



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

FINAL REPORT

(Adopted at the March 20, 2017 Plenary Session)

SUMMARY

This Report contains a comprehensive review of the implementation of the Recommendations formulated to the Republic of Chile in the Second Round Report with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption, which refer, respectively, to systems of government hiring and procurement of goods and services and for the protection of public servants and private citizens who, in good faith, report acts of corruption. Reference is also made, when appropriate, to new developments with respect to the implementation of these provisions.

In addition, the Report includes a comprehensive review of the implementation in Chile of paragraphs 3 and 12 of Article III of the Convention, which refer, respectively, to measures intended to create, maintain and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities; and a study of further preventive measures that take into account the relationship between equitable compensation and probity in public service. These provisions were selected by the MESICIC Committee of Experts for the Fifth Round.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee's Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fifth Round, including the criteria set out therein for guiding the review based on equal treatment for all states parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the states parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out mainly taking into account Chile's Response to the Questionnaire and information gathered during the on-site visit to that country under review from October 4 to 16, 2015, by the representative of Haiti. With the support of the Technical Secretariat of MESICIC, during that visit, the information furnished by Chile was clarified and supplemented with the opinions of civil society and private sector organizations, professional associations, and academics on the issues under review. In addition, although the representative of Grenada was unable to attend the on-site visit for reasons beyond his control, he was actively involved in reviewing the report and at the subgroup's meeting.

With regard to the implementation of the recommendations that were formulated to Chile in the report from the Second Round, based on the methodology for the Fifth Round and bearing in mind the information provided in the Response to the Questionnaire and during the on-site visit, the Committee made a determination as to which of those recommendations had been satisfactorily implemented, which required additional attention, which should be reformulated, and which were no longer valid.

With respect to public servant hiring systems, particularly worth noting are the following: implementation of Regular Official Letter No. 743 of the Civil Service imparting "Instructions for Implementing Presidential Instruction No. 001 on Best Labor Practices in Government Personnel Development"; the platform on the Government Employment Portal of the National Directorate of the Civil Service; the adoption of Law No. 20.955, "Enhancing the Senior Public Management System and Strengthening the National Directorate of the Civil Service"; the implementation of the Integrated Personnel Management System (SIGPER) in the Judiciary; and the proposed amendment to Law No. 10.336, on the "Organizational Structure and Functions of the Office of the Comptroller

General of the Republic," remitted by the Comptroller General of the Republic to the Office of the President of the Republic on May 27, 2016.

With respect to the government system for the procurement of goods and services, it is worth highlighting is the modernization of the ChileCompra platform, which includes the ChileCompra Observatory, charged with continuous monitoring of government procurement and providing citizens with a forum for channeling complaints. The Observatory provides an opportunity for citizens to report cases of procurement by government agencies that, in their view, lack probity, transparency or integrity. Also to be noted is the inclusion in the platform of such tools as the business intelligence portal and the government procurement open data portal.

With respect to systems for protecting public servants and private citizens who report acts of corruption, a channel for filing on-line complaints and investigation suggestions has been set up by the Government Procurement and Hiring Directorate (DCCP) through the ChileCompra Portal, the Assistance Model for victims and witnesses (OPA) of the Public Prosecution Service, as well as the Citizen Watchdog Portal (*Portal Contraloría y Ciudadano*) of the Office of the Comptroller General of the Republic (CGR).

Some of the recommendations put to Chile during the Second Round that are still pending or that have been reformulated address such issues as: reviewing the policy for hiring contractual personnel, with a view to ensuring that such appointments are based on merit; strengthening the National Directorate of the Civil Service as the central authority administering the system by endowing it with the resources it needs for the proper performance of its functions and giving it greater powers to design public sector personnel management policies and to collaborate with government departments to ensure the decentralized implementation of those policies; implementing a system similar to that used for Senior Public Management in the legislature; monitoring how the legislature is applying the regulations on hiring contractual staff to do specific, incidental, or atypical tasks, with a view to checking that this system is not resulting in successive or indefinite renewals and that these exceptions are not being used as a mechanism for evading competitive merit-based hiring procedures; incorporating appropriate provisions to ensure that the personnel responsible for evaluations in government hiring processes is different from the personnel who draw up the terms of reference; establishing citizen oversight mechanisms (such as watchdog committees) to keep an eye on all stages of the procurement process; adopting comprehensive regulations to protect public servants and private citizens, who in good faith report acts of corruption, including measures to protect their identity, in accordance with the Constitution and the fundamental principles governing the domestic legal system (to which end it could bear in mind the criteria established in the Model Law to facilitate and encourage the reporting of acts of corruption and protect both whistleblowers and witnesses); and aligning the characterization of criminal corruption offenses with the requirements of Article VI(1) of the Convention.

In addition, as regards new developments in Chile with respect to implementation of the provisions of the Convention selected for the Second Round, the Committee formulated recommendations involving the inclusion in civil service regulations of a definition of public servant that is consistent with the definitions of public servant and public service used; in the Convention; taking the steps needed to ensure that all central government agencies use the DNSC's Government Employment Portal; training and making personnel involved in hiring procedures aware of the existence, scope, and implementation of Article 6 bis of Law N° 19.886 on the terms and conditions governing administrative supply and service provider contracts; the inclusion in appropriate regulations of

provisions establishing that renegotiations of infrastructure concessions and public works contracts are published promptly and according to a pre-established timetable; and strengthening the CGR Department for Attending to Citizen Complaints and Denunciations by endowing it, to the extent possible, with the human and budgetary resources needed for it to fulfill its functions.

For the review of the first provisions selected for the Fifth Round that refer to instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as set out under Article III, paragraph 3 of the Convention, the country under review chose the National Directorate of the Civil Service (DNSC), the Government Procurement Directorate (ChileCompra), and the Public Prosecutors' Office (Ministerio Público) because it considers their institutional and regulatory developments to be relevant and representative of Chile's entities and institutions as a whole.

This review was focused on determining, with respect to the selected personnel, if the country under review has adopted provisions and/or measures which ensure the proper understanding of their responsibilities and the ethical rules governing their activities; the manner or occasions in which personnel are provided instructions; the programs in place for them; the bodies responsible for them; as well as the objective results obtained on the implementation of said provisions and/ or measures, taking into account any difficulties and/or weaknesses to achieve the purpose of this provision of the Convention. At the same time, it took note of any difficulties and/or shortcomings in accomplishing the object of that provision of the Convention.

Some of the recommendations formulated to Chile, for its consideration, with respect to this topic, are noted as follows:

Take the necessary steps to ensure the adoption of codes of ethics in government service departments, Ministries and Undersecretariats throughout the country, the implementation of training programs specifically dealing with compliance with those codes, and the appointment of authorities responsible for implementing those codes and the training programs associated with them; including, as part of the content of central government staff induction and training courses, a module relating to the ethical standards governing their activities and any risks of corruption that may present themselves in the performance of their jobs; strengthening the Government Procurement Directorate by providing it with the necessary human and financial resources, within the limitations of available funds, in order to establish a sustainable ChileCompra Integrity System within that institution; and including, as part of the content of central Public Prosecutors Office staff induction and training courses, a module relating to the ethical standards governing their activities and any risks of corruption that may present themselves in the performance of their jobs, both at the start and after a given period of time, whenever a change in functions involves a change in applicable ethical norms, and whenever changes are made to those norms.

In accordance with the aforementioned methodology, the review of the second provision selected for the Fifth Round, as set out under Article III, paragraph 12 of the Convention, which refers to the study of preventive measures that take into account the relationship between equitable compensation and probity in the public service, and if objective and transparent criteria has been established for determining the compensation of public servants, it was recommended to Chile that it consider taking the steps needed to adopt a wage policy law that, at a minimum, sets out objective and transparent criteria for ensuring fair remuneration throughout the public sector.

Finally, the best practices that Chile reported may be summarized as the adoption of best practices with respect to sworn statements of net worth and interests, pursuant to Presidential Instruction No. 2 of March 19, 2015, of the Office of the Minister and Secretary-General of the Presidency which calls for *"a larger number of civil servants declaring their net worth and interests and raising the requirements for such statements"*; interagency collaboration in the preparation of Civil Service Codes of Ethics; the adoption of the "SAINT" Self-Assessment of Integrity System, which is *"a tool that enables institutions to identify, analyze, evaluate, and respond to events that could affect an institution's compliance with its objectives, with particular emphasis on safeguarding integrity, probity and public ethics"*; and the establishment of the ChileCompra Observatory which *"promotes quality standards and best practices in the procedures followed by the 850 State entities using the ChileCompra platform, in order to raise the levels of transparency, probity, and efficiency in government procurement."*

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

**REPORT ON FOLLOW-UP ON IMPLEMENTATION IN THE REPUBLIC OF CHILE OF
THE RECOMMENDATIONS FORMULATED AND THE PROVISIONS REVIEWED IN
THE SECOND ROUND, AND ON THE PROVISIONS
OF THE CONVENTION SELECTED FOR REVIEW IN THE FIFTH ROUND^{1/}**

INTRODUCTION

1. Content of the report

[1] As agreed upon by the Committee of Experts (hereinafter “the Committee”) of the Follow-up Mechanism for Implementation of the Inter-American Convention against Corruption (hereinafter “MESICIC”) at its Twenty-fourth Meeting,^{2/} this report will first refer to follow up on the implementation of the recommendations formulated to the Republic of Chile in the report from the Second Round of Review,^{3/} and which were deemed by the Committee to require additional attention in the report from the Third Round^{4/}.

[2] Second, where applicable, it will refer to new developments in the Republic of Chile with regard to the Convention (hereinafter “the Convention”) provisions selected for the Second Round, in such areas as legal framework, technological developments, and results, and will proceed to make any necessary observations and recommendations.

[3] Third, it will address the implementation, in the Republic of Chile, of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the MESICIC for the Fifth Round of Review. These provisions are as follows: Article III, paragraphs 3 and 12, regarding, respectively, the measures relating to “[i]nstruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities” and to “[t]he study of preventive measures that take into account the relationship between equitable compensation and probity in public service.”

[4] Fourth, it will refer to the best practices that the country under review wished to voluntarily share regarding the implementation of the provisions of the Convention selected for the Second and Fifth Rounds.

1. This report was adopted by the Committee in accordance with the provisions of Articles 3 (g) and 25 of the Committee's Rules of Procedure, at the March 17, 2017 plenary session, within the framework of the Twenty-eighth Meeting of the Committee, held at OAS headquarters in Washington, D.C., from March 13 to 17, 2017.

2. Available at: http://www.oas.org/juridico/docs/XXIV_min.doc.

3. Available at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.pdf

4. Available at: http://www.oas.org/juridico/spanish/mesicic3_chl_sp.htm

2. Ratification of the Convention and adherence to the Mechanism

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

[6] 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 THE INFORMATION RECEIVED

1. Response from the Republic of Chile

[7] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Chile and in particular, from the General Government Internal Audit Council (hereinafter CAIGG), which was evidenced, *inter alia*, in its Response to the Questionnaire, in the constant willingness to clarify or complete its contents, as in the support provided for execution of the on-site visit referred to in the following paragraph. Together with its Response, Chile sent the provisions and documents it considered pertinent.^{5/}

[8] The Committee also notes that the country under review granted its consent for an on-site visit, in keeping with provision 5 of the *Methodology for Conducting On-Site Visits*.^{6/} That visit was conducted from October 4 to 6, 2016, by the representative of Haiti, in his capacity as member of the Review Subgroup, with the support of the MESICIC Technical Secretariat. In addition, although the representative of Grenada was unable to attend the on-site visit for reasons beyond his control, he was actively involved in reviewing the report and at the subgroup's meeting. The information obtained during that visit is included in the appropriate sections of this report and the agenda for the visit is attached hereto, in accordance with provision 34 of the *Methodology for Conducting On-Site Visits*.

[9] For its review, the Committee took into account the information provided by Chile up to October 6, 2016, and that furnished and requested by the Secretariat and the members of the Review Subgroup to carry out its functions, in accordance with the *Rules of Procedure and Other Provisions, the Methodology for Follow-up on the Implementation of the Recommendations Formulated and Provisions Reviewed in the Second Round and for the Analysis of the Convention Provisions Selected for the Fifth Round*, and the *Methodology for Conducting On-Site Visits*.^{7/}

2. Documents and information received from civil society organizations and/or, inter alia, private sector organizations, professional organizations, and academics and researchers

[10] The Committee also received, within the deadline set by the Committee in the Schedule adopted for the Fifth Round, a document from the civil society organization “Chile Transparente”

5. Said response and the provisions and documents are available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm.

6. Document SG/MESICIC/doc.276/11 rev. 2, available at: http://www.oas.org/juridico/english/met_onsite.pdf.

7. This information is available at: http://www.oas.org/juridico/spanish/mesicic5_pry.htm.

(National Chapter of Transparency International). This document was submitted by the organization pursuant to Article 34(b) of the Committee's Rules of Procedure.⁸

[11] Moreover, during the on-site visit to the country under review, information was gathered from civil society and private sector organizations, professional associations, academics and researchers, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report.

II. FOLLOW-UP ON THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS IN RELATION TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND

[12] First, the Committee will refer below to the progress made, information, and new developments reported on by Chile in relation to the recommendations formulated and the measures suggested by the Committee for implementation in the report on the Second Round^{9/} and on those that the Committee deemed required additional attention in the report from the Third Round;^{10/} note will be taken of any that have been given satisfactory consideration and of those requiring additional attention by the country under review; and, if applicable, reference will be made to the continued validity of those recommendations and measures and to their restatement or reformulation, in keeping with Section V of the *Methodology* adopted by the Committee for the Fifth Round.

[13] In this section, the Committee will, where applicable, also take note of the difficulties identified by the country under review in implementing the recommendations and measures referred to in the preceding paragraph, as well as to any technical cooperation requested to that end.

[14] Second, reference will be made to the new developments reported on by Chile in relation to the provisions of the Convention selected for the Second Round, on such matters as normative framework, technological developments, and results, and, as appropriate, any necessary observations and recommendations will be made.

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

1.1. Government hiring systems

1.1.1. Follow-up on implementation of the recommendation formulated in the Second Round

Recommendation 1.1.1.:

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

⁸ This document was submitted in electronic format on June 23, 2016, and may be found at http://www.oas.org/juridico/spanish/mesicic5_chi.htm.

⁹ Available at: http://www.oas.org/juridico/english/mesicic_II_inf_chl_en.pdf.

¹⁰ Available at: http://www.oas.org/juridico/spanish/mesicic3_chl_sp.htm.

Measure (a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[15] In its Response, the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹¹

[16] “[Circular No. 35 of the Ministry of Finance](#)¹² sets out general guidelines for Ministers of State, Undersecretaries, Intendants, and Senior Service Heads on contract renewal processes, in which it is instructed that, in accordance with the legal regulations on rehiring contract personnel (Law 18.834, Article 9) in the various ministries and public services (...)”

[17] “... [Civil Service Notice No. 743](#) [“Implementation guidelines for the [Presidential Instruction \[No. 001\] on Best Workplace Practices for Personnel Development in the State](#)¹³”]¹⁴ which establishes as one of its pillars, that public institutions shall ensure compliance with the regulations governing individual and collective labor rights, which include guaranteeing that conditions of access to public sector employment—including selection criteria—and working conditions are free from any kind of discrimination.”

[18] “For that purpose the following measures are available:”

[19] “The Human Resources Management Policy sets out—through its principles, objectives, guidelines, and specific measures—how the institution ensures and commits to creating working conditions in the public sector that are free from any form of discrimination;”

[20] “- Take steps to inform and increase the awareness of public officials about all the regulations in force and measures that the institution has adopted to prevent, address, and eliminate any form of discrimination, in particular with respect to employment access conditions;”

[21] “- Utilize transparent recruitment and selection criteria based on merit, suitability, and selection requirements, providing guarantees to avoid discrimination and ensure broad disclosure of vacancy notices. Only for well-founded reasons or trust positions shall contracting be allowed directly without a selection process.”

[22] In that regard, it is worth noting that in the review in the Second Round, the Committee made the following observations with respect to measure (a) of the above recommendation:¹⁵

¹¹Response of Chile to the Questionnaire for the Fifth Round, p. 57.

¹² Adopted on November 13, 2014.

¹³ Adopted on January 26, 2015.

¹⁴ Adopted on March 27, 2015.

¹⁵ Report on Chile from the Second Round, pp. 15.

[23] *“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:*

[24] ‘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.’

[25] ‘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.’

[26] “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”.

[27] Therefore, the Committee notes that, in first place, neither the Government Administration General Framework Constitutional Organizational (Law No. 18.575) nor the Personnel Administrative Statute has been amended so as expressly to mandate that access to employment in public service under a contract appointment must be via a merit-based selection process.

[28] The Committee also observes, in second place, that the above Civil Service Notice No. 743 [“Presidential Instruction [No. 001] on Best Workplace Practices for Personnel Development in the State”] is a recently adopted measure and that statistics are not yet available on the results yielded by the implementation of those guidelines in selection processes under the contract appointment regime in all the institutions of the central administration.

[29] In light of the foregoing, and notwithstanding the recommendations set out below with respect to hiring process in force, the Committee takes note of the steps taken by the country under review—particularly as regards its implementation of best practices—and of the need for it to continue to give attention to implementing the above measure. (See recommendation 1.1.3.1 in Section 1.1.3 of Chapter II of this report.)

[30] It is also worth noting that the civil society organization *Chile Transparente*, in a document submitted under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, observed the following:¹⁶

[31] *“The main difficulty has to do with the discretionary authority of public-sector officials to hire individuals under contract appointment. Changing the situation requires amending the laws governing government hiring and reformulating the civil service career system.”*

[32] During the on-site visit, representatives of *Chile Transparente* added that, at present, the situation of employees under contract appointment is as follows:¹⁷

[33] *“-Transitory employment”*

[34] *“-Used to supplement permanent civil service staffing needs”*

[35] *“-Competition for the position is at the discretion of the authority concerned”*

Measure (b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[36] In its Response, the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹⁸

[37] *“[Civil Service Notice No. 743](#)¹⁹ [[Implementation guidelines for the Presidential Instruction \[No. 001\] on Best Workplace Practices for Personnel Development in the State](#)²⁰], states that the fee-based hiring is a service provision mechanism designed to enable senior service managers in the state administration to call on the advisory services of specialists in certain matters, provided that they are service-related functions that only arise from time to time, not regularly, or in circumstances relating to specific assignments given to the service or government department.” In that connection, transparent recruitment and selection procedures must be used for fee-based hiring, in line with the principles of merit, suitability, job requirements. Guarantees are set out to prevent discrimination and the existence of a procedure is declared, thus ensuring broad dissemination of the vacancy notice. Direct contracting without a selection process shall only be done on the basis of well-founded reasons.”*

¹⁶Document presented by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, p. 8.

¹⁷ See PowerPoint presentation by *Chile Transparente* http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹⁸Response of Chile to the Questionnaire for the Fifth Round, p. 59.

¹⁹ Adopted on March 27, 2015.

²⁰ Adopted on January 26, 2015.

[38] In this regard, the Committee wishes to point out that measure (b) of the foregoing recommendation originates from the analysis in the Second Round, in which the Committee made the following observations:²¹

[39] *“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.”*

[40] In this regard, the Committee notes that although Civil Service Notice No. 743 instructs the organs of the central administration to use transparent recruitment and selection procedures based on merit, suitability, and job requirements, it is not known what follow-up has been carried out on those guidelines, how many and which of those organs have implemented transparent recruitment processes for fee-based hiring or what such processes consist of, or what follow-up has been done on the renewal of such contracts to prevent them being used as a means to avoid merit-based competitions.

[41] Bearing the foregoing in mind, and notwithstanding the recommendations set out below with respect to hiring process in force, the Committee takes note of the steps taken by the country under review—particularly as regards implementation of best practices—and of the need for it to continue to give attention to implementing the above measure. (See recommendation 1.1.3.2 in Section 1.1.3 of Chapter II of this report.)

[42] Furthermore, it should be noted that the civil society organization *Chile Transparente*, in the parallel document presented under Article 34 of the Rules of Procedure and Other Provisions of MESICIC Committee of Experts, indicated, *inter alia*, that:²²

[43] *“No progress can be seen as regards employees hired on a fee basis in the Chilean administration. From 2012 to date, there has been an increasing trend in the number of individuals employed on that basis, rising from 25,585 in 2011 to more than 47,000 in 2015.”*²³

[44] Likewise, during the on-site visit, *Chile Transparente* mentioned the following with regard to the situation of employees hired under fee contracts:²⁴

²¹ Report on Chile from the Second Round, p. 16.

²² Document submitted by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the MESICIC Committee of Experts, p. 9.

²³ At the plenary meeting of March 15, 2017, the State under review reported that: *“The figure reported by the Civil Service, backed up by the collection data, indicates that in November 2014 there were 20,849 fee-based positions,”*

²⁴ See CHILE TRANSPARENTE PowerPoint presentation
http://www.oas.org/juridico/spanish/mesicic5_chi.htm

[45] “-For unforeseen work and functions not normally performed by the institution.”

[46] “-As with contract appointments, it has become a way of increasing the number of employees in public-sector institutions.”

[47] “- The number of individuals hired on that basis has almost doubled in 4 years.”²⁵

[48] In addition, during the on-site visit representatives of the Inter-American Network of Public Administration Education (INPAE) provided the following information:²⁶

[49] “The Chilean State has begun to adopt a somewhat ambiguous policy regarding the regulatory frameworks applicable to public hirings.”²⁷

[50] On one hand, we have an Administrative Statute that governs the central government administration; increasingly, however, we are seeing public institutions that fall under the Labor Code once they are created.

[51] “This is compounded by the high number of fee-based employees (regarding which decisions are being made), and the differences between employees in the different branches of government. The simple fact that there is an officer in the legislative branch who has a higher salary than the President clearly indicates that there is a problem.”²⁸

[52] It is reasonable to have different ways of hiring in line with the particular circumstances of institutions; the issue is what is reasonably permitted.”

Measure (c) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[53] In its Response, the country under review presents information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to its satisfactory consideration:²⁹

²⁵ At the plenary meeting of March 15, 2017, the State under review reported that: “The figure reported by the Civil Service, backed up by the collection data, indicates that in November 2014 there were 20,849 fee-based positions,”

²⁶ See INPAE PowerPoint presentation http://www.oas.org/juridico/spanish/mesicic5_chi.htm

²⁷ At the plenary meeting of March 15, 2017, the State under review reported that: “It is not effective, but rather diverse, because each institution arises through law, but it is not ambiguous.”

²⁸ At the plenary meeting of March 15, 2017, the State under review reported that: “The evidence on the active transparency pages of both chambers of the legislative branch indicates that the claim made by civil society is not accurate, because parliamentarians’ remunerations are lower than the salary of the President of the Republic. As provided for in Article 62 of the Constitution of the Republic, “Deputies and senators shall receive, as their sole earnings, a remuneration equal to that earned by a Minister of State, including all the allocations corresponding thereto.” https://www.oas.org/dil/esp/Constitucion_Chile.pdf

²⁹ Response of Chile to the Questionnaire for the Fifth Round, p. 59.

[54] – Ministry of Finance Notice No. 1320 of May 15, 2015, which makes it obligatory to use the Public-Sector Employment Portal (*Portal de Empleos Públicos*) of the National Civil Service Directorate to announce vacant positions in the public sector, as part of the Implementation Plan for the Agenda on Integrity and Transparency in Business and Politics recently adopted by the President of the Republic, which advises *"all senior managers of public services in the Civil Administration that use of the Public-Sector Employment Portal (www.empleospublicos.cl) is mandatory for disseminating notices of public competitions and/or selection processes.*

[55] *For the purposes of compliance with the foregoing, the National Civil Service Directorate will provide the necessary information regarding the respective procedures for using the portal.*"³⁰

[56] In this regard, it is worth recalling that measure (c) of the foregoing recommendation originates from the analysis in the Second Round, in which the Committee made the following observation:³¹

[57] *"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".*

[58] Taking the foregoing into consideration, and notwithstanding the recommendations that may be formulated in the section on new developments, which will analyze Ministry of Finance Notice No. 1320 of May 15, 2015, and the statistics on the functioning and use of the Public-Sector Employment Portal of the National Civil Service Directorate, the Committee takes note of the satisfactory consideration of measure (c) of the foregoing recommendation.

[59] It is also worth noting that the civil society organization *Chile Transparente*, in a document submitted under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, observed the following:³²

[60] *"The State of Chile has made progress with the use of web portals and platforms. The <http://www.empleospublicos.cl> platform is an example of that. The portal contains notices of vacancies in public services for which civil servants and members of the public, as appropriate, may apply. Each institution that uses the portal is responsible for its processes and fielding technical queries from applicants on each vacancy notice. The portal does not contain vacancy notices for the High Public Executive System (Sistema de Alta Dirección Pública). It only provides employment opportunities for a number of public services that are taking part in the system's initial rollout. Other institutions will gradually be incorporated.*

³⁰ http://www.oas.org/juridico/spanish/mesicic5_chi.htm

³¹ Chile Report on the Second Round, p. 15.

³² Document presented by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, p. 10.

Measure (d) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[61] The country under review did not refer to the above recommendation in its Response. Therefore, the Committee notes the need for the country under review to give it additional attention. (See recommendation 1.1.3.3 in Section 1.1.3 of Chapter II of this report.)

[62] It is also worth noting that the civil society organization *Chile Transparente*, in a document submitted under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, observed the following:³³

[63] *“The trial employment implementation process does not provide the criteria that the authority uses or official statistics on this issue. This lack of information is a problem, as it is not possible to measure the scope and use of this form of appointment in the public administration.”*

Measure (e) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[64] During the on-site visit, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as a step that contributes to its implementation:³⁴

[65] The Adoption of Law No. 20.955 on Strengthening the High Public Executive System and the National Civil Service Directorate, published on October 20, 2016,³⁵ which, *inter alia*, revises Article 36 of Law 19.882 and incorporates the following agencies and offices that were previously excluded from its scope:

[66] Office of Agrarian Studies and Policies, National Youth Institute, National Senior Citizens' Service, National Indigenous Development Corporation, Labor Directorate, National Health Fund, National Minors' Service,³⁶ National Civil Service Directorate,³⁷ General Directorate of Public Works,³⁸ Planning Directorate,³⁹ Metropolitan Housing and Urban Development Service,⁴⁰ Production Development Corporation,⁴¹ and Social Security Superintendency.⁴²

³³Document presented by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, pp. 11-12.

³⁴See document presented by the National Civil Service Directorate http://www.oas.org/juridico/spanish/mesicic5_chi.htm

³⁵Official Gazette No. 41.588 of Thursday, October 20, 2016.

³⁶In the National Minors' Service the High Public Executive System only applies to senior service managers and regional directors.

In the National Civil Service Directorate, the high Public Executive System only applies to deputy directors' positions.

³⁸For second-tier managers.

