



COUNCIL
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**Actions to Strengthen
Government Policy in the Area
of Public Transparency
and Integrity**

Council for General Internal Governmental Auditing
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Public Transparency and Integrity

(1994- 1997)

Introduction

The President of Chile, in his first address to the nation on March 12, 1994, expressed his desire to see honesty in public service emphasized and noted that he would ceaselessly repudiate any action designed to violate the true meaning of public service, leading it into corruption.

In a clear signal of his intent, on March 24, 1994 he issued a Presidential Order to all of the Ministries on the proper administration of the State. The order included instructions on the use of power, respect for people, and integrity in public service. Subsequently, he established the foundations for a policy on general internal governmental auditing. These commenced with the creation of the post of Ministry Auditors designed to support the work of the Cabinet. On April 5, the President added new weight to his intentions by creating the Public Ethics Commission to engage in studies and draft public policy proposals and legal initiatives to help enhance democracy by reinforcing procedures and institutions that safeguard compliance with the legal and ethical responsibilities of public service.

The Commission -- composed of ranking officials and jurists -- concluded its work in July 1994. In keeping with its mission, it provided a report to the President containing 41 proposals aimed at strengthening public integrity and preventing corruption. Those proposals were addressed in chapters focusing on integrity among civil servants, conflict of interest, oversight and enforcement, contracts and bids, penal aspects associated with corruption, financing of political activity and, lastly, social control. Those proposals are as follow:

Integrity Among Civil Servants

- 1. #** Fostering the institutionalization of efforts aimed at strengthening public ethics. The State should take on this task as an essential part of its functions and responsibility.
- 2. #** Add the principles of integrity and transparency in civil service to the Constitution and establish appropriate regulations.
- 3. #** Strengthen and enhance the civil service career by creating a structure of incentives that encourages the most appropriate people to enter, be promoted and remain in Public Administration. This is to be achieved through a reappraisal of the role of civil servants, improvements in pay and in the promotion system.
- 4.-** Draft a Code of Public Ethics.
- 5. #** Assign functions and responsibilities on matters associated with public ethics (certain areas where statements of property are made, conflict of interest, privacy in reporting, resolving questions, etc.).
- 6. #** Create internal affairs offices charged with receiving reports of misdoing and with providing information.

- 7.-** Enhance procedures to determine administrative responsibility.
- 8.-** Add influence peddling and the misuse of insider information to the determination of administrative responsibility.
- 9.-** Enhance the conflict of interest system among public functions.
- 10.-Enhance** the conflict of interest system between public and private functions.
- 11.-In** terms of the Judiciary, the document recommends publicizing and providing information on prohibited conduct and on procedures, implementing a complaint system, promoting the value of civil service and the importance of the social role played by the judge, reinforcing actions aimed at preventing malpractice and applying the correctional and disciplinary powers granted by law to the Supreme Court.

Conflict of Interest

12.-Foster strong, ethical self-regulation among all of the powers of the State. Create **offices** tasked with receiving statements of assets and interests, **allowing** private citizens access and verifying the accuracy of such statements and serving as a consultant on matters of integrity in specific situations.

lg.-Require mandatory sworn statements of assets and interests.

14.-Establish a specific system of incompatible positions.

15.-Regulate the movement of civil servants to the private sector.

16.-Include consideration of the following cases in the Code of Ethics: receipt of gifts or invitations by civil servants; payments to civil servants for presentations on public policy where their knowledge is due to their position.

17.-Create causes for the dismissal from their post of members of Congress, Mayors and City Council members for promoting, debating or voting on matters in which they have a conflict of interest; using their position to approach other public **officials** to benefit their own assets or those of related third parties; and using insider information they hold as a result of their post to benefit their own properties or those of related third parties.

18.-Extend the conflict of interest ban on contracting with the State or a Municipality to include the President, Ministers, Under Secretaries, Ranking Heads of Services, and members of the Board and top executives of state-owned companies.

lg.-Renunciation from the administration of assets by civil servants and public officials based on the general rules on conflict of interest.

Oversight and Enforcement

20.-Strengthen the oversight capabilities of the Chamber of Deputies.

