studying the viability of implementing a similar system for those bodies, and the Committee will make a recommendation. (Recommendation 1.1.2 (e) in section 1.1 of Chapter III of this Report.)

- With respect to the system of government hiring of public servants in the judicial branch, the Committee takes note of the following:

First, the Committee believes that the country under review would benefit from expanding the obligatory publication of those vacancies by using electronic communications methods such as the internet, in order to increase the dissemination of vacancies and obtain a greater number of applications. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.3 (a) in section 1.1 of Chapter III of this Report.)

Second, the Committee notes that the only reference to mechanisms for challenging selection processes is found in Article 551 of COT and that it applies solely if “the claim addresses the composition of a shortlist and is rejected by the higher court, that court shall return the background documents to the lower court and refer the shortlist to the Ministry of Justice.” The Committee points out that no reference is made to any mechanism for challenges in other stages of the process. Neither does it explain whether external candidates can use it, nor does there appear to be a second instance. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.3 (b) in section 1.1 of Chapter III of this Report.)

Finally, the Committee notes that under Article 9 of Law No. 15.632, the filling of contract positions does not require merit-based public competitions, and that for employees in the sixth category, Article 292 of the COT does not impose the study requirements applied to other officials, but neither does it indicate the kind of training or education that are required for holding those positions. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.3 (c) in section 1.1 of Chapter III of this Report.)

- With respect to the system of government hiring in the Office of the Comptroller General of the Republic, the Committee takes note of the following:

First, the Committee sees that under Article 3 of the Law on the Organization and Powers of the Office of the Comptroller General of the Republic, the Comptroller General is appointed by the President of the Republic, with Senate assent, and the other employees of the Comptroller’s Office serve at the exclusive pleasure of the Comptroller, who may appoint, promote, and remove them with full independence of any other authority.

In that regard, the Committee notes that although the Comptroller General’s Office has a merit-based selection system, it would be useful for the Republic of Chile to consider amending Article 3 of Law No. 10.336, so that the entire staff is not made up of discretionary appointments by the Comptroller, and to study the feasibility of establishing an administrative career system. The

Committee will make a recommendation in this regard.¹⁴ (Recommendation 1.1.4 (a) in section 1.1 of Chapter III of this Report.)

Second, the Committee notes that Article 46 of the Law on the Organization and Powers of the Office of the Comptroller General of the Republic sets a series of requirements for admission to any position within the Comptroller's Office. However, the same article states that those requirements may be omitted in filling the positions of inspectors and section heads, provided they are filled by promoting personnel within the Comptroller's Office itself or by appointments awarded to officers of the public administration. The Committee believes that this exception does not assist in abiding by the principles of equity and efficiency as set out in the Convention, and it will formulate a recommendation in this regard. (Recommendation 1.1.4 (b) in section 1.1 of Chapter III of this Report.)

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

In the results section of its Response,¹⁵ the Republic of Chile states that "*An assessment based on the statistical background has not yet been performed.*"

Considering that the Committee does not have information that might enable it to make a comprehensive evaluation of the results of this topic, it will formulate a recommendation in this regard. (See General Recommendation 4.2 in Chapter III of this Report.)

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

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

The Republic of Chile has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Statutory and other legal provisions applicable to all state entities, among which the following should be noted:

- The Law of Bases for Administrative Contracts for Supplies and Service Provisions (No. 19.886), Article 1 of which states that the law applies to the bodies and services indicated in Article 1 of Law No. 18.595, with the exception of public companies created by law and other cases set out in law.

Article 3 lists the exclusions to the application of this law, which are:

- Contracting of personnel for the state administration regulated by special statutes and fee-based contracts entered into with individuals who provide public agencies with services, irrespective of the legal basis thereof.

¹⁴ In this regard, 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. This information was presented after the deadline, and a copy for analysis was not available.

¹⁵ See page 4 of the Response of the Republic of Chile to the Questionnaire.

- Agreements entered into by and between the public agencies listed in Article 2 (1) of Decree Law No. 1.263 of 1975, Organic Law of the Financial Administration of the State, as amended.
- Contracts entered into under the specific procedure of an international organization, associated with credits or contributions made by such an organization.
- Contracts related to the sale, purchase, and transfer of negotiable instruments and other financial certificates.
- Contracts related to the execution and concession of public works. Works contracts entered into by the Housing and Urbanization Services in pursuit of their goals. Contracts covering the execution, operation, and maintenance of urban works, with the participation of third parties, signed in accordance with Law No. 19.865 which adopted the Shared Urban Funding System.¹⁶
- Contracts dealing with military equipment. Those entered into under Laws Nos. 7.144, 13.196, and the amendments thereto; and those executed for the purpose of purchases of the following items by the armed forces or the forces of law and order: vehicles for military or police use, excluding vans, cars, and buses; information systems and equipment that use advanced and emerging technology, used exclusively for command, control, communications, data-processing, and intelligence systems; components or parts for the manufacture, assembly, maintenance, repair, enhancement, or arming of armaments, their spare parts, fuels, and lubricants.
- Contracts covering goods and services that are necessary for preventing exceptional risks to national security or law and order, assessed as such by a Supreme Decree issued through the Ministry of National Defense following a proposal made by the corresponding Commander-in-Chief or, when applicable, the Director General of the Carabineros or the Director of Investigations.
- Contracts listed in this article shall be governed by their own special terms, without prejudice to the provisions set out in the final section of Article 20 of the Law.

Article 4 provides that contracts with the administration may be entered into by individuals and corporations, both Chilean and foreign, that provide evidence of their financial situation and technical suitability as required by the regulations and meet the other requirements indicated therein and required by common law. The same article sets out the requirements for entering into a contract with the administration.¹

Article 5 provides that the administration shall award the contracts it enters into by means of public competitive bidding, private requests for tenders, or direct contracting, and that public competitive bidding shall be obligatory when the contract amount is in excess of 1,000 monthly tributary units,¹⁷ except as provided for by Article 8 of the same law.

¹⁶ Irrespective of the exclusions set out in this section, the contracts it describes shall be governed by the rules contained in Chapter V of this Law and, on an additional basis, by the rest of its provisions.

¹⁷ The monthly tributary unit (*Unidad Tributaria Mensual*, UTM), as of November 2007, was worth US\$34,120.

Article 8 lists those cases in which private requests for tenders or direct contracting or dealing shall be admissible, and adds that such cases must be duly grounded. The list can be summarized as follows:ⁱⁱ

- If no interested parties came forward in the corresponding public bids.
- Contracts covering the execution or conclusion of a contract that had to be resolved or terminated ahead of time due to the contractor's noncompliance or other reasons, with a remainder not exceeding the equivalent of 1,000 tributary units per month.
- In cases of emergencies, unforeseen situations, or contingencies, assessed as such in a grounded resolution of the head of the contracting entity, without prejudice to the special provisions for earthquakes and other catastrophes set forth in the relevant legislation.
- If there is only one supplier of the good or service.
- Service provision agreements entered into with foreign corporations to be carried out outside the territory of the nation.
- Services of a confidential nature or that the disclosure of which could affect national security or interests, as determined by a Supreme Decree.
- When, because of the nature of the transaction, there are circumstances or characteristics of the contract that necessarily require the use of direct contracting or dealing, according to the criteria or cases indicated in the regulations of this law.
- When the amount of the purchase is lower than the limit set by the regulations.

Article 10 states that the contract is to be awarded through a grounded resolution issued by the competent authority and communicated to the bidder, and that the chosen candidate will be the one who, as a whole, makes the most advantageous offer, in consideration of the conditions set in the bidding terms and the evaluation criteria indicated in the regulations.

Article 16 creates the official electronic register of administration contractors, maintained by the Directorate of Public Purchasing and Contracting, to be used to record all individuals and corporations, both Chilean and foreign, not disqualified from contracting with state agencies. This register is public and is governed by the provisions of the Law and its regulations. There may also exist other official registers of contractors for specific agencies or services, or for categories of contracts that so require, which shall be obligatory for entering into those contracts. Those registers shall be governed by a Supreme Decree issued by the relevant ministry. If they are electronic, they shall be compatible with the format and features of the official register of administration contractors. The armed forces and the forces of law and order may maintain secret or confidential records covering the goods and services exempt from this law, in compliance with the applicable legislation.

Article 18 provides that public agencies governed by this law shall issue quotations for, solicit, contract, award, expedite, and, in general, carry out all their purchasing and contracting of goods, services, and works referred to in the law, using only the electronic or digital systems established for the purpose by the Directorate of Public Purchasing and Contracting. That use may be direct or

connected through open or closed networks, operating on an e-commerce platform or digital transactions market, either individually or availing themselves of the benefits of the framework contracts entered into by that Directorate. Said activity shall abide by the terms of the corresponding organic laws, the digital signature law, and the provisions established by this law and its regulations. The public agencies covered by this law may not award contracts to bids not received through the electronic or digital systems established by the Directorate of Public Purchasing and Contracting. Nevertheless, the regulations shall identify those cases in which purchasing and contracting operations may take place without using those systems.

Article 19 creates the administration's Public Purchasing and Contracting Information System which is kept by the Directorate of Public Purchasing and Contracting and is to be applied to the agencies listed in Article 1 of the Law, and which must be kept available to the general public, in the fashion indicated in the regulations. This information system shall be publicly and freely accessible.

Article 20 orders that the agencies of the administration shall publish, in the information system(s) established by the Directorate of Public Purchasing and Contracting, basic information on their contracting operations and other information indicated in the regulations. It adds that said information shall be complete and timely as regards calls for bids, the reception thereof, clarifications, replies, and amendments to the bidding terms, and the results of awards given for the contracting and purchasing of goods, services, construction projects, and works, all in accordance with the terms of the regulations. The article also establishes that public agencies covered by this law shall not be required to publish in the aforesaid information system any information on purchases and contracts determined to be secret, reserved, or confidential under the law. The armed forces and the forces of law and order shall meet this obligation, in compliance with the current legislation on how they are to handle, use, and process documents.

Article 21 states that the public agencies not covered by this law, with the exception of public companies created by law, shall abide by the terms of Articles 18, 19, and 20 of this Law in providing basic information about their contracts for goods, services, works, and other items determined by the regulations.

Article 22 creates the Public Contracting Tribunal, based in Santiago, and specifies its composition, the minimum requirements to be met by its members, and the length of time they are to remain in their posts.

Article 24 provides that this Tribunal shall have competence to hear challenges brought against illegal or arbitrary actions or omissions occurring in the administrative contracting procedures of the public agencies covered by this law. Challenges shall be admissible against any illegal or arbitrary action or omission occurring between the approval of the corresponding terms and the awarding of the contract, inclusive. In addition, claims bringing such challenges may be filed by any individual or corporation with a current interest in the corresponding administrative contracting procedure. The article also sets out the procedure to be followed in filing a claim with the Tribunal.

Article 28 creates the Directorate of Public Purchasing and Contracting as a decentralized public service, subject to the oversight of the President of the Republic through the Ministry of the Treasury, headquartered in the city of Santiago.