³⁹For second-tier managers.

[67] The Committee also notes that the “[Final Report of the Presidential Advisory Council against Conflict of Interest, Influence Peddling, and Corruption](#) of April 24, 2015 (also called the Engel Commission Report), formulated a number of proposals, including the following:⁴³

[68] 3. “*Incorporate currently excluded oversight agencies, such as the Labor Directorate.*”

[69] 4. “*Incorporate other excluded services, such as Senama, Fonasa, Odepa and Sarcotec*”.

[70] In that connection, the Committee observes that although the new legal framework incorporates a number of these agencies, which were previously excluded from the High Public Executive System, not all have been included in said System. Likewise, the Committee finds that the new legislation incorporates in the list of exclusions from the System, new agencies and services, which did not appear under the previous legal framework.

[71] Based on the foregoing, the Committee takes note of the steps taken by the country under review and of the need for it to continue to give attention to implementing the above measure of the above recommendation. (See recommendation 1.1.3.4 in Section 1.1.3 of Chapter II of this report.)

Measure (f) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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 creating personnel selection, admission, and evaluation policies that are coherent throughout the organization and that allow the comprehensive professionalization of public service .

[72] The country under review did not refer to measure (f) of the above recommendation in its response. Therefore, the Committee notes the need for the country under review to give it additional attention. (See recommendation 1.1.3.5 in Section 1.1.3 of Chapter II of this report.)

Recommendation 1.1.2:

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

⁴⁰For deputy directors' positions.

⁴¹For the positions of inspector and managers of the Production Development Corporation. They are selected according to the rules for second-tier senior management positions contained in Title VI, paragraph 3 of Law No. 19.882. In that case, the selection committee is composed of one representative of the Corporation, one representative of the Ministry of Economy, Development, and Tourism, and one member of the High Public Executive Council.

⁴²The Social Security Superintendent is appointed by the President of the Republic in accordance with Title VI of Law No. 19.882. The Superintendent shall be grade 1 on the inspectors’ scale at the top seniority level. The new law also provides that the positions of inspector and intendant shall be appointed by the Superintendent and shall be grade 2 on the inspectors' scale at the second seniority level.

⁴³See Final Report of the Presidential Advisory Council against Conflict of Interest, Influence Peddling, and Corruption, p. 39. Available in Spanish at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

Measure (a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[73] As regards the Senate, in its Response, the country under review presents information regarding measure a) of the foregoing recommendation, including the following that the Committee wishes to highlight:⁴⁴

[74] *“As was mentioned in the response to the questionnaire submitted in 2010, there is a complete statute that governs recruitment, selection, and incorporation of personnel in the Senate, whether as staff or as contract appointments, the provisions of which are contained in the Constitutional Organic Law of the National Congress (Law 18.918), as amended; the Rules of Procedure of the Senate; and the Senate Staff Rules.*

[75] *“Article 8 of the Staff Rules stipulates that the Secretary of the Senate, with 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.*

[76] *The Senate abides by that principle. Accordingly, personnel hired under fee-based contracts provide specialized services from time to time in support of the Senate's permanent activities.*

[77] *There has been no indefinite and mass hiring of staff by this method. In fact, it should be mentioned that the fee-based contracts into which the Senate enters are for work that meets the above requirements, and their proportion, which varies over time, is less than 2 percent of the overall complement of staff and contract personnel. Information on the personnel complement for several years can be consulted at DIPRES or at www.senado.cl, under the section on Transparency.”⁴⁵*

[78] In that regard, the Committee finds that fee-based contracts are indeed published on the Senate's website, as mentioned in the preceding paragraph. The Committee also observes that some individuals are recorded as serving without interruption under that hiring regime since 2009.

[79] In relation to the Chamber of Deputies, the country under review provided, *inter alia*, the following information in its Response to the Questionnaire:⁴⁶

[80] *“Fee-based hiring, whether by the Senate or the Chamber of Deputies, is not designed to avoid holding merit-based competitions, but as a way of having individuals to perform specific new work for which there are no staff positions available.*

⁴⁴Response of Chile to the Questionnaire for the Fifth Round, pp. 66-67.

⁴⁵ See the website of the Chilean Senate at <http://www.senado.cl/appsenado/index.php?mo=transparencia&ac=informeTransparencia&tipo=13>

⁴⁶Response of Chile to the Questionnaire for the Fifth Round, p. 66.

[81] *The staffing complement of the National Congress was set in 1994 and has not been modified or increased since that time. Thus, the Senate's staff allotment consists of 220 positions, while that of the Chamber of Deputies has 284 positions.*

[82] “...”

[83] *As regards the recommended measure, whenever a staff vacancy has arisen in the Chamber of Deputies or the Senate,⁴⁷ it has been filled by either an internal or a public competition, as appropriate, in accordance with the respective statutory rules.*

[84] During the on-site visit, the representatives of the Chamber of Deputies provided the following statistical information:

TABLE 1
Personnel Complement 2011-2016 (%)
Source: Personnel Department of the Chamber of Deputies

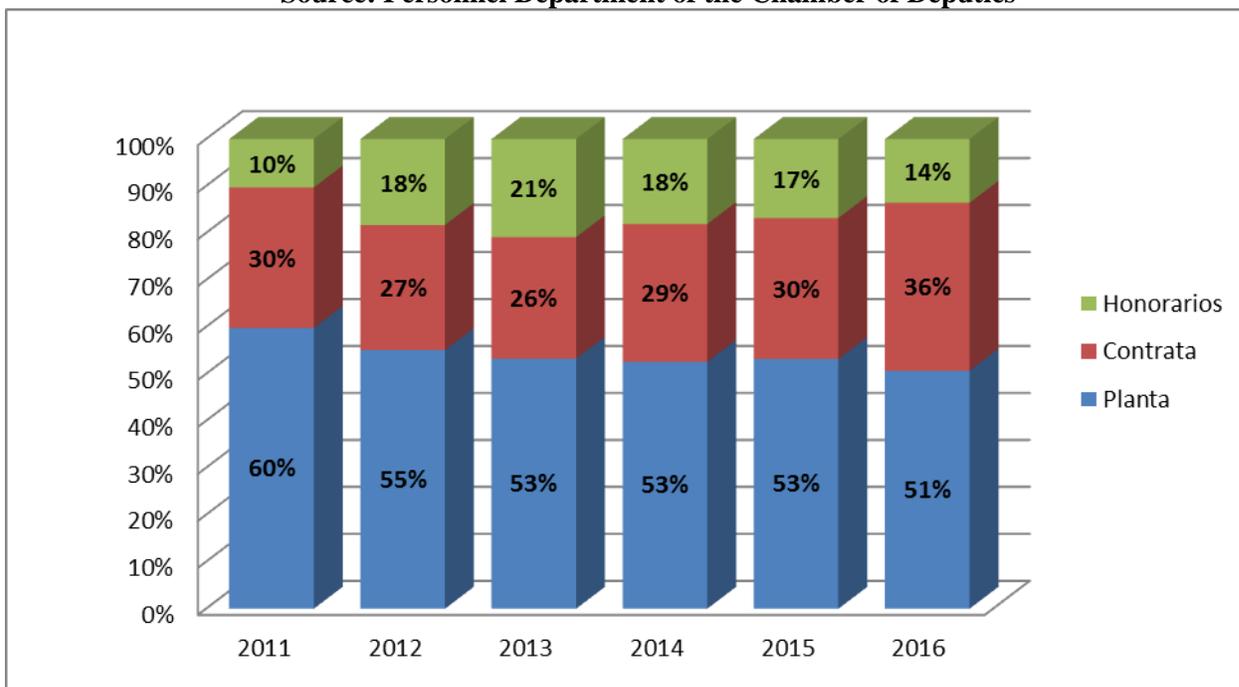


TABLE 2
Fee-Based Hires 2011-2016
Source: Personnel Department of the Chamber of Deputies

Year	Number fee-based	Renewed from previous year	New hires
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⁴⁷ In its comments document on the draft preliminary report of February 9, 2017, the State under review offered the following clarification: “All vacancies in the Senate—both staff positions and contract personnel—are filled by public competition, as expressly required by Article 5 of the Senate Staff Regulations.”

2011	48	38	10
2012	92	48	44
2013	109	81	28
2014	95	76	19
2015	85	64	21
2016	68	52	16

[85] The above information shows that the Chamber of Deputies has collected statistics on the percentage and number of personnel hired under fee-based contracts, as well as the number of renewals from year to year. However, it is not possible to determine from the information supplied if those renewals were for the contracts of the same individuals continuously and how long the contracts were for.

[86] Bearing in mind the foregoing, the Committee takes note of the need for the country under review to continue to give attention to implementing the above measure. (See recommendation 1.1.3.6 in Section 1.1.3 of Chapter II of this report.)

[87] Furthermore, it should be noted that the civil society organization *Chile Transparente*, in the document it presented under Article 34 of the Rules of Procedure and Other Provisions of the MESICIC Committee of Experts, indicated that.⁴⁸

[88] *“As in other areas of the administration, fee-based hiring is used to cover permanent functions of the institutions; in the legislature, it is used to hire parliamentary advisors who directly serve the elected representatives. This remains a mechanism used to appoint persons to public positions on a discretionary basis.”*⁴⁹

Measure (b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[89] In its Response and during the on-site visit, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to its satisfactory consideration:⁵⁰

⁴⁸ Document submitted by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the MESICIC Committee of Experts, p. 16.

⁴⁹ At the plenary meeting of March 15, 2017, the State under review reported that: *“The legislative branch has indicated that this claim is false given that parliamentary advisors are not included in the National Congress's staffing numbers, nor do they perform public functions. They serve to support the work of individual parliamentarians and report solely to them, and they are paid from parliamentary allocations and not by the institutional staffing budgets of the two chambers.”*

⁵⁰ Response of Chile to the Questionnaire for the Fifth Round, p. 68.

[90] *“The Senate is complying with this measure given that, although the Staff Rules—specifically Article 15—only provide for the publication of competitions in the Official Gazette and national newspapers, not the Internet, in accordance with Law 20.285 on Transparency and Access to Public Information, all competitions are published on our website (www.senado.cl), under “Public Competitions” in the “Transparency” section.”*

[91] In light of the foregoing, the Committee takes note of the satisfactory consideration of measure (b) of the above recommendation.

[92] Furthermore, the civil society organization *Chile Transparente*, in the document it presented under Article 34 of the Rules of Procedure and Other Provisions of the MESICIC Committee of Experts, indicated that:

[93] *“Effectively, some announcements are made through electronic media, but this is not done on a permanent basis. Upon accessing the Senate's website, no link to a recruitment unit or to “Work with Us” can be found (see: www.senate.cl).”*⁵¹

[94] *“The fact that the competitions published on the web pages do not permanently exist is described as a difficulty. Neither can a specific section for the publication of vacancies arising in the Senate at the national level be found on the website.”*⁵²

Measure (c) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[95] The country under review provided the following information in its Response:⁵³

[96] *“By definition, contained in Article 2 (d) of the Personnel Statute of the Chamber of Deputies, contract-based positions are transitory in nature and only run until December 31 each year. Therefore, it would be excessively costly for the institution to hold public competitions every year to select personnel to be hired in that way, whose appointment would last for a maximum of 12 months at best.”*

⁵¹ At the plenary meeting of March 15, 2017, the State under review reported that: *“The Senate informed the subgroup that the “Transparency” section of the Senate's website contains a link, in the upper right section, that reads “Public Competitions” in blue uppercase letters. (http://www.senado.cl/prontus_senado/site/edic/base/port/transparencia.html). It contains both ongoing competitions and those held during the three most recent years, indicating each stage therein and publishing all the results thereof on a permanent basis. This represents a level of transparency that is superior to that of most public agencies in Chile. It also indicated that Article 15 of the Staff Rules requires competitions to be published, as was explained on the third slide of the PowerPoint presentation given to the review subgroup during their visit to Chile.*

⁵² At the plenary meeting of March 15, 2017, the State under review reported that: *“Under Article 7.g of Law No. 20,285, the Senate is required, by active transparency, to publish this information on a permanent basis.”*

⁵³ Response of Chile to the Questionnaire for the Fifth Round, p. 68.

[97] During the on-site visit, representatives of the Chamber of Deputies also informed that they have a very small personnel department, making the holding of selection processes for contract personnel all the more onerous. They also mentioned the difficulty that [Law 19.297 “Amending Law No. 18.918, Constitutional Organic Law of the National Congress”](#), which sets the staffing complement of the National Congress, is outdated, dating as it does from 1994, and therefore they need to hire personnel under contract appointments and in some cases even under fee-based contracts in order to be able to perform functions not envisaged in the staffing structure. In addition, they said that the new units and functions were being covered with contract personnel but that they did not yet have a dictionary or job descriptions for the staff of the Chamber of Deputies.

[98] The representatives of the Chamber of Deputies also announced that they had move forward with talks aimed at improving the situation and drafting a new Staffing Law with a view to holding competitions to regularize contract- and fee-based personnel. In that regard, they presented the fact that two best practices have been developed: on one hand, public competitions have been held to fill contract-based positions; on the other, advantage was taken of the results of the public competitions held, primarily to fill staff positions, but also for contract- and fee-based positions. The following statistics are presented in the connection.⁵⁴

Public competitions held from 2011 to 2016				
Public competitions announced	Year of competition	Number of positions filled	Positions filled	Personnel category
Staff positions	2012	2	Legal assistants 2nd	Staff
		1	Legal assistant 2nd	Contract-based
		1	Attorney	Honoraria
	2015	4	Legal assistants 2nd	Staff
		2	Legal assistants 2nd	Contract-based
Contract positions	2014	2	Drivers	Contract-based

[99] Taking the foregoing into account, the Committee takes note of the steps taken by the country under review to implement the above measure, particularly as regards its best practices. However, it also notes the difficulties mentioned and the need for the country under review to continue to give attention to implementing the measure, bearing in mind that the recommendation originates from the analysis in the Second Round, in which the Committee made the following observation: *“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*

⁵⁴ See presentation http://www.oas.org/juridico/spanish/mesicic5_chi.htm

*contract-based employees. The Committee will formulate a recommendation in this regard.”*⁵⁵ (See recommendation 1.1.3.7 in Section 1.1.3 of Chapter II of this report.)

[100] The Committee also deems it appropriate that the country under review consider strengthening the Chamber of Deputies by providing it, subject to the availability of resources, with sufficient human and budgetary resources to enable its Personnel Department properly to hold public competitions for all vacancies that arise, including for contract-based positions, and it will make a recommendation to that end. (See recommendation 1.1.3.8 in Section 1.1.3 in Chapter II of this report).

[101] Finally, the Committee also considers it pertinent for the country under review to consider taking appropriate steps to adopt job descriptions for all positions in the Chamber of Deputies, including those that are contract-based, and to ensure that it has sufficient human and budgetary resources, within the available resources, to perform that task. The Committee will make a recommendation. (See recommendation 1.1.3.9 in Section 1.1.3 of Chapter II of this report.)

[102] Similarly, the Committee believes it relevant to note that during the on-site visit, the representatives of the Senate reported that in 2008 they had developed a dictionary and job descriptions but that they now require updating. They added that they were currently hiring a consultant to perform that update. On this point, the Committee believes it would be useful for the State under review to consider taking the relevant steps to update the dictionary and job descriptions for all posts in the Senate, including contract personnel, and to ensure that the Senate has the necessary human and budgetary resources, within the available resources, to perform that task. The Committee will formulate a recommendation. (See recommendation 1.1.3.10 in section 1.1.3 of Chapter II of this Report.)

[103] It is also worth noting that the civil society organization *Chile Transparente*, in a document submitted under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, observed the following:⁵⁶

[104] “*Article 22 of the Personnel Statute of the Chamber of Deputies (<https://www.camara.cl/camara/media/docs/estatuto.pdf>) requires a public competition, a technical and objective procedure, for admission to the professional permanent staff of the institution. However, it is mandatory only for that type of position and not for positions that belong to another, non-staff, legal category.*

Measure (d) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

⁵⁵ Report on Chile from the Second Round, p. 17.

⁵⁶ Document presented by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, pp. 17-18.

[105] In its Response, and during the on-site visit, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to its satisfactory consideration:⁵⁷

[106] *“Whenever the Chamber of Deputies announces public competitions to fill staff positions, it publishes those announcements, not only in the Official Gazette and a national newspaper, as stipulated in Article 24 of its Personnel Statute (<https://www.camara.cl/camara/media/docs/estatuto.pdf>), but also relies on available new technologies, in accordance with the provision contained in the same article, that states that such means of dissemination as are deemed appropriate should be adopted, and it invariably publishes those competition notices on its website. That means of publication is a permanent practice, without exception, in the public competition announcement procedure.*

[107] *In fact, the website has a special section for advertising competition that arise. That section is situated under the “Active Transparency” (Transparencia Activa) banner at <https://www.camara.cl/camara/concursos.aspx>*

[108] *Not only the competition notice itself is advertised on the website, but also background information, such as the administrative decision to call the competition, its terms and conditions, and other information.*

[109] Furthermore, the Committee also notes that at the plenary session on March 15, 2017, the State under review reported that although the Personnel Statutes of the Chamber of Deputies have not been amended, as is the case with the Senate, Law 20,285 on Transparency and Access to Information Public, published in 2008, requires the publication of such vacancies through electronic media.

[110] Taking the foregoing into consideration, the Committee takes note of the satisfactory consideration of measure (d) of the above recommendation.

[111] It is also worth noting that the civil society organization *Chile Transparente*, in a document submitted under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, observed the following:⁵⁸

[112] *“Article 24 (second paragraph) of the Personnel Statute of the Chamber of Deputies (<https://www.camara.cl/camara/media/docs/estatuto.pdf>), provides that competition notices must be announced by an advertisement published in the Official Gazette and at least one national newspaper, without making the use of the Internet or other technology mandatory. However, it also advertises public competitions under the “Transparencia Activa” section of its website via the link <https://www.camara.cl/camara/concursos.aspx>.*

Measure (e) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

⁵⁷Response of Chile to the Questionnaire for the Fifth Round, pp. 70-71.

⁵⁸Document presented by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, pp. 19-20.

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

[113] In its Response, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to its implementation:⁵⁹

[114] With respect to the Chamber of Deputies:⁶⁰ *“The Chamber of Deputies is currently in talks with the Civil Service with a view to securing its collaboration on matters concerning public competitions for hiring personnel, both as regards a review of the standards governing transparency, disclosure, and equal opportunity of access to positions in the public sector under which those procedures are conducted, and with respect to supporting the dissemination of competition notices, so that they are advertised as widely as possible at the national level, which would entail the use of Civil Service resources.”*

[115] With regard to the foregoing, during the on-site visit, representatives of the Chamber of Deputies said that the agreement being negotiated with the National Civil Service Directorate (DNSC) was under review, with the expectation that it would be concluded in November, 2016. The Committee was informed that the DNSC would provide advisory services in selection processes for management personnel and that a procedure similar to that of the High Public Executive System was expected to be incorporated.⁶¹

[116] With respect to the Senate: *“In 2010, the Chilean Senate signed a cooperation agreement with the Civil Service Directorate and its High Public Executive System with the aim of implementing,⁶² with its assistance, recruitment processes for officials in the first categories when deemed advisable. To provide an example, the Civil Service assisted the Senate in the selection process for the Senate’s current Administrative Director.*

⁵⁹Response of Chile to the Questionnaire for the Fifth Round, pp. 72-73.

⁶⁰ At the meeting of the review subgroup on March 10, 2017, the State under review presented the following additional information: “The text of the agreement has been reviewed by the clerk of the Chamber of Deputies, who approved it as regards its substantive issues. The amendments still being made are merely matters of format, and so its signature is imminent.

“Under this agreement, the Civil Service will provide the Chamber of Deputies with information on best practices in the implementation and development of selection processes for filling such positions as the Chamber of Deputies indicates, as regards transparency, nondiscrimination, professional suitability, and other issues.”

⁶¹ See Power Point presentation of the Chamber of Deputies http://www.oas.org/juridico/spanish/mesicic5_chi.htm

⁶² In its comments document on the draft preliminary report of February 9, 2017, the State under review offered the following clarification: “As this paragraph correctly points out, the Civil Service Directorate assisted the Senate in the selection process for the Senate’s current Administrative Director. Therefore, it is incorrect to say ‘with the aim of implementing’ [recruitment processes] under the cooperation agreement because the agreement has already been implemented. Therefore, we request that the language be amended from ‘with the aim of implementing, with its assistance, recruitment processes for officials’ to say ‘under which, with its assistance, recruitment processes are being implemented for officials’.

[117] In that connection, during the on-site visit, representatives of the Senate said that the agreement has the following objectives:⁶³

[118] “- *Ensure that the Senate has information on the State's best hiring practices and abides by the principles of transparency, nondiscrimination, and professional suitability.*

[119] - *Provide the National Civil Service Directorate with accurate, timely, and responsible information about possible amendments to its legal statute.*

[120] - *The establishment of a Technical Team composed of professionals from both parties.*

[121] - *Under the agreement, the Secretary General of the Senate designates the Department of Personnel and Services as the Technical Team.*”

[122] Bearing in mind the foregoing, the Committee takes note of the steps taken by the country under review and of the need to reformulate the above measure. (See recommendation 1.1.3.11 in Section 1.1.3 of Chapter II of this report.)

Recommendation 1.1.3:

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

Measure (a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[123] In its Response, and during the on-site visit the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that indicate satisfactory consideration of the measure:

[124] The adoption of Act No. 184-2014 of October 25, 2014, by which the Plenary of the Supreme Court issued the Order on the Judicial Appointments System,⁶⁴ Article 1 of which provides: “*The processing of competitions to fill positions in the Judiciary shall be supported by the computer systems developed for that purpose by the Administrative Corporation of the Judiciary, which, furthermore, shall provide such timely support as may be needed both for announcing the competition and for participation in it, and shall take pains at all time to preserve the principles set down in the fourth paragraph of the considerations.*⁶⁵ *In all cases, the forms that the administrative entity provides for such purposes shall be purely indicative in nature.*”

⁶³ See Senate PowerPoint Presentation http://www.oas.org/juridico/spanish/mesicic5_chi.htm

⁶⁴ See ACT No 184-2014 of the Plenary of the Supreme Court http://www.oas.org/juridico/spanish/mesicic5_chi.htm

⁶⁵ Paragraph 4 of the considerations provides “*The governing principle in relation to filling positions shall be objectiveness, with the aim of eliminating and, where not, at least limiting as much as possible, discretionary decisions by the governing entity or entities. To that end, the paradigms are: independence of the selecting or adjudicating entity; equal expectations and opportunities for all interested parties during the announcement; application and procedure; nondiscrimination in the decision; and absolute transparency.*”

[125] In that regard, the country under review provided the following information in its Response:⁶⁶

[126] *“There has been an electronic platform in place since May 2014, where applicants create an account, input their information, and apply for competitions that interest them: <http://postulaciones.pjud.cl/servlet/hwbloginpostulantes>*

[127] *Furthermore, all competitions are announced on the Judiciary website (<http://www.pjud.cl/trabaje-con-nosotros>), as are recruitment and selection procedures (<http://www.pjud.cl/politicas-y-procedimientos-de-reclutamiento-y-seleccion>). They also published in the Official Gazette.*

[128] *“...”*

[129] *A computerized system (Integrated Personnel Management System – SIGPER) began to be implemented in May 2014. It has a separate recruitment and selection module by which competition applications can be submitted in full online. This computerized application system can also be used to publish the scores and assessments given to contestants, challenge decisions, or submit comments and queries.*

[130] Based on the foregoing, and notwithstanding to such recommendations that may be formulated in the section on new developments, which will analyze Act No. 184-2013, the Committee takes note of the satisfactory consideration given by the country under review to measure (a) of the above recommendation.

[131] It is also worth noting that the civil society organization *Chile Transparente*, in a document submitted under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, observed the following:⁶⁷

[132] *“The Judiciary website has a banner (www.pjud.cl/trabaje-con-nosotros) that provides information on vacant positions, eligibility processes for transitory personnel, recruitment and selection policies and procedures, application documents, study manuals, and queries and claims.”*

Measure (b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[133] In its Response, and during the on-site visit the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to its implementation:

⁶⁶Response of Chile to the Questionnaire for the Fifth Round, pp. 75-77.

⁶⁷Document presented by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, p. 22.

[134] – The adoption of Act No. 184-2014 of October 25, 2014, by which the Plenary of the Supreme Court issued the Order on the Judicial Appointments System, Article 13 (Claims) provides: *“Those results [of the preselection process] shall be open to claims, which interested parties must submit with the body that will have the final decision on the competition within three business days of their notification.”*

[135] Furthermore, Article 15 (Challenges) provides: *“The final decision in the competition may be challenged before the superior of the authority that makes said decision, in the manner and within the time limits prescribed in the corresponding terms and conditions.”*

[136] – The adoption by the Administrative Corporation of the Judiciary of the *“General Terms and Conditions for Hiring in the Judiciary: Procedure for Implementation of Supreme Court Act No. 184.”*⁶⁸

[137] Paragraph (g) of provision 2 "Publication of Competition Notices" in Chapter IV "Stages Prior to the Selection Process," provides that information on the specific terms and conditions of each competition to be published on the website shall include the following:

[138] *“(g) Recourse to challenge the process in the admissibility and preselected candidates list stages. Once it has been analyzed and answered the competition shall continue, without the possibility of further recourse to challenge.*

[139] *Applicants may present objections to the results in the remaining stages within three days following notification of the results. Once the term expires, no additional reviews of results will be admitted.*

[140] *Challenges and objections may only be submitted on the scores received by the claimant.”*

[141] In this regard, the Committee notes that the foregoing recommendation originated from the analysis in the Second Round, in which the Committee made the following observation:

[142] *“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”.*

[143] The Committee notes, in first place, that the General Terms and Conditions for Hiring in the Judiciary makes no distinction between internal and external candidates where the right to present challenges is concerned, which constitutes progress in the implementation of the above measure of the recommendation. However, the Committee observes that the time limit for presenting challenges is only three days counted from the date of notification, that challenges or objections may only be

⁶⁸ See General Terms and Conditions for hiring in the Judiciary http://www.oas.org/juridico/spanish/mesicic5_chi.htm

submitted on the scores received by the claimant, and that there is still no recourse to a second instance.

[144] In that regard, the Committee believes that it would be appropriate for the country under review to consider the possibility of extend the recourse to challenge decisions to all stages of selection processes for vacant positions that arise in the Judiciary, including recourse to, or the option of, a second instance, guaranteeing deadlines sufficient to ensure that right, together with the need to reformulate the recommendation in this regard. (See recommendation 1.1.3.12 in Section 1.1.3 of Chapter II of this report.)

