

Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally-binding anti-corruption agreement applicable on a global basis. To date, 154 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a "Conference of the States Parties to the Convention" (CoSP) was established to review and facilitate required activities. In November 2009, the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on Chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation), and the second cycle on Chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group (IRG), which met for the first time in June-July 2010 in Vienna. The IRG selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "*to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption*" and to strengthen that participation by measures such as "*enhancing the transparency of and promoting the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.*" Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10). Article 63 (4) (c) requires the CoSP to agree on procedures and methods of work, including cooperation with relevant NGOs.

In accordance with Resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the Conference secretariat on their compliance with the Convention, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the Convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review, and finalise it upon agreement. The result is a full review report and an Executive Summary, the latter which is required to be published. The Secretariat, based upon the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organized by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group". The Terms of Reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption funded by the UN Democracy Fund (UNDEF), Transparency International has offered small grants for civil society organisations (CSOs) engaged in monitoring and advocating around the UNCAC review process, aimed at supporting the preparation of UNCAC implementation review reports by CSOs, for input into the review process.

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of October 2011. Nevertheless, Chile Transparente and the UNCAC Coalition cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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Introduction

Chile signed the UN Convention against Corruption (UNCAC) on 11 December 2003 and the National Congress ratified it on 13 September 2006.¹

This report reviews Chile's implementation and enforcement of selected articles of UNCAC Chapters III and IV. The report is intended as a contribution to the UNCAC peer review process currently underway covering those two Chapters. Chile was selected for review in the first year of the process by the UNCAC Implementation Review Group in July 2010, by a drawing of lots. An earlier draft of this report was provided to the government of Chile.

Scope. The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), bank secrecy (Article 20), money laundering (Article 23), liability of legal persons (Article 26), sanctions (Article 30), witness protection (Article 32), whistleblower protection (Article 33) and mutual legal assistance (Article 46).

Structure. Section I is an Executive Summary. This presents the main findings, conclusions and recommendations about the review process and the availability of information; and on the implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in Chile, as well as discussing issues around access to information. Section III reviews implementation and enforcement of the UNCAC, including key issues related to the legal framework and enforcement system, with examples of good and bad practice. Section IV covers recent developments, and Section V elaborates on recommended priority actions.

Methodology. The report, produced with UNDEF funding, was prepared by Chile Transparente. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, an earlier draft of the report was supplied to government officials.

The report was prepared using a questionnaire and report template designed by Transparency International (TI) for the use of civil society organisations. These tools reflected, but simplified, the checklist from the United Nations Office on Drugs and Crime (UNODC) and called for relatively short assessments as compared with the detailed official checklist self-assessments. The questionnaire and report template asked a set of questions about the review process. The section on implementation and enforcement asked for examples of good practices and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33 and 46(9)(b) and (c).

The report preparation process went through a number of steps, with respondents first filling out the simplified questionnaire and then preparing the draft report. The report was peer reviewed by a national expert identified by TI.

The draft report was shared with the government and the visiting peer review team for comments before it was finalised. This final report will be used to continue the dialogue and engagement with the stakeholders, including the government, beyond the first round of the country review process.

In preparing this report, the author took into account the recent review of Chile carried out by the OECD Working Group on Bribery regarding its compliance with the OECD Anti-Bribery Convention in a Phase 1ter report published in December 2009² and by the Follow-up Mechanism of the Inter-American Convention against Corruption in a third round report adopted in September 2010.³

¹ UNCAC webpage: www.unodc.org/unodc/en/treaties/CAC/signatories.html

² OECD Working Group on Bribery, Phase 1ter Report on Chile, adopted 2 December 2009, <http://www.oecd.org/dataoecd/60/12/44254056.pdf>

³ Inter-American Convention Against Corruption Committee of Experts, Report on implementation in Chile of the Convention provisions selected for review in the third round, and on follow-up on the recommendations formulated to that country in previous reports, http://www.oas.org/juridico/english/mesicic_III_rep_chl.pdf

I. Executive summary

The report finds that the Chilean legal framework is largely compliant with the UNCAC articles reviewed for this report, except in the areas of sanctions, whistleblower protection and bank secrecy. The report also finds that a legal framework for conflict of interest regulations is lacking. On the enforcement side, there is a lack of capacity to conduct complex financial investigations.