Article 30 defines the functions of this service, which can be summarized as follows:

- Advising public agencies in the planning and management of their purchasing and contracting procedures.
- Subcontracting the operation of the information system and of other mechanisms for the electronic purchasing and contracting of public agencies, overseeing that they function correctly, and acting as a partner to the systems' operators.
- Entering into agreements with the relevant public and private entities in order to gather information to supplement the data on the register of contractors and suppliers referred to in Article 16.
- On an ex officio basis or at the request of one or more public agencies, contract for goods and services by entering into framework agreements, which shall be governed by the regulations of this law.
- Represent or act as the agent of one or more of the public agencies covered by this law, in the contracting of goods or services in fashion established by the regulations.
- Managing, keep updated, and subcontracting the operation of the Register of Contractors and Suppliers described in Article 16, and awarding technical and financial certificates, as stipulated in the regulations.
- Promoting the maximum possible level of competition in the administration's contracting, and developing initiatives to involve the maximum number of bidders. It should also work to publicize, among the administration's current and potential suppliers, the rules, procedures, and technologies that it uses.
- Establishing policies and conditions for the use of the electronic and digital information and hiring systems that are maintained.

- The regulations to Law No. 19.886, on Administrative Contracts for Supplies and Service Provisions (DTO-250), which set the bases and procedures for public contracting, along with the regime for classifying contractors, the requirements for registration in each category, and the grounds for disqualification, incompatibility, suspension, and cancellation of registration for noncompliance with obligations and other causes.

Article 10 sets the circumstances in which private requests for tenders or direct contracting or dealing, all of an exceptional nature, are to be admissible.ⁱⁱⁱ

Article 15 defines what are to be considered "most advantageous conditions" for the awarding of contracts under framework agreements, in the sense that they "*must address objective, demonstrable, and substantial situations for the entity in question, such as delivery dates, guarantees, quality of the goods and services, or, alternatively, the best cost-benefit ratio of the good or service to be acquired.*

"The Entity must inform the Direction of Procurement if they obtain more advantageous conditions on a good or a service than those contained in the Catalog. In such a case, the appropriate background information must be preserved for later review and control. The auditing entity may require backup documentation that emphatically shows that at the time the contract was executed,

the conditions for said contracting were more advantageous than those that existed under the current Framework Agreements.”

Article 38, dealing with evaluation criteria in competitive bidding processes, states that in assessing the bids received, contracting entities shall consider, among other factors, the price offered, the experience of the bidders, the technical quality of the goods and/or services offered, technical assistance and support, after-sales service, delivery dates, freight charges, and any other relevant information. These criteria or others shall be explained in the bidding documents, which shall indicate the points and weightings assigned to each.

Article 44 provides that a private request for tenders shall only be admissible following a grounded resolution requesting it and published in the information system, in compliance with the terms of the Purchasing Law and of Article 10 of the regulations.

Article 48 states that the rules applicable to public competitive bidding shall apply to private requests for tenders, in all relevant aspects in consideration of the nature of a private request for tenders.

Article 49 provides that only when situations set out in the Purchasing Law or in Article 10 of the regulations arise may entities authorize direct contracting or dealing, following the adoption of a grounded resolution. In addition, each contracting entity must give evidence of the circumstances that justify making a purchase by direct contracting or dealing.

Article 50 provides that the contracting entity shall publish, in the Information System, the grounded resolution authorizing the direct contracting or dealing operation, specifying the good and/or service covered and the identity of the contracted supplier, no later than 24 hours after the adoption of said resolution, except when the direct contracting or dealing arises from the situation described in Article 8 (f) of the Purchasing Law.¹⁸

Article 52 provides that the rules applicable to public and private bidding shall apply direct contracting or dealing, in all relevant aspects in consideration of the nature of direct contracting or dealing.

Article 53 states that the following may be performed outside the information system: contracting operations for goods and services involving amounts less than 3 UTM; direct contracting operations for amounts less than 100 UTM charged to funds used for minor operations (petty cash), provided that the total amount has been approved by a grounded resolution and is in accordance with the corresponding budgetary instructions; and contracting operations funded with representation expenses in accordance with the Budget Law and the corresponding budgetary instructions. In any event, the contract operations described above may be conducted, on a voluntary basis, through the information system.

- Supreme Decree DTO-250/04¹⁹, which adopted the regulations to the Law on Administrative Contracts for Supplies and Service Provisions (No. 19.886).

¹⁸ Article 8 (f) of the Purchasing Law deals with “services of a confidential nature or that the disclosure of which could affect national security or interests, as determined by a Supreme Decree.”

¹⁹ Supreme Decree (DS)No. 205 of the Ministry of the Treasury includes the modifications made through DS (H) No. 1562/2006; 20 and 620 of 2007.

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

With respect to the constitutional and legal provisions governing public procurement systems in the Republic of Chile, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are relevant for promoting the purposes of the Convention.

First, the report from the representatives of civil society, on page 5, offers the following comment: *“The ‘Report Card’ report conducted by TI7 into the Chilean state’s Purchasing System sets out the benefits that the system has offered in increasing the transparency of ties between state agencies engaged in procurement activities and their potential suppliers. It is clear that today, the public has greater awareness about the purchases made by each agency of the state and about who the suppliers are, on a real-time basis.*

“The legislation and regulations of Chile’s electronic procurement system favor public competitive bidding and strictly regulate private requests for tenders and direct dealing. As regards the latter, it should be noted that such dealings must be recorded in the system, by means of a grounded resolution issued by the service director using the mechanism, with fines applicable if it is used without the necessary justification. The web site www.chilecompra.cl contains abundant statistical evidence of that situation”

(...)

“However, emphasis must not only be placed on the electronic contracting systems, the advances of which are extensive and well known; there is also a need for greater transparency in the decisions and the officials behind them within the state’s purchasing apparatus. Thus, the Public Purchasing Law requires all institutions to draw up and periodically assess an annual purchasing/contracting plan, the minimum contents of which are set out in the regulations. All this information must be incorporated into the Public Purchasing Information System and into the Suppliers Register. Although the system contains each service’s plan, there is no information to indicate whether the plans were completed and correctly carried out, particularly when compliance is linked to a Management Improvement Program. At the same time, one of the reasons for the poor management of state procurement is that the units or individuals in charge often do not have positions of responsibility within the structure of their institutions: they are technical or administrative employees who, in most cases, have neither the ability or powers to handle purchases of goods and services within those services. Usually service heads or second-level officers do not have this matter on their agendas and, as a result, by reason of not belonging to the second or third levels, these employees are not required to file statements of their interests or net worths, giving rise to an ethically dangerous situation. The same applies to other employees normally involved in procurement, such as those responsible for drawing up terms and assessing bids, whose identities are largely unknown.

“Thus, there is a need for administrative measures to indicate clearly which services abide by their Annual Purchasing Plans and the reasons that may prevent compliance, and which institutions do and do not use the system correctly. The same requirement should also be imposed on suppliers. Measures to correct that noncompliance should be established, along with measures that imply the exercise of administrative responsibilities. To this end, the Citizens’ Portal provided by the Chilecompra web site must be structured to allow true horizontal accountability of the use of public funds, to be able to assess the institutions and their senior management and to take the pertinent

decisions. This would involve structuring the site's information into a design that is more comprehensible and navigable for a regular citizen. The system implemented in Chile increases the transparency of the procurement of goods and services, but it must also increase the transparency of the agents involved in the electronic marketplace it creates."

In connection with this, the Committee believes that the country under review would benefit from training the personnel responsible for managing the procurement of goods and services, and from requiring qualifications of those who select and assess bids, including the requirement of using updated technical criteria, metrics, or standards in making purchases. All this would help the continued promotion of the principles of openness, equity, and efficiency as set out in the Convention. The Committee will formulate recommendations in this regard. (Recommendation 1.2.1 (a) and (b) in Section 1.2 of Chapter III of this Report.)

Additionally, the Committee notes that the Statute contains no provisions requiring that the personnel who conduct assessments be different from those who draw up the terms of reference for public contracting, nor do the Law or its regulations establish specific grounds for the disqualification or incompatibility of those assessors. The Committee will formulate recommendations in this regard. (Recommendation 1.2.1 (c) and (d) in Section 1.2 of Chapter III of this Report.)

Finally, the Committee sees that there are no legal mechanisms that allow for participation by civil society in drafting and setting the priorities of plans and programs, notwithstanding the discussion of the Budget Law by parliament. In that regard, the Committee believes that the implementation of mechanisms for the citizen monitoring of contracting activities, such as citizen oversight bodies, would help toward an effective and efficient comprehensive control system. The Committee will formulate a recommendation in this regard. (Recommendation 1.2.2, in Section 1.2 of Chapter III of this Report.)

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

In the results section of the Republic of Chile's Response to the Questionnaire, the following comment is offered:

The Republic of Chile, on page 8 of its Response to the Questionnaire, states that: "In the National Suppliers Register, which contains the disqualifications referred to above, during 2006 of a total of 10,947 registered suppliers, 873 were considered unqualified to enter into contracts with the state. Of these, 379 were disqualified for having labor and provisional [sic] debts, 368 for having outstanding taxes, while 126 were in both situations."

The Committee believes that the information furnished by the Republic of Chile in its reply to the questionnaire does not enable it to offer a comprehensive appraisal of the results in this area. The Committee will formulate a recommendation. (See General Recommendation 4.2.)

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

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

The Republic of Chile has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Constitutional provisions, among which the following should be noted:

- Article 83 (1) of the Constitution creates the Public Prosecution Service (MP) and establishes, *inter alia*, that it is to be responsible for adopting measures for protecting victims and witnesses.

- Statutory and other legal provisions, among which the following should be noted:

- The Code of Criminal Procedure (CPP), Article 6 (1) of which states: “*Article 6. Protection of victims. The Public Prosecution Service shall be obliged to protect victims at all stages of criminal proceedings. Similarly, the courts²⁰ shall uphold their rights during proceedings. During the proceedings, the prosecutor shall secure agreements regarding assets, precautionary measures, or other mechanisms to facilitate the repair of the harm inflicted on the victim, and said duty shall not affect the exercise of any civil action to which the victim may be entitled. In addition, the police and the other auxiliary bodies shall treat victims in accordance with their status as such, working to ensure their maximum involvement in the formalities in which they participate.*”

Article 109 (1.a) of the CPP states that victims may participate in criminal proceedings in accordance with the terms of the Code and that, in addition, they shall be entitled, *inter alia*, to request protective measures against the probability of harassment, threats, or attacks against themselves or their families.

Articles 173 to 179 of the CPP establish mechanisms for complaints in general, which mean that any person aware of facts constituting the elements of a crime may directly report it to the Public Prosecution Service, the police, or the courts with jurisdiction over criminal matters. The same provisions also establish the obligation of certain persons, including public employees, to report, within a period of 24 hours, any crimes of which they become aware in the performance of their functions, particularly those detected in the official actions of their subordinates, failure to do so being punishable under Article 494 of the Criminal Code.²¹ The exception to this are those misdemeanors covered by special laws, in which greater punishments can be provided for.