[145] It is also worth noting that the civil society organization *Chile Transparente*, a document submitted under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, observed the following:⁶⁹

[146] *“The judiciary has incorporated the possibility of making a claim if errors are committed in following the procedures announced for the competition, but this is far from being an independent procedure that examines the legality of the process, as found in the Administration of the State.”*⁷⁰

[147] *“The website at <http://www.pjud.cl/consultas-y-reclamos> provides access to three forms: “Administrative corporation competition complaint form,” “Secondary roster competition complaint form,” and “Employee roster competition complaint form.” These can be used when the applicant believes that there has only been an error in procedures' application.*

Measure (c) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[148] In its Response, and during the on-site visit the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to its implementation:⁷¹

[149] *“At present, all positions, whether annual contracts or permanent positions, are filled by competition. In order to ensure the principles of transparency and equal opportunities, when competitions are announced, their terms are published at the same time, specifying the requirements and conditions as well as the different stages of the process, what evaluations applicants will undergo, and the metrics used.*

⁶⁹Document presented by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, p. 23.

⁷⁰ At the plenary meeting of March 15, 2017, the State under review reported that: *“Civil society provided no objective information to support its claim. The judiciary informed the Subgroup that all remedies brought against resolutions adopted in public competitions are resolved in accordance with the law.”*

⁷¹Response of Chile to the Questionnaire for the Fifth Round, p. 79.

[150] In this regard, the Committee notes the best practice applied by the country under review and recalls that the foregoing recommendation originated from the analysis in the Second Round, in which the Committee made the following observation:⁷²

[151] *“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,⁷³ 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.”⁷⁴*

[152] Bearing in mind the foregoing, the Committee takes note of the steps taken by the country under review—particularly with respect to best practices—and of the need for the country under review to continue to give attention to implementing the above measure, for which the Committee considers appropriate to reformulate for the sake of greater clarity. (See recommendation 1.1.3.15 in Section 1.1.3 of Chapter II of this report.)

[153] It is also worth noting that the civil society organization *Chile Transparente*, in a document submitted under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, observed the following:⁷⁵

[154] *“The best practice was observed of opening up all positions to competition, as per the text of the General Terms and Conditions for Hiring in the Judiciary. Three principles have been noted that should ensure the selection process, to wit: Transparency, nondiscrimination and equal opportunities, and objectiveness. This text is available on the Judiciary's website.*

Recommendation 1.1.4:

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

Measure (a) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:^{76/}

⁷² Report on Chile from the Second Round, p. 19.

⁷³ Article 9 of Law No. 15,632, *“Amending the Organic Code of Courts and Civil Procedure...,”* provides as follows: *“ARTICLE 9: 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 the second paragraph of Title 1 of Decree 338 of April 6, 1960, on the Administrative Statute, shall apply to these operations, with the exception of the provision contained in the second section of Article 14.*

“In the contracting of jobs listed in the sixth category of Article 292 of the Organic Courts Code, the studies requirement set out in 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.”

⁷⁴ At the plenary meeting of March 15, 2017, the State under review indicated that: “The judiciary reports that Law 15,632 was tacitly repealed by Law No. 19,390 of May 30, 1995.”

⁷⁵ Document presented by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, p. 24.

⁷⁶ In the Report on Chile for the Third Round, the following footnote was inserted in this measure: *“In connection with this, the Republic of Chile reports in its comments document that: “Exempt resolution 01471,*

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.

[155] In its Response, and during the on-site visit the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to its implementation:⁷⁷

[156] – “The adoption of [Resolution No. 5.236 of 2014](#), which approves the personnel management policies of the Office of the Comptroller General,⁷⁸ replacing Resolution No. 1.471 of 2003 and on which the country under review reports: “*The resolution in force establishes general policies, as well as specific ones on recruitment and selection, induction, training, performance evaluation, promotion, transfers, well-being and quality of life, pay, separation, and workplace safety.*”⁷⁹

[157] – The legislative bill amending Law No. 10.336, “*on Organization and Powers of the Office of the Comptroller General of the Republic,*” submitted by the Comptroller General of the Republic to the Office of the President of the Republic on May 27, 2016.⁸⁰

[158] It should be mentioned that during the on-site visit, representatives of the CGR noted that Article 3 of Law No. 10.336, which provides that all the personnel of the CGR are trust appointments of the Comptroller, had become obsolete, and that the current Comptroller General announced in the Senate that this situation was unsustainable and would have to be resolved.

[159] Indeed, Bulletin No. S 1.843-05 of October 2015, “*Report of the Committee on the Constitution, Legislation, Justice, and Rules of Procedure, by which the President of the Republic requested the consent of the Senate to appoint the current Comptroller of the Republic*” recorded the following:

[160] “*In first place, the candidate for the position of Comptroller General [as he was then] referred to the situation of the staff of the Office of the Comptroller General of the Republic. He opined that the way in which that agency is organized is virtually monarchic, given that its head is the Comptroller General, who has the power to remove all the staff because all of them are trust appointments.*

[161] *He said that the situation was anomalous and unsustainable, adding that, nonetheless, those who had headed the agency in the past had acted with prudence in that regard.*

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.

⁷⁷Response of Chile to the Questionnaire for the Fifth Round, p. 79.

⁷⁸ See Resolution No. 5.236 of 2014 http://www.oas.org/juridico/spanish/mesicic5_chi.htm

⁷⁹Response of Chile to the Questionnaire for the Fifth Round, p. 83.

⁸⁰ See to legislative bill amending Law No. 10.336 http://www.oas.org/juridico/spanish/mesicic5_chi.htm

[162] *“He added that the monarchic arrangement was also visible in the Comptroller General's power over the internal organization, since he was able, for example, to open or close regional Comptroller's offices or dependencies. He underscored that solving the situation described by enacting a new law governing the institution's organization and powers was a task waiting to be carried out.”*⁸¹

[163] Bearing in mind the foregoing, the Committee takes note of the steps carried out by the country under review to implement the above measure—particularly with respect to best practices in personnel management—and of the need for the country under review to continue giving it further attention.⁸² (See recommendation 1.1.3.14 in Section 1.1.3 of Chapter II of this report.)

[164] It is also worth noting that the civil society organization *Chile Transparente*, in a document submitted under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, observed the following:⁸³

[165] *“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. The resolution also prescribes policy on performance evaluation, promotion, rotation, and termination.” The resolution has not been incorporated in the new regulations in that regard.*

[166] During the on-site visit, representatives of this civil society organization also mentioned: *“The oversight function that the CGR is required to perform with respect to the lawfulness and registration of personnel appointments has been modernized and expedited with the creation of the SIAPER.”*⁸⁴

Measure b) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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.

[167] In its Response, and during the on-site visit the country under review presented information on the above measure, based on which the Committee concludes that measure has been superseded:⁸⁵

[168] *“... Articles 44 and 46 of Law No. 10.336, which gave rise to measure (b), were repealed before the Convention entered into force. Those provisions should be regarded as abrogated by Articles 9 and 10 of Decree Law No. 3.551 of 1980 and by Decree Law No. 3.651 of 1981, as*

⁸¹ See Newsletter No. S 1.843-05, pp. 17 http://www.oas.org/juridico/spanish/mesicic5_chi.htm.

⁸² At the meeting of the review subgroup on March 10, 2017, the State under review indicated that: “Following the on-site visit, the new CGR Personnel Policy was drafted. It specifically regulates the entry, development, and training of employees and their leaving the institution. On January 23, 2017, the Comptroller General presented it to all the staff of the CGR for them to participate actively in its formulation, following which it will be adopted by means of a resolution.”

⁸³ Document presented by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, p. 26.

⁸⁴ See presentation by Chile Transparente http://www.oas.org/juridico/spanish/mesicic5_chi.htm.

⁸⁵ Response of Chile to the Questionnaire for the Fifth Round, p. 87, and presentation of the Office of the Comptroller General http://www.oas.org/juridico/spanish/mesicic5_chi.htm

amended, which establish the organizational chart and staffing complement, respectively, of the Office of the Comptroller General. That much is expressly recognized in a footnote in the official edition of the updated text of law No. 10.336 (October 2007) published by the CGR, which is in general use throughout the Chilean State Administration.

[169] In that connection, the Committee notes that footnote 18 in Article 44 of [Law 10.336](#), provides: “Articles 44, 45, and 46, should be regarded as abrogated by Articles 9 and 10 of Decree Law No. 3.551 of 1980 and by Decree Law No. 3.651 of 1981, as amended, which establish the organizational chart and staffing complement, respectively, of the Office of the Comptroller General”.

[170] Bearing in mind that the foregoing recommendation originates from the analysis in the Second Round, in which the Committee observed: “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” and that this provision has been repealed, the Committee considers that this recommendation has been superseded.

1.1.2. New developments in respect of the Convention provision on government hiring systems

1.1.2.1. Developments in the regulatory framework

a. Scope

- Legislative and other legal provisions applicable to a majority of public servants, such as the following:

[171] – Law No. 20.955⁸⁶ on Strengthening the High Public Executive System and the National Civil Service Directorate. Notable regulatory changes introduced by the above law include, in particular:⁸⁷

[172] It gives the Civil Service “*the power to issue generally applicable rules on personnel management and development matters to ministries and their dependent and related services, with a view to their decentralized implementation and in order to standardize recruitment and selection practices, admission and promotion competitions, induction programs, training programs, development, grading systems, and other matters relating to good workplace practices and strategic management of human resources;*

[173] It formally establishes a Subdirectorate of Personnel Management and Development within the Civil Service's organic structure;

[174] It incorporates as a Civil Service function the issuance of generally applicable rules on drafting codes of ethics and promoting standards on transparency and administrative integrity;

⁸⁶ Official Gazette No. 41.588, of October 20, 2016. http://www.oas.org/juridico/spanish/mesicic5_chi.htm

⁸⁷ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

[175] It strengthens the role of the Tri-Ministerial Council—comprising the Ministry of Finance, the Secretary-General of the Office of the President of the Republic, and the Ministry of Labor and Social Security—in charge of monitoring technical quality and intersectoral coherence in the various functions performed by the National Civil Service Directorate.

[176] - Circular No. 35 of the Ministry of Finance⁸⁸ sets out general guidelines for ministers of state, undersecretaries, intendants, and senior service heads on contract renewal processes, in which it is instructed that, in accordance with the legal regulations on rehiring contract personnel (Law 18.834, Article 9) in the various ministries and public services (...)"

[177] – Presidential Instruction [No. 001] on Best Workplace Practices for Personnel Development in the State,⁸⁹ which “*commits public services to make firm progress in generating better personnel management policies and practices with the aim of developing better public-sector employment, thus strengthening the contribution that officials make to the fulfillment of the role of the civil service and the public’s satisfaction.*”⁹⁰

[178] - Civil Service Notice No. 743⁹¹ “[Implementation guidelines for the Presidential Instruction [No. 001] on Best Workplace Practices for Personnel Development in the State⁹²”], which establishes as one of its pillars, that public institutions shall ensure compliance with the regulations governing individual and collective labor rights, which include guaranteeing that conditions of access to public sector employment—including selection criteria—and working conditions are free from any kind of discrimination.”

- Legislative and other legal provisions applicable to the legislative branch:

[179] – Cooperation agreement between the Senate and the National Civil Service Directorate, the main objectives of which are:⁹³

[180] “*Ensure that the Senate has information on the State’s best hiring practices and abides by the principles of transparency, nondiscrimination, and professional suitability.*”

[181] *Provide the National Civil Service Directorate with accurate, timely, and responsible information about possible amendments to its legal statute.*

[182] *The establishment of a Technical Team composed of professionals from both parties.*

[183] *Under the agreement, the Secretary General of the Senate designates the Department of Personnel and Services as the Technical Team.*”

- Legislative and other legal provisions applicable to the judicial branch:

⁸⁸ Adopted on November 13, 2014.

⁸⁹ http://www.serviciocivil.gob.cl/ip_bpl

⁹⁰ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

⁹¹ Adopted on March 27, 2015.

⁹² Adopted on January 26, 2015.

⁹³ See PowerPoint presentation of the Senate http://www.oas.org/juridico/spanish/mesicic5_chi.htm

[184] - Act No. 184-2014 of October 25, 2014, by which the Plenary of the Supreme Court issued the Order on the Judicial Appointments System,⁹⁴ Article 1 of which provides: “*The processing of competitions to fill positions in the Judiciary shall be supported by the computer systems developed for that purpose by the Administrative Corporation of the Judiciary, which, furthermore, shall provide such timely support as may be needed both for announcing the competition and for participation in it, and shall take pains at all time to preserve the principles set down in the fourth paragraph of the considerations.*”⁹⁵ *In all cases, the forms that the administrative entity provides for such purposes shall be purely indicative in nature.*”

[185] – Decision of the Administrative Corporation of the Judiciary establishing the “General Terms and Conditions for Hiring in the Judiciary: Procedure for implementing Act No. 184 of the Supreme Court.”⁹⁶

- Legislative and other legal provisions applicable to the Office of the Comptroller General of the Republic (CGR):

[186] – Resolution No. 5.236 of 2014, which approves the personnel management policies of the Office of the Comptroller General⁹⁷, replacing Resolution No. 1.471 of 2003; and adopts general and specific policies on relevant personnel management processes, including recruitment and selection, training, performance evaluation, promotion, transfers, well-being and quality of life, pay, and separation.

[187] – The legislative bill amending Law No. 10.336, “*on Organization and Powers of the Office of the Comptroller General of the Republic,*” submitted by the Comptroller General of the Republic to the Office of the President of the Republic on May 27, 2016.⁹⁸

b. Observations

- New legal developments applicable to the National Civil Service Directorate (DNSC) and the entities under its jurisdiction:

[188] The Committee acknowledges that the new legal developments in this area are positive steps, which were taken to the publication of Law No. 20.955 which strengthens the High Public Executive System and the National Civil Service Directorate. Nevertheless, the Committee deems it appropriate to make a number of observations in that regard:

[189] In first place, the Committee notes that in its final report published on April 24, 2015, the Presidential Advisory Council against Conflict of Interest, Influence Peddling, and Corruption (also

⁹⁴ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

⁹⁵ Paragraph 4 of the considerations provides “*The governing principle in relation to filling positions shall be objectiveness, with the aim of eliminating and, where not, at least limiting as much as possible, discretionary decisions by the governing entity or entities. To that end, the paradigms are: independence of the selecting or adjudicating entity; equal expectations and opportunities for all interested parties during the announcement; application and procedure; nondiscrimination in the decision; and absolute transparency.*”

⁹⁶ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

⁹⁷ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

⁹⁸ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

known as the “Engel Commission”) proposed a number of additional measures for strengthening the High Public Executive System, including the following:⁹⁹

[190] *“6. It is suggested that the status of public agent be granted to everyone hired by the State under a fee-based contract, thereby extending to them their administrative responsibilities. In all other matters, they will be governed by the stipulations of their contract, in addition to decisions and other special provisions in force.”*

[191] In that connection, the Committee notes, first, that the recently adopted Law No. 20.955, which Strengthens the High Public Executive System and the National Civil Service Directorate, does not include that recommendation from the Presidential Advisory Council against Conflict of Interest, Influence Peddling, and Corruption, and therefore it does not bestow public agent status on personnel hired under fee-based contracts. Thus, the Committee believes that it would be useful for the country under review to consider making the relevant legal amendments to extend the status of public servant to personnel hired on a fee basis and, to that end, it will formulate a recommendation. (See recommendation 1.1.3.15 in section 1.1.3 of Chapter II of this Report.)

[192] Moreover, the Committee also observes that the concept of public employee or official is not defined either in that new law, or in Law No. 18.575 (Constitutional Organic Law on the General Bases of the State Administration), or in Law No. 18.834 (Administrative Statute).

[193] It is worth recalling in this connection that the Convention contains the following definitions

[194] *“Public function” means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy.*

[195] *“Public official”, “government official”, or “public servant” means any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy.*

[196] In light of the foregoing, the Committee believes that it would be appropriate for the country under review to consider incorporating in the rules and regulations that govern the public sector employees a definition of what constitutes a public official that is consistent with the definitions of public servant and public service enshrined in the Convention. The Committee will make a recommendation. (See recommendation 1.1.3.16 in Section 1.1.3 of Chapter II of this report.)

1.1.2.2. New developments with regard to technology

- New technological developments applicable to the National Civil Service Directorate (DNSC) and the entities under its jurisdiction:

[197] - The Public-Sector Employment Portal managed by the National Civil Service Directorate contains notices of vacancies in public services for which civil servants and members of the public,¹⁰⁰ as

⁹⁹ Report of the Presidential Advisory Council against Conflict of Interest, Influence Peddling, and Corruption, April 24, 2015, p. 41.

¹⁰⁰ www.empleospublicos.cl

appropriate, may apply. Each institution that uses the portal is responsible for its processes and fielding technical queries from applicants on each vacancy notice.

- New technological developments applicable to the Legislature:

[198] – The inclusion in the Senate portal of a section titled “Transparency/Public Competitions” (*Transparencia/Concursos Públicos*) for advertising public competitions.¹⁰¹

[199] – The inclusion in the Chamber of Deputies portal of a section titled “Active Transparency” (*Transparencia Activa*) for advertising public competitions.¹⁰²

- New technological developments applicable to the Judiciary:

[200] - The Judiciary's Applications Portal, where applicants create an account, input their information, and apply for competitions that interest them (launched in May 2014).¹⁰³

[201] - The Integrated Personnel Management System (SIGPER) is a computerized system with a dedicated recruitment and selection module that can be used, among other things, to publish scores and assessments given to contestants, challenge decisions, or submit comments and queries.¹⁰⁴

- New technological developments applicable to the Office of the Comptroller General:

[202] – The Government Employee Administration System (*Sistema de Información y Control del Personal de la Administración del Estado – SIAPER*) is the web platform of the Office of the Comptroller General (CGR) that “stores information on government employees in a clear and orderly way, facilitating and organizing its processing, supporting studies on the legality of administrative acts in relation to personnel matters, and providing data requested by government bodies and/or members of the public.”¹⁰⁵

a. Observations

- In relation to new technological developments applicable to the National Civil Service Directorate (DNSC) and the entities under its jurisdiction:

[203] The Committee recognizes the new technological developments in this area as positive steps, given the launch of the Public-Sector Employment Portal managed by the National Civil Service Directorate (DNSC) with the aim of publishing vacancies in public services for which civil servants and members of the public, as appropriate, may apply. Nevertheless, the Committee deems it appropriate to make an observation in that regard:

[204] The Committee observes that the portal contains no information relating to notices for public competitions for High Public Executive posts. Accordingly, the Committee believes that it would be

¹⁰¹ www.senado.cl

¹⁰² <https://www.camara.cl/camara/concursos.aspx>

¹⁰³ <http://postulaciones.pjud.cl>

¹⁰⁴ <http://www.sigper.cl/index.php/soluciones/sector-gobierno>

¹⁰⁵ <http://siaper.contraloria.cl/opencms/opencms/siaper/siaper/siaper.html>

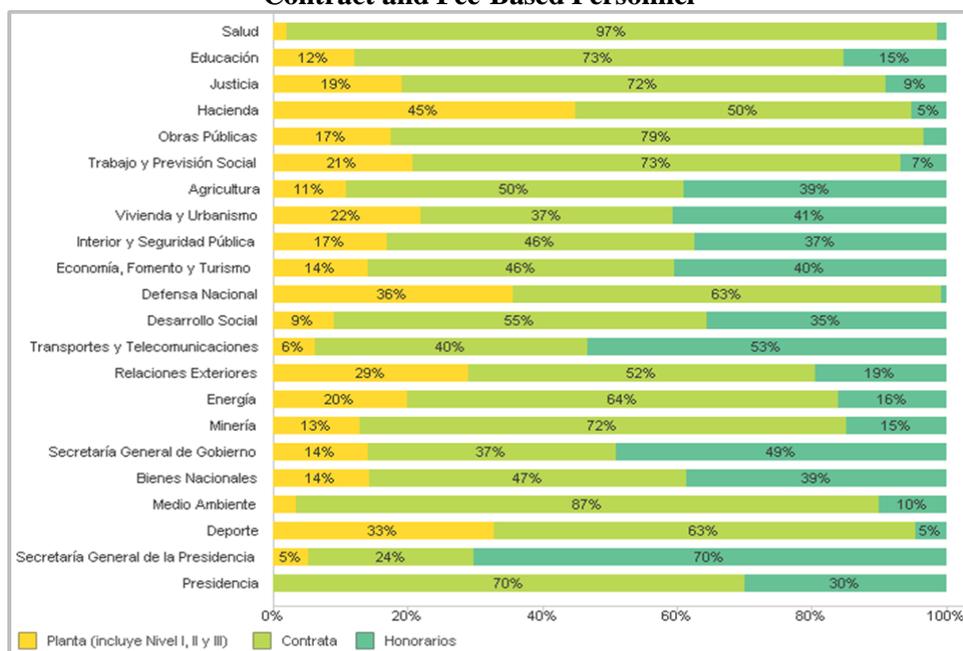
useful for the country under review to consider the possibility of using the Public-Sector Employment Portal for processing public competitions for these posts, and it will make a recommendation to that end. (See recommendation 1.1.3.17 in Section 1.1.3. of Chapter II of this report).

1.1.2.3. Results

- In relation to the results presented by the National Civil Service Directorate (DNSC) and the entities under its jurisdiction:

[205] During the on-site visit, the National Civil Service Directorate (DNSC) presented results in relation to recruitment processes in state organs and entities under its jurisdiction, notably the following:

Statistical Table No. 1
General Summary by Ministry with Percentages of Positions Filled by Staff and Contract and Fee-Based Personnel¹⁰⁶



[Key (in order) for the titles of ministries at left of above chart:

- Health
- Education
- Justice
- Finance
- Public Works
- Labor and Social Security
- Agriculture
- Housing and Urban Development
- Interior and Public Security
- Economy, Development and Tourism
- National Defense

¹⁰⁶ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

Social Development
 Transport and Telecommunications
 Foreign Affairs
 Energy
 Mining
 General Secretariat of Governance
 National Assets
 Environment
 Support
 General Secretariat of the Presidency
 Presidency]

[Key (in order) for titles of hiring categories in Spanish at bottom left of above chart:
 Staff (includes Levels I, II and III) Contract-based Fee-based]

[206] The Committee observes that the information provided in the above chart is not broken down by year and does not disclose which personnel selection procedures were used or if there were successive renewals in the cases of contract- or fee-based appointments, and for what length of time. The Committee also notes that the country under review does not provide statistics on how many selection processes were challenged, how many were audited, or what the results of those challenges and/or audits were.

[207] Based on the foregoing, the Committee believes that it would be appropriate for the country under review to consider keeping detailed statistics on the results of selection processes broken down by year, so as to comprehensively show the number and percentage of positions for all personnel in state organs and entities under the jurisdiction of the DNSC, whether staff, contract-based, fee-based, or other types of appointments, as well as how many selection processes were conducted, what was their nature, how many were challenged, how many audited, and what were the results of those challenges and audits, in order to identify obstacles and recommend corrective measures, as necessary. The Committee will make a recommendation. (See recommendation 1.1.3.18 in Section 1.1.3 of Chapter II of this report.)

[208] Second, as regards High Public Executive Positions, during the on-site visit, the country under review provided statistical information, notably the following:¹⁰⁷

Table No. 1
Appointed to attached and non-attached positions in the last 5 years by SADP

Ye ar	Attached			Non-attached			Tot al
	Lev el I	Lev el II	Tot al	Lev el I	Lev el II	Tot al	
201 2	11	201	212	31	27	58	270
201 3	25	168	193	8	42	50	243
201 4	46	58	104	8	44	52	156
201 5	41	342	383	15	31	46	429
201 6	17	105	122	11	21	32	154
Tot al	140	874	1,014	73	165	238	1,252

¹⁰⁷ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

Table No. 2
Number of competitions published in the last 5 years

Year	Attached			Non-attached			Total
	Level I	Level II	Total	Level I	Level II	Total	
2012	14	209	223	30	30	60	283
2013	21	191	212	15	65	80	292
2014	89	250	339	10	52	62	401
2015	29	357	386	17	42	59	445
2016	15	122	137	11	21	32	169
Total	168	1,129	1,297	83	210	293	1,590

Table No. 3
Number of competitions voided in the last five years for attached and non-attached positions

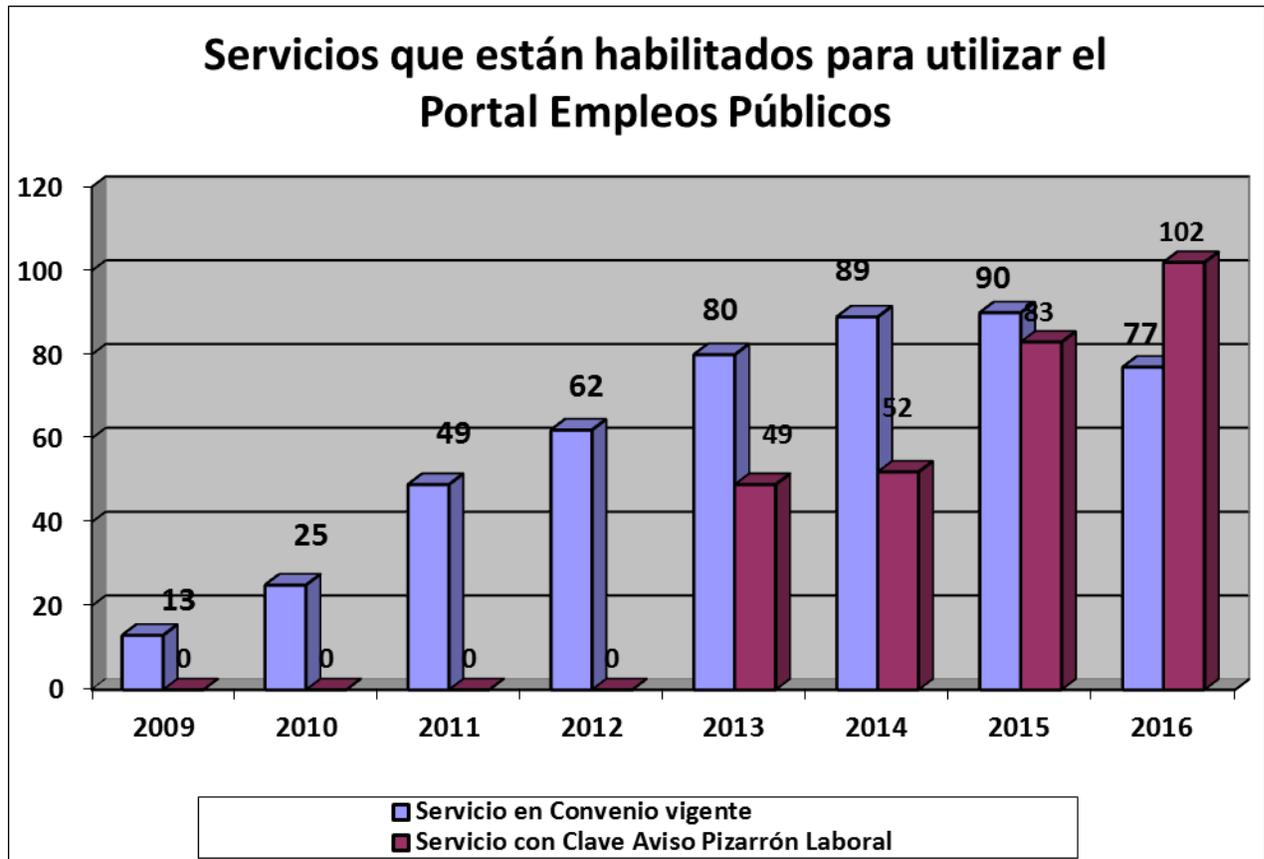
Years	Voided by CADP/Committee	Voided by Authority	Appointed
2012	29	35	270
2013	25	64	243
2014	27	28	156
2015	48	88	430
2016	23	30	154

Definitions:

- SADP: High Public Executive System (*Sistema de Alta Dirección Pública*)
- Attached: Positions governed by all the rules of the SADP
- Non-attached: Positions governed only by the recruitment and selection rules of the SADP
- Seniority Level I: Positions (Service Chiefs) appointed by the President of the Republic
- Seniority Level II: Positions appointed by the service chief

[209] In relation to the above statistical tables, the Committee notes that the country under review has gathered relevant data on the selection procedures of the High Public Executive System (SADP). However, it is not possible to tell from the above information whether or not high executive positions were filled by direct appointment without using the SADP and, if so, how many such appointments there were and when they occurred; or how many selection processes were challenged, how many were audited, and what the results of those challenges and/or audits were. In that regard, the Committee believes that it would be beneficial for the country under review to keep statistics broken down by year so as to know how many SADP selection processes were challenged, how many audited, and what were the results of those challenges and audits, in order to identify obstacles and recommend corrective measures, as necessary. The Committee will make a recommendation. (See recommendation 1.1.3.19 in Section 1.1.3 of Chapter II of this report.)