Assessment of the review process

Conduct of process

Table 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	Yes
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published online or provided to CSOs?	Yes
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report?	No

Availability of information

All of Chile's laws are published on a website (www.leychile.cl), so finding legislation related to the UNCAC was relatively straightforward. However, a series of problems were encountered in finding statistics on the prosecution of UNCAC-related offences in Chile and information on the details of cases. We resorted to requesting the information via the Transparency Law; however, the results were incomplete.

Implementation and enforcement

Legislative changes in Chile over the past two years have facilitated the implementation of the UNCAC. These include the Law on Criminal Liability of Legal Entities, the Whistleblower Protection Act for government officials and the Transparency Law. In addition, Chile was required to pass a series of laws in order to enter the OECD. These resulted in a new corporate governance for the state copper mining firm Codelco, a bill to regulate the corporate governance of state-owned companies, improvements in the corporate governance of private companies, and increased bank transparency to fight tax evasion.

The Public Prosecutor's Office requested the executive to present a bill to strengthen investigations considered to be highly complex crimes related to money laundering, organised crime and corruption – with the objective of improving enforcement of the law as to these offences.⁴ The criteria for classifying cases as high priority include: the fiscal damage, the government position of the accused party, and the impact of the case on public opinion.

⁴ This Act regulates the criminal responsibility of legal persons in respect of offences mentioned in Article 27 of Act No. 19,913, Article 8 of Act No. 18,314 and Articles 250 and 251bis of the Criminal Code, the procedure for the investigation and establishing of such criminal responsibility, the determination of applicable penalties and the enforcement thereof. For an English version of the bill see: OECD, "Chile: Phase 1ter Review of Implementation of the Convention and 1997 Recommendation", available at: www.oecd.org/dataoecd/60/12/44254056.pdf

Recommendations for priority actions

1. Speed up the Probity and Transparency Agenda and provide more training for public officials related to these laws.
2. Introduce a public complaint mechanism on a government website that guarantees protection against retaliation against people who report acts of corruption.
3. Provide protection for whistleblowers in the private sector and state-owned companies.
4. Increase resources for the Public Prosecutor's Office for the prosecution of corruption cases.
5. Publish on a website details and statistics concerning misconduct cases.
6. Promote public awareness of the UNCAC.
7. Improve conflict of interest legislation.
8. Support private sector efforts to tackle corruption (awareness, prevention programmes, training).

II. Assessment of review process for Chile

As stated, reviewing the development of Chile's legislation was not difficult, but some problems were encountered in obtaining information about investigations into corruption cases. Nevertheless, people contacted personally or by telephone were very keen to assist in researching for this report.

A. Report on the review process

We contacted the focal point for the UNCAC, Gladys Muñoz of the Ministry of Foreign Affairs. Ximena Salazar of TI had provided the contact, because when we contacted the Ministry of Foreign Affairs we were transferred to various offices that did not know who the UNCAC contact was. Hence, the UNCAC website should be updated to include the correct contact information for the focal point. Country experts are public officials; therefore the focal point's contact information should be made public, according to Chilean law.

The Ministry of Foreign Affairs sent its self-assessment to the UN in February 2011. The Ministry explained that it did not consult with civil society because its response only concerned two public institutions so only these agencies were consulted.

During the country visit, various organisations were invited to speak with the review team's members from El Salvador. Representatives from the Ukraine were absent from this event. Chile Transparente provided feedback to the reviewers on 10 March 2011.

Muñoz stated that, when it is complete, the government's report will be posted on the ministry's website.

B. Access to information

Two of the main achievements in Chile are the Law on Transparency of Public Information and the creation of the Transparency Council, which has resolved many cases in a positive way concerning documents that should be made public. From April 2009 to November 2010, the Transparency Council received 1,501 cases, and resolved 1,328 (88.5 per cent) of them during this period. However, the council needs reinforcements to institutionalise it and expand its jurisdiction to autonomous agencies in the administration. It also requires a larger budget, given the agency's

importance in responding to citizens' information requests and making the government more accountable.⁵

