

Overall Score:

77 - Moderate

Legal Framework Score:

87 - Strong

Actual Implementation Score:

66 - Weak

Category I. Civil Society, Public Information and Media

I-1. ⁸⁰ Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

The Chilean Constitution states the right of people to form associations, without asking for authorities' permission. For these associations to become legally recognized (so they can rent an office, have employees, receive funds, etc.), they should be registered at the Justice Department according with Decree 110.

References:

Chilean Constitution, Article 19, number 15;
Supreme Decree nr. 110 (modified by Supreme Decree 679), Justice Ministry, Reglamento Sobre Concesión de Personalidad Jurídica a Corporaciones y Fundaciones

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

They are free to accept foreign funding into a special bank account, but they have to inform the authorities.

References:

Decreto Supremo n° 110, Ministerio de Justicia;
 Reglamento Sobre Concesión De Personalidad Jurídica A Corporaciones Y Fundaciones, art. 7;
 Decreto Ley n° 1.183, Ministerio de Hacienda. Determina ordenamiento de ingresos y recursos de instituciones que no persiguen fines de lucro, arts. 1, 2 & 3

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

Corporations and foundations should present an economic report twice a year, as stated by Decree 110. Article 7, which states this obligation, was included by Decree 679, Justice Ministry (2004).

References:

Decreto Supremo n° 110, Ministerio de Justicia;
 Reglamento Sobre Concesión De Personalidad Jurídica A Corporaciones Y Fundaciones (1979), art. 7(reformed 2004);
 Decreto Ley n° 1.183 (1975), Ministerio de Hacienda. Determina ordenamiento de ingresos y recursos de instituciones que no persiguen fines de lucro, arts. 2 & 3;
 Ley 19-913 Crea la Unidad de Análisis e Inteligencia Financiera y modifica el Código Penal en materia de lavado o blanqueo de activos

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

67

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

The government does not create barriers, but CSOs, in general, have to go through many formal steps to be created.

References:

Como formar una ONG", ACCION en <http://www.accionag.cl/formar.php>
 "CHECKLIST PARA ORGANIZACIONES SOCIALES. Revisión de Aspectos Legales y de Administración Institucional", Fun. Probono, en <http://www.probono.cl/descargas/checklist.doc>

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | **50** | 25 | 0

Comments:

There is no systematic, formal, regular participation in the decision making process. There is no lobbying regulation. However, CSOs have had more relevance in telling authorities their opinion about matters of their interest.

References:

Transición a la democracia, políticas de probidad y mecanismos internacionales de protección de derechos humanos. El caso de Chile",

Alex Muñoz Wilson, en "Transparencia y Probidad Pública Estudios de Caso en América Latina", Centro de Derechos Humanos, Facultad de Derecho, Universidad de Chile; enero 2008,

en <http://www.cdh.uchile.cl/media/publicaciones/libros/syllabus/37MunozTransiciondemocracia.pdf>;

"Tan lejos tan cerca. Políticas Públicas y Sociedad Civil en Chile",

Gonzalo de la Maza, LOM Ediciones, 2005; "PROGRAMA DE TRABAJO EN FOMENTO A LA PARTICIPACIÓN CIUDADANA", Subsecretaría de Desarrollo Regional y Administrativo, Unidad de Acción Estratégica, Ministerio del Interior, 2006,

en http://www.subdere.gov.cl/1510/articles-69672_recurso_1.doc

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

CSOs focused on these matters have not reported of any anti-corruption/good governance CSOs being shut down.

References:

<http://www.participa.cl/>;

<http://www.chiletransparente.cl/>;

<http://www.jyd.cl/>; <http://www.cdh.uchile.cl/>;

http://www.proceso.cl

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

No such cases have been reported.

References:

<http://www.amnistia.cl>;

Informe Anual de Derechos Humanos 2008", Universidad Diego

Portales http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/informe_ddhh08_completo.pdf;

<http://www.ipys.org>

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

No such cases have been reported.

References:

<http://www.amnistia.cl>;

Informe Anual de Derechos Humanos 2008", Universidad Diego

Portales http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/informe_ddhh08_completo.pdf;

<http://www.ipys.org>

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

No such cases have been reported.

References:

<http://www.amnistia.cl>:

Informe Annual de Derechos Humanos 2008", Universidad Diego

Portales http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/informe_ddhh08_completo.pdf;

<http://www.ipys.org>

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

The Chilean Constitution states the right of people to form associations, without asking for authorities' permission. Labor Code, art. 212, recognizes the right of workers (private and public employees) to form unions.

References:

Constitución Política de Chile, Art 19 nr. 15;

Código del Trabajo, LIBRO III: de las Organizaciones Sindicales y del Delegado del Personal, Título I: De las Organizaciones Sindicales art. 212 & following

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Unions have become fewer since the 1970s. Only 13 percent of workers are currently associated, mainly because laws are not focused on reinforcing associativity but individuality, thus weakening collective negotiations.

References:

COMPENDIO de SERIES ESTADÍSTICAS 1990-2007”, DIRECCIÓN NACIONAL DEL TRABAJO, 2007;

“ENCUESTA Percepciones sobre Relaciones Laborales y Equidad en Chile”, Comisión Asesora Presidencial Trabajo y Equidad, agosto 2008, <http://www.trabajoyequidad.cl/view/index.asp>;

“HACIA UN CHILE MÁS JUSTO: Trabajo, Salario, Competitividad y Equidad Social”, Informe Final de la Comisión Asesora Presidencial Trabajo y Equidad, agosto 2008
<http://www.trabajoyequidad.cl/view/index.asp>

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Constitución Política de Chile, art. 19, nr. 12;

Ley 19733 (2001) sobre Libertades de Opinión e Información y Ejercicio del Periodismo (ley de prensa), art. 1

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Constitución Política de Chile, art. 19, nr. 12;

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

88

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Barriers are not formal, but economic. The government is supposed to have the obligation to distribute its advertisements evenly among media organizations, but the treatment is actually preferential. That prevents small and medium initiatives from developing.

References:

Concentración del mercado de los medios, pluralismo y libertad de expresión”, Osvaldo Corrales y Juan Sandoval, Centro de Estudios de la Comunicación, Universidad de Chile, en <http://www.comunicacion.uchile.cl/docs/corrales2005.pdf>;

“Periodistas y Magnates. Estructura y concentración de las industrias culturales en América Latina”, Martín Becerra y Guillermo Mastrini, Instituto Prensa y Sociedad, 2006 en http://www.ipys.org/investigaciones/concentracion/periodistas_y_magnates.pdf

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

Print media should inform the regional representatives of the executive branch, but they don't need a license.

References:

Ley 19733 (2001) sobre Libertades de Opinión e Información y Ejercicio del Periodismo (ley de prensa), art. 11

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Print media should inform the regional representatives of the executive branch, but they don't need a license.

References:

El derecho a la informacion en Chile", Pedro Anguita Ramirez, Edit. LexisNexis, 2004.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Print media should inform the regional representatives of the executive branch, but they don't need a license.

References:

El derecho a la informacion en Chile", Pedro Anguita Ramirez, Edit. LexisNexis, 2004.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

To begin with people must form CSOs or companies in order to have the right to apply for a license. That takes time and money. Godoy's article estimates that an FM frequency in Santiago costs US\$3 million.