As regards the identification of witnesses of common crimes, Article 307 of the CPP states that should there be reason for believing that the public identification of a witness's home could pose a danger to him or to another person, the president of the court or the judge, as applicable, may authorize the witness to refrain from answering such questions during the hearing. Should the witness avail himself of this right, the disclosure in any fashion of his identity or of details pointing

²⁰ According to Article 69 (2) of the CPP, references to “courts” in the Code of Criminal Procedure must be understood as covering guarantee judges, courts of criminal hearing, the Court of Appeals, or the Supreme Court, according to the context of the provision in question.

²¹ The sanction established in Article 494 of the Criminal Code is a fine of between one and four monthly tributary units.

thereto shall be prohibited. The article also states that the court must issue a resolution ordering the prohibition and establishes the relevant sanctions should the ban be breached.

Article 308 (1) of the CPP establishes that: *“The court, in serious and qualified cases, may order special measures intended to protect the security of any witness who so requests. Said measures shall last for such a reasonable length of time as the court may order and may be renewed as many times as may be necessary.”* Paragraph (2) of that same article states that: *“The Public Prosecution Service, either on an ex officio basis or at the request on an interested party, shall adopt the measures necessary to ensure the witness due protection, either before or after making his statements.”*

Article 322 of the CPP empowers expert witnesses and other third parties involved in proceedings for the purpose of presenting evidence to request that the Public Prosecution Service adopt on their behalf the protection measures available for witnesses.

- Law No. 20.000, on halting the narcotics trade, Article 13 of which imposes a punishment of minor-level imprisonment in its medium to maximum degrees and a fine of between 40 and 400 monthly tributary units on any public employee who fails to report any of the crimes set out therein.

- The Constitutional Organic Law of the Public Prosecution Service (Law No. 19.640), Article 17 (a) of which states that the National Prosecutor shall be responsible for issuing the general instructions he deems necessary for due compliance with the task of protecting victims and witnesses, and Articles 20 (f) and 34 (e) of which, respectively, create the Victims and Witnesses Attention Division of the National Prosecutor’s Office and the Regional Victims and Witnesses Attention Units (URAVITs) within each Regional Prosecutor’s Office.

- The Organic Courts Code (COT), Article 14 (a) of which specifies, among the duties of judges: *“Upholding the rights of the accused and other participants²² in the criminal proceedings, in accordance with the law of criminal procedure.”*

- The Administrative Statute, Article 61 (m) and (k) of which stipulates that the obligations of public officials include: *“(m) Explaining themselves to their superiors with respect to public charges made against them, within the deadline set by those superiors, and in line with the circumstances of the case”; and “(k) Reporting crimes and misdemeanors to the Public Prosecution Service, or to the police, should there be no prosecutor’s office in the place where the public official is employed, with due promptness, and reporting acts of an irregular nature of which they become aware in the performance of their duties to the competent authorities.”*

Article 90 of the Administrative Statute provides that: *“Public employees shall also be entitled to be defended and to demand that the institutions to which they belong pursue the civil and criminal responsibility of persons who affront their lives or physical integrity in connection with the performance of their duties or who, in connection therewith, insult or defame them in any way. The complaint shall be made before the corresponding court by the head of the institution, at the written request of the employee; should the affected person be the institution head, the complaint shall be filed by the corresponding minister of state.”*

²² Under Article 12 of the CPP, the following are participants: the prosecutor, the accused, the defense counsel, the victim, and the accuser. The witness is therefore not a participant in a criminal trial, but rather a third party, which can also entail serving as an assistant to the prosecutor in the investigation, in the case of the police.

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

With respect to the legal provisions for protecting public servants and private citizens who in good faith report acts of corruption, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are pertinent for promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of complementing, developing and amending certain legal provisions that refer to those systems.

First, on page 9 of its Response to the Questionnaire, the country under review offers the following observation: *“There are no special provisions for mechanisms for reporting crimes of corruption under our legislation, in contrast to investigations for drugs or terrorism, where a special system of protection for those reporting such crimes exists. However, the general protection system, which entails a set of rules that guarantee the right of protection of victims and witnesses, does apply.”*²³

Thus, the Committee sees that although the obligation of reporting crimes is covered by the legislation, there are no reporting mechanisms or methods of identity protection for cases specifically involving corruption. The Committee believes that the Republic of Chile could consider introducing specific reporting mechanisms for corruption cases, including forms of corruption that are not defined as crimes, such as occurs with administrative acts. These reporting mechanisms should include measures to protect the identity of those persons who, in good faith, report acts of corruption, along with their families. The Committee will make a recommendation in this regard. (Recommendation 2.1 (a) in section 2 of Chapter III of this Report.)

Second, the Committee notes that although there is a protection mechanism for victims and witnesses in criminal proceedings, including the creation of the Victims and Witnesses Attention Division within the National Prosecutor’s Office and the Regional Victims and Witnesses Attention Units (URAVITs) within each Regional Prosecutor’s Office, this protection addresses criminal matters only and does not cover threats and reprisals of other kinds in cases in which corruption is reported that might not be classified as criminal offenses and might be subject to an administrative investigation, particularly when private citizens or public employees are involved and when the acts of corruption might involve superiors or workmates.

The Committee therefore believes that the Republic of Chile could consider making the necessary amendments to extend that protection to those who report acts of corruption in good faith, and their families, from threats and reprisals over and above what is covered by criminal proceedings. The Committee will make recommendations in this regard. (Recommendation 2.1 (b), (c), (d) and (e) in Section 2 of Chapter III of this Report.)

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

In the results section of the Republic of Chile’s Response to the Questionnaire, the following comment is offered:

²³ 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.

The Republic of Chile, on page 12 of its Response to the Questionnaire, refers to Annex 15, containing Chapter 4 of the 2007 National Account of the Public Prosecution Service's National Prosecutor, with statistics on the attention and protection afforded to victims and witnesses. This document provides information and statistics on victim and witness attention and protection by subject source and status; economic support funds for victims and witnesses; referral source; and referrals broken down by crime.

However, the Committee sees that neither the Response to the Questionnaire or its Annex No. 15 refer to cases specifically related to good-faith reporting of acts of corruption, even though statistics on common crime are included. The Committee considers that the information submitted by the Republic of Chile in its Response to the Questionnaire does not enable it to make a comprehensive evaluation of the results of this topic. The Committee will formulate a recommendation. (See General Recommendation 4.2.)

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

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

The Republic of Chile has a set of provisions related to the criminalization of the acts of corruption provided for in Article VI (1) of the Convention, among which the following should be noted:

- With regard to paragraph (a) of Article VI(1):

- Article 223 of the Criminal Code (CP) states that: *“Members of single-person and multi-member courts of justice and judicial prosecutors shall be punished with perpetual absolute disqualification from holding public positions and office, political rights, and chartered professions, and by and degree of minor-level imprisonment:*

“1. When they knowingly rule in contravention of express current law in a criminal or civil case.

“2. When, either personally or by means of another, they accept or agree to accept a gift or consideration for performing or refraining from performing any duty of their position.

“3. When in exercising the functions of their position or through the use of the power it confers, they seduce or solicit from the accused or litigant before them.”

Article 248 of the CP states that: *“A public employee who requests or accepts greater fees than those due to him by reason of his position, or an economic benefit for himself or for a third person, for executing or having executed an act inherent to his position to which fees are not assigned, shall be punished by suspension, in any of its degrees, and a fine equal to between one half and the entirety of the fees or benefits requested or accepted.”*

Article 248 bis of the CP states that: *“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 minimum- to medium-degree minor imprisonment and, additionally, by temporary special or absolute disqualification from holding public positions or posts of any level and by a fine equal to between once and 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."

Article 249 of the CP states that: *"A public employee who requests or agrees to receive an economic benefit for himself or for a third party in exchange for committing one of the crimes or misdemeanors set forth in this Title, or in paragraph 4 of Title III, shall be punished by permanent special disqualification and temporary absolute disqualification, or by permanent absolute disqualification from holding public positions or posts, and a fine equal to between one and three times the benefit requested or accepted."*

"The provisions of the preceding paragraph are to be understood without prejudice to the punishment applicable to the crime committed by the employee, which shall in no case be less than minor-level imprisonment in its medium degree."

- With regard to paragraph (b) of Article VI(1):

- Article 250 of the CP states that: *"Any person who offers or agrees to offer a public employee an economic benefit, to the advantage of that employee or of a third party, for performing the actions or incurring in the omissions listed in Articles 248, 248 bis, and 249, or for having performed or having incurred in the same, shall be punished with the same fines and disqualifications as are set out in those provisions."*

In cases involving benefits agreed on or offered in connection with the actions and failures to act referred to in Article 248 bis, the bribing person shall also be punished by minor-level imprisonment in its minimum to medium degrees, for a benefit offered, or by minor-level imprisonment in its minimum degree, for benefits agreed on."

In cases involving benefits agreed on or offered in connection with the crimes and misdemeanors referred to in Article 249, the bribing person shall also be punished by minor-level imprisonment in its medium degrees, for a benefit offered, or by minor-level imprisonment in its minimum to medium degrees, for benefits agreed on. In such cases, the bribing person may not be additionally punished for the liability incurred in the crime or misdemeanor committed by the public official."

Article 250 bis of the CP states that: *"In cases in which the aim of the crime indicated in the previous article is the performance or omission of an act from those indicated in Articles 248 or 248 bis within a criminal proceeding on the accused's behalf, and is committed by his/her spouse, one of his forebears or progeny ascendants or descendants by blood or marriage up to and including the second degree, or by a person related to him/her by adoption, the perpetrator shall only be punished by the fine applicable under the aforesaid provisions."*

- With regard to paragraph (c) of Article VI(1):

- Article 233 of the CP states that: *"A public employee who, while responsible for public or private funds or effects on deposit, assignment, or in custody, should steal them or allow another to steal them, shall be punished:*

"1. By minor-level imprisonment in its medium degree and a fine of monthly tributary units, if the amount stolen is between one and four monthly tributary units."

“2. With minor-level imprisonment in its maximum degree and a fine of between six and ten monthly tributary units, if the amount is between four and forty monthly tributary units.

“3. With major-level imprisonment in its minimum to medium degrees and a fine of between 11 and 15 monthly tributary units, should the amount exceed forty monthly tributary units.

“In all instances, with temporary absolute disqualification in its minimum degree to permanent absolute disqualification from holding public posts and positions.”

Article 234 of the CP states that: *“Any public employee who, through unforgivable dereliction of duty or negligence, permits another person to steal the public or private funds or effects referred to in the three sections of the previous article, shall be punished by suspension in any of its degrees and shall also be required to return the amount or effects stolen.”*

Article 235 of the CP states that: *“An employee who, causing harm to or otherwise hindering public service, makes use for himself or for another of funds or effects in his charge, shall be punished by medium-grade temporary special disqualification from holding public posts and positions and a fine of between 10 and 50 percent of the amount stolen.*

“If evidence of reimbursement is not given, the punishments provided for in Article 233 shall apply.