2 **1.-Engage in** a global, systematic study of regulatory and oversight mechanisms in order to make them more agile and transparent.

22.-Initiate a system of selective audits assigned by a high-level State agency and implemented **by private** auditing companies.

23.-Extend the requirements applied to publicly-traded corporations to all state-run enterprises, particularly those dealing with providing systematic and periodic information on the management and performance of those companies.

24.-Institutionalize mechanisms for controlling management and making information on the nation's budget, as well as its implementation, more transparent. This information should be expressed in terms that permit public scrutiny.

25.-Make government officials accountable for the use of slush funds.

26.-Strengthen oversight and enforcement mechanisms in the municipal arena.

Contracts and Public Bids

27.-Systematize the legal process through a framework law on public sector hiring and public bids.

28.-Issue acquisition rules for municipalities and make such rules mandatory by law.

29.-Institute an outsourced system of electronic bidding for State contracts.

Penal Aspects

30.-Add the crimes of influence peddling, misuse of insider information and illicit enrichment to the Penal Code.

31.-Establish legal mechanisms that serve as incentives to report corruption.

32.-Enhance existing criminal legislation, particularly in terms of bribery, illegal collections and incompatible negotiations.

33.-Enhance penal procedures through the use of oral trials and create a Public Ministry.

34.-Until a Public Ministry is created, assign the criminal responsibilities such as a Ministry would handle in fighting corruption to the State Defense Council.

Financing of Political Activity

35.-Establish measures that allow for accountability and public scrutiny of the revenue and **expenditures** by political parties.

36.-Implement measures that directly or indirectly reduce the costs of campaigns.

37.-Recognize the advantages of a system of public financing, propose the gradual introduction of such a system in Chile, and establish public funding for certain electoral campaigns based on the portion of votes received.

Social Control

38.-Legislate access by citizens to information, statistics and reports on public topics or on public administration.

39.-Make it a legal requirement for every Public Service to present an annual report of its activities in such terms that can be easily understood by citizens.

M.-Establish courses in ethics and civic education in school curricula.

41.-Private organizations, professional associations, trade unions and others are encouraged to create mechanisms for ethical self-regulation.

RESULTS

In describing the results of these proposals, it is important to note that they have been implemented to different degrees, based on the powers the Constitution grants the Executive in each area. In addition, they have been adapted to conditions that emerged from subsequent, in-depth studies. Overall, the results of implementation can be summarized as follows:

Proposals Public Ethics Commission	Proposal Addressed Legislatively	Proposals Addressed Administratively	Total Proposals Addressed
41	24	7	31
100%	58.5%	17%	75.5%

Of the proposals made, over twenty have been addressed by the legislature:

BILL	STATUS OF LEGISLATIVE PROCESS
Constitutional Reform on Integrity	1 st . legislative process, in the Constitution Committee of the Chamber of Deputies
Administrative Integrity	3 rd . leg. process, in Chambers of Deputies
Modifications to the Press Law	3 rd . leg. process, in Chambers of Deputies
Access to Administration Information	1 st . leg. process, Chamber of Deputies
Modifications to the Organic Law on Municipalities	4 th leg. Process, Mixed Commission
Constitutional Reform to allow a Public Ministry	Approved
Public Ministry	1 st . Leg. Process, in Chambers of Deputies
Convention on Transnational Bribery (OECD)	1 st . Leg. Process, in Chambers of Deputies
Financing Political Activity	Draft bill approved.
Constitutional Reform on the Chamber of Deputies' Oversight Powers	Rejected in 1996 by Congress
Congressional Motion to Modify the Penal Code in the area of Corruption	3 rd . leg. process, in Chambers of Deputies
Inter-American Convention Against Corruption (OAS)	Approved

SYNOPSIS OF THE PRIMARY LEGAL INITIATIVES TARGETING INTEGRITY IN PUBLIC ADMINISTRATION

BILL ON ADMINISTRATIVE INTEGRITY

DESCRIPTION

Legal initiative which proposes the principle of administrative integrity in Public Administration, specifying which acts constitute **conflict** of interest and unethical behavior and establishing penalties for them.