References:

Guía para concesiones y permisos, Subsecretaría de Telecomunicaciones, http://www.subtel.cl/prontus_oirs/site/artic/20080630/pags/20080630181436.html;
TV digital en Chile: Regulación y modelos de negocio, Sergio Godoy, Cuadernos de Información, Segundo semestre de 2007.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

If people believe their rights haven't been respected, they can appeal in courts.

References:

Corte de Apelaciones. Ley 18.168, Ley General de Telecomunicaciones (1982). arts. 13A, 15, 16, 36A, 39

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Broadcast licenses take around six months to obtain.

References:

Solicitud de concesion de servicios de radiodifusión sonora, <http://www.tramitefacil.gov.cl/1481/article-47607.html>;
Concesiones <http://www.cntv.cl/link.cgi/Concesiones/>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Licenses are very expensive.

References:

TV digital en Chile: Regulación y modelos de negocio, Sergio Godoy, Cuadernos de Información, Segundo semestre de 2007;
Estructura de los Medios de comunicación en Chile, César Jiménez y Jorge Muñoz, Revista electrónica Razón y Palabra, enero-febrero 2008, http://www.razonypalabra.org.mx/anteriores/n60/varia/jimenes_munoz.html

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

Restrictions have been made by internet providers, not by the government. A report by a P2P company in April 2008 showed VTR and Telefonica restricted downloading access to their clients (Azureus Vuze Report).

References:

Professor Alejandro Morales Vargas, Academic Coordinator Digital Journalism Diploma, Instituto de la Comunicación e Imagen,

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

Professor Alejandro Morales Vargas, Academic Coordinator Digital Journalism Diploma, Instituto de la Comunicación e Imagen, Universidad de Chile, Interviewed by e-mail on Oct. 17, 2008;
Azureus Vuze, April 2008, First Results from Vuze Network Monitoring Tool Released on April 18, 2008: Revision to Appendix A,
available at <http://www.neutralidadsi.org/wp-content/uploads/2008/04/vuze-plug-in-results.pdf>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

67

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Ley 19733 (2001) sobre Libertades de Opinión e Información y Ejercicio del Periodismo (ley de prensa), art. 30

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In general, media coverage on corruption issues is about judiciary processes, i.e., it is reactive to facts but not necessarily looking for them.

References:

Centro de Investigación e Información Periodística (Ciper), Juan Pablo Figueroa y Pedro Ramírez, October 3rd, 2008, Las acciones y sociedades que los senadores no declararon, <http://ciperchile.cl/>;
El Mostrador, 04/23/2008, El insólito pituto de la subsecretaría que vende frambuesas,
en http://www.elmostrador.cl/modulos/noticias/constructor/noticia_nueva.asp?id_noticia=244887;

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In Chile there is no prepublication censoring. However, there is a form of self-censorship involved (i.e. if a journalist covering the government publishes something uncomfortable, he/she will not be invited on the next presidential trip.)

References:

Informe sobre Derechos Humanos 2008", Universidad Diego Portales
en http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/informe_dhh08_completo.pdf;
Gustavo González, ex director Freedom of Expression Program, Universidad de Chile, interviewed on Oct. 23, 2008

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

75

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

References:

Ley 19733 (2001) sobre Libertades de Opinión e Información y Ejercicio del Periodismo (ley de prensa), art. 9, 2nd paragraph

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

Ley 19733 (2001) sobre Libertades de Opinión e Información y Ejercicio del Periodismo (ley de prensa), art. 9, 2nd paragraph

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

There have been a few instances when journalists were sanctioned because of their misbehavior. The most important recent case involved Chilevision (TV Channel), which misused a hidden camera to reveal homosexual tendencies in judge Daniel Calvo, who was working on a pedophile network case. The TV station was sanctioned by two of the three ethical regulation mechanisms: TV Council and Media Ethical Council, both of which said the network was trying to trace a simplistic relation

between homosexuality and pedophilia. The third body, the Ethical Board of Journalists' Association, thought the TV report was justified. According to Gustavo González, the arguments the Association made in favor of the TV station were not very strong, especially because they used a gay sauna manager to speak to judge Calvo, following the Chilevision report.

References:

15 años de información y ética". Consejo de Ética de los Medios de Comunicación. Impreso en INTERGRAF. Santiago, mayo 2008;

"La ética periodística en el tratamiento de la pobreza", María José RUBIO, en revista Comunicación y Medios, ICEI, Universidad de Chile, http://www.icei.uchile.cl/comunicacionymedios/pdf/17/pobreza_maria_jose_rubio_cym_17.pdf;

"Cámaras ocultas y narrativas periodísticas. En torno al 'caso Calvo-Chilevisión', Gustavo GONZÁLEZ RODRÍGUEZ, en revista Comunicación y Medios, ICEI, Universidad de Chile, en http://www.icei.uchile.cl/comunicacionymedios/pdf/17/camaras_ocultas_gustavo_Gonzalez_cym_17.pdf;

"Consultorio de Ética Periodística", Escuela de Periodismo de la Universidad Diego Portales, en <http://www.udp.cl/comunicacion/periodismo/consultorioetica/index.htm>;

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

Comments:

TV coverage of political candidates is regulated by law. Radio spots are free, and any candidate can pay for advertising. Sebastián Valenzuela and Teresa Correa showed in 2005 (when the last presidential elections were held) that candidates received different media coverage because of their gender. Studies conducted in a province showed that this practice also happened in mayoral elections.

References:

Directiva sobre Pluralismo en Televisión para el Periodo de Elección Presidencial", Consejo Nacional de TV (CNTV), junio 1999 en http://www.cntv.cl/link.cgi/Quienes_Somos/Normas_Legales/22;

Prensa y candidatos presidenciales 2005: Así los mostramos, así los miraron, Sebastián Valenzuela y Teresa Correa, Cuadernos de Información N°19, 2006, http://fcom.altavoz.net/prontus_fcom/site/artic/20061201/asocfile/20061201145249/s_valenzuela.pdf;

Análisis de la cobertura informativa que El Diario Austral de Valdivia le dio a los candidatos a alcalde de la provincia de Valdivia, entre el 01 de agosto y 15 de diciembre de 2004, Tesis de Grado, Julio Cristian Mauricio Cerda Recabarren, <http://cybertesis.uach.cl/tesis/uach/2007/ffc413a/doc/ffc413a.pdf>

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | **50** | 25 | 0

Comments:

There are two state-owned media outlets: Diario La Nación and Televisión Nacional de Chile (TVN). TVN has an agreement about how to distribute the coverage evenly among parties, but this usually benefits the main political forces (those which are represented in Congress.)

References:

Sergio Campos, Journalist anchor man of El diario de Cooperativa (radio program), interviewed on Oct. 21, 2008;
Gustavo González, ex director Freedom of Expression Program, Universidad de Chile, interviewed on Oct. 23, 2008

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

There are no records of such cases.

References:

Mulet presenta demanda contra La Tercera, en La Tercera, Santiago, 19 de enero de 2007;

"Informe sobre Derechos Humanos 2008", Universidad Diego Portales
en http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/informe_ddhh08_completo.pdf;

Human Rights Watch, <http://www.hrw.org>;
Colegio de Periodistas de Chile, <http://www.colegiodeperiodistas.cl>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

There are no records of such cases.