“Should the undue use of the funds not cause harm or otherwise hinder the public service, the punishment shall be medium-grade suspension from employment and a fine of between 5% and 25% of the amount stolen, in addition to its reimbursement.”

Article 239 of the CP states that: *“Any public employee who, in the operations in which he is involved by reason of his position, defrauds the state, a municipality, or a public institution of education or assistance, or allows them to be defrauded, by causing them a loss or denying them a legitimate gain, shall be punished by minor-level imprisonment in its medium to maximum degrees, permanent special disqualification from holding that post or position, and a fine of between 10% and 50% of the loss inflicted.”*

Article 240 of the CP states that: *“A public employee who either directly or indirectly takes a holding in any kind of contract or operation in which he is involved by reason of his position shall be punished by minor-level imprisonment in its medium degree, permanent special disqualification from holding that position or post, and a fine of between 10% and 50% of the value of the interest he took in the operation.*

“This provision shall apply to expert witnesses, arbiters, and commercial liquidators with respect to the goods or property in the assessment, awarding, division, or administration of which they are involved, and to guardians and executors with respect to the assets of their charges.

“The same sanctions shall apply to the persons indicated in this article if, in the transaction or operation entrusted to them, they give an interest to their spouse, any of their legitimate forebears or progeny by blood or by marriage, to their legitimate collateral relatives by up to the third degree by blood or the second degree by marriage, to their recognized natural or illegitimate parents or progeny, or to persons related to them by adoption.

“Similar sanctions shall apply to a public employee who, in an transaction or operation in which he is involved by reason of his position, gives an interest to third parties associated with him or with

the individuals indicated in the previous section, or to partnerships, companies, or corporations in which said third parties hold a stock holding greater than 10% if the company is an anonymous one or are responsible for the administration thereof in any way.”

Article 240 bis of the CP states that: *“The sanctions set out in the preceding article shall also apply to a public employee who, having a direct or indirect interest in any contract or operation in which another public employee is involved, exerts his influence on the latter in order to secure a decision favorable to his interests.*

“These same sanctions shall apply to a public employee who, in order to give an interest to any of the persons identified in third and last sections of the preceding article in any contract or operation in which another public employee is involved, exerts his influence on the latter in order to secure a decision favorable to those interests.

“In the cases covered by this article the judge may impose the penalty of permanent absolute disqualification from holding public posts or positions.”

Article 241 of the CP states that: *“A public employee who directly or indirectly demand greater fees than those due to him by reason of his position, or an economic benefit for himself or for a third person, for executing or having executed an act inherent to his position to which fees are not assigned, shall be punished by temporary absolute disqualification from holding public posts or positions at any of its levels and a fine of between two and four times the fees or benefit obtained.”*

Article 241 bis of the CP states that: *“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 from holding public posts or positions 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. 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 del Code of Criminal Procedure, 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, without prejudice to the criminal liability arising therefrom for the offense proscribed in Article 211 of this Code.”

- With regard to paragraph (d) of Article VI(1):

- Article 14 of the CP stipulates that: *“The following persons are criminally responsible for crimes:*

1. *The perpetrators;*
2. *The accomplices;*
3. *The accessories after the fact.”*

Article 15 of the CP states that: *“The following are considered perpetrators:*

1. *Those who take part in the execution of the act, either immediately and directly, by preventing it from being avoided, or by working 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.”*

Article 16 of the CP states that: *“Accomplices are those persons who, while not covered by the previous article, cooperate in the execution of the act by means of prior or simultaneous actions.”*

- Law 19.913, which creates the Financial Analysis Unit and amends various provisions governing money laundering, Article 19 of which establishes: *“A penalty of major-level imprisonment in its minimum to medium degrees and a fine of between 200 and 1000 monthly tributary units shall apply to:*

- a) *“Any person who in any way conceals or disguises the illicit origin of given items, knowing that they either directly or indirectly come from actions constituting any of the offenses set out in Law No. 19.366, which criminalizes the illicit trafficking in narcotics and psychotropic substances; in Law No. 18.314, which defines terrorist acts and imposes sanctions thereon; in Article 10 of Law No. 17.798, on arms controls; in Title XI of Law No. 18.045, on the stock market; in Title XVII of Legal Decree No. 3 of 1997, issued by the Ministry of the Treasury, the General Banking Law; in paragraphs 4, 5, 6, and 9 of Title V, Book II, of the Criminal Code, and in Articles 141, 142, 366 quater, 367, and 367 bis of the Criminal Code; or alternatively, while aware of said origin, conceals or disguises such items.*
- b) *“Any person who acquires, possesses, holds, or uses such items, to secure profit, knowing of their illicit origin upon receiving them. The same sanction shall apply to the actions described in this article if the items come from an act performed abroad that is punishable where it was committed and that in Chile constitutes one of the offenses indicated in section (a) above. For the purposes of this article, “items” are any objects that can be assessed in money terms, be they physical or notional, real estate or other property, tangible or intangible, along with the documents or legal instruments asserting ownership or other rights over them. (...)”*

- With regard to paragraph (e) of Article VI(1):

Article 17 of the CP states that: *“Accessories after the fact are those persons who, knowing that a crime or misdemeanor has been committed, or that actions have been taken to carry it out, without being involved therein as principals or accomplices, intervene, following its commission, in any of the following ways:*

“1. Making use of, or providing the criminals with the means for them to make use of, the proceeds of the crime or misdemeanor;

“2. Hiding or rendering useless the body, effects, or instruments of the crime or misdemeanor to hinder its discovery.

“3. Providing refuge to, concealing, or assisting the escape of those guilty.

“4. Accepting, receiving, or customarily protecting criminals, knowing them to be such and even without awareness of the specific crimes or misdemeanors committed, and providing them with a place to meet or to hide their weapons or other effects, or providing them with assistance or warnings to hide, take precautions, or flee.

“Exempt from the sanctions applicable to accessories after the fact are those who act as such toward their spouses or legitimate relatives by blood or by marriage through the direct line and in the collateral line up to and including the second degree, to their parents or recognized illegitimate/natural progeny, with the sole exception of those indicated in section (1) of this article.”

Article 52 of the CP states that: *“The principals of an attempted crime or misdemeanor, the accomplices in a thwarted crime or misdemeanor, and the accessories after the fact of a consummated crime or misdemeanor shall be punished by a sanction two degrees lower than the one established by law for that crime or misdemeanor. (...)”*

Article 269 bis of the CP states that: *“Any person who knowingly seriously hinders the investigation of a punishable action or the identification of those responsible for it, by providing false information that leads the Public Prosecution Service to act or refrain from acting in the investigation, shall be punished by minor-level imprisonment in its minimum degree and a fine of between two and 12 monthly tributary units.*

“The sanction provided for in the previous section shall be increased by one degree should the false information furnished lead the Public Prosecution Service to request precautionary measures or to make a false accusation.

“An attorney who incurs in any of the actions described in the above sections shall also be punished by the suspension of his professional title for the duration of the conviction. A timely retraction by a person having incurred in the actions addressed by this article shall constitute an extenuating circumstance. In those situations described by the second section, the extenuation shall be deemed highly qualified, pursuant to Article 68 bis.

“A timely retraction is one made at such a moment and in such a way as to be considered by the court that is resolving an issue under the false information furnished or, alternatively, one taking place during the currency of precautionary measures issued as a result of the false information furnished and leading to the lifting thereof or, alternatively, one made prior to the issuing of a verdict or the acquittal or conviction, as applicable.

“The sanctions provided for in this article shall not apply to the individuals referred to in the final section of Article 17 of this Code and the Article 302 of the Code of Criminal Procedure.”

Article 269 ter of the CP further states that: *“A prosecutor of the Public Prosecution Service who knowingly conceals, alters, or destroys any information, object, or document indicating the existence or nonexistence of a crime, the punishable participation or innocence therein of any person, or that could be used to determine the applicable punishment shall be punished by minor-level imprisonment in any of its degrees and permanent special disqualification from that position.”*

- Law 20.000, criminalizing the illicit trafficking of narcotic and psychotropic substances (replacing Law 19.366), Article 11 of which states: *“A person who owns, possesses, holds, or in any way administers real or personal property and who, even without prior accord, furnishes the same to*

another knowing that they will be used in the commission of one of the crimes described in Articles 1, 2, 3, or 8 shall be punished by the sanction established for the corresponding crime.”

Article 12 of Law 20.000 states that: *“A person who, in any way, is in charge of a commercial establishment, cinema, hotel, restaurant, bar, dance or music hall, sports facility, educational establishment of any level, or other premises open to the public, and who tolerates or permits the trafficking or consumption of any of the substances listed in Article 1, shall be punished by minor-level imprisonment in its medium to maximum degrees and a fine of between 40 and 200 monthly tributary units, unless a more severe sanction is applicable for his participation in the act. The court may also impose the closure provisions referred to in Article 7.”*

- Article 16 of Law 20.000 establishes: *“Those who conspire or organize in order to commit any of the crimes covered by this law shall be punished, for that fact alone, according to the following provisions (...)”*

- Book II (“Felonies, crimes, and their penalties”) of the Criminal Code, Title VI of which deals with “Felonies and crimes against public order and security committed by private individuals.” This title contains a paragraph 10, entitled “Illicit associations,” which includes Articles 292, 293, 294, 294 bis, 295 and 295 bis, which classify the following forms of conduct:

- Article 292: *“The formation of any association for the purpose of committing offenses against the social order, social conventions, persons, or property constitutes a crime.”*

- Article 293: *“If the purpose of the association has been to commit felonies, the heads, anyone who has exercised leadership therein, and their instigators, shall be punished by long-term imprisonment in any of its degrees.*

“If the purpose of the association has been to commit crimes, the penalty shall be short-term imprisonment in any of its degrees for the individuals mentioned in the preceding section paragraph.”

- Article 294: *“Any other individuals who might have taken part in the association and who knowingly and voluntarily furnished it with means and instruments to commit felonies or crimes, lodging, hiding places, or meeting places, shall be punished, in the first case provided for in the preceding article, with short-term imprisonment in its medium degree, and in the second, with short-term imprisonment in its minimum degree.”*

- Article 294 bis: *“The penalties provided in Articles 293 and 294 shall be imposed without prejudice to any penalties that might be arise for felonies or crimes committed by reason or on account of such activities.”*

- Article 295: *“Any of the culprits who reveal to the authorities the existence of said associations, their plans, and purposes, shall be exempt from the penalties mentioned in the preceding articles, provided that they do so prior to the commission of any of the felonies or crimes that constitute the purpose of the association and prior to their prosecution.”*

“However, the authorities may place them under close watch.”

-Article 295 bis: *“Any person having credible information on the plans or activities carried out by one or more members of an unlawful association who fails to inform the authorities promptly thereon shall be subject to imprisonment ranging from minimum to maximum terms.”*

“Spouses, legitimate blood relatives of direct linear consanguinity or collateral consanguinity to the second degree, fathers, and natural or illegitimate sons of any member of the association shall be exempt from the penalties stipulated in this article. This exception shall not apply in cases where information was not reported to the authorities in order to abet the use by association members of the results of the felony or crime.”