The website of the Public Prosecutor's Office includes some statistics regarding corruption cases, but they are aggregated with other economic offences. Therefore, we requested that they be broken down by type of offence, pursuant to the Transparency Law. The official response from the Public Prosecutor's Office was received two weeks later, on 15 February 2011; however, it only contained statistics concerning corruption cases. Information on judgments was not provided. The Prosecutor's Office stated that sentences are judicial acts, and that a public information request had to be sent directly to the judiciary. However, Article 13 of the Transparency Law states that, if the public agency to which the request was sent is not competent to provide the information, this agency should immediately forward the request to the corresponding authority. Accordingly, the Public Prosecutor's Office was required to forward our request to the judiciary and notify us of this step. The response also referred us to the Judiciary's website, but the search engine is not user-friendly. In order to access information, users must know the name of the defendant, the names of the lawyers, the person's identification number or the case number.

In addition, the website only includes the various procedural steps that a case has been through; it does not include specific information on the case, such as the lawsuit or the final decision. Article 9 of the Organic Code of Courts states that court actions are public, with exceptions established by law. But it seems that a formal request is necessary in order to obtain them. We were not able to find any judgements on the judiciary's website, though some were found in law journals. Mauricio Fernandez, chief of the Money Laundering, Economic Crimes and Organised Crime Unit (ULDEDECO) within the Public Prosecutor's Office was contacted regarding information on money laundering, and kindly provided the author with statistics and judgments upon request.

The Law Bulletin and Magazine of the Public Prosecutor's Office (Boletín y Revista Jurídica del Ministerio Público⁶), published quarterly on its website, is a good source of information that explains some corruption cases in more detail. Therefore, this is an area that the Specialised Unit of Corruption could enhance – publishing statistics for each offence and judgement. Although the Transparency Law does not oblige the unit to do so, it would be a good practice and a helpful tool to research the development of corruption enforcement in Chile.

Statistics are also available on the Financial Analysis Unit's website, such as reports of suspicious activity regarding money laundering, reports sent to the Public Prosecutor's Office, law enforcement concerning entities that must file reports of suspicious financial activities, international cooperation, cases and sanctions.⁷

III. Implementation and enforcement of the UNCAC

In a survey by Generación Empresarial of 154 business people from large companies,⁸ fewer than half of the respondents (45 per cent) said they knew the effects of the law. Only 29 per cent said their business was making the reforms proposed by the law. It is noted here that it is voluntary to have a prevention system, but the programme can be used to obtain exemption from criminal liability if the judge decides it was well implemented. However, if companies are not aware of the law and its consequences, they do not realise that they can benefit from prevention programmes.

⁵ Consejo para la Transparencia, "Reporte Estadístico Noviembre 2010", Chile, November 2010, available at: www.consejotransparencia.cl/consejo/site/artic/20110104/asocfile/20110104170318/reporte_noviembre2010.pdf

⁶ "Statistics and Jurisprudence"; see: www.fiscaliadechile.cl/

⁷ The statistical report of the Financial Analysis Unit is available at: www.uaf.cl/articulos.asp?id=69

⁸ Generación Empresarial, "Impactos de la Nueva Ley N° 20.393. Responsabilidad Penal de las Personas", Chile, 2010; available at: www.generacionempresarial.cl/cgi-bin/procesa.pl?plantilla=/archivo.html&bri=generacionempresarial&tab=art_27&campo=c_archivo&id=101&nseccion=archivo:6.-%20RESULTADOS%20DEL%20ESTUDIO%20SOBRE%20LA%20LEY%20DE%20RESPONSABILIDAD%20PENAL%20DE%20LAS%20PERSONAS%20JURIDICAS

A. Key issues related to the legal framework

1. Areas showing good practice

UNCAC Articles 15 and 16: Bribery of national public officials; bribery of foreign public officials and officials of public international organizations. A positive development in the legal framework was the amendment of the offence of foreign bribery by Law No. 20,341 of 22 April 2009, which created Chapter 9bis in the Chilean Criminal Code. With this modification, the foreign bribery offence includes the offer, promise or giving of a bribe. Previously, the offence only included “giving”. On 25 August 2009, Law No. 20,371 amended the Organic Court Code to introduce jurisdiction over active bribery of foreign public officials committed abroad by Chilean nationals or foreigners who mainly reside in Chile.