References:

Proyecto Impunidad,
<http://www.impunidad.com/index.php?asesinados=all&idioma=sp;>

Informe sobre Derechos Humanos 2008", Universidad Diego Portales
en [http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/informe_ddhh08_completo.pdf;](http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/informe_ddhh08_completo.pdf)

Colegio de Periodistas de Chile,
[http://www.colegiodeperiodistas.cl;](http://www.colegiodeperiodistas.cl)

Human Rights Watch,
<http://www.hrw.org>

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

There are no records of such cases.

References:

Proyecto Impunidad,
<http://www.impunidad.com/index.php?asesinados=all&idioma=sp;>

Informe sobre Derechos Humanos 2008", Universidad Diego Portales
en [http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/informe_ddhh08_completo.pdf;](http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/informe_ddhh08_completo.pdf)

Colegio de Periodistas de Chile,
[http://www.colegiodeperiodistas.cl;](http://www.colegiodeperiodistas.cl)

Human Rights Watch,
<http://www.hrw.org>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to

his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

85
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

Law 18.575 establishes that all administrative acts and all the information directly related are public. (art. 13)

The Chilean Constitution establishes that all acts and resolutions of any organism of the state are public, as well all the fundamentals and procedures.

References:

Chilean Constitution, Article 8

Law 18.575 Orgánica Constitucional de Bases Generales de la Administración del Estado, Article 13.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

Law 18.575 Orgánica Constitucional de Bases Generales de la Administración del Estado, Articles 13 and 14.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

In practice the process is not effective, because citizens don't know about their rights and public functionaries don't promote the access to information.

The institutional mechanism does not have an specific name, it's just called request for public opinion." There is no specific institution to ask for public information. In August 2008, a law was adopted, which stipulates the creation of a specific institution: "Consejo de la Transparencia."

References:

Law 18.575 Orgánica Constitucional de Bases Generales de la Administración del Estado, Articles 13 and 14.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

40

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Corporación Participa investigation shows that in a significant number of cases the requests for public information are not answered (61 percent) or are denied. Only Congress answered with complete information.

References:

Segundo Estudio de Acceso a la Información Pública, Corporación Participa, December 2006, available at <http://participa.ioeweb.net/wp-content/uploads/2007/05/resultados-monitoreo-2006-II.ppt>;

IV Barometro de Acceso a la Información Pública, Fundación de la Prensa UDP KAS, November 2007, available at http://www.fundaciondelaprensa.cl/prontus_fundacion/site/artic/20071121/asocfile/resultados_publicos_barometro_acceso_informacion_221107

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The law establishes that the cost of the public information is just the photocopying cost, but sometimes citizens complain that the process is expensive.

References:

Segundo Estudio de Acceso a la Información Pública, Corporación Participa, December 2006, available at <http://participa.ioeweb.net/wp-content/uploads/2007/05/resultados-monitoreo-2006-II.ppt>;

IV Barometro de Acceso a la Información Pública, Fundación de la Prensa UDP KAS, November 2007, available at http://www.fundaciondelaprensa.cl/prontus_fundacion/site/artic/20071121/asocfile/resultados_publicos_barometro_acceso_informacion_221107

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The appeals process is very long. It goes through the judicial system, which in Chile has almost collapsed.

References:

Segundo Estudio de Acceso a la Información Pública, Corporación Participa, December 2006, available at <http://participa.ioeweb.net/wp-content/uploads/2007/05/resultados-monitoreo-2006-II.ppt>;

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

References:

Segundo Estudio de Acceso a la Información Pública, Corporación Participa, December 2006, available at <http://participa.ioeweb.net/wp-content/uploads/2007/05/resultados-monitoreo-2006-ii.ppt>;

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

Comments:

The Corporación Participa investigation shows that in a significant number of cases the requests for public information are not answered (61 percent) or are denied. Only Congress answered with complete information.

References:

Segundo Estudio de Acceso a la Información Pública, Corporación Participa, December 2006, available at <http://participa.ioeweb.net/wp-content/uploads/2007/05/resultados-monitoreo-2006-ii.ppt>;

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Chilean Constitution, Article 15

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Chilean Constitution, Articles 25, 47, 49 and 199

Law 18.695 Orgánica Constitucional de Municipalidades

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

One of the issues measured by Freedom in the World Surveys is free participation in the political process and free vote in legitimate election. In 2008, Chile obtained a score of 1, which means totally free.

References:

Polity IV Country Report 2006: Chile, 2007, Monty G. Marshall and Keith Jagers. Available at: <http://www.systemicpeace.org/polity/Chile2006.pdf>

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

One of the issues measured by Freedom in the World Surveys is free participation in the political process and free voting in legitimate election. In 2008, Chile has obtained a score of 1, which means totally free. There is no specific studies about the issue, but the scores Chile receives in all international indexes measuring democracy show that at least the right to vote is guaranteed to all citizens.

References:

Freedom in the World 2008, Freedom House, available at <http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7371>
Polity IV Country Report 2006: Chile, 2007, Monty G. Marshall and Keith Jagers. Available at: <http://www.systemicpeace.org/polity/Chile2006.pdf>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

One of the issues measured by Freedom in the World Surveys is free participation in the political process and free voting in legitimate election. In 2008, Chile has obtained a score of 1, which means totally free. In practice, the electoral schedules have respected the legal observations established by the constitution.

References:

Historical electoral schedule available at <http://www.elecciones.gov.cl>
Freedom in the World 2008, Freedom House, available at <http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7371>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

90

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Chilean Constitution, Articles 13, 17 and 19, number 15.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

There are some specific requirements (i.e be over 40 years old to run for certain political offices, to know to read and write.)

References:

Chilean Constitution, Articles 25, 48 and 50;

Law 18.695 Orgánica Constitucional de Municipalidades, Articles 57 and 73.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

Comments:

One of the issues measured by Freedom in the World Surveys is free participation in the political process and free voting in legitimate election. In 2008, Chile has obtained a score of 1, which means totally free. There are some basic barriers to form political parties, such as having a certain number of militants and being present in more than one region of the country, but those barriers are applied fairly to all parties.

References:

Freedom in the World 2008, Freedom House, available at <http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7371>
 Polity IV Country Report 2006: Chile, 2007, Monty G. Marshall and Keith Jagers. Available at: <http://www.systemicpeace.org/polity/Chile2006.pdf>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

Comments:

The electoral system puts barriers to political competition, tending to create two major coalitions. In that way the likelihood that independent candidates win the election is pretty low. In the last legislative election, for deputies, there were only eight independent candidates and none of them was elected.

References:

Una Reforma Necesaria. Efectos del Sistema Binominal, 2006, FLACSO. Available at: <http://fondofp.flacso.cl/fondo/pub/publicos/2006/libro/026233.pdf>
 Reforma Política en Chile: Repitiendo una vieja historia, 2007, Claudio Fuentes, Flacso. Available at: <http://www.flacso.cl/flacso/biblos.php?code=2511>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

In Chile, the principal opposition parties are represented in the legislature, and are available to present law projects. They play an important role in the legislative processes. Some minor parties, like the Communist Party, that have around 5 percent of the votes, are not represented.