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

With respect to provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention that have been examined by the Committee, based on the information made available to it, they constitute, as a whole, a set of provisions relevant for promoting the purposes of the Convention.

Notwithstanding, the Committee considers that the country under review may complement certain legal provisions, taking into account the following observations^{IV}:

First of all, the Committee notes that with reference to paragraph (a) of Article VI.1 of the Convention, Articles 248, 248 bis, and 249 of the Criminal Code do not cover criminal acts committed by means of an intermediary. It also notes that Article 223 refers solely to gifts and considerations; Article 248, to economic benefits and fees; and Articles 248 bis and 249, to economic benefits. In contrast, the Convention also specifies favors, promises, and advantages in the commission of the criminal act for the person in question or for another person or entity. The Committee will formulate a recommendation on this point. (Recommendation 3.1, Section 3, in Chapter III of this Report.)

Secondly, with reference to paragraph (b) of Article VI.1 of the Convention, the Committee notes that the criminal offense defined in Article 250 of the Criminal Code does not include its commission by means of an intermediary. The Committee will formulate a recommendation on this point. (Recommendation 3.1, Section 3, in Chapter III of this Report.)

Finally, the Committee notes that with regard to paragraph (d) of Article VI(1) of the Convention (dealing with the fraudulent use or concealment of property), the country under review could consider defining an autonomous offense for acts of corruption, thus avoiding having to make recourse to the crimes of criminal participation (Criminal Code, Articles 17 and 52), obstruction of justice (CP, Article 269), and Law 19.366 on the illicit trafficking of narcotics and psychotropic substances (Article 12). The Committee will formulate a recommendation in that regard. (Recommendation 3.1 in Section 3 of Chapter III of this Report.)

Results of the legal framework and/or other measures

The Republic of Chile included an annex along with its Response to the Questionnaire,²⁴ containing an analysis of specific cases,²⁵ some of which predate the amendments to the Criminal Code, along

²⁴ The document appears as Annex 20 to the Response to the Questionnaire.

²⁵ See pp. 1 to 5, Annex 20, Response to the Questionnaire.

with five tables showing statistics for crimes by public officials reported to the Public Prosecution Service in 2004, 2005, and the first half of 2006; these are transcribed below. The country under review points out that crimes committed by public officials account for only 0.1 % of the total cases received by the prosecution service.

PUBLIC OFFICIAL CRIME STATISTICS 2004

Offenses	Cases
Abuse of private citizens	143
Usurpation of functions	92
Bribery	72
Fraud and illegal exaction	71
Embezzlement of public funds	57
Others from Book II, Title V	22
Prevarication	15
Bribery	10
Dereliction of duty	7
Breaches of document custody	5
Violation of secrecy	5
Incompatible business	3
Illegal appointments	3
Total	505

PUBLIC OFFICIAL CRIME STATISTICS, FIRST SEMESTER 2005

Offenses	Cases
Abuse of private citizens	93
Irregular arrests	54
Embezzlement of public funds	43
Fraud and illegal exaction	41
Usurpation of functions	33
Exaction	31
Prevarication	14
Bribery	11
Others from Book II, Title V	8
Dereliction of duty	6
Detainee torture	3
Violation of secrecy	3
Assisting detainees to escape	2
Illegal appointments	1
Breaches of document custody	1
Invasions	1
Total	345

PUBLIC OFFICIAL CRIME STATISTICS, SECOND SEMESTER 2005

Offenses	Cases
Abuse of private citizens	164
Irregular arrests	78
Exaction	58
Embezzlement of public funds	45
Usurpation of functions	45
Defrauding the treasury and state agencies	28
Prevarication	22
Invasions	17
Bribery	16
Assisting detainees to escape	9
Detainee torture	9
Violation of secrecy	7
Dereliction of duty	6
Others from Book II, Title V	6
Breaches of document custody	4
Incompatible business	2
Illegal exaction	1
Illegal appointments	1
Total	518

PUBLIC OFFICIAL CRIME STATISTICS, FIRST SEMESTER 2006

Offenses	Cases
Abuse of private citizens	177
Exaction	79
Irregular arrests	71
Embezzlement of public funds	62
Defrauding the treasury and state agencies	40
Embezzling the treasury and state agencies	35
Prevarication	23
Bribery	22
Detainee torture	19
Usurpation of functions	18
Breaches of document custody	15
Violation of secrecy	12
Invasions	10
Assisting detainees to escape	4
Illegal appointments	4
Incompatible business	3
Others from Book II, Title V	3
Illegal exaction	2
Dereliction of duty	1
Influence peddling	1
Total	600

Similarly, the representatives of civil society, in their report,²⁶ offered the following comments: *“In connection with this, there is a need to reiterate a comment made in the Report Card on Public Integrity prepared by the Chilean Chapter of Transparency International:²⁷ the statistical data on corruption crimes is scant, and it does not enjoy easy public access. Thus, there are no statistics on how many cases have been reported by the office of the Comptroller General of the Republic, nor on what offenses they entailed. Similarly, as of the date of this report, the information available on the web site of the judicial branch is silent on this matter. The Report Card indicates that a Unit charged with statistics had not provided for corruption-related crimes in its information. In any event, judicial statistics are not public.*

“Notable in this regard is the work of the Public Prosecution Service, which has a unit that specializes in civil-servant crimes and that provides systemic guidance and support vis-à-vis the phenomenon of crimes committed by public officials and, in particular, corruption offenses. Since 2004, this unit has been publishing statistics covering all the country’s regions – including, since 2005, the Metropolitan Region, with its four regional prosecutors’ offices – on the kind of crimes reported and the number of cases admitted by each regional prosecutor’s office. These statistics are prepared every six months. We believe that actions of this kind, irrespective of those of their aspects that could be improved, should be imitated by other institutions and agencies of the state apparatus, particularly in the administrative area.”

First, the Committee takes note of the statistical data compiled by the Public Prosecution Service on civil-servant crimes. However, the Committee points out that country under review submitted no information on corruption offenses not committed by public employees, particularly as regards cases presented by the Office of the Comptroller General of the Republic. Consequently, the Committee believes that the information furnished by country under review does not allow it to prepare a comprehensive appraisal of the results in this area; for that reason, it will formulate recommendations in this regard. (See General Recommendation 4.2.)

III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE FRAMEWORK OF THE SECOND ROUND

Based on the review conducted in Chapter II of this Report, the Committee offers the following conclusions and recommendations regarding implementation by the Republic of Chile of the provisions contained in Article III(5) (systems of government hiring and for the procurement of goods and services); Article III(8) (systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and Article VI (acts of corruption) of the Convention, which were selected for review within the framework of the second round.

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

1.1. Systems of Government Hiring

The Republic of Chile has considered and adopted measures to establish, maintain and strengthen the systems of government hiring, as discussed in Section 1.1 of Chapter II of this Report.

²⁶ Civil society report, p. 7.

²⁷ Annex IV to the civil society report: “Public Integrity Report Card.”

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Chile consider the following recommendations:

- 1.1.1 Strengthen the systems of government hiring within the general system of the public administration. In meeting this recommendation, the Republic of Chile could take into account the following measures:
- 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. (See section 1.1.2 of Chapter II of this Report.)
 - 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. (See section 1.1.2 of Chapter II of this Report.)
 - 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. (See section 1.1.2 of Chapter II of this Report.)
 - 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. (See section 1.1.2 of Chapter II of this Report.)
 - 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.²⁸ (See section 1.1.2 of Chapter II of this Report.)
 - 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, 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

²⁸ 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.

creating personnel selection, admission, and evaluation policies that are coherent throughout the organization and that allow the comprehensive professionalization of public service. (See section 1.1.2 of Chapter II of this Report.)

1.1.2 Strengthen the system of government hiring of public officials in the legislative branch. In meeting this recommendation, the Republic of Chile could take into account the following measures:

- 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. (See section 1.1.2 of Chapter II of this Report.)
- 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. (See section 1.1.2 of Chapter II of this Report.)
- 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. (See section 1.1.2 of Chapter II of this Report.)
- 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. (See section 1.1.2 of Chapter II of this Report.)
- e) Consider the possibility of studying the viability of introducing a system similar to that Senior Public Management System in the legislative branch. (See section 1.1.2 of Chapter II of this Report.)

1.1.3 Strengthen the system of government hiring of public officials in the judicial branch. In meeting this recommendation, the Republic of Chile could take into account the following measures:

- 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. (See section 1.1.2 of Chapter II of this Report.)
- 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. (See section 1.1.2 of Chapter II of this Report.)
- 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. (See section 1.1.2 of Chapter II of this Report.)

1.1.4 Strengthen the system of government hiring of public officials in the Office of the Comptroller General. In meeting this recommendation, the Republic of Chile could take into account the following measures:

- 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.²⁹
- 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. (See section 1.1.2 of Chapter II of this Report.)

1.2. Government Systems for the Procurement of Goods and Services

The Republic of Chile has considered and adopted measures intended to establish, maintain and strengthen the systems for government procurement of goods and services by the state, as discussed in Section 1.2 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Chile consider the following recommendations:

1.2.1 Strengthen the procedures for public tender with competitive bidding and procurement in general. In meeting this recommendation, the Republic of Chile could take into account the following measures:

- a) Expand its training programs for the personnel responsible for managing purchases of goods and services.³⁰ (See section 1.2.2 of Chapter II of this Report.)
- 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. (See section 1.2.2 of Chapter II of this Report.)³¹
- 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. (See section 1.2.2 of Chapter II of this Report.)

²⁹ 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.

³⁰ 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.

³¹ *Ibid.*

- d) Establish in the corresponding regulations specific causes for the disqualification or incompatibility of those responsible for evaluating or assessing public procurement operations. (See section 1.2.2 of Chapter II of this Report.)

1.2.2 Strengthen mechanisms of control mechanisms within the government procurement system. In meeting this recommendation, the Republic of Chile could take into account the following measure:

- 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. (See section 1.2.2 of Chapter II of this Report.)

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

The Republic of Chile has considered and adopted certain measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption, as discussed in Section 2 of Chapter II of this Report.

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

Strengthen its systems for protecting public servants and private citizens who, in good faith, report acts of corruption. In meeting this recommendation, the Republic of Chile could take into account the following measures:

- 2.1 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 protection of their identities, in accordance with the Constitution and the basic principles of its domestic legal system; this could include, for example, the following:³²
- a) Specific provisions on mechanisms for reporting acts of corruption, including measures to protect the identity of those who in good faith report acts of corruption and their families. (See section 2.2 of Chapter II of this Report.)
 - 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. (See section 2.2 of Chapter II of this Report.)
 - c) Provisions to punish noncompliance with protection rules and/or obligations. (See section 2.2 of Chapter II of this Report.)

³² 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.

- 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. (See section 2.2 of Chapter II of this Report.)
- 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. (See section 2.2 of Chapter II of this Report.)