Domestic and foreign bribery is regulated by Articles 248 to 251-ter of the Criminal Code. These articles describe the offences and their applicable penalties. Other laws include administrative sanctions, such as the Administrative Statute and Law No. 20,393, which includes the criminal responsibility of legal persons.

UNCAC Article 23: Laundering of proceeds of crime. Law No. 19,913 – published in 2003 and modified in 2009, and entitled “Creation of the Financial Intelligence Unit and modifies several articles related to money laundering” – established the Financial Intelligence Unit (FIU, Unidad de Análisis Financiero, UAF). The UAF is in charge of preventing money laundering and the financing of terrorism. It oversees the obligation of various agencies to report suspicious operations. The UAF has the duty to request, receive and analyse data and forward it to the National Prosecutor’s Office if it raises suspicions of money laundering activities.

Article 27 of Law No. 19,913 states that, whoever in any way hides or disguises the illicit origin of certain assets, knowing that they originate, directly or indirectly, from the perpetration of illegal acts, has committed money laundering – for example, drug-related crimes, terrorism activities and financing, arms trafficking, economic-related crimes, corruption, and other crimes stipulated in law. In addition, whoever, knowing the origin of the goods, hides or disguises them, and whoever acquires, possesses, has or uses these goods with the intention of making a profit, knowing of their illicit origin, has committed money laundering.

Law No. 20,393 states that legal persons can be held responsible for money laundering, terrorism financing, and national and foreign bribery.

UNCAC Article 26: Liability of legal persons. In December 2009, Law No. 20,393 introduced criminal responsibility of legal persons for the offences of bribing Chilean and foreign public officials, money laundering and financing terrorism, if the crime is committed directly and immediately for its own interest or benefit by the owners, controllers, responsible officers, principal executives, officers, representatives or those conducting activities of administration and supervision. Criminal liability is applied if the commission of the crime results from the breach of the legal person’s direction and supervisory functions. Sanctions include dissolution of the entity, permanent or temporary prohibition from entering into acts and contracts with public administrative agencies, partial or total loss of fiscal subsidies, an absolute prohibition from receiving such subsidies, and fines of US\$ 14,000 to US\$ 700,000.

UNCAC Article 46(9): Mutual legal assistance in the absence of dual criminality. Article 33 of Law No. 19,913 (“Creation of the Financial Intelligence Unit and modifies several articles related to money laundering”) deals with the principle of dual criminality. It authorises international cooperation and extradition, but only in money laundering cases. The Prosecutor’s Office (the competent authority for international cooperation) reported that they requested assistance from Bolivia on a corruption case and Bolivia responded, but the UNCAC was not invoked. However, Chile has had difficulties with another country as to general assistance (not corruption-related). On a multilateral level, there is a need to harmonise mutual request standards with defined

requirements and procedures, and to set a deadline within which to answer requests or ask for more information.⁹

2. Areas with deficiencies

UNCAC Article 21: Bribery in the private sector. In Chile, bribery committed between private parties is not specially sanctioned.

UNCAC Article 30: Prosecution, adjudication and sanctions. The Public Prosecutor's Office stated in its 2010 Accountability Report that imprisonment penalties for accused parties in corruption offences are not always proportional to the seriousness of the crime, or to the fiscal damage or loss of confidence in the state. Nevertheless, this is not a judicial problem; it is a legal obstacle that must be remedied through legislation, given the light penalty currently imposed by the Criminal Code. We recommend that when its analysis is complete, the Public Prosecutor's Office should send a bill through the Executive to Congress to increase the imprisonment penalties in the Criminal Code related to corruption offences.

UNCAC Articles 33: Protection of reporting persons. Public officials are subject to the reporting obligations stated in the Criminal Procedure Code and Administrative Law (Estatuto Administrativo). They are required to report any crimes of which they become aware in the course of their duties. The Whistleblower Protection Act for government officials entered into force in 2007.

No cases of public officials providing information on corruption cases invoking Law No. 20,205 and its protection could be identified.