[210] During the on-site visit, the country under review presented information in relation to statistics on the Public-Sector Employment Portal, notably the following:¹⁰⁸



[Key: (Chart title) Services Able to Use the Public-Sector Employment Portal
(Bottom): Service with Valid Agreement
Service with Password for Labor Noticeboard]

[211] The Committee observes that the above chart refers to state “services” (agencies) that have agreements with the DNSC for the use of Public-Sector Employment Portal, as well as to services with a password for placing notices on the “Labor Noticeboard” (*Pizarrón Laboral*). In that regard, the Committee notes that the number of state agencies that have agreements with the DNSC for that purpose increased from 13 in 2009 to 90 in 2015. However, the Committee finds that in 2016 the number of state services with such agreements fell to 77.

[212] During the on-site visit, DNSC representatives reported the following:

[213] “Of the 77 services with agreements for using the Public-Sector Employment Portal, only 33 do not receive advisory services for the publication of notices.”

¹⁰⁸ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

[214] *The other 44 institutions still receive advisory services from the Civil Service for the online publication of notices of selection and recruitment processes.”*

[215] The Committee also notes that Administrative Measure No. 5 of the Agenda on Integrity and Transparency makes it mandatory for all agencies that belong to the Central Administration to use the Public-Sector Employment Portal; and that Ministry of Finance Notice No. 1320 dated May 5, 2015, advises all senior managers of public services in the Civil Administration that use of the Public-Sector Employment Portal is mandatory for disseminating notices of public competitions and/or selection processes.

[216] Based on the foregoing, the Committee believes that it would be pertinent for the country under review to consider adopting the necessary measures so that all the agencies that belong to the Central Administration are able to use the Public-Sector Employment Portal of the DNSC and do so. The Committee will make a recommendation. (See recommendation 1.1.3.20 in Section 1.1.3 of Chapter II of this report.)

- In relation to the results presented by the Legislature:

[217] During the on-site visit, the country under review presented results in relation to the recruitment processes of the Senate, notably the following:

**Selection Processes Conducted Since 2010 by the Senate
(31 processes in total)¹⁰⁹**

YEAR	POSITIONS UP FOR COMPETITION	VACANCIES	APPLICATIONS	APPOINTMENTS	LEGAL STATUS
2010	JOURNALIST	1	62		CONTRACT-BASED
2010	HEAD OF SECURITY	1	19	1	CONTRACT-BASED
2010	RISK PREVENTER	1	17	1	FEE-BASED
2011	ASSOCIATE LAWYER 2ND	5	306	5	STAFF
2011	PROFESSIONAL 3RD	1	26	1	STAFF
2011	ADMINISTRATIVE DIRECTOR	1	72	0	STAFF
2012	JOURNALIST-BROADCASTER	1	49	1	CONTRACT-BASED
2013	JOURNALIST-BROADCASTER	1	38	1	CONTRACT-BASED
2012	BUDGET ANALYST	2	53	2	CONTRACT-BASED
2012	ADMINISTRATIVE DIRECTOR	1	106	1	STAFF
2013	TYPISTS AND COORDINATORS 1ST AND 2ND	4	29	2	STAFF
2013	TELEPHONE OPERATOR 2ND	1	41	1	STAFF
2014	TELEPHONE OPERATOR 3RD	1	59	2	STAFF
2014	TECHNICIAN 3RD	1	26	1	CONTRACT-BASED
2014	TECHNICIAN 3RD	1	31	2	CONTRACT-BASED
2014	ORGANIZATIONAL DEVELOPMENT PROFESSIONAL	1	53	1	CONTRACT-BASED
2014	TECHNICIAN 2ND	1	72	2	STAFF
2014	ASSISTANT AND SERVICES AUXILIARY	3	28	3	STAFF
2014	PROFESSIONAL 3RD	1	17	1	CONTRACT-BASED

¹⁰⁹ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

2014	PROFESSIONAL 3RD	1	102	2	STAFF-CONTRACT
2014	ADMINISTRATIVE AND AUXILIARIES	18	113	14	STAFF-CONTRACT
2014	EXECUTIVE SECRETARY 3RD AND SECRETARY 1ST	5	95	7	STAFF-CONTRACT
2014	BUDGET ANALYST	1	36	1	CONTRACT-BASED
2014	WELLBEING ASSISTANT	1	29	1	CONTRACT-BASED
2014	PROFESSIONAL 3RD	2	18	2	CONTRACT-BASED
2014	PROFESSIONAL 3RD	1	64	1	STAFF
2015	PUBLICATIONS COORDINATOR 2ND	1	18	2	STAFF
2015	HEAD OF FINANCE	1	33	1	STAFF
2015	PROFESSIONAL 3RD	1	28	1	CONTRACT-BASED
2013	TYPIST TRAINING	14	25	9	FEE-BASED
2015	LAWYERS COMMITTEES AND INSPECTOR'S OFFICE	3	238	3	STAFF AND CONTRACT-BASED
VACANCIES		APPLICATIONS		ADMITTED	
78		1,903		73	

[218] Regarding the above statistical table, the Committee notes that the chart shows that selection processes have been carried out for vacancies that have arisen in the Senate between 2010 and 2015. The Committee also observes that, although the information is broken down by year, it does not disclose if those processes were internal or external in nature, or if there were successive renewals in the cases of contract-or fee-based appointments, and for what length of time. The Committee also notes that the country under review does not provide statistics on how many selection processes were challenged, how many were audited, or what the results of those challenges and/or audits were.

[219] Based on the foregoing, the Committee believes that it would be pertinent for the country under review to consider keeping detailed statistics on the results of selection processes in the Senate, so as to know if they were internal or external in nature, if there were successive renewals in the cases of contract- or fee-based appointments and for what length of time; as well as how many selection procedures were challenged, how many audited, and what the results of those challenges and audits were, in order to identify obstacles and recommend corrective measures, as necessary. The Committee will make a recommendation. (See recommendation 1.1.3.21 in Section 1.1.3 of Chapter II of this report.)¹¹⁰

[220] As regards results of selection processes in the Chamber of Deputies, during the on-site visit, the country under review submitted statistics that have already been transcribed in Section 1.1.1 under paragraphs 73 to 88, corresponding to the follow-up review of measure (a) of recommendation 1.1.2 formulated by the Committee in the Second Round. Those two statistical tables refer to the personnel allocation of the Chamber of Deputies from 2011 to 2016, as well as the number of fee-based contracts over the same period, and are transcribed again in this section:

¹¹⁰ At the plenary meeting of March 15, 2017, the State under review reported that: *"The Senate clarified that the selection and recruitment procedures described are public competitions in their entirety, since that is the path of admission to staff and contract-based positions in that body. There have been no claims or challenges, and so no statistics relating thereto were presented. Finally, the human resource management processes are currently undergoing an a posteriori review by external auditors."*

TABLE 1
Personnel Complement 2011-2016 (%)
 Source: Personnel Department of the Chamber of Deputies

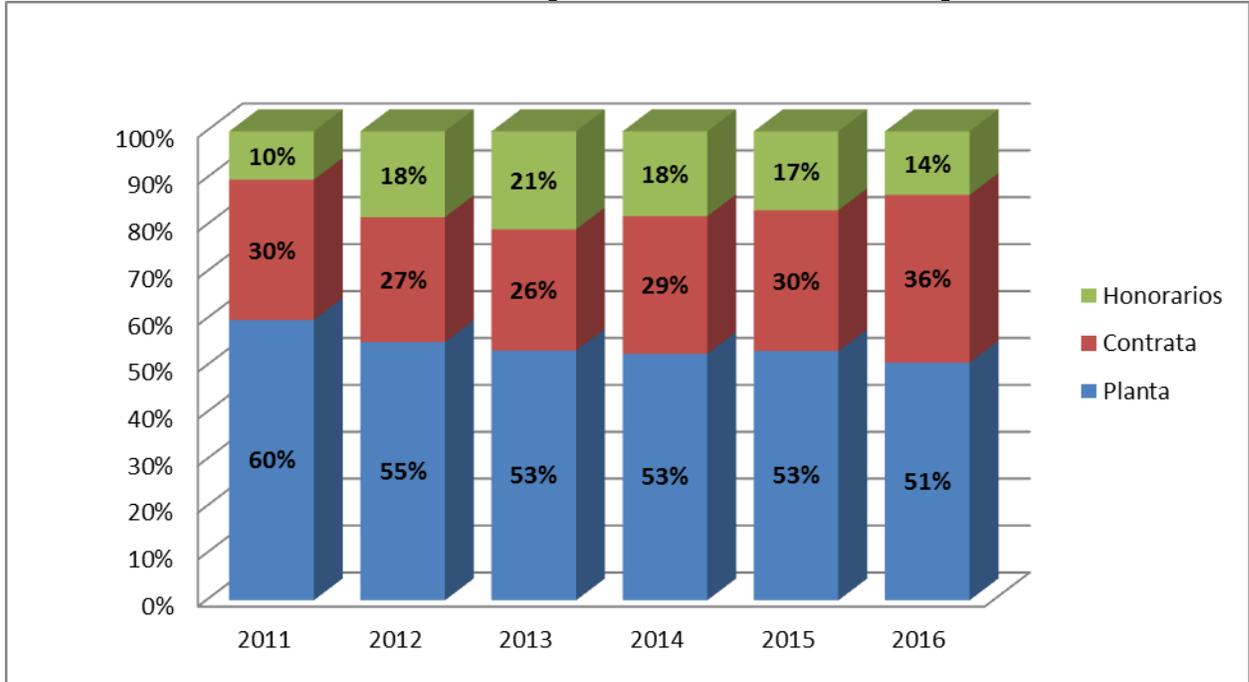


TABLE 2
Fee-Based Hires 2011-2016
 Source: Personnel Department of the Chamber of Deputies

Year	Number fee-based	Renewed from previous year	New hires
2011	48	38	10
2012	92	48	44
2013	109	81	28
2014	95	76	19
2015	85	64	21
2016	68	52	16

[221] Notwithstanding the Committee’s observations in Section 1.1.1 above, the Committee notes that the information supplied in Table No.1 does not disclose which of those personnel entered service with the Chamber of Deputies by means of a public merit-based competition and which by direct appointment, or if there were successive renewals in the case of contract-based personnel who were not engaged by means of merit-based competition; with respect to Table No. 2, it is not clear if the renewals

of personnel on fee-based contracts involved the same individuals over successive years. In addition, it is not possible to tell if there were any challenges and/or audits in the selection procedures and what the results of those challenges or audits were.¹¹¹

[222] Based on the foregoing, the Committee believes that it would be pertinent for the country under review to consider keeping detailed statistics on the results of selection processes in the Chamber of Deputies, so as to know if those personnel were engaged by means of public merit-based competitions or by direct appointment, if there were successive renewals in the cases of contract- or fee-based appointments and for what length of time; as well as how many selection procedures were challenged, how many audited, and what the results of those challenges and audits were, in order to identify obstacles and recommend corrective measures, as necessary.¹¹² The Committee will make a recommendation. (See recommendation 1.1.3.22 in Section 1.1.3 of Chapter II of this report.)

- In relation to the results presented by the Judiciary:

[223] The Committee, taking into account that the country under review did not submit information on results in relation to hiring in the Judiciary, believes that it would be useful for the country under review to consider preparing detailed statistics compiled on an annual basis on the results of selection processes for personnel of the Judiciary, with a view to identifying obstacles and recommending corrective measures, as necessary.¹¹³ The Committee will make a recommendation in that connection. (See recommendation 1.1.3.23 in Section 1.1.3 of Chapter II of this report.)

- In relation to the results presented by the Office of the Comptroller General of the Republic (CGR):

[224] During the on-site visit, the country under review presented results in relation to the recruitment processes of the CGR, notably the following:¹¹⁴

Year	No. of officials engaged via merit-based selection	Total engaged	Merit-based engagements as a percentage of the total engagements
2012	102	127	80.3%

¹¹¹ At the plenary meeting of March 15, 2017, the State under review reported that: “*There have been no claims or challenges, and so no statistics relating thereto were presented.*”

http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹¹² At the meeting of the subgroup on March 10, 2017, the State under review presented statistical information on the selection processes of the Chamber of Deputies. http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹¹³ At the meeting of the subgroup on March 10, 2017, the State under review presented statistical information on the personnel selection processes of the judiciary. http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹¹⁴ See CGR PowerPoint presentation http://www.oas.org/juridico/spanish/mesicic5_chi.htm

2013	144	159	90.6%
2014	101	118	85.6%
2015	59	64	92.2%
2016	50	71	70.4%
Grand total	456	539	84.6%

Table No. 2 Personnel admitted by discretionary appointment						
POSITION						Total
	2012	2013	2014	2015	2016	
Deputy Comptroller General					1	1
Head of Division					2	2
Auditor					1	1
Deputy Secretary General					1	1
Regional Comptroller	3	4	3	1	1	12
Total Positions by discretionary appointment	3	4	3	1	6	17
Personnel allocation	1,895	2,001	1,993	1,973	1,987	
Percentage of allocation	0.16%	0.20%	0.15%	0.05%	0.30%	
<ul style="list-style-type: none"> ➤ The personnel allocation of the Office of the Comptroller General is approximately 2,000 employees nation-wide. ➤ Discretionary appointments correspond to the most senior posts and not career positions. 						

Table No. 3

Personnel engaged under services regimes			
Year	No. personnel on fee-based contracts	No. of CGR employees	Fee-based appointments as a percentage of the total employees
2012	13	1,895	0.69%
2013	15	2,001	0.75%
2014	20	1,993	1.00%
2015	13	1,973	0.66%
2016	11	1,987	0.55%

Other data requested for the last 5 years
<ul style="list-style-type: none"> ➤ Number and percentage of civil servants engaged under temporary or provisional appointments: NONE ➤ Number and percentage of civil servants engaged under special appointments: NONE ➤ Number and percentage of appeals filed against decisions issued in recruitment processes: NONE

[225] Regarding the statistics supplied by the CGR, the Committee notes that while they disclose how many officials were engaged via merit-based selection processes, they do not show how many were contract-based hires and how many are staff, or if there were successive renewals in the cases of contract- or fee-based appointments and for what length of time.¹¹⁵ Based on the foregoing, the Committee believes that it would be pertinent for the country under review to consider keeping statistics on such information, in order to identify obstacles and recommend corrective measures, as necessary. The Committee will make a recommendation. (See recommendation 1.1.3.24 in Section 1.1.3 of Chapter II of this report.)

1.1.3. Recommendations

[226] In light of the comments made in Sections 1.1.1 and 1.1.2, the Committee suggests that the country under review consider the following recommendations:

¹¹⁵ At the meeting of the subgroup on March 10, 2017, the State under review presented additional statistical information on the selection processes of the CGR
<https://www.contraloria.cl/portalweb/documents/451102/2253315/Estadisticas+de+Personal+CGR.pdf/a4da165c-e939-ae02-6b4a-b04a3727f233>

- 1.1.3.1 Consider reviewing the policy for contract appointments, including the legislative amendments deemed appropriate, in order to ensure that the hiring of public officials under such mechanisms are carried out accordance to a merit-based system, thus ensuring compliance with the principles of openness, equity, and efficiency as set out in the Convention. (See paragraphs 15 to 35 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.2 Follow up on the manner 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 paragraphs 36 to 52 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.3 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 paragraphs 61 to 63 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.4 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. (See paragraphs 64 to 71 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.5 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 creating personnel selection, admission, and evaluation policies that are coherent throughout the organization and that allow the comprehensive professionalization of public service. (See paragraph 72 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.6 Follow up the manner 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 paragraphs 73 to 88 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.7 Consider making the necessary modifications to the Personnel 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 paragraphs 95 to 99 in Section 1.1.1 of Chapter II of this report.)

- 1.1.3.8 Strengthen the Chamber of Deputies by providing it, subject to the availability of resources, with sufficient human and budgetary resources to enable its Personnel Department to properly hold public competitions for all vacancies that arise, including for contract-based positions. (See paragraph 100 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.9 Take appropriate steps to adopt job descriptions for all positions in the Chamber of Deputies, including those that are contract-based, ensuring that it has sufficient human and budgetary resources, within the available resources, to perform this task. (See paragraph 101 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.10 Take appropriate steps to update the job descriptions for all positions in the Senate, including those that are contract-based, ensuring that it has sufficient human and budgetary resources, within the available resources, to perform this task. (See paragraph 102 to 104 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.11 Take the steps necessary to introduce into the Legislative Branch a system similar to that of the High Public Management System. (See paragraphs 113 to 122 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.12 Consider appropriate legal measures to extend the recourse to challenge decisions to all stages of selection processes for vacant positions that arise in the Judiciary, including recourse to, or the option of, a second instance, guaranteeing deadlines sufficient to ensure that right. (See paragraphs 133 to 147 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.13 Consider making the necessary legal amendments in order to make it a mandatory requirement that all vacancies, without exception, that arise in the Judiciary, including vacancies for contract personnel, are filled by means of merit-based competitions, in which observance of the principles of equity, openness, and efficiency enshrined in the Convention is ensured. (See paragraphs 148 to 154 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.14 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 study the feasibility of establishing an administrative career. (See paragraphs 155 to 166 in Section 1.1.1 of Chapter II of this report.)
- 1.1.3.15 Consider making the necessary legal amendments to extend the status of public agent to personnel hired on a fee basis. (See paragraphs 188 to 191 in Section 1.1.2 of Chapter II of this report.)
- 1.1.3.16 Consider including in the legal framework a definition of public servant that is consistent with the definitions of public official and government official used in the Convention; (See paragraphs 192 to 196 in Section 1.1.2 of Chapter II of this report.)
- 1.1.3.17 Use the Government Employment Portal of the National Civil Service Directorate for publicizing and processing public competitive processes for filling Senior Public

Management positions. (See paragraphs 203 to 204 of Section 1.1.2 of Chapter II of this Report.)

- 1.1.3.18 Keep detailed statistics on the outcome of selection processes, broken down by year, so that it is possible to achieve an overview of the number and percentage of positions of all public servants in State agencies and entities that come within the purview of the National Civil Service Directorate, including permanent staff, contractual staff, and persons earning fees or hired on some other basis; of the number of selection processes carried out, the nature of those processes; whether there were successive renewals in cases of contractual or fee-based appointments and for how long; the number of appeals filed against resolutions issued in selection processes and the results of said appeals, with a view to identifying challenges and, if necessary, recommending corrective measures. (See paragraphs 205 to 207 in Section 1.1.2 of Chapter II of this report.)
- 1.1.3.19 Keep detailed statistical records on the outcomes of Senior Public Management (SADP) selection processes, broken down by year, that make it possible to see how many Senior Management positions were filled through direct appointment, without using the SADP, and the the number of appeals filed against resolutions issued in selection processes and the results of said appeals, with a view to identifying challenges and, if necessary, recommending corrective measures. (See paragraphs 208 to 209 in Section 1.1.2 of Chapter II of this report.)
- 1.1.3.20 Make the necessary arrangements for all central government agencies to be authorized to use the National Civil Service Directorate's Government Employment Portal and make its use mandatory. (See paragraphs 210 to 206 in Section 1.1.2 of Chapter II of this report.)
- 1.1.3.21 Keep detailed statistical records on the outcomes of selection processes in the Senate, that make it possible to see whether the processes were internal or open to outside applicants, whether there were successive renewals in cases of contractual or fee-based appointments and for how long; the number of appeals filed against resolutions issued in selection processes and the results of said appeals, with a view to identifying challenges and, if necessary, recommending corrective measures. (See paragraphs 217 to 219 in Section 1.1.2 of Chapter II of this report.)
- 1.1.3.22 Keep detailed statistical records on the outcomes of selection processes in the Chamber of Deputies, that make it possible to see what portion of its personnel were hired following merit-based competitive processes and what percentage were directly appointed; whether there were successive renewals in cases of contractual or fee-based appointments and for how long; the number of appeals filed against resolutions issued in selection processes and the results of said appeals, with a view to identifying challenges and, if necessary, recommending corrective measures. (See paragraphs 220 to 222 in Section 1.1.2 of Chapter II of this report.)
- 1.1.3.23 Compile detailed annual statistics on the results of the selection processes for personnel in the Judiciary, in such a way as to show clearly the number and percentage of public servants hired through competitive merit-based processes, temporary or provisional

appointments, exceptional appointments, discretionary appointments, the use of professional services rendered in a personal capacity, such as advisory services and consultant's contracts, and the number of appeals filed against resolutions handed down in selection processes and the outcomes of those processes, so that challenges can be identified and, where necessary, corrective measures recommended. (See paragraph 223 in section 1.1.2 of Chapter II of this report).

- 1.1.3.24 Keep detailed annual statistics on the outcomes of personnel selection processes for the Office of the Comptroller General of the Republic that clearly show the number and percentage of personnel hired as permanent staff or as contractors, whether there were successive renewals in cases of contractual or fee-based appointments and for how long, with a view to identifying challenges and, if necessary, recommending corrective measures. (See paragraphs 224 to 225 in section 1.1.2 of Chapter II of this report).

1.2. Systems for government procurement of goods and services

1.2.1. Follow-up on implementation of the recommendations formulated in the Second Round

Recommendation 1.2.1:

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

Measure a):

This measure has been satisfactorily considered and, therefore, the country under review does not need to provide further information in this regard.

Measure b):

This measure has been satisfactorily considered and, therefore, the country under review does not need to provide further information in this regard.

Measure c) suggested by the Committee, which requires additional attention under the terms contemplated in the Third Round report:

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.

[227] In its Response, the country under review presents information and new developments with respect to the foregoing measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹¹⁶

[228] *"The latest amendment to the Regulations for Law No. 19.886 (<https://www.leychile.cl/Navegar?idNorma=230608>), on Terms and Conditions for Administrative Supplier and Services Contracts, which entered into force in August 2015, included a provision (Article 12 bis) aimed at ensuring that the various stages of a procurement of goods or services be conducted by different people."*

¹¹⁶ Response of Chile to the Questionnaire for the Fifth Round, pp. 89 to 92.

[229] *"Moreover, in light of that amendment, a new article was added (Article 6 bis), designed to preclude the participation in procurement processes of any authority or public servant potentially affected by any situation or circumstance that could detract from his or her impartiality."*

[230] In this respect, the Committee notes that the aforementioned articles read as follows:

[231] *"1) Article 6 bis. - Duty to abstain:*

[232] "Authorities and public servants, as well as consultants in cases in which, exceptionally, they are involved in hiring processes of agencies governed by Law N° 19.886 and its Regulations, shall abstain from participating in the hiring procedures governed by said sets of rules and regulations, whenever there is any circumstance that could detract from their impartiality under the terms of Article 62.6 of Law N° 18.575, Constitutional Framework Law on the General Terms and Conditions Governing Public Administration."

[233] *"2) Article 12 bis: Specification of functions:*

[234] "Government institutions shall strive to promote measures designed to specify the functions and scope of the spheres of competence of the various public servants involved in the many stages of procurement processes, so as to ensure that expenditure estimates; the preparation of technical and administrative specifications for procurement; evaluation of bids and awarding of contracts; administration of the contract and the management of payments are all conducted by different public servants or teams."

[235] At the same time, both in its Response and during the on-site visit, the country under review noted the following difficulties:

[236] "Difficulties arise in those government agencies that lack the staff needed to perform all the functions they should be performing. For that reason the norms on specification of functions strives to achieve the distribution of activities if and when it is feasible. In short, the possibility of a neat division of functions in each process to be carried out will depend on each agency's actual circumstances."

[237] In light of the above, the Committee takes note of the steps undertaken by the country under review and of the difficulties presented, as well as of the need to continue giving attention to implementation of the above measure, bearing in mind that, under present regulations, it is not possible to guarantee that the personnel evaluating bids is different from the personnel that prepares the terms of reference for government procurement. The Committee also deems it necessary to reformulate the recommendation to include all government agencies (See Recommendation 1.2.3.1 in Section 1.1.3 of Chapter II of this report).

[238] In addition, the Committee notes that, in its Response, the country under review also highlighted the following difficulty:

[239] "Regarding the aforementioned provision in Article 6 bis, some problems have arisen due to the fact that it is relatively new and personnel are not yet familiar with it. The obstacle will undoubtedly be overcome and implementation of the provision will eventually achieve the desired impact."

[240] Accordingly, the Committee considers that it would be useful for the country under review to consider adopting the measures needed to train the staff charged with participating in procurement processes and make them aware of the existence, scope and implementation of Article 6 bis of the Regulations for Law 19.886 on Terms and Conditions for Administrative Supplier and Services Contracts, and to ensure that the Government Procurement and Hiring Directorate (DCCP) is provided, as far as possible, with the human and budgetary resources needed to fully perform this function. The Committee will make recommendations in that regard. (See recommendations 1.2.3.2 and 1.2.3.3 in Section 1.1.3 of Chapter II of this report.)