References:

Estudio sobre elecciones parlamentarias 2005, Informe 1, Colección Ideas 57, Pepe Auth, available at <http://www.chile21.cl/chile21/archivos/descargas/Col57.pdf>
Principios rectores para una reforma electoral, Patricio Navia, 2006. Available at: http://www.expansivaudp.cl/media/en_foco/documentos/04072006114842.pdf

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

100

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

All the agencies are built as autonomous organisms, outside political interference.

References:

Servicio Electoral created by Law 18.556 Orgánica Constitucional sobre Sistema de Inscripciones Electorales y Servicio Electoral.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Patricio Navia, Director del Observatorio Electoral de Chile, interviewed by mail on Oct. 29, 2008.
Gonzalo Tapia, Public Opinion Diploma, Universidad Diego Portales, interviewed in Facultad de Ciencias Sociales e Historia" Universidad Diego Portales on Oct. 28, 2008.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Servicio Electoral: http://www.servel.cl/transparencia/dotacionplanta_08.htm /
Tribunal Calificador de Elecciones: http://www.servel.cl/transparencia/dotacioncontrata_08.htm

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

After any electoral cycle the Servicio Electoral" and the "Tribunal Calificador de Elecciones" make reports about some specific issues, such as electoral expenditures limits and vote counting.
The reports are available on the web sites of the agencies:
<http://www.servel.cl>
<http://www.tricel.cl>

References:

Patricio Navia, Director del Observatorio Electoral de Chile, interviewed by mail on Oct. 29, 2008.
Gonzalo Tapia, Public Opinion Diploma, Universidad Diego Portales, interviewed in Facultad de Ciencias Sociales e Historia” Universidad Diego Portales on Oct. 28, 2008.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

On Dec. 19, 2005, the Tribunal Calificador de Elecciones” imposed a penalty of US\$120 to Lucia del Carmen Carrasco Muñoz for not having the required the balance of the expenditures incurred during the electoral process. The complete list of resolutions made by the agency in 2006 is available at: <http://www.tribunalcalificador.cl/admin/upload/PERIODO%202006.pdf>

References:

Penalties imposed by Servicio Electoral on March 6t, 2006, for infractions to laws 18.556, 19.884, and 19.880 available at: <http://www.servel.cl/transparencia/file0645.pdf>
Penalties imposed by Servicio Electoral on April 7, 2006, for infractions to laws 18.556, 19.884, and 19.880 available at: <http://www.servel.cl/transparencia/file1102.pdf>

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

100

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The voter registration system is transparent and clear but has other problems, such as disproportionality, resulted in the absence of political competition.

Our system of voter registration has established some barriers to the electoral participation. The youngest population are not registered, so their political views are not represented in the Congress. Also the system of voter registration is easier to by pass by the upper class because they can effectively to go out during the electoral process, and they're in better condition to pay the sanction stated in law. Also, many times, people that don't agree with the political system don't register to vote. These factors create a disproportionality in the political system.

References:

Hacia una participación electoral de mayor calidad, Juan Ignacio Garcia, en Modernización del Régimen Electoral Chileno, 2007, Arturo Fontaine, Cristián Larroulet, José Antonio Viera-Gallo e Ignacio Walker (Editores)
La reforma del sistema binominal desde una perspectiva comparada, Dieter Nohlen, 2006. Available at: <http://www.scielo.cl/pdf/revcipol/v26n1/art12.pdf>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Law 18.700 Orgánica Constitucional de Elecciones Populares y Escrutinios, Articles 96 to 99 and 143 to 153.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The electoral justice doesn't follow the same procedure that civil justice. The Tribunal Calificador de Elecciones is a specific court that resolves the appeals on electoral results. Its resolutions are available at: http://www.tribunalcalificador.cl/obtienen-fichas.php?seccion_id=896&base=896

References:

Patricio Navia, Director del Observatorio Electoral de Chile, interviewed by mail on Oct. 29, 2008.
Gonzalo Tapia, Public Opinion Diploma, Universidad Diego Portales, interviewed in Facultad de Ciencias Sociales e Historia" Universidad Diego Portales on Oct. 28, 2008.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

Freedom in the World 2008, Freedom House, available at <http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7371>

Polity IV Country Report 2006: Chile, 2007, Monty G. Marshall and Keith Jagers. Available at: <http://www.systemicpeace.org/polity/Chile2006.pdf>

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

There is no law prohibiting or conditioning the presence of international electoral observers.

References:

Chilean Political Constitution

Law 18.556 Orgánica Constitucional sobre Sistema de Inscripciones Electorales y Servicio Electoral

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

References:

Patricio Navia, Director del Observatorio Electoral de Chile, interviewed by mail on Oct. 29, 2008.
Gonzalo Tapia, Public Opinion Diploma, Universidad Diego Portales, interviewed in Facultad de Ciencias Sociales e Historia" Universidad Diego Portales on Oct. 28, 2008.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

Law 18.556 Orgánica Constitucional sobre Sistema de Inscripciones Electorales y Servicio Electoral.
The agencies are a) Tribunal Calificador de Elecciones, b) Tribunales Regionales Electorales, and c) Servicio Electoral.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

100
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

Law 19.884 establishes limits to individual corporate donations to political parties and candidates during the electoral campaign period, but doesn't establish any prohibition during non-electoral campaign periods. Law 19.885 establishes a limit to the tax exemptions that corporations could receive.

References:

Law 19.884 sobre transparencia, control y límites del gasto electoral.

Law 19.885 que norma el buen uso de donaciones de personas jurídicas que dan origen a beneficios tributarios y los extiende a otros fines sociales y públicos

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

The limits are just established for donations during electoral campaigns.

References:

Law 19.884 sobre transparencia, control y límites del gasto electoral, Articles 4 to 6.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

The limits are just established for donations during electoral campaigns.

References:

Law 19.884 sobre transparencia, control y límites del gasto electoral, Article 9.

Law 19.885 que norma el buen uso de donaciones de personas jurídicas que dan origen a beneficios tributarios y los extiende a otros fines sociales y públicos.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | **NO**

Comments:

The limits are just established for donations during electoral campaigns.

References:

Law 18.603 Orgánica Constitucional de Partidos Políticos,

Law 19.884 sobre transparencia, control y límites del gasto electoral, Articles 4 to 6.

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

The law establishes that every year all parties must present a balance, identifying the incomes and expenditures during that period. During the electoral process, parties and candidates must present a disclosure identifying the funding sources.

References:

Law 18.603 Orgánica Constitucional de Partidos Políticos, Articles 34 and 35.

Law 19.884 sobre transparencia, control y límites del gasto electoral, Articles 30 to 49.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | **NO**

Comments:

The laws doesn't establish any mechanism for independent auditing of the finances and expenditures of political parties. Servicio Electoral performs only an auditing of expenditures during electoral campaigns.

References:

Law 18.603 Orgánica Constitucional de Partidos Políticos.

Law 19.884 sobre transparencia, control y límites del gasto electoral.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

References:

Law 18.556 Orgánica Constitucional sobre Sistema de Inscripciones Electorales y Servicio Electoral.

The agency is the Servicio Electoral.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

83

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

Comments:

The only regulations are about electoral financing, expenditures during electoral campaigns and tax exemptions that companies may use.