Chile does not have a law that protects whistleblowers in the private sector or state-owned companies. The codes of ethics of some companies guarantee that whistleblowers will be protected and include bans on retaliation. The Public Prosecutor's Office has a witness protection programme that is organised by the Victims and Witness Support Division and its regional units. Paragraph 4 of Article 83 of Chile's Constitution states that the Public Prosecutor's Office shall adopt protective measures for victims and witnesses. Article 33 of Law No. 19,913 requires the protection of witnesses in money laundering cases. Chile's System of Ethics Management and Prevention of Criminal Responsibility includes whistleblower protection for companies that use this system, because any person should be able to 'blow the whistle' anonymously through a special website.

UNCAC Article 40: Bank secrecy. It is important that bank secrecy be lifted in money laundering investigations. A bill on money laundering (Bulletin 4426-07) would allow prosecutors to access any information related to the accounts and deposits for money laundering with a judicial order. The bill is in its second stage in the Commission of Constitution, Legislation and Justice of the House of Representatives. The development of this bill can be followed at www.observa.cl.

UNCAC Article 7: Public sector. On 3 May 2011, the Probity Law was presented to Congress to regulate financial and interest disclosures, blind trusts and the sale of certain assets. However, the bill is not sufficient to regulate conflicts of interests regarding public officials. Additional bills that should be speedily passed into law include those related to lobbying; to the 'revolving door' project that regulates the movement of public officials between the public and private sectors, which the current law applies only to a few cases; to a system to verify disclosures of patrimony and interests of authorities and public officers, as there is basically no verification of this information at present; and the reinforcement of the civil service system for high-ranking officials.

⁹ Interview with official from the Public Prosecutor's Office.

B. Key issues related to enforcement

This section evaluates the enforcement of UNCAC-related offences in Chile. It provides an overview of enforcement mechanisms in place and analyses statistical data provided by the government.

In Chile, the Public Prosecutor's Office is the public agency in charge of investigating and prosecuting corruption offences. The National Prosecutor is selected by the president from a list of five candidates supplied by the Supreme Court of Justice. The candidate is required to be approved by a two-thirds majority vote in the Senate. The National Prosecutor has a special unit for corruption crimes, the Money Laundering and Economic Crimes Unit (ULDDECO), and the International Cooperation and Extraditions Unit. For money laundering and the financing of terrorist activities the FIU has to send information to the Public Prosecutor's Office for investigation.

1. Statistics

For the first time in Chile, two investigations regarding foreign bribery were underway in 2011. Under Chilean law, information on such investigations is not public unless they lead to a prosecution and a trial.

258 cases were concluded in 2010 involving passive domestic bribery, and 207 were being investigated in 2011. For active domestic bribery, 36 cases were concluded in 2010, and 23 were underway in 2011. For cases of embezzlement, misappropriation or other diversion by a public official, 116 cases were concluded in 2010, and 200 were being investigated in 2011. Finally, for cases of money laundering related to corrupt acts, two cases were concluded in 2010, and eight were underway in 2011.

Table 3: Statistics of cases

	Prosecutions (underway and concluded)	Pending ¹⁰
Bribery of foreign public officials (Article 16)	2	2
Bribery of national public officials (passive) (Article 15(b))	688	207
Bribery of national public officials (active) (Article 15(a))	104	23
Embezzlement, misappropriation or other diversion by a public official (Article 17)	378	200
Illicit enrichment (Article 20)	0	0
Money laundering, corruption-related (Article 23)	5	8

Note: No information was provided on settlements, convictions, acquittals and dismissals.

2. Cases

“Kodama”: Consorcio Kodama Ltda. is a construction company which won a bid in 2006 with the Ministry of Public Works in which the Ministry of Housing and Urbanism (MINVU) acted as representative. The objective of the fixed-sum contract was to build an express bus lane for one of Transantiago's “corridors” (the public transport scheme in Santiago). Work was delayed because of problems related to expropriating land needed for the corridor as well as “new and extraordinary works” that were required by the MINVU. Consequently, the project was extended from 336 days to more than 1,000 days.

¹⁰ Pending cases also includes those of January 2011; information was provided in response to a freedom of information request.