[241] Furthermore, the civil society organization *Chile Transparente*, both during the on-site visit and in the parallel document presented under Article 34 of the Rules of Procedure and Other Provisions of the MESICIC Committee of Experts, indicated, *inter alia*, that:

[242] *"In public services, it is very common for the public employees who prepare bidding documents and their terms of reference to be the same as those who publish, manage, assess, and award procurement public procurement contracts."*¹¹⁷

Measure (d) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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

[243] In its Response, the country under review presents information and new developments with respect to the foregoing measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹¹⁸

[244] – The amendment to the Regulations for Law N° 19.886, of August 2015, on Terms and Conditions for Administrative Supplier and Services Contracts, which, as explained in the foregoing section, introduced Article 6 bis on the duty of authorities, public servants, and consultants in agencies governed by Law N° 19.886 and its Regulations to abstain from participating in procurement procedures when, for any reason, their impartiality may be impaired, under the terms of Article 62.6 of Law N° 18.575, Constitutional Framework Law on the General Terms and Conditions Governing Public Administration.¹¹⁹

¹¹⁷ At the plenary session of March 15, 2017, the State under review indicated that: *"The administrative procedure currently in force in Chile states that awards are made by the Head of the Service; thus, all the stages of the award process are not the responsibility of the same person."*

¹¹⁸ Response of Chile to the Questionnaire for the Fifth Round, pp. 92 to 95.

¹¹⁹ Article 62.6 of Law N° 18.575 reads as follows: *"The following conduct, in particular, contravenes the administrative probity principle: ..."*

"6. Intervening, in an official capacity, in matters in which a public servant -- or his or her spouse, children, adopted children, or relatives up to the third degree of consanguinity and second degree of affinity -- has or have a personal stake.

Likewise, participating in decisions in which any circumstance may detract from the public servant's impartiality.

Authorities and public servants shall abstain from taking part in such matters and should notify their supervisor of the involvement that affects them."

[245] – The implementation of [Law N° 20.730, of 2014, Regulating Lobbying and Applications Representing Private Interests to Authorities and Public Servants](#), Article 4.7 of which stipulates that the following shall be deemed to be bound by said Law: "7) *Advisors to the State Defense Council, the Executive Council for Electoral Services, the Council for Transparency, the Public Senior Management Council, the National Television Council, the National Human Rights Institute, the members of the Panels of Experts established in Law 19.940 and in Law N° 20.378 , and the Technical Panel established by Law N° 20.410, solely with regard to the performance of their functions.* Also deemed bound by this law are the members of the Evaluation Commissions established within the framework of Law N° 19.886, solely with regard to the performance of said functions and for as long as they form part of those Commissions."¹²⁰

[246] In light of the above, the Committee takes note of the steps taken by the country under review and of the need for it to continue giving attention to implementation of the aforementioned measure, bearing in mind that the measure referred to in the foregoing recommendation dates back to the Second Round review, when the Committee observed that: "*nor do the Law or its regulations establish specific grounds for the disqualification or incompatibility of those assessors.*" (See Recommendation 1.2.3.4 of Section 1.1.3 of Chapter II of this report.)

[247] At the same time, the Committee notes that, in its Final Report of April 24, 2015,¹²¹ the [Presidential Advisory Council against Conflicts of Interest, Influence Peddling, and Corruption](#), also known as the "Engel Commission," included, as one of its priorities the reformation of the government procurement, concessions, and defense expenditure system, so that "public tender assessors shall be obliged to sign a sworn statement certifying the non-existence of any conflicts of interest in the respective operation."

[248] In this respect, the Committee notes that no law requires public tender assessors or the external evaluators of those assessors to sign a sworn statement certifying the non-existence of conflicts of interest in the operation concerned.¹²² In that regard, the Committee deems it pertinent that the country under review establish that obligation and a verification mechanism. To that end, it will make a recommendation (See Recommendation 1.2.3.5 in Section 1.1.3 of Chapter II of this report).

Recommendation 1.2.2:

Strengthen control mechanisms within the government procurement system.

Measure suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

¹²⁰ Emphasis added.

¹²¹ See the section entitled [Priority Proposals](#) in the Final Report of the Presidential Advisory Council against Conflicts of Interest, Influence Peddling, and Corruption , p. 13.

¹²² In its comments document on the draft preliminary report of February 9, 2017, the State under review offered the following comment: "It is worth pointing out that, while not legally mandatory, the Government Procurement and Hiring Directorate has encouraged members of evaluation committees to sign a sworn statement certifying the nonexistence of any conflicts of interest, instituting it as a best practice."

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.

[249] In its Response, the country under review presents information and new developments with respect to the foregoing measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:¹²³

[250] “- Law 20.285 , or Transparency Law, posted on the website <http://www.leychile.cl/Navegar?idNorma=276363>, Article 1 of which regulates the principle of transparency in public office, the right to access the information in the possession of Government Administration bodies, the procedures for exercising and upholding that right, and the exceptions to disclosure of information, including as regards contractual activity, available to citizens, whereby it is understood that, pursuant to Article 10, everyone has a right to request and receive information from any Government Administration entity, in the manner and subject to the terms and conditions established by this law.”

[251] (...)

[252] “- Citizens also have at their disposal the Transparencia Chile portal, available on the web at <https://www.portaltransparencia.cl/PortalPdT/>, where it is possible to request information, keep track of such requests, view government agencies' public information, and file claims with ministries, prefects, governor's offices, regional governments, municipalities, the armed forces, police (Carabineros), the Plain Clothed Police , and government bodies and services established to perform administrative functions.

[253] At the same times, the Committee notes that, during the on-site visit, representatives of the Government Procurement Directorate (DCCP) pointed out that currently, there were no official oversight bodies and no provision for them is made in its laws. Nevertheless, they said that an effort was being made to achieve transparency in information. Accordingly, the Committee wishes to recall that the foregoing recommendation dates back to the Second Round of Review, which observed that:

[254] “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.”¹²⁴

[255] In light of the foregoing, the Committee takes note of the steps taken by the country under review and the need for it to continue to give attention to the implementation of the foregoing measure, together with its reformulation so that these mechanisms are extended to all stages of the goods and services procurement process, including the contract execution phase.¹²⁵ (See Recommendation 1.2.3.6 in section 1.1.3 of Chapter II of this report.)

¹²³ Response of Chile to the Questionnaire for the Fifth Round, pp. 96 a 98.

¹²⁴ Report on Chile for the Second Round, p. 26.

¹²⁵ In its comments document on the draft preliminary report of February 9, 2017, the State under review reported that: “With respect to the initial observation it should be clarified that the Government Procurement

[256] Second, the Committee notes that, during the on-site visit, representatives of the DCCP pointed out that they were working with the Office of the Comptroller General of the Republic (CGR) on an open data policy and guidelines for making the information posted on the ChileCompra portal more digestible and user-friendly, especially for small suppliers and providers, as well as on standardizing and simplifying its structure, and employing more user-friendly and less technical language so as to ensure that it is more easily understood by citizens and users. They added that they would begin by implementing these improvements for smaller tenders, and subsequently scaling them up.

[257] Accordingly, the Committee considers that it would be beneficial for the country under review to strengthen the open data policy and update its ChileCompra platform so that information is available in more user-friendly language and both suppliers/providers and the general public can monitor every stage in the government procurement process.¹²⁶ The Committee will make a recommendation in that regard. (See recommendation 1.2.3.7 in Section 1.1.3 of Chapter II of this report.)

[258] It is further worth pointing out that the civil society organization “*Chile Transparente*” -- both during the on-site visit and in the document submitted pursuant to Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC – indicated that:¹²⁷

[259] *“The technical language used for the information posted at ChileCompra, the codes typically used in public administration, and the language in which procedures are couched all make it difficult for citizens to do a good job of overseeing the procurement system.”*

[260] Third, the Committee also notes that, on that occasion, the country under review pointed out that large infrastructure works, such as those of the Ministry of Public Works (MOP), are not being posted on ChileCompra, because the institution has its own regulations and procedures and lacks an electronic platform for publishing them. The representatives added that it would be very useful if the MOP, while adhering to its own legal framework, were to use the ChileCompra platform for its public works projects. They said that a bill to that effect was being prepared.¹²⁸ Here, the Committee considers that it would be

Directorate (DCCP) has a Civil Society Council, a consultative body designed to allow citizen groups involved in public procurement to contribute ideas and opinions to public policy analysis in that area. The Council’s rules of procedure were approved by Exempt Resolution No. 324 B of 2016.”

¹²⁶ In its comments document on the draft preliminary report of February 9, 2017, the State under review reported that: “We would like to add that the Government Procurement and Hiring Directorate is one of the organs in the Chilean Government that are implementing commitments under the Open Government Partnership. In that connection, efforts are underway to adopt the Open Contracting standard created by the Open Contracting Partnership, and two documents were drawn up that establish the starting point for that objective. The first is Directive No. 27 on Recommendations to procuring organs to facilitate open data use in public procurement. In addition, an open data policy was instituted.

“As a result, the Government Procurement and Hiring Directorate is working to adopt measures by which to position itself at the five-star level of the open data standard. For example, we have a platform in place (<http://datosabiertos.chilecompra.cl/home>) to provide clear and accurate information to members of the public.”

¹²⁷ Paper presented by “*Chile Transparente*” pursuant to Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, p. 31.

¹²⁸ In its comments document on the draft preliminary report of February 9, 2017, the State under review reported that: “We should clarify that the inclusion of public works in the www.mercadopublico.cl system was one of the priority strategic objectives of the ChileCompra Directorate. In that regard, there has been significant progress since the DCCP and the General Directorate of Public Works of the Ministry of Public Works signed a

beneficial for the country under review to consolidate its public works systems in such a way that all the institutions, including the MOP, would use the ChileCompra platform. It will make a recommendation in that regard. (See recommendation 1.2.3.8 in Section 1.1.3 of Chapter II of this report.)

[261] Fourth, the Committee observes that during the on-site visit representatives of ChileCompra said that the information published on the platform covered the entire pre-contract stage, but did not contain information execution of the contracts, as this lay outside its remit. On this, they said that a bill was being considered that proposes broadening ChileCompra' powers to include the execution of contracts stage. They added that they were currently working on a new platform in which institutions would publish contract performance details. They expected it to be ready next year. However, they also pointed out that they were going to need funds to bring the new platform on stream, especially when the new law enters into forces, given that they need a much more robust platform than the one they have in order to be able to publish contract execution processes.

[262] In this respect, the Committee notes that, in its Final Report of April 24, 2015, the [Presidential Advisory Council against Conflicts of Interest, Influence Peddling, and Corruption](#) , also known as the "Engel Commission", puts forward a series of proposals with respect to strengthening the public procurement, concessions, and defense expenditure system. Its priorities include:

[263] *“Converting ChileCompra into a single and integrated system for coordinating, supervising, and assisting with State procurement.*

[264] *As a centralized agency, ChileCompra shall handle the process from preparation of the bidding conditions through to complete execution of the contract.*

[265] *The new system will also encompass public works contracts and purchases by autonomous State bodies, such as municipalities, the Judiciary, and the Office of the Comptroller General of the Republic.*

[266] In this regard, the Committee deems it appropriate for the country under review to consider adopting the legal and other measures needed to transform ChileCompra into the single integrated oversight body that coordinates, supervises, and supports government procurement of goods and services, from bidding conditions through to contract execution. It should also consider strengthening ChileCompra, making sure that, to the extent possible, it has the human and budgetary resources it needs to strengthen, modernize, and maintain the Portal, as well as to train the staff needed to operate it. The Committee will make recommendations in that regard. (See recommendations 1.2.3.9 and 1.2.3.10 in Section 1.1.3 of Chapter II of this report.)

partnership agreement in July 2016, to enable the latter to begin holding its tender processes on the www.mercadopublico.cl platform administered by the DCCP; a number of tenders began to be held using that mechanism in 2017.

“In January 2017, the Ministry of Public Works held its first online tender for construction projects and consultancies using ChileCompra. In this way, works and consultancy tenders from its portfolio will gradually be incorporated in the ChileCompra system and managed over the www.mercadopublico.cl platform.”

1.2.2. New developments with respect to implementation of the Convention provision on government systems for the procurement of goods and services

1.2.2.1. New developments in the legal framework

a. Scope

[267] – Amendment to the Regulations for Law 19.886 on Terms and Conditions for Administrative Supplier and Services Contracts, which introduces Article 6 bis "Duty to Abstain", which provides as follows: "*Authorities and public servants, as well as consultants in cases in which, exceptionally, they are involved in hiring processes of agencies governed by Law N° 19.886 and these Rules of Procedure, shall abstain from participating in the hiring procedures governed by said sets of rules and regulations, whenever there is any circumstance that could detract from their impartiality under the terms of Article 62.6 of Law N° 18.575, Constitutional Framework Law on the General Terms and Conditions Governing Public Administration.*"¹²⁹

[268] – Amendment to [Law No 20.720](#), which replaces the Competitive Rules in Effect with a Law on the Restructuring and Winding Up/Receivership of Enterprises and Individuals (*Ley de Reorganización y Liquidación de Empresas y Personas*) and refines the role of the respective Superintendency with respect to disqualification for bankruptcy offenses (*inhabilidad de los delitos concursales*).

[269] – Law No. 20.883, amending Article 22 of Law No. 19.886 and raises the maximum number of sessions of the Government Procurement Tribunal from 12 to 21 per month.¹³⁰

[270] - Law [N° 20.730 of 2014](#), Regulating Lobbying and Applications Representing Private Interests to Authorities and Public Servants. That law provides, inter alia, that those bound by it would include the authorities and public servants lobbied or contacted in pursuit of personal interests referred to in the law or a special administrative resolution issued by the department head. Also deemed bound by this law are the members of the Evaluation Commissions established within the framework of Law N° 19.886, solely with regard to the performance of said functions and for as long as they form part of those Commissions.

[271] – [Law 20.285](#) on Access to Public Information, last amended in January 2016, Article 1 of which regulates the principle of transparency in public office, the right to access the information in the possession of Government Administration bodies, the procedures for exercising and upholding that right, and the exceptions to disclosure of information, including as regards contractual activity,

¹²⁹ Article 62.6 of Law N° 18.575 reads as follows: "*The following conduct, in particular, contravenes the administrative probity principle: ...*"

"6. Intervening, in an official capacity, in matters in which a public servant -- or his or her spouse, children, adopted children, or relatives up to the third degree of consanguinity and second degree of affinity -- has or have a personal stake.

Likewise, participating in decisions in which any circumstance may detract from the public servant's impartiality.

Authorities and public servants shall abstain from taking part in such matters and should notify their supervisor of the involvement that affects them."

¹³⁰ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

available to citizens, whereby it is understood that, pursuant to Article 10, everyone has a right to request and receive information from any Government Administration entity, in the manner and subject to the terms and conditions established by this law.

b. Observations

[272] The Committee acknowledges that the new legal developments in this area are positive steps toward establishing legal and regulatory provisions for government procurement of goods and services. Nevertheless, the Committee deems it appropriate to make a number of observations in that regard:

[273] First, the Committee notes that, on [April 24, 2015, the Presidential Advisory Council against Conflicts of Interest, Influence Peddling, and Corruption](#), also known as the "Engel Commission", published its Final Report in which it put forward a series of proposals with respect to strengthening the public procurement, concessions, and defense expenditure system. Its priorities include:

[274] *"Renegotiations of infrastructure concessions and public works contracts shall be made public within a pre-established and short period of time"; and*

[275] *"Provide for timely payment of Government suppliers/providers so as to encourage the participation of multiple bidders."*

[276] Accordingly, the Committee observes that none of the recently revised regulations on government procurement of goods and services contain provisions on the matters at hand. In that regard, the Committee deems it pertinent that the Committee consider incorporating in the law on the subject provisions that establish that renegotiations of infrastructure concessions and public works contracts shall be made public within a pre-established and short period of time; and also adopt provisions that ensure timely payment of Government suppliers/providers so as to encourage the participation of multiple bidders. The Committee will make recommendations in that regard. (See recommendations 1.2.3.11 and 1.2.3.12 in Section 1.1.3 of Chapter II of this report.)

1.2.2.2. New developments with respect to technological aspects

[277] – The modernization of the ChileCompra platform, which includes the [ChileCompra Observatory](#), on the ChileCompra Directorate's Portal, charged with the continuous monitoring of government procurement and providing citizens with a forum for channeling complaints. The Observatory provides an opportunity for citizens to report cases of procurement by government agencies that, in their view, lack probity, transparency or integrity; the [business intelligence portal](#); the as well as the [public procurement open data portal](#); amongst other tools.

[278] – The [Transparencia Chile Portal](#), which provides an opportunity to request information, keep track of such requests, view government agencies' public information, and file claims with Ministries, Prefects, Governor's Offices, Regional Governments, Municipalities, the Armed Forces, Police (*Carabineros*), the Plain Clothed Police, and government bodies and services established to perform administrative functions.

1.2.2.3. Results

[279] During the on-site visit, the country under review presented statistical data provided by the Office of the Director of ChileCompra, of which the following is noted:

[280] First, the country under review presented information regarding the outcomes relating to the Government Procurement Tribunal, whose purview "includes hearing and resolving complaints brought against: a) illegal or arbitrary acts or omissions that may have been committed in administrative tenders by government agencies subject to Law N°19.886 between (and inclusive of) approval of the bidding conditions and the award of the contract..."¹³¹

[281] In this regard, the following information is highlighted:¹³²

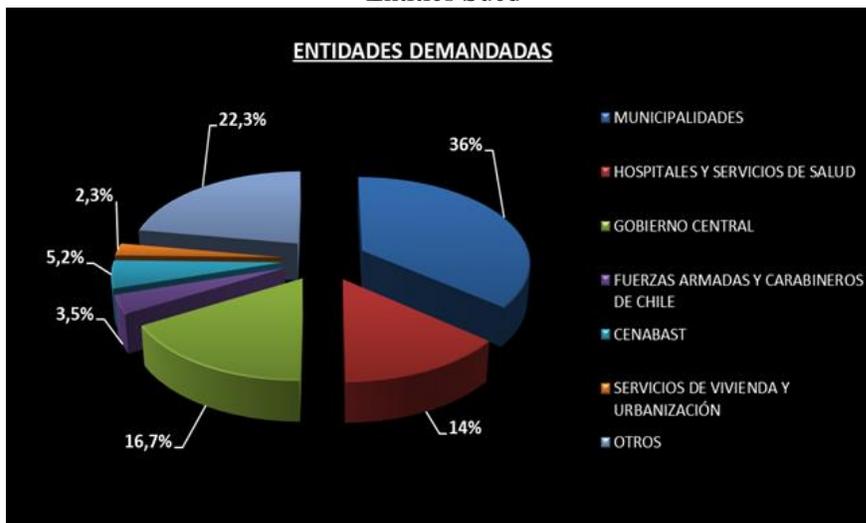
[282] "Government Procurement Tribunal Statistics:

[283] "According to information provided by the Tribunal itself, at August 31, 2016, 2, 391 cases had been admitted.

[284] As regards the types of contract contested, our data since 2010 show: Services Contracts, 43.5%; Provision of Goods, 24% (one third of which are pharmaceuticals); Construction, 22%; and Concessions, 9%.

[285] There are other charts showing data from 2010 to 2013, that could illustrate certain points:

Chart No. 1
Entities Sued



Tr. Key to text in Chart No. 1: "Entities Sued".
Municipalities; hospitals and health care services; Central Government; Armed Forces and Police (*Carabineros de Chile*); CENABAST; Housing and Urbanization Services; Other.

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http://www.tribunaldecontratacionpublica.cl/index.php?option=com_content&view=article&id=2&Itemid=109

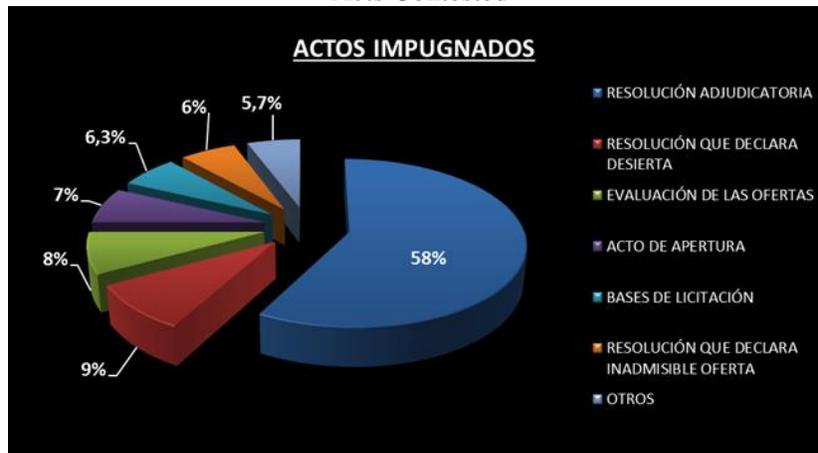
¹³² Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

Chart No. 2
Types of Contract Tendered



Tr. Key to text in Chart No. 2: “Types of Contracts Applied For”.
Provision of Goods; Services; Construction; Concessions; Other.

Chart No. 3
Acts Contested



Tr. Key to text in Chart No. 3: “Acts Contested”.
Resolution awarding contract; Resolution declaring bidding process void; Evaluation of bids;
Opening of bid envelopes; Bidding conditions; Resolution declaring bid inadmissible; Other.

[286] With respect to the foregoing statistics provided by the country under review, the Committee observes that it is not broken down by year and the charts only cover 2010 to 2013. In this regard, the Committee deems it pertinent that the country under review consider compiling statistics on the outcomes of the Government Procurement Tribunal's work that show how many cases were processed; the kinds of acts contested; how many resulted in fines, indemnification of the State or

indemnification of the contractor, and the amounts involved; the cost to the State derived from these items or, in cases in which the State was compensated, the amount recouped; how many cases resulted in sanctions; how many cases resulted in circumstantial evidence of punishable acts; and how many were referred to the competent authority, with a view to identifying challenges and, where necessary, adopting corrective measures. The Committee will make a recommendation in that regard. (See recommendation 1.2.3.13 in Section 1.1.3 of Chapter II of this report.)

[287] In that regard, the Committee believes it would be useful for the State under review to consider strengthening the Government Procurement Tribunal, ensuring that it has the human, technological, and financial resources needed, within the available resources, to ensure the sustainability of the requested broken-down statistical information and, to that end, it will formulate a recommendation. (See recommendation 1.2.3.14 in Section 1.1.3 of Chapter II of this Report.)

[288] Finally, the Committee notes that the country under review did not provide comprehensive statistics on the number and percentage of contracts awarded through public tenders, private lenders, direct hiring, emergency purchases, or other forms of procurement, which does not allow it to make a comprehensive evaluation of the results of this topic. The Committee does note that the ChileCompra Portal has an information search tool, however, these types of statistics are not found on this website. Accordingly, the Committee deems it appropriate that the country under review consider compiling statistics of this kind, in order to identify challenges and, where necessary, adopt corrective measures. The Committee will make a recommendation in that regard. (See recommendation 1.2.3.15 in Section 1.1.3 of Chapter II of this report.)

1.2.3. Recommendations

[289] In light of the comments made in Sections 1.2.1 and 1.2.2, the Committee suggests that the country under review consider the following recommendations:

- 1.2.3.1 Ensure, in all government agencies, that the personnel evaluating bids is different from the personnel preparing the terms of reference for government procurement. (See paragraphs 227 to 237 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.2 Adopt such measures as are needed to train the staff charged with participating in procurement processes and make them aware of the existence, scope and implementation of Article 6 bis of the Regulations for Law 19.886 on Terms and Conditions for Administrative Supplier and Services Contracts. (See paragraphs 240 to 242 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.3 Ensure that the ChileCompra Directorate has, to the extent possible, the human and budgetary resources needed to train the staff charged with participating in procurement processes and make them aware of the existence, scope and implementation of Article 6 bis of the Regulations for Law 19.886 on Terms and Conditions for Administrative Supplier and Services Contracts. (See paragraphs 240 to 242 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.4 Consider establishing in the appropriate legislation, specific disqualifications or incompatibilities with respect to those responsible for evaluating or rating government

procurement bids and their external evaluators. (See paragraphs 243 to 246 in Section 1.2.1 of Chapter II of this report.)

- 1.2.3.5 Consider including in the legislation the obligation for public tender assessors and their external evaluators to sign a sworn statement certifying the non-existence of conflicts of interest in the operation concerned, together with a verification mechanism. (See paragraphs 247 to 248 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.6 Make the pertinent modifications to establish citizen oversight mechanisms for contracting activities, such as citizen watchdogs, and to continue strengthening the principles of disclosure, equality, and efficiency enshrined in the Convention, seeking to extend such citizen oversight mechanisms to all phases of the procurement of goods and services, including contract execution. (See paragraphs 249 to 255 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.7 Strengthen the open data policy and ensure that the information in the ChileCompra platform is available in more user-friendly language so that both suppliers/providers and the general public can monitor every stage in the government procurement process. (See paragraphs 256 to 259 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.8 Consolidate the public works contracts and purchases systems of autonomous State bodies, such as municipalities, the Judiciary, and the Office of the Comptroller General of the Republic, and the Ministry of Public Works, so that they all use the ChileCompra platform for processing procurement and publishing all stages of the process. (See paragraph 260 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.9 Consider adopting the legal measures needed to transform ChileCompra into a single, integrated body for coordinating, overseeing, and assisting government procurement, from preparation of the bidding conditions through to full execution of the contract. (See paragraphs 261 to 266 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.10 Strengthening ChileCompra Directorate, making sure that, within available resources, it has the human and budgetary resources it needs to strengthen, modernize, and maintain its Portal, in such a way that it is able to publish information on every stage in the procurement process, including the contract execution state, and to train the personnel responsible for operating it. (See paragraphs 261 to 266 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.11 Consider including in the appropriate legislation provisions that establish that renegotiations of infrastructure concessions and public works contracts are to be made public within a pre-established and short period of time. (See paragraphs 272 to 276 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.12 Consider including in the appropriate legislation provisions ensuring timely payment of Government suppliers/providers so as to encourage the participation of multiple bidders. (See paragraphs 272 to 276 in Section 1.2.2 of Chapter II of this report.)

- 1.2.3.13 Compiling annual statistics on the outcomes of the Government Procurement Tribunal's work that show how many cases were processed; the kinds of acts contested; how many resulted in fines, indemnification of the State or indemnification of the contractor, and the amounts involved; the cost to the State derived from these items or, in cases in which the State was compensated, the amount recouped; how many cases resulted in sanctions; how many cases resulted in circumstantial evidence of punishable acts; and how many were referred to the competent authority, with a view to identifying challenges and, where necessary, adopting corrective measures. (See paragraphs 279 to 286 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.14 Strengthen the Government Procurement Tribunal by providing it with the necessary human, technological, and financial resources, subject to their availability, in order to ensure that the broken-down statistics can be made available. (See paragraph 287 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.15 Keep statistics on the number and percentage of contracts awarded through public tenders, private lenders, direct hiring, emergency purchases, or other forms of procurement with a view to identifying challenges and, where necessary, adopting corrective measures. (See paragraph 288 in 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)

2.1. Follow-up on implementation of the recommendations formulated in the Second Round

Recommendation 2.1.