References:

Law 18.603 Orgánica Constitucional de Partidos Políticos,

Law 19.884 sobre transparencia, control y límites del gasto electoral.

Law 19.885 que norma el buen uso de donaciones de personas jurídicas que dan origen a beneficios tributarios y los extiende a otros fines sociales y públicos.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

Law 19.884 states specific limits for donations during the electoral campaign. Those limits are calculated on the number of voters registered in each district, circumscription or municipality. Law 19.885 states a fiscal exemption for donations made by corporations.

References:

Law 19.884 sobre transparencia, control y límites del gasto electoral, Article 9.

Law 19.885 que norma el buen uso de donaciones de personas jurídicas que dan origen a beneficios tributarios y los extiende a otros fines sociales y públicos.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

Comments:

Law 19.884 states specific limits for donations during the electoral campaign. Those limits are calculated on the number of voters registered in each district, circumscription or municipality. Law 19.885 states a fiscal exemption for donations made by corporations.

References:

Law 19.884 sobre transparencia, control y límites del gasto electoral, Article 9.

Law 19.885 que norma el buen uso de donaciones de personas jurídicas que dan origen a beneficios tributarios y los extiende a otros fines sociales y públicos.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

Comments:

According to law 19.884, candidates and political parties must present a disclosure when the total sum of all donations made to a specific candidate surpasses the US\$20.000, US\$30.000, US\$60.000 or US\$120.000, depending on the kind of election: for mayor, for deputy, senator or president, respectively. The disclosure must include the name of the person who made the donation, the amount of the donation and the receipt of the donation.

References:

Law 19.884 sobre transparencia, control y límites del gasto electoral, Articles 30 to 49.

Law 19.885 que norma el buen uso de donaciones de personas jurídicas que dan origen a beneficios tributarios y los extiende a otros fines sociales y públicos.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | NO

References:

Law 19.884 sobre transparencia, control y límites del gasto electoral.

Law 19.885 que norma el buen uso de donaciones de personas jurídicas que dan origen a beneficios tributarios y los extiende a otros fines sociales y públicos.

Law 18.700 Orgánica Constitucional de Elecciones Populares y Escrutinios

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

The agency is the Servicio Electoral." It was created by law 18.556 to monitor the financing of individual political candidates.

References:

Servicio Electoral, created by Law 18.556 Ley Orgánica Constitucional sobre Sistema de Inscripciones Electorales y Servicio Electoral"

Law 19.884 sobre transparencia, control y límites del gasto electoral.

Law 19.885 que norma el buen uso de donaciones de personas jurídicas que dan origen a beneficios tributarios y los extiende a otros fines sociales y públicos.

Law 18.700 Orgánica Constitucional de Elecciones Populares y Escrutinios

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

33

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

Comments:

The limits stated by law just apply to donations during the electoral process and are not according to real expenditures, so a significant number of candidates spend more than the limits. Sometimes those expenditures are not declared and sometimes the candidates prefer to pay the penalties, as they are rather low. Also, the Servicio Electoral just audits the financing after the elections.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at:
http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Financiamiento Político en Chile. Una Batalla Incierta, Andrés Villar, 2006. Available at:
<http://www.flacso.cl/flacso/biblos.php?code=1603>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

Comments:

The limits stated by law just apply to donations during the electoral process and are not according to real expenditures, so a significant number of candidates spend more than the limits. Some times those expenditures are nor declared and sometimes the candidates prefer to pay the penalties, as they are rather low. Also, the Servicio Electoral just audits the financing after the elections.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at:
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Financiamiento Político en Chile. Una Batalla Incierta, Andrés Villar, 2006. Available at:
<http://www.flacso.cl/flacso/biblos.php?code=1603>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that

advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

The limits stated by law just apply to donations during the electoral process and are not according to real expenditures, so a significant number of candidates spend more than the limits. Some times those expenditures are nor declared and sometimes the candidates prefer to pay the penalties, as they are rather low. Also, the Servicio Electoral just audits the financing after the elections.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at: http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Financiamiento Político en Chile. Una Batalla Incierta, Andrés Villar, 2006. Available at: <http://www.flacso.cl/flacso/biblos.php?code=1603>

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Servicio Electoral doesn't have the capacity to perform its duties. In this sense, the limits to donations could be easily avoided. Outside electoral periods, the statements presented to the Servicio Electoral are very erroneous and vague.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio

Walker (editores), 2008. Available at:
http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Financiamiento Político en Chile. Una Batalla Incierta, Andrés Villar, 2006. Available at:
<http://www.flacso.cl/flacso/biblos.php?code=1603>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Even though Servicio Electoral" doesn't have the capacity to carry out all its functions there are some routine functions that are done, like the formal monitoring of the expenditures. Some other functions like the monitoring of the donations are not done, but still, there are some occasions when the "Servicio Electoral" effectively imposes penalties or sanctions.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at:
http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Financiamiento Político en Chile. Una Batalla Incierta, Andrés Villar, 2006. Available at:
<http://www.flacso.cl/flacso/biblos.php?code=1603>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Servicio Electoral" performs just formal audits. In practice, it doesn't have the capacity to investigate the sources of the donations and the destinations of the expenditures. The balances presented by political parties are really poor.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at:

http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Financiamiento Político en Chile. Una Batalla Incierta, Andrés Villar, 2006. Available at:

<http://www.flacso.cl/flacso/biblos.php?code=1603>

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

40

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

In practice, significant expenditures are not declared to the Servicio Electoral.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at:

http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Los mitos de la Ley de Transparencia Electoral, Corporación Tiempo 2000, 2005.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

In practice, significant expenditures are not declared to the Servicio Electoral.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at:
http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Los mitos de la Ley de Transparencia Electoral, Corporación Tiempo 2000, 2005.
<http://biografias.bcn.cl/alegislativo/pdf/cat/docs/4696-06/789.pdf>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice, significant expenditures are not declared to the Servicio Electoral.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at:
http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Financiamiento Político en Chile. Una Batalla Incierta, Andrés Villar, 2006. Available at:
<http://www.flacso.cl/flacso/biblos.php?code=1603>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

When the Servicio Electoral" identifies an infraction it always impose penalties, but the penalties are not really significant, so on many occasions candidates prefer to not respect the law and pay the fines.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at:

http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Financiamiento Político en Chile. Una Batalla Incierta, Andrés Villar, 2006. Available at:

<http://www.flacso.cl/flacso/biblos.php?code=1603>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

Servicio Electoral" makes only formal audits. In practice, it doesn't have the capacity to investigate the sources of the donations and the destinations of the expenditures.

In the 2005 elections there were a lot of reports about fake bills presented to the Servicio Electoral, but just a few of them were really investigated. Also, there are a lot of expenditures that are not declared to the Servicio Electoral.

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at:

http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Financiamiento Político en Chile. Una Batalla Incierta, Andrés Villar, 2006. Available at:

<http://www.flacso.cl/flacso/biblos.php?code=1603>

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

50

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Obtaining access is a long and difficult process. Citizens must personally go to Servicio Electoral and they may end up only with partial information.

References:

Los mitos de la Ley de Transparencia Electoral, Corporación Tiempo 2000, 2005.
<http://biografias.bcn.cl/alegislativo/pdf/cat/docs/4696-06/789.pdf>

Monitoreo del Gasto Electoral, Corporación Participa, 2005.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Obtaining access is a long and difficult process. Citizens must personally go to Servicio Electoral and they may end up only with partial information.