In November 2010, representatives of both parties began to negotiate the compensation for Kodama¹¹ but no agreement was reached.¹² In December 2010 Kodama sued the MINVU for “over-cost of general expenses” of US \$87 million. Again, the MINVU, represented by an advisor of the former minister and other public officials, negotiated with Kodama’s representatives. The parties agreed to an extrajudicial settlement of US \$36 million, and a court ruling that ended the trial approved the agreement.¹³

The Minister of Housing and Urbanism signed the decree for this amount. However, the minister stopped the payment and requested that the Public Prosecutor’s Office investigate the case,¹⁴ and the minister resigned.¹⁵ An investigation revealed that the MINVU’s former legal sub-director violated probity laws.¹⁶ On 16 August 2011, the State Defence Council announced criminal proceedings for fiscal fraud against the advisor and two other public officials of the MINVU, as well as one of the owners of Kodama and his lawyers.¹⁷ A prosecutor for high-complexity cases is continuing the investigation.

“Corruption Net”: In October 2008, the Public Prosecutor’s Office opened an investigation into active and passive domestic bribery and other offences. A group of public officials from the Investigations Police and judiciary were accused of obtaining and modifying confidential information from a computer system that was restricted to use by the Investigations Police – including judicial orders of apprehension and arrest, criminal records and pending causes – to the benefit of third parties. They were also accused of falsifying judicial resolutions used as the recognition of time spent in jail, removing and changing blood samples to alter the results of blood-alcohol tests, and other illicit activities. In June 2011 a Criminal Court in Santiago declared four former public officials guilty of domestic bribery, falsification of public instrument and illicit disclosure of information. Penalties imposed ranged from 61 days to five years.¹⁸

Irregularities in a municipality lease: on 20 April 2009, the Public Prosecutor opened an investigation into a mayor who allegedly received a bribe to lease a municipal lot to a supermarket.¹⁹ The Public Prosecutor successfully lifted the secrecy of the mayor’s bank account and found deposits of millions of dollars. The mayor said the money came from loans from his former head of cabinet, since he was suffering prolonged economic hardship following a separation from his wife. However, the mayor could not explain the origin of nearly US \$127,000 in his accounts.²⁰

¹¹ Minutes from these meetings showed that some public officials from the MINVU did not follow the legal process to determine the compensation and wanted to avoid authorisation from the Comptroller’s Office. In December 2010, Kodama sued the MINVU for “over-cost of general expenses” of US \$87 million. Again, the MINVU, represented by an advisor of the former minister and other public officials, negotiated with Kodama’s representatives. The parties agreed to an extrajudicial settlement of US \$36 million, and a court ruling that ended the trial approved the agreement.

¹² Comptroller’s Office, “Informe Investigación Especial Ministerio de Vivienda y Urbanismo Servicio de Vivienda y Urbanización Región Metropolitana”.

¹³ Comptroller’s Office, “Informe Investigación Especial Ministerio de Vivienda y Urbanismo Servicio de Vivienda y Urbanización Región Metropolitana”.

¹⁴ Ciper Chile, “Caso Kodama: la bomba que Navarro soltó en el Minvu”, 14 April 2011; see: ciperchile.cl/radar/caso-kodama-la-bomba-que-navarro-solto-en-el-minvu/

¹⁵ Diario Financiero, “Matte asume costo político en caso Kodama y renuncia al Ministerio de Vivienda”, April 20, 2011 see: http://w2.df.cl/matte-asume-costo-politico-en-caso-kodama-y-renuncia-al-ministerio-de-vivienda/prontus_df/2011-04-19/215252.html

¹⁶ Comptroller’s Office, “Informe Investigación Especial Ministerio de Vivienda y Urbanismo Servicio de Vivienda y Urbanización Región Metropolitana”, 13 May 2011; see: www.contraloria.cl/NewPortal2/portal2/ShowProperty/BEA%20Repository/portalCGR/Documentos/Investigaciones_especiales/AuditoriaAdministrativa/2011/INVE_N_05_01-2011_INVESTIGACION_ESPECIAL_N_27_DE_2011_KODAMA_LTDA-MAYO_2011

¹⁷ Biobiochile, “Caso Kodama: Descartan presentar querrela por fraude al Fisco contra ex ministra Matte”, 17 August 2011, see: www.biobiochile.cl/2011/08/17/caso-kodama-descartan-presentar-querrela-por-fraude-al-fisco-contra-ex-ministra-matte.shtml

¹⁸ Sentence of the 4th Tribunal de Juicio Oral en lo Penal de Santiago, 8 June 2011; see: www.poderjudicial.cl/noticias/File/sentencia%20red%20de%20corrupcion.pdf