Strengthen the systems to protect public officials and private citizens who, in good faith, report acts of corruption.

Measure suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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:

- 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.*
- b) *Attention and protection measures for those who in good faith report acts of corruption and their families, which may or may not be identified as crimes and which may be liable for investigation by judicial or administrative venues.*
- c) *Provisions to punish noncompliance with protection rules and/or obligations.*

- d) *Measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve his superior or co-workers.*
- e) *Mechanisms to facilitate international cooperation in the above areas, when appropriate, including technical assistance and mutual cooperation established by the Convention, as well as the exchange of experiences, training and mutual assistance.*

[290] Both in its Response to the Questionnaire and during the on-site visit, the country under review presented information and reported new developments in relation to the above measure. In that regard, the Committee notes the following as steps that contribute to progress in its implementation:¹³³

[291] – In January 2015, ChileCompra made an anonymous complaint mechanism available to all its users on its website, which buyers, providers, or members of the public can use to report a situation that in their opinion violates the probity, transparency, or integrity of one or more procurement processes.¹³⁴

[292] – The complaints mechanism of the Office of the Comptroller General of the Republic (CGR) which allows for an anonymous complaint has been available on its website since September 2012. The aim is *"that the citizenry (public officials or members of the public) becomes collaborators in the oversight role of the Office of the Comptroller General, by submitting oversight suggestions and complaints using the online forms specially designed for that purpose."*¹³⁵

[293] The Assistance Model for victims and witnesses, based on the provision of three basic services (guidance, protection, and support), also offers other special arrangements or schemes for certain particularly vulnerable victims and witnesses (OPA). Through these models, the Public Prosecution Service is able to adopt a series of protection measures, some of which require judicial approval because they affect constitutional rights (precautionary measures), while others (autonomous measures) may involve temporary or permanent relocation, police security devices, alarms, etc.¹³⁶

[294] The Committee takes note of the steps taken by the country under review to advance in its implementation of the measure pertaining to the foregoing recommendation and the need for it to continue to give attention thereto. It also considers it appropriate to reformulate the measure for the following reasons:

[295] First, the Committee notes that during the on-site visit representatives of the Public Prosecution Service also mentioned [Law 20,205 which "Protects public employees who report irregularities and breaches of the principle of probity,"](#)¹³⁷ and said that although public officials are offered protections, they are only available to staff and contract-based personnel, not to employees hired under other arrangements such as fee-based contracts, as they are not legally recognized as public officials.

¹³³ Response of Chile to the Questionnaire for the Fifth Round, pp. 89-92.

¹³⁴ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹³⁵ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹³⁶ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹³⁷ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

[296] In that regard, it is worth recalling that in the preceding section, which deals with government hiring systems, the Committee makes a recommendation that the country under review consider incorporating in the rules and regulations that govern the public sector employees a definition of what constitutes a public official that is consistent with the one contained in the Convention. As a result, it would recognize as a public official any employee of the State or its entities, including those selected, designated, or elected to carry out activities or functions in the name or in the service of the State, at any level of seniority, which would include personnel hired under fee-based contracts, who would be protected, therefore, by Law 20. 205. (See recommendation 1.1.3.16 in Section 1.1.3. of Chapter II of this report.)

[297] Second, the Committee notes that Law 20.205 which “Protects public employees who report irregularities and breaches of the principle of probity,” was analyzed in the Third Round, at which time it offered the following observations:¹³⁸

[298] “[270] – *In particular, with the entry into force of Law No. 20.205, Protecting Public Employees who Report Irregularities and Breaches of the Principle of Probity, amending Law No. 18.834 (the Administrative Statute), Article 90-A was added to it. This provision grants rights to whistleblowing civil servants, including freedom from disciplinary suspension or dismissal for a period of 90 days after conclusion of the summary investigation or proceedings, as applicable. In addition, whistleblowers may not be transferred from their duty station or post, without their written authorization. Finally, they may not be subject to annual prequalification, should the person against whom the complaint is made be his hierarchical superior.*” – “*In addition, the same guarantees are extended to municipal employees, in that the law in question also amended Law No. 18.883, the Administrative Statute of Municipal Officers.*”

[299] “[271] *The Committee takes note of the step taken by the State under review to progress with the implementation of measure 2.1 of this recommendation and of the need for it to continue to give attention thereto, bearing in mind that Law No. 20.205 contains measures to protect the employment of public officials who report acts of corruption, but it does not represent a comprehensive regulation addressing all the issues indicated by the Committee in connection with that measure and also applying to private citizens who report acts of corruption.*

[300] Third, the Committee notes that during the on-site visit representatives of the Public Prosecutions Service said that the time limits envisaged in Law 20.205 for the protection of officials who report acts of corruption in the context of administrative proceedings and for the protection offered under criminal law by the Assistance Model (OPA) for Victims and Witnesses in Criminal Proceedings are too short.

[301] In that regard, the Committee observes that Article 90 A(a) of Law 20.205 provides: “*They shall not be subject to the disciplinary measures of suspension or dismissal from the date on which the authority receives the complaint until the date on which it is definitively determined not to be submitted or, as appropriate, up to 90 days after the preliminary investigation or preliminary hearing called on the basis of said complaint has concluded*”; and that, based on information supplied by representatives of the Public Prosecution Service, the protection offered under criminal law by the Assistance Model for Victims and Witnesses in Criminal Proceedings is only for six months after the trial concludes.

¹³⁸ Report on Chile from the Third Round, paras. 270 and 271.

[302] Based on the foregoing, the Committee takes note of the steps taken by the country under review, of the difficulties mentioned, and of the need for the country under review to give attention to implementing the measure pertaining to the above recommendation, to which end, it could take into consideration the criteria established in the *Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses*. In light of the above, the Committee reiterates the measure in recommendation 2.1 formulated in the Second Round, which it considers appropriate to reformulate in order to adapt it to the needs of the country under review. (See recommendation 2.4.1 in Section 2.4 of Chapter II of this report.)

[303] It is also worth noting that the civil society organization *Chile Transparente*, in a document submitted under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, observed the following:¹³⁹

[304] *“There is a protection mechanism for certain public-sector employees, from which members of the Armed Forces are excluded. However, the mechanism is inadequate as it only protects officials in particular cases and only for a certain amount of time. The Office of the Comptroller General has developed a platform (www.contraloriayciudadano.cl) that facilitates the process of reporting complaints but does not enhance the legal status of officials.”*

[305] Furthermore, during the on-site visit, *Chile Transparente* added, among other things, that:¹⁴⁰

[306] *“There is no protection of any kind for citizens who report cases of administrative corruption”;* and that

[307] *“The anonymity of whistleblowers is not protected.”*

[308] Similarly, the Committee notes that during the on-site visit, the civil society organization *Espacio Público*, said that progress is needed with anonymous complaint reporting mechanisms and that both Law 20.205 and the protection mechanisms offered by the criminal justice system have had a negligible impact.

2.2 New developments with respect to the Convention provision on systems for protecting public servants and private citizens who in good faith report acts of corruption

2.2.1 New developments with regard to technology

a. Scope

[309] – The complaints mechanism set up by the Directorate of Public Purchasing and Contracting (DCCP) on the ChileCompra website, as part of its observatory, which *“all users on its website, buyers, providers, or members of the public can use to report a situation that in their opinion violates the*

¹³⁹ Document presented by *Chile Transparente* under Article 34 of the Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC, p. 32.

¹⁴⁰ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

*probity, transparency, or integrity of one or more procurement processes. Although the mechanism is not completely anonymous it includes features for protecting the whistleblower's identity.*¹⁴¹

[310] – The “[Comptroller and Citizen Portal](#)” (*Portal Contraloría y Ciudadano*) for making online complaints and oversight suggestions to the Office of the Comptroller General of the Republic (CGR), the aim of which is *“that the citizenry (public officials or members of the public) becomes collaborators in the oversight role of the Office of the Comptroller General, by submitting oversight suggestions and complaints using the online forms specially designed for that purpose.”*¹⁴² Complaints can be submitted anonymously for the whistleblower's protection.

[311] – The Public Prosecution Service’s [User Information and Assistance System](#) (*Sistema de Información y Atención a Usuarios – SIAU*), the purpose of which is *“to create an information and assistance system for users that provides quality information and assistance in a timely manner, in order to facilitate access to the institution's services and ensure a prompt and effective response, all with the purpose of generating reciprocal channels of communication between the institution and its users.”*¹⁴³

b. Observations

[312] With regard to the CGR's Comptroller and Citizen Portal, during the on-site visit, representatives of that agency reported that they are receiving ever-greater numbers of complaints of acts of corruption, including anonymous complaints, putting their capacity to process them under great strain. They added that the creation of the Citizen Complaints Department (*Departamento de Atención a la Denuncia Ciudadana*) had been of great assistance in handling the workload but that it needed to be strengthened so that it could perform its functions properly. The Committee believes it appropriate for the country under review to consider strengthening the Citizen Complaints Department of the CGR by providing it, subject to availability, with the human and financial resources that it needs to perform its functions properly.¹⁴⁴ The Committee will make a recommendation. (See recommendation 2.4.2 in Section 1.1.3 of Chapter II of this report.)

2.3 Results

[313] During the on-site visit, the country under review provided statistics extracted from the Public Prosecution Service's Prosecutor Support System (*Sistema de Apoyo a Fiscales – SAF*), notable among which was the following:¹⁴⁵

¹⁴¹ Response of Chile to the Questionnaire, pp. 99-101.

¹⁴² Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹⁴³ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹⁴⁴ At the meeting of the review subgroup on March 15, 2017, the State under review furnished the following information: *“Following the on-site visit, by means of Resolution No. 102/2016, the Comptroller General created two Regional Metropolitan Comptrollerships, which include new units for citizen attention and complaints, thereby strengthening that function and doubling the personnel assigned to them.”*

“This was accomplished by means of Resolution No. 102 of December 30, 2016...”

¹⁴⁵ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

Table 1

Victims and witnesses in proceedings involving financial corruption offenses (January 1, 2013 to September 25, 2016)					
By type of offense and year					
OFFENSE:	YEAR RECEIVED				Total
	2013	2014	2015	2016	
BREACH OF JUDICIAL AND ADMINISTRATIVE DUTIES (ARTS. 223 TO 229)	94	29	42	48	213
MISAPPROPRIATION OF PUBLIC FUNDS (ARTS. 233, 234 and 235)	395	313	332	136	1,176
OFFERING BRIBES (ARTS. 248, 248 <i>BIS</i> AND 249)	743	583	810	422	2,558
BRIBERY (ART. 250)	104	101	89	39	333
CONFLICT OF INTEREST (ART. 240)	159	21	46	13	239
INFLUENCE PEDDLING (ART. 240 <i>BIS</i>)	20	14	40	6	80
ILLEGAL EXACTION BY PUB. OFFICIAL (ARTS. 157 AND 241)	49	9	9	6	73
ILLICIT ENRICHMENT (ART. 241 <i>BIS</i>)	2	15	6	1	24
DEFRAUDING THE TREASURY AND GOVERNMENT AGENCIES (ART. 239)	629	516	330	280	1,755
BRIBERY OF A FOREIGN PUBLIC OFFICIAL (ART. 251 <i>BIS</i>)	1	3	2	7	13
Total	2,196	1,604	1,706	958	6,464

Table 2

Victims and witnesses in cases of financial corruption (January 1, 2013 to September 25, 2016)				
By offense and type of individual				
OFFENSE	TYPE OF INDIVIDUAL			Total
	VICTIM	WITNESS	VICTIM 108i.2	
BREACH OF JUDICIAL AND ADMINISTRATIVE DUTIES (ARTS. 223 TO 229)	107	104	2	213
MISAPPROPRIATION OF PUBLIC FUNDS (ARTS. 233, 234 and 235)	456	720	0	1,176
OFFERING BRIBES (ARTS. 248, 248 <i>BIS</i> AND 249)	1,132	1,417	9	2,558
BRIBERY (ART. 250)	169	164	0	333
CONFLICT OF INTEREST (ART. 240)	35	204	0	239
INFLUENCE PEDDLING (ART. 240 <i>BIS</i>)	29	51	0	80
ILLEGAL EXACTION BY PUB. OFFICIAL (ARTS. 157 AND 241)	45	27	1	73
ILLICIT ENRICHMENT (ART. 241 <i>BIS</i>)	6	18	0	24
DEFRAUDING THE TREASURY AND GOVERNMENT AGENCIES (ART. 239)	515	1,240	0	1,755
BRIBERY OF A FOREIGN PUBLIC OFFICIAL (ART. 251 <i>BIS</i>)	10	3	0	13
Total	2,504	3,948	12	6,464

[314] The Committee notes that although the above tables show the number of victims and witnesses of corruption offenses by year and by type of criminal offense, they do not disclose how many corruption whistleblowers requested protection measures; how many of them had their protection application accepted and what type of protection they were given; how many of them had their applications refused; how many protection applications remained undecided for any reason; how long the protection measures were in place; how effective the measures were; and in how many instances did the six-month time limit expire before the case was decided. Such information would be useful for the purpose of identifying challenges and adopting corrective measures, if necessary. The Committee believes that it would be appropriate for the country under review to consider keeping such statistics and it will make a recommendation to that effect. (See recommendation 2.4.3 in Section 2.4 of Chapter II of this report).

[315] By the same token, the Committee notes that the country under review did not provide statistics on the results of the application of Law 20.205 which “*Protects public employees who report irregularities and breaches of the principle of integrity,*” in order to disclose, at a minimum, how many officials reported irregularities and breaches of the principle of integrity; how many applied for the statutory protections; how many were denied protection and why; and in how many instances did the 90-day time limit for the statutory protection offered expire before the problem was resolved. Such information would be useful for the purpose of identifying challenges and adopting corrective measures, as appropriate. The Committee believes that it would be appropriate for the country under review to consider keeping such statistics and it will make a recommendation to that effect. (See recommendation 2.4.4 in Section 2.4 of Chapter II of this report).

2.4 Recommendations

[316] In light of the comments made in Sections 2.1, 2.2, and 2.3, the Committee suggests that the country under review consider the following recommendations:

- 2.4.1 Enact, through the appropriate authority, a comprehensive regulation on protection of public servants and private citizens who in good faith report acts of corruption, including protection of their identities, in accordance with the Constitution and the fundamental principles of its domestic system of laws, to which end it might consider the criteria outlined in the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses (available at the Anti-Corruption Portal of the Americas), including, *inter alia*, the following: (See paragraphs 290 to 308 in Section 1.1.2 of Chapter II of this report.)
- 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.
 - b) Attention and protection measures for those who in good faith report acts of corruption and their families, which may or may not be identified as crimes and which may be liable for investigation by judicial or administrative venues.
 - c) Provisions to punish noncompliance with protection rules and/or obligations.

- d) Protection and assistance measures to protect the physical integrity of individuals who in good faith report acts of corruption and their families, as well as to protect their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers.
 - e) Reasonable durations for protection measures provided for public servants and private citizens who in good faith report acts of corruption.
 - f) 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.
- 2.4.2 Strengthen the Citizen Complaints Department of the CGR by providing it, subject to availability, with the human and financial resources that it needs to perform its functions properly. (See paragraph 312 in Section 2.2 of Chapter II of this report.)
- 2.4.3 Keep detailed statistics, collected each year, on the protection process for corruption whistleblowers that disclose how many of them requested protection measures; how many of them had their protection application accepted and what type of protection they were given; how many of them had their applications refused and why; how many protection applications remained undecided; how long the protection measures were in place; and how effective the measures were, in order to identify challenges and adopt corrective measures, as appropriate. (See paragraphs 313 to 314 in Section 2.3 of Chapter II of this report.)
- 2.4.4 Keep statistics, broken down by year, on the results of the application of Law 20.205 which “*Protects public employees who report irregularities and breaches of the principle of integrity*”, in order to disclose how many officials reported irregularities and breaches of the principle of integrity; how many applied for the statutory protections; how many were not given protection and for why; and in how many instances did the 90-day time limit for the statutory protection offered expire before the problem was resolved, in order to identify challenges and adopt corrective measures, as appropriate. (See paragraph 315 in Section 2.3 of Chapter II of this report.)

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

3.1. Follow-up on implementation of the recommendations formulated in the Second Round

Recommendation suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

Adapt and/or expand, as appropriate, its criminal legislation, in order to include the elements of those acts of corruption set out in Article VI.1 of the Convention.

[317] During the on-site visit, the country under review presented information and new developments with respect to the above recommendation. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[318] - The draft amendment to the Criminal Code, at the initiative of the Office of the President of the Republic, currently being considered by the National Congress.

[319] In this regard, the Committee notes that the representatives of the Public Prosecutors' Office (*Ministerio Público*) reported that the President's proposal takes into consideration the observations and recommendations formulated in the Final Report of the Presidential Advisory Council against Conflicts of Interest, Influence Peddling, and Corruption, of April 24, 2015, also known as the "Engel Commission", with respect to criminal prosecution and punishment of corruption, including criminalization of corruption offenses. Of note is the following:¹⁴⁶

[320] *"In international rankings based on public opinion surveys, Chile is among the countries with the lowest incidence of corruption. However, there is no set of indicators and no reliable record of official statistics with which to keep proper track of offenses, misdemeanors, proceedings, and punishments in respect of corruption. Despite that, various international organizations specializing in monitoring standards and conventions on this topic —United Nations Convention against Corruption (UNCAC), the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC), and the Organization for Economic Co-operation and Development (OECD)—, have identified areas that pose risks with respect to the regulation and capacity to prosecute corruption offenses in our country.*

[321] *Among the problems identified is the existence of relatively lenient punishments for crimes against probity, compared to both other countries and other crimes in Chile. Likewise, there are still legal lacunae in the characterization of some offenses recognized as such in other countries and in the UNCAC, such as the misuse of office (abuso de funciones), corruption among private individuals, and influence peddling by a private person.*

[322] *Furthermore prescription times for the statute of limitations are far too short for offenses that take time to identify, denounce, and investigate. Finally, a weakness has also been detected in our ability to effectively monitor and prosecute corruption offenses. Neither the Public Prosecutors' Office nor the various police forces have sufficient specialized personnel and they lack the organizational resources required to do a thorough job in this area.*

[323] *Proposals:*

[324] *Based on this mapping out of the risks, the following proposals are put forward:*

[325] *1. Generate an official statistics system for monitoring the incidence of corruption offenses.*

[326] *2. Review the characterization, punishments, and prescription times for corruption offenses, based on international organizations' standards and recommendations.*¹⁴⁷

¹⁴⁶ Final Report of the Presidential Advisory Council against Conflicts of Interest, Influence Peddling, and Corruption, of April 24, 2015, pp. 45 and 46.

¹⁴⁷ Emphasis added.

[327] 3. *Bring tools used to investigate corruption into line with the already existing tools used to investigate money laundering offenses.*

[328] 4. *Establish a public prosecution unit for highly complex investigations (Fiscalía de Alta Complejidad) with the powers and resources needed to investigate and prosecute corruption offenses, within the broader plan to strengthen the Public Prosecutors' Office.*

[329] 5. *Strengthen the investigative capacity of Chile's Investigative Police (PDI) with respect to corruption, endowing it with specialized personnel devoted full time to such cases."*

[330] In this regard, the Committee notes that the origin of this recommendation goes back to the Second Round of Review, when the following comments were made:

[331] *"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.)*

[332] *"Secondly, with reference to paragraph (b) of Article VI.1 of the Convention, the Committee notes that the criminal offense described 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.)*

[333] *"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)."¹⁴⁸*

[334] The Committee thus takes note of the step taken by the country under review to move ahead with implementation of the measure contained in the foregoing recommendation through its proposed amendments of the Criminal Code and for it to continue to give attention thereto, in the understanding that once these amendments have come into effect, the Committee will examine them in detail in accordance with Article VI.1 of the Convention and will make recommendations if needed. (See Recommendation 3.2.1 in Section 3.2 of Chapter II of this report).

3.2. Recommendations

¹⁴⁸ See the Report on Chile from the Second Round of Review, pp. 39-40.

[335] In light of the comments made in Section 3.1 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendation:

- 3.2.1. Adapt and/or expand, as appropriate, its criminal legislation, in order to include the elements of those acts of corruption set out in Article VI.1 of the Convention. (See paragraphs 319 to 334 in Section 3.1 of Chapter II of this report.)

4. GENERAL RECOMMENDATIONS

Recommendation 4.1.

This measure has been satisfactorily considered and, therefore, the country under review does not need to provide further information in this regard.

Recommendation 4.2 suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

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

[336] Bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to the Republic of Chile in the Second Round and of the systems, standards, measures, and mechanisms to which the above recommendation refers, the Committee reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

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

1. INSTRUCTION TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)

[337] In accordance with the Methodology adopted by the Committee for the Fifth Round regarding the implementation of Article III, paragraph 3 of the Convention, which refer to measures that intended to establish, maintain and strengthen “*instruction[s] to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities.*” the country under review selected the Directorate of Public Purchasing and Contracting (*Dirección de Compras y Contratación Pública – ChileCompra*), the National Civil Service Directorate (*Dirección Nacional del Servicio Civil – DNSC*), and the Public Prosecution Service (*Ministerio Público – MP*), based on the consideration that they stand out for having implemented programs in that connection.

[338] The following is a brief description of the three bodies selected by the Republic of Chile that will be examined in this section:

[339] – The Directorate of Public Purchasing and Contracting (ChileCompra): According to Article 28 of Law No. 19.886, ChileCompra is a decentralized public agency that reports to the Ministry of

Finance and is subject to the oversight of the President of the Republic; it manages Chile's government procurement system (*Sistema de Compras Públicas*) which operates under its own regulatory framework, based on transparency, efficiency, universality, accessibility, and nondiscrimination, and requires public-sector agencies to conduct their procurement through the Information System www.mercadopublico.cl.¹⁴⁹

[340] – The National Civil Service Directorate (DNSC), which, according to Law 19.882 is a decentralized public agency with juridical personality and its own equity that is linked to the President of the Republic through the Ministry of Finance. Its purpose is to coordinate, supervise, and improve personnel functions in the agencies belonging to the state's civil administration by implementing management and development policies for personnel and high-ranking executives, in order to promote better public-sector employment, and a State that is at the service of its citizens.¹⁵⁰

[341] – The Public Prosecution Service (MP), which, according to Law 19.640, is an independent agency with a hierarchical structure whose exclusive mission is to direct criminal investigations; conduct public criminal prosecutions, where appropriate; seek adequate and timely decisions in its various criminal cases; and adopt the necessary measures to provide assistance and protection to victims and witnesses, all with the aim of contributing to the consolidation of the rule of law, according to high quality standards.¹⁵¹

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

[342] The Republic of Chile has a set of provisions and/or measures that provide instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, among which the following are highlighted:

- Constitutional, legal and other provisions applicable to most government personnel, including, in particular:

[343] The Constitution of the Republic of Chile, Article 8 of which provides: *“In the exercise of their official duties, public servants are required to comply strictly with the principle of probity in all activities.”*

[344] [Law No. 18.834 \(Administrative Statute\)](#), Article 55 of which sets out the obligations of each official, including *“[t]o strictly observe the principle of administrative probity as governed by Law No. 18.575 and other special provisions”* and *“[t]o perform their work with diligence, courtesy, dedication, and efficiency, thus contributing to the realization of the institution's objectives.”*

[345] [Law 18.575 \(Government Administration General Framework Constitutional Organizational Law\)](#), Article 3 of which provides: *“The Government Administration is at the service of the individual; its purpose is to promote the common good by continuously and permanently addressing public needs and fostering the country's development through the exercise of its powers under the Constitution and the law, as well as through the adoption, execution, and monitoring of policies, plans, programs, and measures at the national, regional, and district level.”*

¹⁴⁹Response of Chile to the Questionnaire for the Fifth Round, p. 4.

¹⁵⁰*Ibid.*

¹⁵¹*Ibid.*

[346] *“The Government Administration shall observe the principles of responsibility, efficiency, efficacy, coordination, ex officio institution of proceedings, the possibility to challenge administrative acts, oversight, probity, transparency and disclosure, and shall guarantee the proper autonomy of intermediate groups of society to fulfill their own specific ends, while respecting the right of individuals to engage in any economic activity, in accordance with the Constitution and the law.”*

[347] Article 11 bis provides, *inter alia*: *“Personnel of the Government Administration shall observe the principle of administrative probity and, in particular, the general and special legal norms that govern it.”*

[348] Article 54 provides: *“All authorities in the government administration, regardless of the title by which they are designated in the Constitution and laws, and all personnel of the Public Administration, be they members of staff or contract-based employees, shall abide strictly by the principle of administrative probity.”*

[349] *“The principle of administrative probity requires officials to conduct themselves unimpeachably and to discharge their duties in an honest and loyal way, according preeminence to the general interest in that regard.”*

[350] *“Failure to do so shall incur the liabilities and penalties envisaged by the Constitution, the law, and paragraph 4 of this Title, as appropriate.”*

[351] Article 64 contains a list of examples of conduct that violates administrative probity.

[352] – [Law 20.730 \(Law on Lobbies and Private Interest Representations to Public Authorities and Officials\)](#), which governs disclosure in lobbying activities and other private interest representations in order to strengthen transparency and probity in relations with State organs.

[353] – [Law 20.880 \(Law on Integrity in Public Service and Prevention of Conflicts of Interest\)](#), Article 1 of which governs the principle of probity in the discharge of public duties and prevention and punishment of conflicts of interest.

[354] As to the way in which personnel are apprised of their responsibilities or functions, in its Response, the country under review provided information, of which the Committee highlights the following:¹⁵²

[355] *“First, when new intakes of selected individuals first join the Chilean Public Administration, they undergo an “induction” process in which the appropriate officials from the various institutions inform them about fundamental concepts in relation to their work and responsibilities.”*

[356] *Furthermore, given Chile's laws, particularly the Law on Access to Public Information (Law No. 20.285), each public institution, saving the relevant legal exceptions, publishes, among other documents, the regulatory framework that applies to each institution on the Transparencia Activa website. In this way, not only new personnel, but also the general public, has access to information on all the duties and responsibilities of each public servant.*

¹⁵² Response of Chile to the Questionnaire for the Fifth Round, pp. 11-13.