3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

The Republic of Chile has adopted measures aimed at criminalizing the acts of corruption indicated in Article VI(1) of the Convention, as discussed in Section 3 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Chile consider the following recommendations:

- 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. (See Section 3.2 in Chapter II of this Report). (See section 3.2 of Chapter II of this Report.)

4. GENERAL RECOMMENDATIONS

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

- 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.
- 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 (See Chapter II, Sections 1.1.3 and 1.2.3).

5. FOLLOW-UP

The Committee will consider the periodic update Reports submitted by the Republic of Chile concerning progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions of Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress of the Republic of Chile in implementing the recommendations made in this Report, in accordance with Article 29 of the Rules of Procedure.

IV. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN THE FIRST ROUND

The Committee observes, in relation with the implementation of the recommendations formulated for the Republic of Chile in the Report in the First Round of review, based on the information at its disposal, 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 intended to prevent conflicts of interest and enforcement mechanisms

Recommendation

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:

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

In its Response, the Republic of Chile presents information with respect to the above recommendation and cites as contributing to its general implementation, the following:³³

- Constitutional Amendment Law No 20.50 of August 2005, Article 8 of which introduces the principles of probity and transparency in the actions and resolutions of state agencies.
- Law No. 18.575, Article 56 of which establishes the incompatibility of the activities of former authorities or former officers of an oversight agency that entail a labor relation with private sector bodies subject to the oversight of that agency. This incompatibility is to remain in force for a period of six months following the termination of their functions.
- Presidential Instruction No. 008 on transparency and disclosure of the information of the state administration, dated December 4, 2006.

³³ See pp. 17-19 of the Response of the Republic of Chile to the Questionnaire.

- Circular No 3, on guidelines for the implementation of Presidential Instruction No. 008, of January 5, 2007.
- Law No 20.88, requiring that public servants present Sworn Statements of Net Worth, published in the Official Journal on January 5, 2006, and its regulations, Supreme Decree No. 45 from the General Secretariat Ministry of the President's Office, published in the Official Journal on March 22, 2006.
- Circular No. 17.152, of April 17, 2006, "Instructions on the Statement of Net Worth issued by the Office of the Comptroller General of the Republic."
- Ordinary Deeds Nos. 184-05 and 186-04 from the government's General Internal Auditing Council, dated September 6, 2004, on statements of interest and net worth, asking all public institutions to report on the existence and status of statements of interests and on the existence of statements of net worth.
- Internal Probity Audits. Within the internal audits conducted by each public service, specific probity audits are carried out, either under Technical Document No. 29 of the government's General Internal Auditing Council or independently of it.
- Measures adopted within the legislature, judiciary, and Office of the Comptroller General of the Republic, which can be seen on the institutional web sites of the Senate and the Chamber of Deputies through the link "Transparency and Citizen Control," which contains information on the activities of each branch of the National Congress.
- The Judiciary Ethics Commission.
- Law No. 20.035, amending the Constitutional Organic Law on Regional Administration and Government (No. 19.175) as regards the structure and functioning of the regional governments.
- The Securities Self-Regulation Committee.
- Bills currently before Congress pending adoption and enactment.³⁴

As regards measure (a), the representatives of civil society,³⁵ offers the following comment in its Report:

"This measure was designed after an analysis of the provision governing conflicts of interest in the final section of Article 56 (previously Article 58) of Law 18.575 on the Bases of the Administration of the State, which stipulates: "Similarly, incompatibility applies to the activities of former authorities or former officers of an oversight agency that entail a labor relation with private sector bodies subject to the oversight of that agency. This incompatibility is to remain in force for a period of six months following the termination of their functions." In connection with that provision, the Committee stated that, "it would be useful for the Republic of Chile to consider expanding and strengthening this provision to include situations that could entail conflicts of interest not limited solely to the oversight agencies and to employment relationships with bodies subject to their

³⁴ The Committee states that since those initiatives are still at the drafting stage, they have not been analyzed.

³⁵ Civil society report, p. 9.

oversight. For this, consideration could be given to measures such as a ban on former public employees handling in any way official business that was dealt with by them or managed by agencies with which they were recently related, and, in general, all situations that could lead to the improper use of the status as a former civil servant.”

The civil society report further notes that, *“The provision in question has not yet been amended. Thus, it is still restricted to labor relations and the relationship between the oversight agency and bodies subject to that oversight.”*

With reference to measure (b), the civil society report states that,³⁶ *“there have been no changes in the regulations that could serve as the basis for comments on progress.”* Similarly, as regards measure (c), the representatives of civil society say that, *“there have been no changes in the regulations on which we could comment.”*

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties in the process of implementing this recommendation mentioned by the country under review³⁷ and by civil society.³⁸

1.2 Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

The Committee made no recommendations on this matter for the Republic of Chile.

1.3 Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation

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:

- 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.*

In its Response, the Republic of Chile presents information with respect to the above recommendation and cites as contributing to its implementation the formulation of a legislative bill

³⁶ *Ibid.*, p. 11.

³⁷ Response of the Republic of Chile to the Questionnaire, p. 20.

³⁸ Report of civil society, pp. 11-12.

that favors administrative probity, including protective measures for public servants who report noncompliance with legal duties, irregularities, and lapses in probity. This bill has been submitted to the National Congress and has not yet been adopted or enacted.³⁹

The country under review did not address measure (b).

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties in the process of implementing this recommendation mentioned by the country under review⁴⁰ and by civil society.⁴¹

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

Recommendation

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:

- 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.*

In its Response, the Republic of Chile presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation the following:

Regarding measure (a), the country under review⁴² states that on January 5, 2006, Law No. 20.088 was published, requiring that authorities that perform a public function make sworn statements of their net worths.⁴³ Similarly, in their report the representatives of civil society note that measure (a) “has been implemented since the enactment of Law No. 20.088.”

³⁹ The Committee states that since the initiative has not yet been passed, it has not been analyzed.

⁴⁰ Response of the Republic of Chile to the Questionnaire, p. 24.

⁴¹ Report of civil society, pp. 15-16.

⁴² Response of the Republic of Chile al Questionnaire, pp. 24-26.

⁴³ In a footnote to its Response, the Republic of Chile states that, “The following are required to submit statements of interests and statements of net worth: the President of the Republic, Ministers of State, Undersecretaries, Intendants and Governors, Regional Ministerial Secretaries, Senior Service Heads, Ambassadors, Councilors of the State Defense Council, the Comptroller General of the Republic, general officers and senior offices of the armed forces and equivalent

As regards measure (b), the country under review states, *inter alia*, that:⁴⁴ “*Declarations of net worths made by officials and authorities required to do so shall be public and shall be renewed every four years and upon termination of employment. They are to be presented, within 30 days of assuming the post or of one of the events requiring updates, to the Comptroller General of the Republic or the corresponding Regional Comptroller, who will store them for consultation purposes.*”

The country under review did not specifically address measure (c).

Without offering a detailed analysis of the legislation referred to above, the Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties in the process of implementing this recommendation mentioned by civil society.⁴⁵

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

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.

In its Response, the country under review presents information with respect to the above recommendation, of which the following are noted:

The country under review reports, *inter alia*,⁴⁶ that: “*Oversight of the various provisions related to public ethics and administrative probity is included in all the oversight activities carried out by the Office of the Comptroller General of the Republic; however, the Office does not bear the entire obligation of ensuring that they are complied with. First of all, it is the active administration itself, through its authorities and internal control systems, that is responsible for upholding this fundamental principle and, in general, all the agencies that make up the National Control System.*

“It is necessary to note that the on-site oversight activities carried out by the Office of the Comptroller General of the Republic are based on permanent and reciprocal cooperation with the legal offices and the internal control units or departments of public agencies, which serves to

ranks in the security and law-enforcement forces, mayors, and regional councilors 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, council members of the Central Bank, 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.”

⁴⁴ Response of the Republic of Chile to the Questionnaire, pp. 26-27.

⁴⁵ *Ibid.*, pp. 16-18.

⁴⁶ Response of the Republic of Chile to the Questionnaire, pp. 27-28.

support the administration and strengthen oversight efforts. Similarly, efforts have been made to maintain reciprocal relations and support with the judiciary, the Constitutional Court, the State Defense Council, and the Public Prosecution Service.”

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties in the process of implementing this recommendation mentioned by civil society.⁴⁷

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

4.1 Mechanisms for access to information:

Recommendation

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

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

In its Response, the Republic of Chile presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following measures:

As regards measure (a), the Republic of Chile states⁴⁸ that “*by means of the aforesaid Presidential Instruction No. 008 (Annex 24) of December 4, 2006, on active transparency, the Government of Chile ordered the agencies of the state administration to report on all their procurements of goods and services, personnel contracts, the legal framework governing each institution, and those acts or*

⁴⁷ *Ibid.*, pp. 20-21.

⁴⁸ Response of the Republic of Chile to the Questionnaire, p. 28.

*resolutions with an impact on third parties. In compliance with that instruction, the public agencies have made information on those topics available to the public on their web sites.*⁴⁹

In connection with measure (b), the country under review reports⁵⁰ that the Constitution was changed by means of a constitutional amendment on August 26, 2005, that incorporated a new Article 8, raising the principles of probity and disclosure in public undertakings to the constitutional level. This article also establishes that only under the circumstances it authorizes (due compliance with functions, personal rights, national security, or national interest), and by means of a qualified quorum law, may secrecy or confidentiality be established for acts and resolutions of state agencies. Furthermore, as a result of this reform, Supreme Decree 134 of January 5, 2006, repealed Supreme Decree No. 26 from the Ministry General Secretary of the President's Office which contained the "Regulations on secrecy and confidentiality of acts and documents of the state administration."

Finally, as regards measure (c), the Republic of Chile reports that the Minister Secretary General of the President's Office, by means of Deed 072 of January 24, 2006, introduced additional guidelines for transparency and disclosure in the administration's actions against corruption; it also reported on the constitutional amendment and the repeal of the regulations, and it enclosed a "guide to the rules and criteria currently applicable to disclosure and access to administrative information," which was forwarded to the country's ministries, undersecretariats, and intendancies.⁵¹

In turn, the civil society report refers to the December 4, 2006, Presidential Instruction on active transparency and disclosure of information of the state administration, which essentially orders state agencies dependent on and related to the central government to publish, on a permanent basis on their respective web sites, information on their procurement operations for goods and services and the corresponding contractors; on staff, contract, and fee-based personnel; transfers of funds made to corporations; the current laws, regulations, orders, and circulars that make up the legal framework governing them; and the actions and resolutions with effects on third parties, by publishing the duly processed actions and resolutions.⁵²

The Committee, while not entering into a detailed analysis of this legislation, takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties in the process of implementing this recommendation mentioned by the country under review⁵³ and by civil society.⁵⁴

4.2 Mechanisms for consultation

Recommendation

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.

⁴⁹ The Committee also notes that on June 22, 2004, the executive submitted to the National Congress a bill on citizen associations and participation.