¹⁹ La Tercera, “Colina: formalizarán a alcalde en investigación por cobro de coima para construcción de proyecto”, 17 April 2010, see: http://diario.latercera.com/2010/04/17/01/contenido/9_24292_9.shtml

²⁰ Ciper, “Las pruebas que inculpan al presidente de la Asociación de Municipalidades en un emblemático caso de corrupción”, 16 June 2011, see: <http://ciperchile.cl/2011/06/16/las-pruebas-que-inculpan-al-presidente-de-la-asociacion-de-municipalidades-en-un-emblematico-caso-de-corrupcion/>

After an investigation, the Public Prosecutor offered a conditional suspension to the mayor. However, the mayor had to pay back the overpayment of his salary that the Comptroller's Office had identified. The Defense Council of the State filed an appeal, and in June 2011 the Court of Appeals annulled the agreement with the Public Prosecutor's Office, stating that the bribery acts appeared to be serious and recurrent, and that an investigation has to be undertaken. The executives of the supermarket who were involved in the transaction were excluded from the investigation.²¹

Bribery of domestic public officers: A former director of the Fisheries Department of the Araucanía (Sernapesca) was sentenced to one year in prison for bribery by the Criminal Oral Court of Concepcion. A shipbuilder had applied for a permit which was denied. After a payment was made to the former director, the authorisation was granted. The Public Prosecutor's Office discovered this after finding cheques from the shipbuilder to the former director.²²

In another case, the former head of collection of the Treasury Department of Linares was found guilty of requesting bribes. If the judgment is upheld, the official could spend 541 days in jail, would be unable to work in public positions for five years, and must pay a fine of US \$25,000. The official requested money from at least six taxpayers who had debts with the Treasury Department of Linares. In return, property seizure was avoided and the official slowed his public duties so the people had more time to pay.²³

3. Areas with deficiencies

Corruption-related investigations represent one of the most complex areas for reform in Chile, and as the National Prosecutor has stated, his office faces major challenges. Consequently, the Public Prosecutor's Office needs support to address the inadequacies in the enforcement system for UNCAC-related offences. The inadequacies are based on various factors, such as highly demanding workloads for investigators; the great amount of information which needs to be processed during an investigation; and the public stature of the parties involved. As a result, obtaining convictions is very difficult. In fact, the Public Prosecutor's Office apparently prefers to negotiate an economic sanction in some cases rather than pursuing the investigation.

Taking into account the complexity of corruption cases, the Public Prosecutor's Office is not adequately trained and resourced; nor does it have sufficient capacity to conduct electronic surveillance and undercover operations. The Public Prosecutor's Office needs a special National Unit for highly complex cases, staffed with prosecutors, lawyers, analysts and information technology experts, and with direct and continuous communication with the Internal Revenue Service (IRS, Servicio de Impuestos Internos) and Comptroller's Office. This requires the introduction of a bill from the Executive to strengthen investigations considered to be highly complex for crimes related to money laundering, organised crime and corruption, with the objective of improving the results of prosecutions of these crimes. A draft of such a bill was sent to the Ministry of Finance for its approval, in order for it to be sent to Congress.

In addition, National Prosecutor Sabas Chahuan requested in his 2010 Accountability Report that electronic surveillance and concealed operations (such as those used in Chile for money laundering) also be employed in corruption cases in order to improve investigations, thereby complying with the UNCAC and other international obligations.²⁴

The Report on the implementation of the provisions of the Convention selected for review within the framework of the Third Round of the Inter-American Convention against Corruption and the Follow-

²¹ El Mercurio, "Fue revocada la suspensión condicional de alcalde de Colina", 8 June 2011 in the following link diario.elmercurio.com/detalle/index.asp?id={d6d898ac-e13c-45c7-b832-f1f5d41d6e15}; and in Ciper, see: ciperchile.cl/2011/06/07/inedita-resolucion-judicial-obliga-a-reabrir-causa-contra-alcalde-olavarria/

²² Biobio.cl, "Condenan por cohecho a ex director de Sernapesca de La Araucanía", 20 December 2010; see: www.biobiochile.cl/2010/12/20/condenan-por-cohecho-a-ex-director-de-sernapesca-de-la-araucania.shtml