References:

Los mitos de la Ley de Transparencia Electoral, Corporación Tiempo 2000, 2005.
<http://biografias.bcn.cl/alegislativo/pdf/cat/docs/4696-06/789.pdf>

Monitoreo del Gasto Electoral, Corporación Participa, 2005.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Estatuto Jurídico de los Partidos Políticos en Chile: Veinte años de la Ley Orgánica Constitucional de los Partidos Políticos, Teodoro Ribera, en Reforma de los Partidos Políticos en Chile, Arturo Fontaine, Cristián Larroulet, Jorge Navarrete e Ignacio Walker (editores), 2008. Available at:
http://web.proyectamerica.cl/documentos/reforma_de_los_partidos.pdf

Financiamiento Político en Chile. Una Batalla Incierta, Andrés Villar, 2006. Available at:
<http://www.flacso.cl/flacso/biblos.php?code=1603>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

50

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Los mitos de la Ley de Transparencia Electoral, Corporación Tiempo 2000, 2005.
<http://biografias.bcn.cl/legislativo/pdf/cat/docs/4696-06/789.pdf>

Monitoreo del Gasto Electoral, Corporación Participa, 2005.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Los mitos de la Ley de Transparencia Electoral, Corporación Tiempo 2000, 2005.
[http:// biografias.bcn.cl/alegislativo/pdf/cat/docs/4696-06/789.pdf](http://biografias.bcn.cl/alegislativo/pdf/cat/docs/4696-06/789.pdf)

Monitoreo del Gasto Electoral, Corporación Participa, 2005.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

Los mitos de la Ley de Transparencia Electoral, Corporación Tiempo 2000, 2005.
[http:// biografias.bcn.cl/alegislativo/pdf/cat/docs/4696-06/789.pdf](http://biografias.bcn.cl/alegislativo/pdf/cat/docs/4696-06/789.pdf)

Monitoreo del Gasto Electoral, Corporación Participa, 2005.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-1. Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

81

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008
Robert Funk, Presidente Asociación Chilena de Ciencia Política, Interviewed by mail on Oct. 29, 2008

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Ley N° 17.997 Organica Constitucional del Tribunal Constitucional

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

References:

Praxis del Control de Constitucionalidad en Chile, Jose Luis Cea Egaña, 2007. Available at:

<http://www.jornadasderechopublico.ucv.cl/ponencias/PRAXIS%20DEL%20CONTROL%20DE%20CONSTITUCIONALIDAD%20EN%20CHILE.pdf>

Efectos Vinculantes de los Precentes del Tribunal Constitucional en la actividad de la Contraloría General de la Republica, Mario Verdugo, 2006. Available at:

http://www.cecoch.cl/docs/pdf/revista_ano4_1/revista_ano4_1_11.pdf

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

In 2008, the government required a US\$400 million credit to the Inter-American Development Bank to finance the public system of transportation. Although strongly objected by the opposition, the credit was authorized by an executive order. Finally the credit was declared non-constitutional.

A few year ago the government tried to impose an emergency health policy with the morning-after pill, forcing municipalities to accept it through an executive order.

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008

Robert Funk, Presidente Asociación Chilena de Ciencia Política, Interviewed by mail on Oct. 29, 2008

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The president and ministers can be prosecuted for crimes they commit once the Congress and the Tribunal Constitucional have approved the constitutional accusation. The constitutional accusations can be used while the president exerts his/her mandate and for six months afterwards.

References:

Chilean Constitution, Articles 52 and 54.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

The president and ministers can be prosecuted for crimes they commit once the Congress and the Tribunal Constitucional have approved the constitutional accusation. The constitutional accusations can be used while the president exerts his/her mandate and for six months afterwards.

References:

Chilean Constitution, Articles 52 and 54.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

50

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Law 20.088 establishes as obligatory a patrimony asset for public functionaries. Available at:
http://www.subdere.gov.cl/1510/articles-69972_recurso_1.pdf

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Law 20.088 establishes as obligatory a patrimony asset for public functionaries. Available at:
http://www.subdere.gov.cl/1510/articles-69972_recurso_1.pdf

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

In the Chilean legislation there are no specific regulations about gifts and hospitality offered to members of the executive branch. Currently there is an initiative to develop an Ethics Code for Public Functionaries.

References:

Chilean Constitution,
Law 18.834 Estatuto Administrativo
Law 18.575 Orgánica Constitucional de Bases Generales de la Administración del Estado

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

Contraloría General de la República Law 20.088 establishes as obligatory a patrimony asset for public functionaries. Available at:
http://www.subdere.gov.cl/1510/articles-69972_recurso_1.pdf

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:
A draft law looking to regulate the issue is pending in Congress.

References:
Chilean Constitution,
Law 18.834 Estatuto Administrativo
Law 18.575 Orgánica Constitucional de Bases Generales de la Administración del Estado

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

Comments:
There are a significant number of ministers who after leaving the government assumed leading roles in private companies or started lobbying. Some examples are Minister Enrique Correa and Minister Ricardo Solari.

References:
Agenda de Probidad, Transparencia, Eficiencia, Calidad de la Política y Modernización del Estado, Secretaria Ejecutiva, Agenda de Probidad y Transparencia, 2007. Available at:
http://www.regionactiva.cl/sites/www.regionactiva.cl/files/2007_AgendaTransparencia.pdf

¿Hacia una democracia corporativista?, Carlos Huneus, 2008. Available at:
<http://www.cerc.cl/Publicaciones/MENSAJE%20568%20P%C3%A1g.%208.-13%20Comentario%20Nacional.%20Mayo%202008.pdf>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | **50** | 25 | 0

Comments:

In law, there are no specific regulations; in practice it is not usual to see members of the executive accepting gifts and hospitalities.

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008
Robert Funk, Presidente Asociación Chilena de Ciencia Política, Interviewed by mail on Oct. 29, 2008

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | **50** | 25 | 0

Comments:

The auditing process is the responsibility of the secretaries of the Chamber of Deputies and the Senate.

References:

Resultados. Seguimiento al funcionamiento de la Ley 20.088 de Declaración Jurada de Patrimonio en el Congreso, Observatorio Parlamentario, 2006.
Silvana Lauzan, Directora del Programa de Derechos Humanos y Democracia, Universidad de Chile, Interviewed by mail on Oct. 28, 2008

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

67

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

Law 20.088 establishes as obligatory a patrimony asset for public functionaries. Available at:
http://www.subdere.gov.cl/1510/articles-69972_recurso_1.pdf

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Ley N° 20.088 sobre Declaración Jurada Patrimonial: su aplicación por Senadores/as y Diputados/as, Humanas, 2007. Available at:
http://www.humanas.cl/documentos/resumen_estudio_declaracion_patr_abril07.pdf

Resultados. Seguimiento al funcionamiento de la Ley 20.088 de Declaración Jurada de Patrimonio en el Congreso, Observatorio Parlamentario, 2006.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Ley N° 20.088 sobre Declaración Jurada Patrimonial: su aplicación por Senadores/as y Diputados/as, Humanas, 2007. Available at:

http://www.humanas.cl/documentos/resumen_estudio_declaracion_patr_abril07.pdf

Resultados. Seguimiento al funcionamiento de la Ley 20.088 de Declaración Jurada de Patrimonio en el Congreso, Observatorio Parlamentario, 2006.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Chilean Constitution, Articles 20 and 38

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

50

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

In Chile, it is usual that some officers use government vehicles and funds otherwise destined for party activities.