FUNDAMENTAL CONTENTS

- The proposal establishes integrity as a basic principle for **civil** servants, understood as their loyal and honest commitment to the job and the placing of the public good above private interests.
- Establishes conflicts of interest for those who hold public office and have financial ties to the State.
- Requires those who enter public service to make a public statement of their assets and interests.
- Establishes actions contrary to integrity (**influence** peddling, obtaining advantages or preferences, undue use of insider information) and establishes administrative penalties.

BILL ON ACCESS TO ADMINISTRATION INFORMATION

DESCRIPTION

Initiative that seeks to bring the right to access information from Public Administration into the legal system in an effort to ensure accountability in government affairs. Personal information and confidentiality in matters of fundamental importance to the State shall be preserved.

FUNDAMENTAL CONTENTS

- Establishes principles aimed at protecting and ensuring the exercise of the right to give opinions and to report, particularly for professional journalists.
- Free access to sources of information is established, as are professional confidentiality and a clause on good conscience.

BILL ON ACCOUNTABILITY, LIMITS, CONTROL AND SUBSIDY OF ELECTION-RELATED SPENDING

DESCRIPTION

Legal initiative which seeks to guarantee a minimum equal footing for candidates and political parties participating in elections and establishes an accountable, technical, controllable system for election-related spending.

FUNDAMENTAL CONTENTS

- Regulates systems for funding political campaigns.
- Establishes direct public funding (subsidy), either total or partial, for specific electoral spending.
- Transparency in the origin of private resources donated to election campaigns.
- Establishes spending caps for election campaigns and outsources the administration of the resources used.
- Creates a complete system for external control of funds raised and spent on advertising.
- Creates an advertising mechanism for income and election spending.

BILL ON MUNICIPAL MANAGEMENT

DESCRIPTION

This bill substantively modifies the Law on Municipalities, establishing technical mechanisms for municipal management and strengthening the powers of the city council, particularly in the areas of oversight and enforcement, and making municipal management more transparent and accountability to the local community.

FUNDAMENTAL CONTENTS

- Adds broad concepts of municipal planning and administration.
- Reinforces the autonomy of the oversight office, deeming it an advisory body to the City Council.
- The position of Municipal Administrator is created, appointed by the Mayor. The post holds exclusively administrative powers.'
- The attributes and powers of Mayors are modified, with some roles being shared with the City Council and authorization granted to delegate specific tasks to other employees.

- The powers of the City Council are reinforced; the areas in which the Mayor requires the agreement of the Council are increased, as are the Council's oversight powers.
- Municipalities are required to have regulations on acquisitions and contracting.
- Mayors would be legally required to render a public yearly accounting of their activities. The specific areas to be covered in that report are proposed.

BILL ON THE CREATION OF A PUBLIC MINISTRY

DESCRIPTION

Legislative initiative submitted by the Executive Branch that creates and organizes a Public Ministry as a division of the Judiciary in an effort to prosecute criminals on behalf of the State and of society.

FUNDAMENTAL CONTENTS

- Establishes the existence of an organization in the country's judiciary lead by an appointed National Prosecutor. That appointment process includes the participation of the three branches of government.
- Calls for the organization of regional prosecutors' **offices** and permits the naming of specialized coordinating prosecutors entitled to use **qualified** teams to direct appropriate prosecution of crimes nationwide.
- Allows for assistance and coordination in law enforcement actions aimed at investigating the crimes prosecuted by the Public Ministry.
- Establishes the powers and attributions of the organization in representing society in criminal cases, in keeping with the reform to the penal procedures code currently underway (oral hearings, rulings by a panel of judges, state or private assistance for defendants).

RATIFICATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

DESCRIPTION

The Inter-American Convention Against Corruption signed by the Government of Chile will be sent to Congress in an effort to secure its ratification and include its contents within domestic legislation.

FUNDAMENTAL CONTENTS

- Establishes measures to prevent corruption within the State.
- Indicates the area of action of the Convention and the acts necessary for signatory States to exercise jurisdiction.
- **Codifies** those acts considered to be corrupt (bribery, transnational bribery, illicit enrichment) and describes others which need to be addressed in the future.
- Establishes uniform regulations for the treatment of extradition as well as standards for cooperation and assistance.