²³ Cooperativa.cl, "Ex tesorero provincial de Linares arriesga 541 días de cárcel", 1 May 2011, see: www.cooperativa.cl/ex-tesorero-provincial-de-linares-arriesga-541-dias-de-carcel/prontus_notas/2011-05-01/162922.html

²⁴ Accountability Report 2010, Cuenta Pública, 2010, see: www.fiscaliadechile.cl/cuentaspublicasministerio/2010/index.html#seis

Up Mechanism for its Implementation (MESICIC) of September 2010²⁵ stated the need to continue developing institutional coordination mechanisms to obtain timely collaboration, and to take steps so that “professional secrecy” of accountants will not become an obstacle to reporting acts of corruption.

In addition, the government must promote anonymous reporting and provide tools to file anonymous reports. Currently there are no mechanisms to file complaints.

IV. Recommendations for priority actions

In order of importance, the necessary priority actions are:

1. **Probity and Transparency Agenda:** This should be speeded up, especially bills related to conflicts of interest, such as asset and interest declarations. A set of bills in Congress related to transparency should be passed in the near future – for example, the revolving door project that regulates the entry and exit of public officials from and to the private sector, and a bill that would strengthen the institution of the Transparency Council. The government sent Congress a bill on new rules of patrimony and interest disclosures by public authorities and public servants. Proposed bills are being monitored by Chile Transparente’s legislative observer.²⁶ Unfortunately, these bills are stalled in Congress, with little movement in the commissions reviewing them. Chile Transparente has made recommendations for the probity and transparency bills that have been sent to Congress.
2. **Complaint mechanism:** Introduction of a complaint system for the reporting of corruption cases, such as hotlines for the anti-corruption divisions of government agencies that are in charge of investigating corruption activities. Developing a complaint system would help enforcement agencies receive more information and investigate potential cases that may not be reported for fear of retaliation. Public officials could also use this mechanism, but unfortunately the public whistleblower’s law requires the names of people who report cases.
3. **Private sector whistleblower protection:** In addition, a bill must be introduced in Congress to protect whistleblowers in the private sector and state-owned companies in order to encourage the reporting of crimes included in the UNCAC, as well as to strengthen the law of public whistleblowers. As stated in this report, there are no laws regarding the protection of whistleblowers in the private sector and in state companies. We only have good practices in the ethics codes voluntarily implemented by some companies. The law of criminal liability of legal entities only requires companies to have a mechanism to receive reports, but there is no provision related to protection. It is also crucial to enforce the whistleblower law for the public sector, in order to give a real guarantee of protection for employees who report corruption offences. Chile must enhance and promote the protection of government officials.
4. **More resources are required.** The Public Prosecutor’s Office needs a special National Unit of High Complexity Cases, with prosecutors, lawyers, analysts and technology information experts, as well as direct and continuous communication with the IRS and Comptroller’s Office. This requires the introduction of a bill from the Executive to strengthen investigations considered to be highly complex for crimes related to money laundering, organised crime and corruption, with the objective of improving the results of prosecutions of these crimes. A draft of such a bill was sent to the Ministry of Finance for its approval, in order for it to be sent to Congress.

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²⁵ The report is available at: www.oas.org/juridico/english/mesicic_III_rep_chl.pdf

²⁶ www.observa.cl.

laundering) also be employed in corruption cases in order to improve investigations, therefore complying with the UNCAC and other international obligations.²⁷

5. Anti-corruption measures in the private sector: These should be promoted through seminars, workshops and perhaps a special programme financed by the government and international entities for small businesses. The implementation of prevention programmes should also be promoted. Chile Transparente is working with the private sector on this issue, and we have seen that multinationals, banks and large Chilean companies have taken action by implementing prevention systems, including Sodimac, Essbio, Nuevosur, Derco and Deposito Central de Valores. However, much work remains to be done in this regard, particularly with small companies, which do not have the economic resources to implement prevention systems. Accordingly, they are more exposed to the offences included in the law of criminal responsibility of legal entities.

²⁷ Accountability Report 2010, Cuenta Pública, 2010, see:
www.fiscaliadechile.cl/cuentaspublicasministerio/2010/index.html#seis

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