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008

Robert Funk, Presidente Asociación Chilena de Ciencia Política, Interviewed by mail on Oct. 29, 2008

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

100

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Chilean Constitution, Article 93,
Ley N° 17.997 Organica Constitucional del Tribunal Constitucional

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

Praxis del Control de Constitucionalidad en Chile, Jose Luis Cea Egaña, 2007. Available at:
<http://www.jornadasderechopublico.ucv.cl/ponencias/PRAXIS%20DEL%20CONTROL%20DE%20CONSTITUCIONALIDAD%20EN%20CHILE.pdf>

Efectos Vinculantes de los Precentes del Tribunal Constitucional en la actividad de la Contraloría General de la Republica, Mario Verdugo, 2006. Available at:
http://www.cecocch.cl/docs/pdf/revista_ano4_1/revista_ano4_1_11.pdf

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

References:

Chilean Constitution, Article 61.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

29

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Law 18918 Organica Constitucional del Congreso Nacional, Article 5° D,
Law 18565, Articles 60 B, 60 C and 60 D.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

Chilean Constitution
Law 18918 Organica Constitucional del Congreso Nacional
Law 18.565

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | **NO**

References:

Chilean Constitution
Law 18918 Organica Constitucional del Congreso Nacional
Law 18.565

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

According to law 18.918, the auditing of asset disclosures is the responsibility of the Comité de Ética del Senado and Comisión de Conducta de la Cámara de Diputados.

References:

Chilean Constitution
Law 18918 Organica Constitucional del Congreso Nacional
Law 18.565

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | **50** | 25 | 0

Comments:

In law there aren't any regulations. In practice, it is not usual that members of the legislative regularly take jobs in the private sector that entail direct lobbying or seeking to influence their former government colleagues. One of the probable reasons is that a very significant numbers of legislators keep their positions for a really long time.

References:

Estado de implementación de la Convención de las Naciones Unidas contra la Corrupción a partir del análisis de la agenda legislativa nacional, Davor Harasic, Chiletransparente, 2008. Available at:

http://www.chiletransparente.cl/home/pdf/Convencion_Naciones_Unidas_contra_la_corrupcion.pdf

¿Hacia una democracia corporativista?, Carlos Huneeus, 2008. Available at:

<http://www.cerc.cl/Publicaciones/MENSAJE%20568%20P%C3%A1g.%208.-13%20Comentario%20Nacional,%20Mayo%202008.pdf>

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | **50** | 25 | 0

Comments:

In law there are no clear prohibitions on the subject. It is not known whether members of the legislative accept gifts or hospitalities.

References:

Transparencia en la función legislativa chilena: Experiencias y desafíos, Davor Harasic, Chiletransparente, 2007. Available at:

<http://www.chiletransparente.cl/home/pdf/PreCongresoMexAgosto07.pdf>

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Ley N° 20.088 sobre Declaración Jurada Patrimonial: su aplicación por Senadores/as y Diputados/as, Humanas, 2007. Available at:

http://www.humanas.cl/documentos/resumen_estudio_declaracion_patr_abril07.pdf

Resultados. Seguimiento al funcionamiento de la Ley 20.088 de Declaración Jurada de Patrimonio en el Congreso, Observatorio Parlamentario, 2006.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

83

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Law 18918 Organica Constitucional del Congreso Nacional, Article 5° D,

Law 18565, Articles 60 B, 60 C and 60 D,

Law 20.088.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Las acciones y sociedades que los senadores no declararon, Media Report, CIPPER Chile, 2008. Available at:

<http://www.elciudadano.cl/2008/10/07/las-acciones-y-sociedades-que-los-senadores-no-declararon/>

Indice Regional de Transparencia Parlamentaria, Corporación Participa, 2008. For further publication.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Las acciones y sociedades que los senadores no declararon, Media Report, CIPPER Chile, 2008. Available at: <http://www.elciudadano.cl/2008/10/07/las-acciones-y-sociedades-que-los-senadores-no-declararon/>

Indice Regional de Transparencia Parlamentaria, Corporación Participa, 2008. For further publication.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

67

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

The law establishes that the processes, contents and decisions made by the legislative are public.

References:

Law 18918 Orgánica Constitucional del Congreso Nacional, Article 5
Law 19.653

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Indice Regional de Transparencia Parlamentaria, Corporación Participa, 2008. For further publication.

Segundo Estudio de Acceso a la Información Pública, Corporación Participa, December 2006, available at <http://participa.ioeweb.net/wp-content/uploads/2007/05/resultados-monitoreo-2006-ii.ppt>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Much information available on the web-site of Congress. In some cases citizens must personally go to Congress, which implicates a significant cost.

References:

Indice Regional de Transparencia Parlamentaria, Corporación Participa, 2008. For further publication.

Segundo Estudio de Acceso a la Información Pública, Corporación Participa, December 2006, available at <http://participa.ioeweb.net/wp-content/uploads/2007/05/resultados-monitoreo-2006-ii.ppt>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:
Chilean Constitution, Article 78

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:
The quality of the judges is not a conflictive issue, but the designation system has some structural problems, recognized by the judges, that could prevent transparency. Usually designations are made on merit more than on objective professional qualifications.

References:
Reforma al Poder Judicial: Una Agenda para la Discusión”, Instituto Libertad Y Desarrollo, 2008. Available at: http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3864/deploy/TP-876-Reforma%20al%20Poder%20Judicial%20Una%20agenda%20para%20la%20discusion-04-07-2008.pdf

“Informe Global de la Corrupción 2007”. Transparencia Internacional, 2007. Available at: <http://www.cejamericas.org/doc/documentos/corrupcionjudicial.pdf>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

Just five of 21 members are confirmed.

References:

Chilean Constitution,
Law 7421 Código Orgánico de Tribunales

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

50

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Chilean Constitution, Article 79.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Some courts, such as the Tribunal Militar, do not give clear reasons about their decisions.

References:

Reforma al Poder Judicial: Una Agenda para la Discusión", Instituto Libertad Y Desarrollo, 2008. Available at: http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3864/deploy/TP-876-Reforma%20al%20Poder%20Judicial%20Una%20agenda%20para%20la%20discusion-04-07-2008.pdf

"Informe Global de la Corrupción 2007". Transparencia Internacional, 2007. Available at: <http://www.cejamericas.org/doc/documentos/corrupcionjudicial.pdf>

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | **NO**

Comments:

There is a process that could be initiated by the Chamber of Deputies.

References:

Chilean Constitution
Law 7421 Código Orgánico de Tribunales

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | **NO**

Comments:

There is no such agency.

References:

Chilean Constitution
Law 7421 Código Orgánico de Tribunales

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

Comments:

Corte Suprema” issues disciplinary reports, which are significant even if we consider that it is not an independent agency. The reports about discipline in the Judiciary system show that the mechanism works properly.