[357] *The National Civil Service Directorate has made available to the citizenry and public sector authorities and employees, a database of job descriptions for positions in the High Public Executive System, which contains the set of rules and principles, both legal and ethical, that high-ranking public executives are required to observe in the performance of their work duties. That information is contained in a section entitled "performance conditions" (condiciones de desempeño) for each job description.*

[358] *"In addition, the section titled 'Labor Conditions' of the Presidential Instruction on Good Labor Practices in Chile, of January 2015, establishes that public institutions shall create the necessary conditions to promote quality services, so that male and female personnel can work in conditions of dignity, efficiency, merit, and innovation ..."*

[359] As for the occasions when personnel are informed of their responsibilities or functions, in its Response, the country under review reported that said information is provided when they apply for a public-sector position, during the performance of their duties, and when there are changes in those duties.¹⁵³

[360] As to the existence of induction, training, or instruction programs and courses for personnel on the proper performance of their responsibilities and functions, and, in particular, to make them aware of the inherent corruption risks in their performance, the country under review mentioned in its Response that, with respect to access to training, the DNSC has been making significant efforts since January 2014, working with, and providing guidance to, public services in drafting and adopting codes of ethics.¹⁵⁴

[361] As to the use of the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, in its Response, the country under review said that public services and institutions have websites managed by communications units or departments that contain information for apprising personnel of their responsibilities and guiding them on how to perform them appropriately.¹⁵⁵

[362] In terms of the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, in its Response, the country under review said that the organ responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed about their responsibilities and functions and for seeing that this task is fully carried out is the National Civil Service Directorate.¹⁵⁶

[363] As for the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public institutions and for wrongdoers, in its Response, the country under review said: "At present, induction, training, and instruction programs and courses for personnel on ethical rules governing their activities and, in particular, on the consequences that violation of such

¹⁵³ *Supra*, p. 14.

¹⁵⁴ *Supra*, p. 17.

¹⁵⁵ *Supra*, p. 20.

¹⁵⁶ *Supra*, p. 23.

standards entails for public service and for the wrongdoers are under development and are directly related to the steps that the National Civil Service Directorate has been taking this year to carry out the instructions of the Minister of Finance to have all public codes of ethics for the country's public services drafted by November 2016, which includes the various under-secretariats of the different ministries.

[364] *The process in question has three main stages: diagnostic assessment, drafting, and training.* At present, the process underway nationwide is in the diagnostic assessment stage.¹⁵⁷

[365] As regards the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, the country under review reported in its Response that at the moment that task falls to the National Civil Service Directorate and that the adoption of the various institutions' codes of ethics, on which work is under way, is pending.¹⁵⁸

- Statutory and other legal provisions or measures applicable to ChileCompra personnel, including, in particular:

[366] The implementing regulations of Law No. 19.886 (Law on Terms and Conditions of Administrative Goods and Services Contracts), Article 6 *bis* of which provides: “*All authorities and staff—as well as those hired under fee-based contracts in the exceptional cases in which they take part in procurement procedures—of agencies governed by Law No. 19.886 and these Regulations, shall abstain from participating in procurement processes governed by said bodies of provisions, should any circumstance exist that might undermine their impartiality, under the terms of Article 62 (6) of Law No. 18.575 (Government Administration General Framework Constitutional Organizational Law).*”

[367] Article 12 *bis* provides: “*Entities shall seek to take steps to delimit the functions and areas of responsibility of the various public servants who participate in the different stages of procurement processes, so that costing; drafting of the technical and administrative requirements of the procurement; evaluation of bids and award of the contract; and the administration of the contract and management of payments are handled by different officials or working teams.*”

[368] As to the manner in which employees are informed about their responsibilities and functions, the country under review mentioned in its Response to the Questionnaire that this is done by publishing job descriptions on the institution's intranet and by means of an induction program that is certified by the quality assurance system.¹⁵⁹

[369] Regarding the occasion(s) when personnel are informed of their responsibilities and functions, indicating whether this is done when they begin performing them or at a later point; when those functions change; or when functions change due to a change of post, the country under review reported in its Response to the Questionnaire that this is done during the first three days after they join the institution and its purpose is to provide them with the necessary basic tools to know about the

¹⁵⁷ *Supra*, p. 30.

¹⁵⁸ *Supra*, p. 33.

¹⁵⁹ *Supra*, pp. 13 and 15.

objectives, functions, and activities of the organization, the workplace environment, and administrative and organizational aspects.

[370] Re-induction training is also provided for those who change functions within the service and take up new responsibilities, including for personnel who assume supervisory positions with leadership responsibilities, as well as staff who rejoin the institution after a lengthy absence.¹⁶⁰

[371] As for the existence of introductory, training or instructional programs and courses for personnel on how to perform their responsibilities and functions properly and, particularly, for making them aware of the risks of corruption inherent in the performance of those functions, the country under review mentioned in its Response to the Questionnaire that the *"institutional induction program includes a module on ethics and probity delivered by the Legal Department of ChileCompra to inform personnel about the rights and obligations of public servants, with an emphasis on the correct performance of their duties and functions. In addition, the induction given by the personnel development team includes aspects connected with official obligations."*¹⁶¹

[372] As to the use of modern communication technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, the country under review mentioned in its Response to the Questionnaire that it has the Personnel Management System (*Sistema de Gestión de Personas*) a computer application accessible to all personnel that contains all the tools used in the performance management process.¹⁶²

[373] As to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, the country under review reports in its Response to the Questionnaire that that task belongs to the public servant's immediate supervisor and that it is carried out through "feedback interviews," which are a permanent practice in the performance management system.¹⁶³

[374] In terms of the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, and for seeing that this task is fully carried out, and the steps such bodies can take to enforce the norms and/or measures in force in this regard, in its Response to the Questionnaire, the country under review mentioned that that function falls to the Personnel and Institutional Management Division of the Directorate of Public Purchasing and Contracting.¹⁶⁴

[375] In relation to the way in which personnel are informed of the ethical rules governing their activities, indicating whether this is done verbally or in writing and whether records are kept of those instructions, in its Response to the Questionnaire, the country under review said that it has several mechanisms for that purpose, including induction, which begins as soon as personnel join the institution; training in accordance with the institution's annual training plan; and the Performance Management System, which regularly assesses compliance with institutional rules and regulations.¹⁶⁵

¹⁶⁰ *Supra*, pp. 15-16.

¹⁶¹ *Supra*, pp. 18-19.

¹⁶² *Supra*, pp. 20-21.

¹⁶³ *Supra*, pp. 22-23.

¹⁶⁴ *Supra*, pp. 24-25.

¹⁶⁵ *Supra*, p. 26.

[376] With respect to the occasion(s) when personnel are informed of ethical rules governing their activities, indicating whether this is done when they begin performing them or at some later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules, the country under review mentioned in its Response to the Questionnaire that personnel are informed of the ethical rules that govern their activities by means of the institutional induction program they undergo upon joining the institution, as well as through training activities throughout the year in accordance with the annual training plans defined by the Bipartite Committee on Institutional Training.¹⁶⁶

[377] As far as the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public institutions and for wrongdoers, the country under review said in its Response to the Questionnaire that the institutional induction program includes a module on ethics and probity delivered by the Legal Department of ChileCompra to inform personnel about the rights and obligations of public servants, with an emphasis on the correct performance of their duties and functions. It added that the induction given by the personnel development team includes aspects connected with official obligations.¹⁶⁷

[378] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard, the country under review mentioned in its Response to the Questionnaire that that function falls to the Personnel and Institutional Management Division.¹⁶⁸

- Statutory and other legal provisions or measures applicable to Public Prosecution Service (MP) personnel, including, in particular:

[379] [Law 19.640 \(Constitutional Organic Law of the Public Prosecution Service\)](#), Article 8 of which provides that prosecutors and personnel of the Public Prosecution Service shall observe the principle of administrative probity; and that public duties shall be discharged with transparency, so as to permit and promote knowledge about the procedures, contents, and reasons for decisions adopted in the exercise of those duties.

[380] In relation to the manner in which employees are informed about the responsibilities and functions of their posts, and whether this is done verbally or in writing and if there is a record thereof, in its Response to the Questionnaire, the country under review said that personnel undergo an induction course upon joining the institution, the purpose of which is to inform them about the duties, prohibitions, ineligibilities, and conflicts of interest that apply to personnel and prosecutors in the Public Prosecution Service; and that they are apprised of the responsibilities and duties that pertain directly to their position by their immediate superior.¹⁶⁹

¹⁶⁶ *Supra*, p. 29.

¹⁶⁷ *Supra*, p. 30.

¹⁶⁸ *Supra*, p. 35.

¹⁶⁹ *Supra*, pp. 13-14.

[381] As for the occasion(s) when personnel are informed of their responsibilities and functions, in its Response, the country under review reported that prosecutors and personnel are informed of their responsibilities upon joining the institution.¹⁷⁰

[382] As regards the existence of introductory, training or instructional programs and courses for personnel on how to perform their responsibilities and functions properly and, particularly, for making them aware of the risks of corruption inherent in the performance of those functions, the country under review mentioned in its Response that there are Manuals and Regulations that describe the powers of prosecutors and personnel,¹⁷¹ as well as apprising them of the corruption risks inherent in their work; and that the National Prosecutor has issued general instructions,¹⁷² which are deemed necessary for the proper performance of their specific tasks.¹⁷³

[383] As to the use of modern communications technologies to apprise personnel of their responsibilities or functions and to provide guidance on how to perform them properly, the country under review said in its Response that in order to inform personnel and prosecutors of the Public Prosecution Service about ineligibilities, conflicts of interest, prohibitions and their responsibilities in general, as well as to guide them in their correct performance, the induction process uses a PowerPoint presentation, which makes the information provided more interactive; and that in the case of training on the User Assistance and Information System (*Sistema de Información y Atención a Usuarios – SIAU*) of the Prosecutor's Office, since 2015, additional data has been used to provide training, using e-learning, to personnel involved in the process of handling complaints presented to the Prosecutor's Office, specifically to strengthen the registration of this service.¹⁷⁴

[384] With respect to the existence of bodies to which personnel can resort to obtain information or resolve doubts about how to perform their responsibilities and functions properly, the country under review reported in its Response to the Questionnaire that both prosecutors and personnel can ask their direct superiors to resolve doubts about their responsibilities and duties, which is further supported by the performance management system.¹⁷⁵

[385] Regarding the existence of a governing organ, authority or body responsible for defining, steering, advising, or supporting the manner in which personnel are to be informed of their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard, in its

¹⁷⁰ *Supra*, p. 17.

¹⁷¹ They include the Staff Rules for Prosecutors (*Reglamento de Personal para los Fiscales*), Staff Rules for Personnel (*Reglamento de Personal para los Funcionarios*), Rules on Administrative Liability of Prosecutors and Personnel of the MP (*Reglamento de Responsabilidad Administrativa para fiscales y funcionarios del MP*), Rules on the Duties of Senior Prosecutors and Administrators of Prosecution Units of the MP (*Reglamento de Funciones de los Fiscales Jefe y Administradores de Fiscalías del MP*), Staff Rules for Public Officials (*Reglamentos de Personal de los Funcionarios Públicos*), Rules on the Safekeeping of Monies Seized by the MP (*Reglamento sobre Custodia de Dineros Incautados por el MP*). All of these rules are accompanied in an attached file but may also be consulted at <http://www.fiscaliadechile.cl/transparencia/reglamentosmp.htm>

¹⁷² See <http://www.fiscaliadechile.cl/Fiscalia/instructivos/index.do?d1=0>

¹⁷³ Response of Chile to the Questionnaire for the Fifth Round, p. 19.

¹⁷⁴ *Supra*, p. 21.

¹⁷⁵ *Supra*, p. 23.

Response to the Questionnaire, the country under review mentioned that those functions fall to the immediate superiors of MP personnel.¹⁷⁶

[386] In relation to way in which personnel are informed of the ethical rules governing their activities, indicating whether this is done verbally or in writing and whether records are kept of those instructions, in its Response to the Questionnaire, the country under review said that the way in which personnel are informed of the ethical rules governing their activities is in writing in their employment agreement as well as in the resolution of appointment for prosecutors, which stipulates that “all the pertinent provisions of Law 19.640 and of the regulations issued by the National Prosecutor in accordance with the powers granted to him or her under said law, of which the parties shall be presumed to have knowledge, shall be an integral part of the employment relationship.”¹⁷⁷

[387] With respect to the occasions on which personnel are informed of ethical rules governing their activities, that is, whether this is done when they begin performing them or at a later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules, the country under review mentioned in its Response to the Questionnaire that the occasion on which personnel and prosecutors are informed of ethical rules is when they begin to perform their duties, and that said rules are understood to be those stipulated in the employment agreement for personnel, and the resolution of appointment in the case of prosecutors.¹⁷⁸

[388] As to the existence of introductory, training or instructional programs and courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public institutions and for wrongdoers, the country under review said in its Response that, among other things, the Prosecutor’s Office, through its Training Unit and using internal instructors from the Prosecutors’ Academy, organized between 2009 and 2015 a series of training courses (119 courses) for personnel and prosecutors (3,006 trained) in different curricular areas, including support function modules: physical and financial resources, comprehensive assistance to victims and witnesses, and quality management.¹⁷⁹

[389] As regards use of modern communication technologies to apprise personnel of the ethical rules governing their activities and to provide guidance as to their scope or interpretation, the country under review mentioned in its Response that the Public Prosecution Service’s induction program is an e-learning course that is compulsory for all who join the institution to take and is imparted in the first month of service. PowerPoint presentations are also used.¹⁸⁰

[390] As regards the existence of bodies to which personnel can resort to obtain information or resolve doubts about the scope or interpretation of the ethical rules governing their activities, the country under review said in its Response that Regional Prosecutor’s Offices have legal advice units that can answer queries about the scope or correct interpretation of the ethical rules that govern their activities or, if necessary, relay the query to the Legal Advice Unit of the National Prosecutor’s Office.¹⁸¹

¹⁷⁶ *Supra*, p. 25.

¹⁷⁷ *Supra*, p. 26.

¹⁷⁸ Response of Chile to the Questionnaire for the Fifth Round, pp. 24-25.

¹⁷⁹ *Supra*, p. 31.

¹⁸⁰ *Supra*, p. 32.

¹⁸¹ *Supra*, p. 34.

[391] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or actions that such bodies can take to enforce the norms and/or measures in force in this regard, in its Response, the country under review said that the initial definition is done by the National Prosecutor; application is done by the Human Resources Units or Division within their respective areas of responsibility; information on the rules is provided using the above mechanisms; and their interpretation is done by the legal advice units.¹⁸²

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

[392] With respect to the constitutional, statutory and other legal provisions reviewed by the Committee on the measures intended to provide instructions to government personnel of the three bodies selected by the country under review that ensure proper understanding of their responsibilities and the ethical rules governing their activities, the Committee notes that they are relevant for promoting the purposes of the Convention.

[393] Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures:

- With respect to the provisions and/or other measures applicable to the personnel of the National Civil Service Directorate (DNSC), the Committee notes the following:

[394] First, the Committee notes that in its Response, the country under review reported that since January 2015 the DNSC has been making efforts to work with and provide guidance to the country's public services, ministries, and under-secretariats in drafting and adopting codes of ethics, in accordance with the instructions contained in [Official Circular No. 3 of February 10, 2016](#), from the Minister of Finance of Chile.¹⁸³

[395] In this respect, the Committee notes that although the country under review has made progress in terms of coordination and providing training for the implementation of codes of ethics in all the country's public services, Ministries, and Under-secretariats, the task is not yet complete. In that connection, the Committee also notes that during the on-site visit, representatives of the DNSC reported that at that time 67 percent of institutions were in the final stages of drafting their respective codes and that 33 percent had finished doing so, and therefore expected to complete the process by year-end, in keeping with the November 2016 deadline prescribed in Official Circular No. 3 from the Ministry of Finance. However, they noted that more important were the implementation, training on, and disclosure of the codes once their drafting is complete.

[396] In that regard, the Committee believes that it would be advisable for the country under review to consider adopting the necessary measures so that, as the country's public services, Ministries, and Under-Secretariat progressively adopt their codes of ethics, training programs are implemented at each of those entities specifically on compliance with their respective codes, and authorities are appointed to be in charge of implementing the codes and the training programs in relation to them.

¹⁸² *Supra*, p. 35.

¹⁸³ *Supra*, p. 17.

The Committee will make a recommendation. (See recommendation 1.4.1 in Section 1.4 of Chapter III of this report.)

[397] Second, with respect to the occasions on which personnel are informed of ethical rules governing their activities, in its Response, the country under review referred the Committee to the response provided to question (ii) of the Questionnaire regarding the occasions on which personnel are informed of their responsibilities and duties, in which it stated: *“As regards the occasions when personnel are informed of their official responsibilities and duties, in the Chilean administrative and legal system that information is provided when they apply for a public-sector position, during the performance of their duties, and when there are changes in those duties.”*¹⁸⁴

[398] The Committee notes, however, that the Response refers to the responsibilities and duties of personnel without mentioning whether that instruction contains a module on the ethical rules that govern the activities of personnel or on the inherent corruption risks in their performance. In that connection, the Committee believes that it would be advisable for the country under review to include as part of the content of the induction and training programs for personnel of the central administration a module on the ethical rules that govern the activities of the personnel of central administration institutions and on the inherent corruption risks in the performance, either when they begin performing their duties or at a later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules. The Committee will make a recommendation. (See recommendation 1.4.2 in Section 1.4 of Chapter III of this report.)

- With respect to the provisions and/or other measures applicable to the personnel of ChileCompra, the Committee notes the following:

[399] First, the Committee notes that both in its Response and during the on-site visit, the country under review presented information on personnel training provided by ChileCompra.¹⁸⁵

[400] In that regard, the Committee notes that personnel receive induction courses on their duties and responsibilities upon joining the institution; in the context of the performance management system, when their functions change, and when personnel rejoin the institution after a lengthy absence. In addition, the Committee notes that the training covers both ethical rules and the inherent corruption risks in duties performed by the institution’s personnel.

[401] The country under review also said in its Response that the induction program applies to all personnel that join ChileCompra, regardless of the nature of their engagement (staff, contract-based, fee-based) and whether it be in a professional, technical, or administrative capacity.¹⁸⁶

[402] The Committee also notes, however, that in the same Response, the country under review says that personnel hired on fixed-term contracts and interns are excluded from the induction program, although their immediate supervisors may allow them to participate in those induction programs that have a direct bearing on the unit in which they serve.¹⁸⁷

¹⁸⁴ *Supra*, pp. 14 and 29.

¹⁸⁵ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹⁸⁶ Response of Chile to the Questionnaire for the Fifth Round, p. 15.

¹⁸⁷ *Supra*, p. 16.

[403] In that connection, the Committee believes that it would be beneficial for the country under review to take the steps it considers appropriate so that all ChileCompra personnel, irrespective of the nature of their engagement, are incorporated in induction, re-induction, and continuous training programs, as appropriate, including those relating to ethics and awareness of corruption risks. The Committee will make a recommendation. (See recommendation 1.4.3 in Section 1.4 of Chapter III of this report.)

[404] Second, the Committee notes that the country under review reported in its Response that in October 2015, ChileCompra and the United Nations Development Programme (UNDP) signed an agreement on the project “Strengthening the institutional culture and ethical behavior in the Directorate of Public Purchasing and Contracting,” the purpose of which is the creation and implementation in 2016 of an Integrity System that includes the participation of ChileCompra personnel, *“who set down in the Code of Ethics the values and conduct that reflect the culture, mission, vision, and ethical behavior that guide the behavior of the institution’s members, taking into account, moreover, their link to the legal framework that governs the conduct of public officials. The objectives of the Integrity System also include providing channels of communication to enable any member of the personnel to resolve their concerns and submit complaints in relation to matters of ethics and probity.”*

[405] They added therefore to be effectively implemented, the Code of Ethics needs to be inserted in a system that includes ethical management procedures and to have leaders who encourage ethical conduct, awareness, and continuous training for personnel, as well as anonymous consultation processes, penalties, accountability, and other elements. Furthermore, in addition to the Code of Ethics, the Integrity System would include: a consultation and complaints mechanism to allow personnel to answer queries about the content of the Code of Ethics, ethical-labor conflicts, or violations of official duties, in addition to lodging complaints; Integrity Coordinators, whose function will be to answer queries concerning violations of probity; and a General Coordinator, whose responsibility will be to receive complaints and, in coordination with the service’s prosecution unit, follow the established steps and those required under the regulations in force.

[406] In relation to the foregoing, the Committee believes that it would be beneficial for the country under review to strengthen ChileCompra, by providing it with the necessary human and financial resources, subject to their availability, to establish the Integrity System in that institution and ensure its sustainability. The Committee will make a recommendation. (See recommendation 1.4.4 in Section 1.4 of Chapter III of this report.)

- With respect to the provisions and/or other measures applicable to the personnel of the Public Prosecution Service (MP), the Committee notes the following:

[407] First, the Committee notes that both in its Response and during the on-site visit, the country under review presented information on personnel training provided by Public Prosecution Service (MP).¹⁸⁸

[408] The Committee notes that, although the Public Prosecution Service has a National Training Unit under its Human Resources Division, which has developed a Centralized Training Program that *“is centered on the institution’s strategic guidelines and contingent needs, the principal courses*

¹⁸⁸ See MP PowerPoint presentation “MESICIC-IV” http://www.oas.org/juridico/spanish/mesicic5_chi.htm

conceived being Management of physical and financial resources, Quality control management, Team leadership for work excellence, Competency-based management, Crosscutting conduct competencies, Indicator management, Continuous improvement, Service quality and user attention, and Comprehensive assistance for victims and witnesses, among others,” those programs do not include as a core aspects training on ethical rules that govern the activities of MP personnel or the inherent corruption risks in the performance of their duties.

[409] The Committee also notes that the country under review (in the Response to the Questionnaire) and MP representatives (during the on-site visit) reported that in 2012, the Legal Advice Unit of the National Prosecutor’s Office provided training on administrative liability for MP prosecutors and personnel with the broad aim of providing them with an overview of the administrative investigations procedure, addressing both formal and substantive aspects, examining the provisions that govern the Public Prosecution Service’s Administrative Liability System, and reviewing the constitutional, legal, and regulatory provisions (including the ethical rules that govern the performance of their duties) on which the internal administrative liability system is based, with reference made to the sources of the National Prosecutor’s Office disciplinary authority and the provisions that recognize MP prosecutors and personnel as public officials.

[410] However, other than the information registered in the preceding paragraph, the country under review offers no other information about training specifically related to the ethical rules that govern the way in which Public Prosecution Service personnel should perform their duties, or to apprise them of the inherent corruption risks in their performance.¹⁸⁹ Therefore, the Committee believes that it would be advisable for the country under review to incorporate those topics in its induction, re-induction, and continuous training programs, as appropriate, and it will make a recommendation to that effect. (See recommendation 1.4.5 in Section 1.4 of Chapter II of this report).

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

[411] In its Response to the Questionnaire and during the on-site visit, the country under review presented the following results from the application of the provisions and/or measures relating to instruction given to government personnel in order to ensure proper understanding of their responsibilities and the ethical rules governing their activities:

[412] During the on-site visit, the country under review presented information on the National Civil Service Directorate, notably the following:¹⁹⁰

[413] *“The National Civil Service Directorate, in keeping with the instructions issued by the Minister of Finance contained in Official Circular No. 3 of February 10, 2016, has developed a set of training courses for the country’s ministries, under-secretariats, and public services, with the aim of*

¹⁸⁹ At the meeting of the review subgroup on March 10, 2017, the State under review reported that on January 25, 2017, it had signed an interinstitutional agreement with the National Civil Service Directorate to collect best personnel management practices and to jointly draft a Code of Ethics for the Prosecution Service, which would be prepared with the participation of both prosecutors and officials and would reflect the values and principles that guide the Prosecution Service in the pursuit of its institutional mission. Once it is adopted, the courses and workshops necessary for its dissemination will be organized.

http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹⁹⁰ Response of Chile to the Questionnaire for the Fifth Round, p. 35.

facilitating the process of constructing codes of ethics for public institutions. As mentioned, those codes of ethics must be enacted in November this year at the latest.

[414] *Specifically, the training courses provided by the Civil Service were given on April 15, April 22, April 28, May 6, May 9, May 11, May 13, June 1, June 2, and June 3 this year.*

[415] *This set of instruction and training courses has been executed with the collaboration and advice of the United Nations Development Programme (UNDP) and support from the IDB.*

[416] – With respect to results corresponding to ChileCompra, during the on-site visit, representatives of that institution provided statistics, notably the following:

Courses 2012

- Advanced Course on Corporate Social Responsibility
- Global Reporting Initiative (GRI)
- Seminars: Ethics and Compliance, Fundación Generación Empresarial
- Workshop: Self-care and drug and alcohol abuse prevention
- Workplace and Sexual Harassment Workshop, DNSC
- Talk on Ethics, Integrity and the Administrative Statute

Total participants: 44 staff

Courses 2013

- GRI Update Course
- Protection of Personal Data
- Diploma in Fraud Prevention, Detection and Investigation

Total participants: 4 staff

Courses 2014

- Talk: Guidelines on workplace harassment prevention, DNSC
- EducaTransparencia Courses
- Workshop: Awareness and alignment with social responsibility, Centro Vincular PUCV
- Course on Managing Diversity in the Company, Acción RSE

Total participants: 81 staff

Courses 2015

- Workshop: Ethical Dilemmas, Fundación Generación Empresarial
- Diploma Course: Strategic Sustainability Management
- Talk: Diversity and Personnel Management “Diverse teams = Better teams,” Acción RSE
- Managing Diversity in the Company, Acción RSE

Total participants: 48 staff

Courses 2016

- Managing Diversity in the Company, Fundación Generación Empresarial
- Course on Sustainable Government Procurement
- Diploma Course: Strategic Sustainability Management 2016
- Talk: Diversity and Inclusion, Acción RSE
- Talk: Sexual Diversity in the Workplace, Fundación Iguales
- Introduction to the ChileCompra Integrity System

Total participants: 100 staff

[417] In its Response, and during the on-site visit, the country under review presented statistics on the Public Prosecution Service (MP), notably the following:¹⁹¹

Course implemented 2009 - 2016			
Curricular areas	Courses	Number of Courses	Number trained
Conduct Modules	Crosscutting conduct competencies	1	24
	Curricular area total	1	24
Criminal Prosecution Functions Module	Initial oral litigation	20	545
	Advanced oral litigation	16	405
	Investigation planning and execution strategies	8	206
	Investigation of complex cases	6	169
	Seized goods and assets management	4	100
	Curricular area total	54	1,425
Support Functions Module	Indicator management	10	255
	Continuous improvement	12	286
	Physical and financial resources	10	248
	Comprehensive assistance for victims and witnesses	13	337
	Service quality and user attention	1	20
	Competency-based management	7	167
	Quality management	1	23
	Curricular area total	54	1,336
Executive Management Functions Module	Team leadership for work excellence	11	282

¹⁹¹ See MP PowerPoint presentation http://www.oas.org/juridico/spanish/mesicic5_chi.htm

	Personnel management	6	137
	Curricular area total	17	419
	Totals	126	3,204

[418] The Committee considers that the above information is pertinent for demonstrating that the public-sector entities selected by the country under review have obtained results in the application of provisions and/or measures relating to instruction given to government personnel to ensure proper understanding of their responsibilities and functions.