⁵⁰ Response of the Republic of Chile to the Questionnaire, pp. 28-29.

⁵¹ *Ibid.*, p. 29.

⁵² Report of civil society, pp. 23-24.

⁵³ Response of the Republic of Chile to the Questionnaire, p. 29.

⁵⁴ Report of civil society, pp. 24-27.

Measures suggested by the Committee:

- 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.*⁵⁵

In its Response, the country under review presents information with respect to the above recommendation, of which the following are noted:

Regarding measure (a), the country under review describes, in its Response to the Questionnaire,⁵⁶ a legislative bill and a draft constitutional amendment that, if approved and published, would address this matter. The Republic of Chile also reports draft legislation related to measures (b) and (c).⁵⁷

Additionally, with reference to measure (b), the Republic of Chile adds that *“The Social Organizations Division is currently working to implement these measures, through its Department of Citizenship and Public Management and the Civil Society Councils Unit; efforts are already underway to establish those Councils in various ministries and services, and to encourage participatory public accounts, with a different methodology that involves authentic citizen participation. As regards the Civil Society Councils, establishment protocols are pending signature with several institutions. On December 26, 2006, the National Consumer Service formalized its Civil Society Council, by means of a resolution. And as regards participatory public accounts, six of them have been carried out at various intendancies, governors’ offices, and services. In addition, citizen dialogues have been underway since 2006. During 2006 a total of 13 were held, one in each region of the country. Three have been held this year. See www.portalciudadano.cl and www.participemos.cl.”*⁵⁸

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties in the process of implementing this recommendation mentioned by the country under review⁵⁹ and by civil society.⁶⁰

⁵⁵ The Republic of Chile reports that its draft legislation on Citizen Associations and Participation in the Public Administration is at an advanced stage in its first reading by the Interior Governance Committee of the Chamber of Deputies.

⁵⁶ Response of the Republic of Chile to the Questionnaire, p. 30.

⁵⁷ The Committee takes note that a proposed constitutional amendment on citizenship legislative initiatives was admitted for processing by Congress, by means of a presidential message of July 31, 2007.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Report of civil society, pp. 27-29.

4.3 Mechanisms to encourage participation in public administration

Recommendation

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:

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

In its Response, the Republic of Chile presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following measures:

As regards measure (a), the country under review notes in its Response to the Questionnaire⁶¹ that the Social Organizations Division of the Ministry General Secretariat of Government is currently working on these issues, coordinating with the various ministries and services in order to set up Civil Society Councils.⁶²

As regards measure (b), the Republic of Chile also adds that Law No. 20.048 (Annex 34) of August 31, 2005, introduced amendments to the Criminal Code (Arts. 263, 264, 265, and 268) and to the Code of Military Justice (Art. 276), eliminating the offense of contempt (*desacato*) as regards slander and insults leveled at public authorities and officials, who, if they believe themselves to have been harmed by slander or insults made against them, may invoke the general provisions of criminal law to pursue the applicable responsibilities.

In connection with this, the representatives of civil society, in their report, say they believe that measure (b) “*has been implemented by Law No. 20.048, published in the Official Journal on August 31, 2005, which amended the Criminal Code and the Code of Military Justice as regards desacato.*”⁶³

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties in the process of implementing this recommendation mentioned by the country under review⁶⁴ and by civil society.⁶⁵

⁶¹ Response of the Republic of Chile to the Questionnaire, p. 31.

⁶² The Committee notes that the Republic of Chile reports that these topics are addressed in the draft legislation described above, which is still pending approval.

⁶³ Civil society report, p. 28.

⁶⁴ Response of the Republic of Chile to the Questionnaire, p. 31.

4.4 Mechanisms for participation in the follow-up of public administration

Recommendation

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:

- 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.*

In its Response, the Republic of Chile presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following measures:

As regards measure (a), the Republic of Chile, in its Response to the Questionnaire, says that the Chilean State has introduced an agenda to promote participation.⁶⁵ The country under review adds that on September 29, 2006, the President of the Republic publicly presented the government's Agenda for Promoting Citizen Participation, which "*contains a set of initiatives intended to promote participation, the exercise of civic rights, the creation of associations, and respect for diversity. Its main axes include participatory public management and the citizens' access to timely public information. This approach is working for the creation of Civil Society Councils and the implementation of participatory public accounts and citizen dialogues.*"

Regarding measure (b), the country under review again refers to the government's Agenda for Promoting Citizen Participation and adds that an additional two lines of inquiry are being developed: "*Strengthening the system for validating and evaluating the Information, Claims, and Suggestions Offices (OIRS) of all the public institutions covered by the Management Improvement Program (PMG). It involves technical assistance and permanent collaboration with the public institutions in the PMG-OIRS scheme for the standardization of user attention processes using the parameters of the Integral User Attention Model. The second line of approach works for the installation of Citizen Portals: public information models through which the citizens for whom public policies are intended can access up-to-date quality information about the supply available for both private citizens and associations, the role of which as joint partners public management it seeks to strengthen. For further information see www.portalciudadano.cl.*"⁶⁷

⁶⁵ Report of civil society, pp. 27-29.

⁶⁶ Response of the Republic of Chile to the Questionnaire, pp. 31-32.

⁶⁷ Response of the Republic of Chile to the Questionnaire, pp. 32.

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation. The Committee also takes note of difficulties in the process of implementing this recommendation mentioned by the country under review⁶⁸ and by civil society.⁶⁹

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

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.

In its Response, the Republic of Chile presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following measures:

The Republic of Chile, in its Response to the Questionnaire,⁷⁰ refers to Law 20.074 of November 14, 2005, Article 20 bis of which regulates the procedure for handling requests for international assistance. The country under review also reports that on January 30, 2007, it published Supreme Decree No. 375, enacting the United Nations Convention against Corruption; and on April 11, 2007, the National Congress adopted the Agreement on the Benefit of Fee-Free Litigation and Free Legal Assistance Among the States Parties of Mercosur, the Republic of Bolivia, and the Republic of Chile, signed on December 15, 2000, the goal of which is to establish mechanisms to allow the neediest members of society effective access to justice.⁷¹ In addition, the Republic of Chile and Switzerland signed a Treaty on Judicial Assistance in Criminal Matters.⁷²

The Republic of Chile also reports that the following international instruments, among others, are in force in Chile:

- Strasbourg Convention on the Transfer of Sentenced Persons of 1983, enacted by Decree No. 1.317 of the Ministry of Foreign Affairs, published in the Official Journal (DO) on 03.11.98. 1.
- Inter-American Convention on the Serving of Criminal Sentences Abroad, adopted on 09.06.93 by the OAS, enacted by Supreme Decree No. 1.859 of the Ministry of Foreign

⁶⁸ Response of the Republic of Chile to the Questionnaire, p. 32.

⁶⁹ Report of civil society, pp. 28-29.

⁷⁰ Response of the Republic of Chile to the Questionnaire, pp. 32-33.

⁷¹ The Committee notes that the following treaties, signed by the Mercosur member states and the Republics of Chile and Bolivia, are currently before the National Congress: Agreement on Mutual Legal Assistance in Criminal Matters, signed in Buenos Aires, 18.02.02; Supplementary Agreement to that Agreement and its Annex, signed in Brasilia 05.12.02; Amendment Agreement to the Supplementary Agreement, signed in Asunción 06.06.03. There is also the Agreement on Extradition among the States Parties of Mercosur and the Republic of Chile and the Republic of Bolivia, signed in Rio de Janeiro 10.12.98.

⁷² The Committee that adherence to the European Convention on Mutual Assistance in Criminal Matters of 20.04.59 is currently being studied.

Affairs, published in the DO on 02.02.99. Its provisions are similar to those of the Strasbourg Convention.

- The Treaty with Brazil on the Transfer of Convicted Prisoners, signed between the Federative Republic of Brazil and the Republic of Chile on 29.04.98, enacted by DS No. 225 of the Ministry of Foreign Affairs and published in the DO on 18.03.99.
- The Treaty with Bolivia on the Transfer of Convicted Prisoners, signed between the governments of Chile and Bolivia on 22.02.01, enacted by DS No. 227 of the Ministry of Foreign Affairs and published in the DO on 10.12.04.
- The Treaty with Argentina on the Transfer of Convicted Nationals and Compliance with Criminal Judgments, signed by the governments of Chile and Argentina on 29.10.02, enacted by DS No. 55 of the Ministry of Foreign Affairs and published in the DO on 30.06.05.

Finally, the country under review reports that *“in order to promote exchanges of technical cooperation with other states parties, the State of Chile is a user of the GROOVE secure e-mail system, with accounts being maintained by the Ministry of Foreign Affairs, the Ministry of Justice, and the Public Prosecution Service. This system, while it is not used by our country to transmit requests for assistance in criminal matters, does represent a valuable contribution as a means of secure communication among the states that are members of it, which facilitates technical cooperation among the user states.”*

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation. The Committee also takes note of difficulties in the process of implementing this recommendation mentioned by the country under review.⁷³

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.

In its Response, the country under review presents information with respect to the above recommendation, of which the following are noted:

The participation of Chilean experts in training matters on anticorruption topics sponsored by the Organization for Economic Co-operation and Development (OECD), along with their attendance at several international seminars, conferences, and technical meetings, including the hosting of an anticorruption event in Santiago, organized by the OECD and the government of Chile, with the participation of the IDB, the OAS, and the UNODC. The Republic of Chile gave no further

⁷³ Response of the Republic of Chile to the Questionnaire, p. 34.

information related to the design and implementation of the comprehensive strategy referred to in the recommendation.⁷⁴

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation.

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

In its Response, the Republic of Chile presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following measures:⁷⁵

“Through the general mechanisms provided by Chilean law, broad mutual technical cooperation with other states on the best ways to prevent, detect, investigate, and punish acts of public corruption has continued. In particular, through the foreign policy of the Chilean state, led by President of the Republic (Article 32, No. 15, of the CPE (Annex 1)) and implemented by the Minister of Foreign Affairs, efforts have been made to adhere to relevant international instruments dealing with this topic, such as the United Nations Convention Against Corruption and other international instruments indicated in connection with recommendation 5.1.”

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation

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

In its Response, the Republic of Chile presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following measures:⁷⁶

“The State of Chile confirms that the Ministry of Foreign Affairs is serving as the central authority for the purposes of international assistance and cooperation set out in the Inter-American Convention against Corruption; regardless of this, as indicated in the reply given during the First Evaluation Round, notice will be given of the central authority finally appointed for these purposes in due course.”

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*, p. 35.

⁷⁶ *Ibid.*

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation.

7. GENERAL RECOMMENDATIONS

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.