[419] However, the Committee believes that it would be useful to supplement the statistics on all the public-sector entities selected by the country under review with data, broken down by date, on induction, re-induction, training, and instruction courses to ensure proper understanding of the ethical rules that guide the activities of their personnel, the periodicity or frequency with which they are imparted, the number of civil servants taking part, the use of technological tools for those purposes, and the activities carried out to determine if the objective of ensuring that those ethical rules are understood has been met. (See recommendation 1.4.6 in Section 1.4 of Chapter III of this report.)

[420] Finally, the Committee considers that it would be beneficial for the country under review to consider preparing guides, guidelines, or instruments of other types to guide public servants about the due performance of their duties and to alert them about the risks of corruption inherent in the fulfillment of their responsibilities, as well as on the scope and interpretation of the ethical rules that govern their activities and the consequences of noncompliance for the public service and for those in breach thereof, when they are not in place in the institutions.¹⁹² (See recommendation 1.4.7 in Section 1.4 of Chapter III of this report.)

1.4. Recommendations

[421] In light of the comments made in Sections 1.2 and 1.3 of Chapter II of this report, the

¹⁹² At the meeting of the review subgroup on March 10, 2017, the State under review presented new information, which is summarized below:

(a) 2016–2022 Strategic Plan of the National Prosecutor’s Office, which will guide the activities of the Public Prosecution Service over the next six years. The plan is built on four pillars aimed at boosting efficiency in the area of criminal prosecution, strengthening relations with, and attention to, victims and witnesses, emphasizing the agency’s role as society’s representative in criminal prosecutions, and bolstering internal management.

(b) Signing of an advisory services agreement with the Civil Service to strengthen personnel management good practices. Joint efforts will be made to draft a Code of Ethics for the Public Prosecution Service, and the training courses and workshops necessary will be held to disseminate it among the MP’s staff.

(c) Regional Training Programs and Academy Organizational Design.

They added that: *“In 2017, the National Training Unit will be focused on advancing the organizational design of the Academy, which will include an organizational chart, processes, and its structure, which, once defined, will include a course on ethical rules governing personnel activities that will be compulsory for all Public Prosecution Service prosecutors and officials and be included both in the institution’s induction programs and as a crosscutting element of improvement and refresher programs.”*

Committee suggests that the country under review consider the following recommendations:

- 1.4.1. Adopt the necessary measures so that, as the country's public services, Ministries, and Under-Secretariats progressively adopt their codes of ethics, training programs are also implemented specifically addressing compliance with their codes of ethics, and authorities are appointed to be in charge of implementing the codes and the training programs in relation to them. (See paragraphs 394 to 396 in Section 1.2 of Chapter III of this report.)
- 1.4.2. Include as part of the content of the induction and training programs for personnel of the central administration a module on the ethical rules that govern their activities and on the inherent corruption risks in the performance, either when they begin performing their duties or at a later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules. (See paragraphs 397 to 398 in Section 1.2 of Chapter III of this report.)
- 1.4.3. Take the steps it considers appropriate so that all ChileCompra personnel, irrespective of the nature of their engagement, participate in induction, re-induction, and continuous training programs, as appropriate, including those relating to ethics and awareness of corruption risks. (See paragraphs 399 to 403 in Section 1.2 of Chapter III of this report.)
- 1.4.4. Strengthen the Directorate of Public Purchasing and Contracting by providing it with the necessary human and financial resources, subject to their availability, to establish the ChileCompra Integrity System in that institution and ensure its sustainability. (See paragraphs 404 to 406 in Section 1.2 of Chapter III of this report.)
- 1.4.5. Include as part of the content of the induction and training programs for personnel of the Public Prosecutions Service a module on the ethical rules that govern their activities and on the inherent corruption risks in the performance, either when they begin performing their duties or at a later point; when a change in their functions entails a different set of applicable ethical rules; or when changes are made to those rules. (See paragraphs 407 to 410 in Section 1.2 of Chapter III of this report.)
- 1.4.6. Supplement the statistics from the National Civil Service Directorate (DNSC) ChileCompra, and the Public Prosecution Service with data, broken down by date, on induction, training, and instruction courses to ensure proper understanding of the ethical rules that guide the activities of their personnel, the periodicity or frequency with which they are imparted, the number of civil servants taking part, the use of technological tools for those purposes, and the activities carried out to determine if the objective of ensuring that those ethical rules are understood has been met. (See paragraphs 411 to 419 in Section 1.2 of Chapter III of this report.)
- 1.4.7. Prepare, for those institutions that are without them, handbooks, guidelines, and other instruments for civil servants on the proper discharge of their functions, the inherent corruption risks in the performance of their duties, and the scope and interpretation of the ethical rules that govern their activities and the consequences of

their infringement for the civil service and for wrongdoers. (See paragraph 420 in Section 1.2 of Chapter III of this report.)

2. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE III, PARAGRAPH 12 OF THE CONVENTION)

2.1. STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE

[422] In its Response to the Questionnaire, the country under review points out that the National Directorate of the Civil Service (DNSC) has commissioned a series of studies on wages and compensation, the last of which was conducted by [Deloitte in 2015](#). The country under review indicates that the purpose of those studies was "to perform comparative analyses of wages and wage systems in relation to managerial position in the public and private sectors. *National and comparative experience in this field.*"¹⁹³

2.2. ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT GUIDELINES FOR DETERMINING THE COMPENSATION OF PUBLIC SERVANTS

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

[423] The Republic of Chile has a set of provisions for determining the compensation of public servants, in particular:

[424] The first paragraph of Article 19.16 of the Political Constitution of the Republic guarantees everyone the "freedom to work and protection of that freedom" and it specifies that "any person has the right to free employment and free selection of his work, with a just compensation."

[425] – Decree Law N° 249, of 1974, "Establishing the single salary scale for the personnel referred to."

[426] – Decree Law N° 3.551, of 1980, "Establishing forms of remuneration for the public sector," Article 1 of which provides that "*The Office of the Comptroller General of the Republic, the National Economic Affairs Investigation Bureau (Fiscalía Nacional Económica), Customs, the Labor Directorate, and the Superintendency of Social Security shall cease to be governed by the remunerations system established in Decree Law N° 249, of 1974, without prejudice to the provisions of Article 7.*"

[427] Article 7 stipulates, inter alia, that: "The personnel referred to in Article 5,¹⁹⁴ shall, in addition, maintain the right to receive the following additional compensation: a) *Special location bonus* (asignación de zona). b) *Per diems*. c) *The transportation costs allowance referred to in Article 76 of Statutory Decree No. 338, of 1960; the cashiers' potential losses allowance* (asignación por pérdida

¹⁹³ Response of Chile to the Questionnaire for the Fifth Round, p. 43.

¹⁹⁴ Article 5 establishes the monthly pay scale for personnel working in the Office of the Comptroller General of the Republic and oversight bodies.

de caja) of Article 77 of Statutory Decree No. 338, of 1960; the light meal allowance; the change of home allowance; the family allowance; and the collective transport fare allowance pursuant to Article 1 of Decree Law No. 300, of 1974. d) The night work or holiday work bonus and extra pay for overtime..."

[428] – "[Administrative Statute Law 18.834](#)," which provides that "Every public office shall have an assigned level (grado) in accordance with the importance of the function performed and shall be remunerated accordingly in terms of both wages and other entitlements."

[429] – Law No 20.883, which "Grants wage adjustments for public sector personnel, certain extra month's salary benefits and certain other benefits."

[430] – Official Circular No. 36 of the Ministry of Finance, of December 24, 2015, which establishes fees to be paid to contractors.¹⁹⁵

2.2.2. Adequacy of the legal framework and/or other measures in respect of the Convention

[431] With respect to the provisions on the establishment of objective and transparent criteria for determining the compensation of public servants, based on the information available to it, the Committee deems it pertinent to make the following observations:

[432] First, the Committee notes that, in its Response, the country under review mentions the following difficulties:¹⁹⁶

[433] *"There are few legal provisions on internal equity with respect to remunerations..."*

[434] *All in all, it should be noted that, objectively, the existence of public servants with low wages or wages that bear little relation to the importance or vital or sensitive nature of the tasks performed does pose a risk to or could undermine the Integrity System.*

[435] *"This is an area in which our country needs to develop better rules and regulations."*

[436] At the same time, the Committee notes that during the on-site visit, the representatives of the National Directorate of the Civil Service (DNSC) pointed out that, apart from the norms described in the foregoing section, there are a number of other special rules on civil servants' remunerations, for instance those of municipal staff, the Armed Forces, and so on.

[437] They also pointed out that there is no uniform statute governing public sector remunerations, as there is for the private sector. Rather, in the public sector, each area and trade union association has found a way to negotiate various allowances on top of the uniform basic scale, so that the rules have ended up being variable rather than fixed, with special laws being passed for each allowance.

[438] Likewise, they reported that some 80 percent of public servants are covered by the basic salary scale, but all of them have added a series of allowances, so that, in the end, each institution has its own compensation package, whereby the older institutions pay less because they started with a low

¹⁹⁵ Available at: http://www.oas.org/juridico/spanish/mesicic5_chi.htm

¹⁹⁶ Response of Chile to the Questionnaire for the Fifth Round, p. 44.

wage scale. They added that, in other systems, wages match the position, whereas in Chile wages are made to fit the person not the job.

[439] Moreover, the DNSC representatives also reported that several international observers had pointed out that the country under review has one of the most complicated remuneration systems in the region and that over the past 20 years very disparate hiring and remuneration practices had developed.

[440] Finally, the Committee notes that during the on-site visit the representatives of the DGNC pointed out that a diagnostic assessment was needed to determine the causes of that wide range of different pay scales and allowances, despite the efforts made to establish a single compensation system for all public servants. They added that, as they had pointed out in their Response, the country still needs rules and regulations establishing a wages policy that simplifies the system and guarantees fair remuneration.

[441] The Committee deems it appropriate that the country under review consider adopting the legal measures needed to establish a uniform wage policy law for all public sector institutions that would, at a minimum, establish objective criteria for fair remuneration in the public sector and strengthen the guidelines for strict, mandatory compliance with all existing labor rules and regulations. The Committee will make a recommendation in that regard. (See recommendation 2.2.3.1 in Section 2.2.3 of Chapter II of this report.)

2.2.3. Conclusions and recommendations

[442] Based on the review conducted in the foregoing sections, the Committee suggests that the country under review consider the following recommendation with respect to implementation of the provisions contained in Article III (12) of the Convention:

2.2.3.1. Consider taking the steps needed to pass a uniform wage policy law for all public sector institutions that would, at a minimum, establish objective criteria for fair remuneration in the public sector and strengthen the guidelines for strict, mandatory compliance with all existing labor rules and regulations. (See paragraphs 418 to 428 in Section 2.2.2 of Chapter III of this report.)

IV. BEST PRACTICES

[443] In keeping with section VI of the Methodology for follow-up of implementation of the recommendations formulated and provisions reviewed in the Second Round and for the review of the provisions of the Convention selected for the Fifth Round, the following describes the best practices identified by the country under review that it has wished to share with the other member countries of the MESICIC in the belief that they could be of benefit to them:

[444] First, in its Response,¹⁹⁷ the country under review identifies as a best practice the adoption of high standards with regard to sworn statements of net worth and interests through the [Instructivo Presidencial \[Presidential Instruction\] No 2, of March 19, 2015](#), issued by the Office of the Minister

¹⁹⁷ Response of Chile to the Questionnaire for the Fifth Round, pp. 45-47.

and Secretary-General of the Presidency, which calls for "a larger number of civil servants declaring their net worth and interests and raising the requirements for such statements."¹⁹⁸

[445] In this respect, the country under review points out that this best practice arose because previously there had been no rules about disclosing net worth and interests, whereas now such statements are obligatory for the President of the Republic, ministers, undersecretaries, regional prefects and governors, regional ministry secretaries, senior departmental managers, and contract staff in regional ministries, departments, or governments earning more than a given level of remuneration; staff in the Office of the President, including the person acting as the Director of Social and Cultural Affairs regardless of whether he or she is paid a salary; those holding managerial positions in corporations and foundations in which the State has a majority share, as well as those running companies and firms in which the State has a majority stake or owns the same amount of shares as the other partners; the chancellors members of the board of State universities.

[446] A second best practice identified in the Response of the country under review¹⁹⁹ is the cooperation between the Office of the Comptroller (CGR) and with other agencies in the preparation of Codes of Ethics for the Civil Service.

[447] Referring to the reasons for and importance of developing this best practice, the country under review added that "*The Executive developed the Agenda for Integrity and Transparency in Business and Politics based on the findings of the "Presidential Advisory Council against Conflicts of Interest, Interest Peddling, and Corruption," established by Decree N° 2, of 2015, of the Office of the Minister and Secretary-General of the Presidency, by establishing administrative and legislative measures aimed at raising public and private probity standards. The administrative initiatives included the preparation of general guidelines for drawing up Codes of Ethics for public services, aimed at enhancing ethics training for public servants and setting high standards of conduct to be observed in the performance of their duties.*"

[448] Third, the Committee notes that, in its Response,²⁰⁰ the country under review singles out as another best practice the adoption of the Integrity Self-Assessment System (SAINT), which is "*a tool that enables institutions to identify, analyze, evaluate, and respond to events that could affect an institution's compliance with its objectives, with particular emphasis on safeguarding integrity, probity and public ethics.*"²⁰¹

[449] Finally, the Committee notes that, in its Response,²⁰² the country under review also identifies as a best practice the establishment of the [ChileCompra Observatory](http://www.chilecompra.cl), which "*promotes quality standards and best practices in the procedures followed by the 850 State entities using the Chile Compra platform, in order to raise the levels of transparency, probity, and efficiency in government procurement.*" The country under review has identified it as a best practice because it has helped to promote standards of quality, probity, transparency, and efficiency in government procurement.

¹⁹⁸ <http://dpi.minsepres.gob.cl/portada>

¹⁹⁹ Response of Chile to the Questionnaire for the Fifth Round, pp. 47-49.

²⁰⁰ Cf. above, pp. 49-52.

²⁰¹ <http://www.agendaanticorruccion.cl/AnticorruccionUNCAC/>

²⁰² Response of Chile to the Questionnaire for the Fifth Round, pp. 52-55.

AGENDA
**ONSITE VISIT TO THE REPUBLIC OF CHILE IN THE FRAMEWORK OF THE
 FIFTH ROUND OF REVIEW OF MESICIC**

<u>Monday, October 3, 2016</u>	
15:00 – 16:00 <i>Hotel Plaza San Francisco</i>	Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat
16:00 – 17:00 <i>Hotel Plaza San Francisco</i>	Coordination meeting between the representatives of the country under review, the member states of the subgroup, and the Technical Secretariat
<u>Tuesday, October 4, 2016</u>	
09:30 – 13:00 <i>MRE headquarters</i>	Meetings with civil society organizations and/or, among others, with private-sector organizations, professional associations, academics, or researchers
	<p><u>Topics:</u></p> <ul style="list-style-type: none"> • Systems for hiring public servants, their training and compensation • Systems for the procurement of goods and services by the state • Systems for the protection of persons reporting acts of corruption
	<p><u>Suggested participants:</u></p> <p><i>Red Interamericana de Educación en Administración Pública (INPAE)</i> <i>- Cristian Pliscoff, Presidente</i></p> <p><i>Chile Transparente</i> <i>- Alberto Precht, Director Ejecutivo</i> <i>- Michel Figueroa, Coordinador Sector Público</i></p> <p><i>Espacio Público</i> <i>- María Jaraquemada, Directora de Incidencia</i></p>
13:00 – 14:00	Lunch
14:00 – 17:30 <i>MRE headquarters</i>	Meetings with government authorities: systems for the protection of those reporting acts of corruption and criminalization of these acts

<p>14:00 – 16:30</p>	<p>Panel 1: <u>Systems for the protection of public servants and individual citizens who, in good faith, report acts of corruption</u></p> <p>Progress, new developments, and their results in implementing the recommendation made and the measure suggested in the Second Round</p> <hr/> <p><i>Ministerio Público</i></p> <ul style="list-style-type: none"> - Sr. Hernán Fernández Aracena, Subdirector de la Unidad Especializada Anticorrupción - Sr. Adio González Cortés, Gerente de la División de Recursos Humanos de la Fiscalía Nacional - Sra. Ángela Chávez Torrico, Subdirectora de la División de Atención a Víctima y Testigos de la Fiscalía Nacional - Sr. Jorge Ibarra Méndez, Profesional de la División de Recursos Humanos de la Fiscalía Nacional - Sr. Ricardo Mestre Araneda, Abogado Asesor de la Unidad de Asesoría Jurídica de la Fiscalía Nacional - Srta. Angélica Torres Figueroa, Abogado Asesor de la Unidad Anticorrupción de la Fiscalía Nacional - Sra. Yélica Lusic Nadal, Abogado Asesor de la Unidad Anticorrupción de la Fiscalía Nacional <p><i>Contraloría General de la República</i></p> <ul style="list-style-type: none"> - Sr. Joaquin Muga Hernández, Unidad de Atención y Denuncia Ciudadana - Sra. Verónica Orrego Ahumada, Subsecretaría General - Sra. Piscila Jara Fuentes, Jefa División de Auditoría Administrativa <p><i>ChileCompra</i></p> <ul style="list-style-type: none"> - Sra. Viviana Mora Higuera, Jefa Observatorio de Compras Públicas, Dirección ChileCompra - Sr. Ricardo Miranda Zúñiga, Fiscal Dirección ChileCompra - Sr. Javier Valladares Ljubetic, Abogado Fiscalía, Dirección ChileCompra
<p>16:30 – 16:45</p>	<p>Break</p>
<p>16:45 – 17:30</p>	<p>Panel 2: <u>Acts of corruption</u></p> <ul style="list-style-type: none"> • Follow-up on the recommendations of the Second Round • New developments in connection with the implementation of Article VI of the Convention

	<p><i>Ministerio Público</i></p> <ul style="list-style-type: none"> - Sr. Hernán Fernández Aracena, Subdirector de la Unidad Especializada Anticorrupción - Sr. Adio González Cortés, Gerente de la División de Recursos Humanos de la Fiscalía Nacional - Sra. Ángela Chávez Torrico, Subdirectora de la División de Atención a Víctima y Testigos de la Fiscalía Nacional - Sr. Jorge Ibarra Méndez, Profesional de la División de Recursos Humanos de la Fiscalía Nacional - Sr. Ricardo Mestre Araneda, Abogado Asesor de la Unidad de Asesoría Jurídica de la Fiscalía Nacional - Srta. Angélica Torres Figueroa, Abogado Asesor de la Unidad Anticorrupción de la Fiscalía Nacional - Sra. Yélica Lusic Nadal, Abogado Asesor de la Unidad Anticorrupción de la Fiscalía Nacional <p><i>Poder Judicial</i></p> <ul style="list-style-type: none"> - Sra. María Loreto Gutiérrez Alvear, Fiscal Judicial, Ilustrísima Corte de Apelaciones de Santiago - Sr. Esteban Paiva Jara, Jefe de Modernización del Departamento de Desarrollo Institucional - Sr. Mauricio Farfan Manns, Jefe de Proyectos del Area Penal del Departamento de Desarrollo Institucional - Sr. Ricardo Tucas Rojas, Jefe de Proyectos de Estadísticas del Departamento de Desarrollo Institucional
17:30 – 18:00	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat
<u>Wednesday, October 5, 2016</u>	
09:30 – 17:30 <i>MRE headquarters</i>	Meetings with government authorities: the systems for hiring public servants, training them and their compensation
09:30 – 13:00	<p>Panel 3: <u>Systems for hiring public servants</u></p> <ul style="list-style-type: none"> • Progress, new developments, and their results in the implementation of the recommendations and measures suggested in the Second Round whose fulfillment is pending. • New developments in connection with the implementation of Article III, paragraph 5, of the Convention with respect to systems for hiring public servants

	<p><i>Contraloría General de la República</i></p> <ul style="list-style-type: none"> - Sra. Dorothy Pérez Gutiérrez, Subcontralora - Sra. Verónica Orrego Ahumada, Subsecretaría General - Sra. Piscila Jara Fuentes, Jefa División de Auditoría Administrativa <p><i>Dirección Nacional del Servicio Civil</i></p> <ul style="list-style-type: none"> - Sra. Daniella Carrizo Santiago, Coordinadora Alta Dirección Pública - Sra. Sorely Martínez, División de Gestión y Desarrollo Institucional - Sr. Héctor Cornejo, Subdirección de Alta Dirección Pública - Sr. Rodrigo Bravo Acevedo, Abogado División Jurídica <p><i>Congreso Nacional</i></p> <ul style="list-style-type: none"> - Sr. Carlos Becerra Farias, Jefe Departamento de Personal y Servicios del Senado - Sra. Verónica Seguel Ilabaca, Jefa Unidad Acceso a la Información y Transparencia Cámara de Diputados - Sr. Luis Rojas Gallardo, Prosecretario de la Cámara de Diputados - Sr. Gonzalo Salas Ochoa, Funcionario del Departamento de Personal de la Cámara de Diputados <p><i>Poder Judicial</i></p> <ul style="list-style-type: none"> - Sra. María Loreto Gutiérrez Alvear, Fiscal Judicial, Ilustrísima Corte de Apelaciones de Santiago - Sr. Ricardo L. Guzman Sanza, Director de la Corporación Administrativa del Poder Judicial - Sra. Andreina Olmo Marchetti, Jefa del Departamento de Recursos Humanos de la Corporación Administrativa del Poder Judicial - Sr. Mario Lara Orellana, Jefe del Departamento de Desarrollo Institucional de la Corporación Administrativa del Poder Judicial - Sra. Carolina Manterola Urrutia, Jefa (s) de Reclutamiento y Selección de la Corporación Administrativa del Poder Judicial
13:00 – 14:00	Lunch
14:00 – 16:15	<p>Panel 4: <u>Instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities</u></p> <ul style="list-style-type: none"> • Legal and institutional framework • Induction, training, or instruction programs and/or courses and their

	<p>results</p> <p><i>Dirección Nacional del Servicio Civil</i></p> <ul style="list-style-type: none">- Sra. Daniella Carrizo Santiago, Coordinadora Alta Dirección Pública- Sra. Sorely Martínez, División de Gestión y Desarrollo Institucional- Sr. Héctor Cornejo, Subdirección de Alta Dirección Pública- Sr. Rodrigo Bravo Acevedo, Abogado División Jurídica <p><i>ChileCompra</i></p> <ul style="list-style-type: none">- Sra. Viviana Mora Higuera, Jefa Observatorio de Compras Públicas, Dirección ChileCompra- Patricia Ibañez Crino, Jefa División de Personas y Gestión Institucional, Dirección ChileCompra- Sr. Ricardo Miranda Zúñiga, Fiscal Dirección ChileCompra- Sr. Javier Valladares Ljubetic, Abogado Fiscalía, Dirección ChileCompra <p><i>Ministerio Público</i></p> <ul style="list-style-type: none">- Sr. Hernán Fernández Aracena, Subdirector de la Unidad Especializada Anticorrupción- Sr. Adio González Cortés, Gerente de la División de Recursos Humanos de la Fiscalía Nacional- Sra. Ángela Chávez Torrico, Subdirectora de la División de Atención a Víctima y Testigos de la Fiscalía Nacional- Sr. Jorge Ibarra Méndez, Profesional de la División de Recursos Humanos de la Fiscalía Nacional- Sr. Ricardo Mestre Araneda, Abogado Asesor de la Unidad de Asesoría Jurídica de la Fiscalía Nacional- Srta. Angélica Torres Figueroa, Abogado Asesor de la Unidad Anticorrupción de la Fiscalía Nacional- Sra. Yélica Lusic Nadal, Abogado Asesor de la Unidad Anticorrupción de la Fiscalía Nacional
16:15 – 16:30	Break
16:30 – 17:30	<p>Panel 5: <u>The study of preventive measures that take into account the relationship between equitable compensation and probity in public service</u></p> <ul style="list-style-type: none">• Legal framework and other measures

	<p><i>Dirección Nacional del Servicio Civil</i></p> <ul style="list-style-type: none"> - Sra. Daniella Carrizo Santiago, Coordinadora Alta Dirección Pública - Sra. Sorely Martínez, División de Gestión y Desarrollo Institucional - Sr. Héctor Cornejo, Subdirección de Alta Dirección Pública - Sr. Rodrigo Bravo Acevedo, Abogado División Jurídica
18:00 – 18:30	Informal meeting between the representatives of the members states of the subgroup and the Technical Secretariat
<u>Thursday, October 6, 2016</u>	
09:30 – 17:30 <i>MRE headquarters</i>	Meetings with government authorities: systems for the procurement of goods and services by the state and general recommendations
	<p>Panel 6: <u>Systems for the procurement of goods and services by the state</u></p> <ul style="list-style-type: none"> • Progress, new developments, and their results in implementing recommendations and the measures suggested in the Second Round whose fulfillment is pending • New developments in connection with implementation of Article III, paragraph 5, of the Convention with respect to systems for the procurement of goods and services by the state
14:00 – 15:00	Lunch
15:00 – 17:30	<p>Panel 7: <u>General recommendations made in the Second Round</u></p> <ul style="list-style-type: none"> • Progress, new developments, and their results in implementing the general recommendation of the Second Round whose fulfillment is pending
	<p><i>Consejo de Auditoría Interna General de Gobierno</i></p> <ul style="list-style-type: none"> - Sr. Luis Sepúlveda Ponce, Abogado Asesor Área Gestión de Riesgos Corporativos y Empresas Públicas
16:30 – 17:30	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat
17:30 – 18:00	Final meeting between the representatives of the country under review, the member states of the subgroup, and the Technical Secretariat

**OFFICIALS WHO ACTED AS CONTACTS IN THE STATE UNDER REVIEW IN
COORDINATING THE ON-SITE VISIT, AS WELL AS REPRESENTATIVES OF THE
MEMBER STATES OF THE SUBGROUP AND OF THE MESICIC TECHNICAL
SECRETARIAT WHO TOOK PART IN THE VISIT**

STATE UNDER REVIEW:

CHILE

Daniella Caldana Fulss

Lead Expert on the Committee of Experts of the MESICIC
Auditor General
General Government Internal Audit Council (CAIGG)

Luis Felipe Sepúlveda Ponce

Alternate Expert on the Committee of Experts of the MESICIC
Legal Advisor
General Government Internal Audit Council (CAIGG)

ESTADOS MIEMBROS DEL SUBGRUPO DE ANÁLISIS PRELIMINAR:

GUYANA

Ronald Mathurin

Alternate Expert on the Committee of Experts of the MESICIC
Legal Advisor
Anti-Corruption Unit (ULCC)

SECRETARÍA TÉCNICA DEL MESICIC

Marta Laura Martínez

Senior Legal Officer
Department of Legal Cooperation
OAS Secretariat for Legal Affairs

Rodrigo Silva

Legal Officer
Department of Legal Cooperation
OAS Secretariat for Legal Affairs