In its Response, the Republic of Chile presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the following measures:⁷⁷

- Personnel entering the public administration under the new public contracting system are not only subject to a public and impartial selection process based on technical criteria, they are also incorporated into a process of induction and permanent training for Senior Public Managers.⁷⁸
- The development, by the Government Auditing Council, of permanent training effort for the network of internal auditors within the various public services and ministries, through Technical Documents No. 24 “Risk-Based Auditing Program,” No. 26 “Auditing Follow-Up,” No. 29 “Framework Auditing Program for Administrative Probity,” No. 30 “Framework Auditing Program for Transfers within or from the Public Sector,” No. 31 “Executing Audits,” No. 35 “Management Program: Internal Auditing System 2007,” and No. 36 “Purpose of Government Auditing.”⁷⁹
- The national training plan developed by the Directorate of Public Purchasing and Contracting (ChileCompra) to promote excellence in the management of public-sector purchasing and supplying.⁸⁰
- Development initiatives within public services in order to inform public officials about amendments to the legislation and to make progress with good institutional practices, organizational enhancements, and other aspects.

⁷⁷ *Ibid*, p. 36.

⁷⁸ For details on the activities carried out by the National Civil Service Directorate, see: <http://www.serviciocivil.cl>. In particular, the training component covers two lines of inquiry: formal training and extension. The extension component opens up a forum for reflection and discovery through activities such as forums, seminars, conferences, and discussion groups, which seek to develop and strengthen the identity and role of the Senior Public Manager.

⁷⁹ For a more detailed examination of the general bases of the Management Improvement Program in the internal auditing area, contained in the document “Requirements and Verification Methods of the Management Improvement Program, year 2007,” see: www.dipres.cl.

⁸⁰ A total of 1,117 received free training in the cities of Valdivia, Puerto Montt, Punta Arenas, Coyhaique, Antofagasta, Concepción, Temuco, and Talca, as a part of the ChileCompra Regional Week tours organized by the Directorate of Public Purchasing since April 2007. These nationwide training tours are held at least twice a year and are intended to enhance the knowledge of system users. The planned activities include free training for buyers with workshops on “Drawing up Bidding Terms” and “Preparing Evaluation Criteria,” for suppliers with the workshop on “Doing Business with the State,” and for information center monitors with workshops on “The Public Procurement System” and “Using the Portal www.chilecompra.cl.”

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Chile to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties in the process of implementing this recommendation mentioned by the country under review.⁸¹

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.

The Republic of Chile did not refer to this recommendation. Consequently, the Committee takes note of the need for the country under review to give 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.

The Republic of Chile did not refer to this recommendation. Consequently, the Committee takes note of the need for the country under review to give additional attention to its implementation.

END NOTES

ⁱ Article 4 of the Law of Bases for Administrative Contracts for Supplies and Service Provisions (No. 19.886) stipulates that: “Contracts with the administration may be entered into by individuals and corporations, both Chilean and foreign, that provide evidence of their financial situation and technical suitability as required by the regulations and meet the other requirements indicated therein and required by common law.

Each contracting institution may establish, with respect to the contract recipient, in the corresponding bid documents, the obligation of establishing and granting, upon the awarding of the contract, a mandate with adequate authority or the incorporation of a Chilean company or an agency of a foreign one, as applicable, with which it will enter into the contract, and the purpose of which shall include the execution of said contract in accordance with the terms of this law.

“The above section shall apply only to contracts the purpose of which is to acquire goods or provide services that the contract recipient is obliged to hand over or render on a successive basis over time.

“No agency of the state administration, or state companies and corporations, or in which the state has a holding, may sign administrative contracts for the supply of goods or the provision of services with the senior officers of that same agency or company, or with persons related to them by the relationships described in section (b) of Article 54 of Law No. 18.575, the Organic Constitutional Law on the General Bases for the Administration of the State, or with partnerships of individuals of which either the former or the latter are a part, nor with closely-held stock companies or anonymous corporations in which either the former or the latter hold stock representing 10% or more of the total capital, nor with the managers, administrators, representatives, or directors of any of the aforesaid companies.

⁸¹ Response of the Republic of Chile to the Questionnaire, p. 36.

“The same prohibitions as in the previous section shall apply to both chambers of the National Congress, to the Administrative Corporation of the Judiciary, and to the municipalities and their corporations, with respect to members of the parliament, members of the Primary Hierarchy of the judiciary, and mayors and councilors, in each specific case.

“Contracts entered into in breach of the terms of the above section shall be null and void, and those public servants involved therein shall be in breach of the principle of administrative probity described in item 6, second section, of Article 62 of Law No. 18.575 (Organic Constitutional Law of the General Bases of the State Administration), irrespective of any applicable civil or criminal liability.

“However, when so required by exceptional circumstances, the agencies and companies referred to in section four may enter into such contracts, provided that they are in accordance with conditions of equity such as generally prevail in the market. Contracts must be approved by a grounded resolution, which shall be communicated to the superior of the person signing, the Office of the Comptroller General of the Republic, and the Chamber of Deputies. In cases involving the National Congress, this communication shall be addressed to the Senate Ethics Commission or the Conduct Commission of the Chamber of Deputies, as applicable, and, in cases involving the judiciary, to its Ethics Commission.”

ii Article 8 of the Law of Bases for Administrative Contracts for Supplies and Service Provisions (No. 19.886) stipulates that: *“Private requests for tenders or deals or direct contracting shall apply in the grounded cases listed below:*

“(a) If no interested parties came forward in the corresponding public bids. In this situation, first private bidding or requests for tenders shall be attempted, and, if no interested parties come forward again, direct contracting or dealing shall be permissible. The terms set for the public competitive bidding shall be the same as are used for direct contracting or awarding the contract through a private request for tenders. If the terms are modified, the process must recommence in accordance with the provisions of the general rule.

“(b) Contracts covering the execution or conclusion of a contract that had to be resolved or terminated ahead of time due to the contractor’s noncompliance or other reasons, with a remainder not exceeding the equivalent of 1,000 monthly tributary units.

“(c) In cases of emergencies, unforeseen situations, or contingencies, assessed as such in a grounded resolution of the head of the contracting entity, without prejudice to the special provisions for earthquakes and other catastrophes set forth in the relevant legislation.

“Irrespective of whether a contract is valid or invalid, a service head who unduly assesses a situation as an emergency, unforeseen situation, or contingency shall be punished by a fine of between 10 and 50 monthly tributary units, depending on the contract amount involved. This fine shall be compatible with the other administrative sanctions that might be applicable under current law, and compliance therewith shall be made in accordance with Article 35 of Decree Law No. 1.263 of 1975.

“(d) If there is only one supplier of the good or service.

“(e) Service provision agreements entered into with foreign corporations to be carried out outside the territory of the nation.

“(f) services of a confidential nature or that the disclosure of which could affect national security or interests, as determined by a Supreme Decree.

“(g) When, because of the nature of the transaction, there are circumstances or characteristics of the contract that require the use of direct contracting or dealing, according to the criteria or cases indicated in the regulations of this law.

“(h) When the amount of the purchase is lower than the limit set by the regulations.

“In all of the above case, the existence of the circumstances must be shown, along with the quotations in those cases indicated by the regulations.

“In the cases covered by the above paragraphs, with the exception of section (f), the grounded resolutions authorizing the direct contracting or dealing to proceed shall be published in the Public Purchasing and Contracting Information System no later than 24 hours after they are issued. A similar mechanism and time limit shall be observed in the publication of resolutions or agreements issued by the public agencies covered by this law authorizing private requests for tenders to proceed.

“All contracting by direct contracting or dealing shall require a minimum of three prior quotations, except in those cases covered by sections (c), (d), (f), and (g) of this article.”

iii Article 10 of the regulations to the Purchasing Law, DTO-250, provide as follows: *“Private requests for tenders or direct contracting or dealing, are admissible, on an exceptional basis, in the following circumstances:*

1. If no interested parties came forward in the corresponding public bids. In this situation, first private bidding or requests for tenders shall be attempted, and, if no interested parties come forward again, deals or direct contracting shall be permissible.

2. Contracts covering the execution or conclusion of a contract that had to be resolved or terminated ahead of time due to the contractor's noncompliance or other reasons, with a remainder not exceeding the equivalent of 1,000 tributary units per month (UTM).

3. In cases of emergencies, unforeseen situations, or contingencies, assessed as such in a grounded resolution of the head

of the contracting entity, without prejudice to the special provisions for earthquakes and other catastrophes set forth in the relevant legislation.

4. If there is only one supplier of the good or service.

5. Service provision agreements entered into with foreign corporations to be carried out outside the territory of the nation.

6. Services of a confidential nature or that the disclosure of which could affect national security or interests, as determined by a Supreme Decree.

7. When, because of the nature of the transaction, there are circumstances or characteristics of the contract that require the use of direct contracting or dealing, according to the criteria or cases indicated below:

a) If there is a need to contract for an extension of a supply or service contract, or to contract for related services, with respect to a previously signed contract, deemed indispensable for needs of the entity and only until a new procurement process can be completed, provided that the amount of the extension does not exceed 1,000 UTM.

b) When the contract is funded with representation expenses in accordance with the corresponding budgetary instructions.

c) When the security and personal integrity of the authorities could be affected, making it necessary to contract directly with a proven supplier who guarantees discretion and confidence.

d) If consultancy services are to be hired, the topics of which are assigned in special consideration of the powers of the supplier who is to provide the service and, as a result of which, they cannot be submitted to a regular public bidding process. In such cases, entities shall endeavor to secure private quotations in accordance with Articles 105 et seq. of these regulations.

e) When the contracting in question can only be performed by suppliers who hold title to the corresponding intellectual or industrial property rights, licenses, patents, etc.

f) When on account of the volume and importance of the contracting operation it is indispensable to use a specific supplier because of the confidence and security derived from his proven experience in the provision of the goods or services required, provided there are grounds for believing there are no other suppliers offering those levels of confidence and security.

g) When the purpose is the replacement or addition of accessory equipment or services that must necessarily be compatible with models, systems, or infrastructure previously acquired by the corresponding entity.

h) When public knowledge of the bidding process prior to the contracting

i) In the case of procurement of movable property from foreign bidders intended for use or consumption outside Chile in the performance by the procuring entity of its particular functions, and for which, owing to factors such as language, legal system, economic or cultural systems, or other factors of a similar nature, it is essential to resort to this type of contract. Entities shall adopt by resolution such internal procedures as might be necessary to ensure efficiency, transparency, publicity, equality, and no arbitrary discrimination in procurement operations of this type.

8. If the contracted amounts are equal to or lesser than 100 monthly tributary units. In that case, the terms of Article 51 of these regulations shall apply. In all the above cases, the purchasing and contracting operations must be conducted by means of the Information System, with the exception of cases covered by paragraph 6, in which it may be used voluntarily. Irrespective of the foregoing, in all the cases described above the contracting operation may be conducted by means of competitive bidding, should the contracting entity so determine."

^{iv} Article 260 of the CP establishes the definition of a public employee in the following terms: "For the purposes of this Title and of Paragraph IV of Title III, an employee shall mean any person who performs a public function or office, either in the central administration or in semifiscal, municipal, or autonomous institutions, or in agencies created by the state or dependent on the state, even if they are not appointed by the President of the Republic nor receive remuneration from the state. This definition shall also apply to those who are popularly elected."