References:

Reforma al Poder Judicial: Una Agenda para la Discusión”, Instituto Libertad Y Desarrollo, 2008. Available at: http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3864/deploy/TP-876-Reforma%20al%20Poder%20Judicial%20Una%20agenda%20para%20la%20discusion-04-07-2008.pdf

“Informe Global de la Corrupción 2007”. Transparencia Internacional, 2007. Available at: <http://www.cejamericas.org/doc/documentos/corrupcionjudicial.pdf>

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies’ investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

Comments:

The Corte Suprema” initiates and imposes penalties to offenders, but the process usually takes a long time and the results are not always the ones expected.

References:

Reforma al Poder Judicial: Una Agenda para la Discusión”, Instituto Libertad Y Desarrollo, 2008. Available at: http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3864/deploy/TP-876-Reforma%20al%20Poder%20Judicial%20Una%20agenda%20para%20la%20discusion-04-07-2008.pdf

“Informe Global de la Corrupción 2007”. Transparencia Internacional, 2007. Available at: <http://www.cejamericas.org/doc/documentos/corrupcionjudicial.pdf>

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

14

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Law 19653 Sobre Probidad Administrativa Aplicable a los Órganos de la Administración del Estado,
Law 18575 Orgánica Constitucional de Bases Generales de la Administración del Estado, Article 60
Law 7421 Código Orgánico de Tribunales, Article 323.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

There is a Judiciary Ethics Code elaborated by the Corte Suprema, but it is not a law, and it only regulates some monetary donations to judges.

References:

Law 19653 Sobre Probidad Administrativa Aplicable a los Órganos de la Administración del Estado,
Law 18575 Orgánica Constitucional de Bases Generales de la Administración del Estado
Law 7421 Código Orgánico de Tribunales

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

Contraloría General de la República audits the asset disclosures.

References:

Law 19653 Sobre Probidad Administrativa Aplicable a los Órganos de la Administración del Estado,

Law 18575 Orgánica Constitucional de Bases Generales de la Administración del Estado

Law 7421 Código Orgánico de Tribunales

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

Law 19653 Sobre Probidad Administrativa Aplicable a los Órganos de la Administración del Estado

Law 18575 Orgánica Constitucional de Bases Generales de la Administración del Estado

Law 7421 Código Orgánico de Tribunales

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

References:

Reforma al Poder Judicial: Una Agenda para la Discusión", Instituto Libertad Y Desarrollo, 2008. Available at:

http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3864/deploy/TP-876-Reforma%20al%20Poder%20Judicial%20Una%20agenda%20para%20la%20discusion-04-07-2008.pdf

"Informe Global de la Corrupción 2007". Transparencia Internacional, 2007. Available at:

<http://www.cejamericas.org/doc/documentos/corrupcionjudicial.pdf>

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at:

<http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

Reforma al Poder Judicial: Una Agenda para la Discusión”, Instituto Libertad Y Desarrollo, 2008. Available at: http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3864/deploy/TP-876-Reforma%20al%20Poder%20Judicial%20Una%20agenda%20para%20la%20discusion-04-07-2008.pdf

“Informe Global de la Corrupción 2007”. Transparencia Internacional, 2007. Available at: <http://www.cejamericas.org/doc/documentos/corrupcionjudicial.pdf>

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Reforma al Poder Judicial: Una Agenda para la Discusión”, Instituto Libertad Y Desarrollo, 2008. Available at: http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3864/deploy/TP-876-Reforma%20al%20Poder%20Judicial%20Una%20agenda%20para%20la%20discusion-04-07-2008.pdf

“Informe Global de la Corrupción 2007”. Transparencia Internacional, 2007. Available at: <http://www.cejamericas.org/doc/documentos/corrupcionjudicial.pdf>

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

92

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Law 19653 Sobre Probidad Administrativa Aplicable a los Órganos de la Administración del Estado
Law 18575 Orgánica Constitucional de Bases Generales de la Administración del Estado, Article 60
Law 7421 Código Orgánico de Tribunales, Article 323.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosures are now available on line.

References:

Reforma al Poder Judicial: Una Agenda para la Discusión”, Instituto Libertad Y Desarrollo, 2008. Available at: http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3864/deploy/TP-876-Reforma%20al%20Poder%20Judicial%20Una%20agenda%20para%20la%20discusion-04-07-2008.pdf

“Informe Global de la Corrupción 2007”. Transparencia Internacional, 2007. Available at: <http://www.cejamericas.org/doc/documentos/corrupcionjudicial.pdf>

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Reforma al Poder Judicial: Una Agenda para la Discusión”, Instituto Libertad Y Desarrollo, 2008. Available at: http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3864/deploy/TP-876-Reforma%20al%20Poder%20Judicial%20Una%20agenda%20para%20la%20discusion-04-07-2008.pdf

“Informe Global de la Corrupción 2007”. Transparencia Internacional, 2007. Available at: <http://www.cejamericas.org/doc/documentos/corrupcionjudicial.pdf>

Informe Anual sobre Derechos Humanos en Chile, 2008, Centro de Derechos Humanos, Universidad Diego Portales. Available at: <http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe08.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

25

40a. In law, the legislature can amend the budget.

YES | **NO**

References:

Chilean Constitution, Article 67

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

The capacity of the Congress to provide changes to the budget are very low. On the other hand, during the past years the Congress and the Executive have agreed on the major aspects of the budget, but an important part of the expenditures doesn't need the approval of the Congress.

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008
Robert Funk, Presidente Asociación Chilena de Ciencia Política, Interviewed by mail on Oct. 29, 2008

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

On many occasions, the members of the legislative don't have access to significant information to evaluate the budget process. By law, they cannot provide inputs to the budget. Sometimes there are negotiations, but they are not part of the budget process.

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008
Robert Funk, Presidente Asociación Chilena de Ciencia Política, Interviewed by mail on Oct. 29, 2008

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008
Silvana Lauzan, Directora del Programa de Derechos Humanos y Democracia, Universidad de Chile, Interviewed by mail on Oct. 28, 2008

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes organizations and members of civil society are invited to provide inputs to the budget, but that process doesn't have a formal recognition.

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008
Silvana Lauzan, Directora del Programa de Derechos Humanos y Democracia, Universidad de Chile, Interviewed by mail on Oct. 28, 2008

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008
Silvana Lauzan, Directora del Programa de Derechos Humanos y Democracia, Universidad de Chile, Interviewed by mail on Oct. 28, 2008

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

50

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008
Silvana Lauzan, Directora del Programa de Derechos Humanos y Democracia, Universidad de Chile, Interviewed by mail on Oct. 28, 2008

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The members of the committee are elected by the members of Congress, so it is basically a recreation of the distribution of power in Congress. There are no specific ratios to respect. The current committee has integrated 14 members of the ruling coalition and 12 members of the opposition coalition, but the influence of the ruling party is much bigger than the influence of the opposition coalition. In practice, the members of the opposition parties have can influence the work of the comitte.

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | **50** | 25 | 0

Comments:

The committee can start investigations, ask for specific information to monitor the execution of the budget, but in practice it doesn't have the capacity to effectively investigate. There is the possibility that the Chamber of Deputies start a specific investigation, by creating an investigative committee. The committee is created just to approve the budget presented by the Executive, so it's changed every year. The committee doesn't have the real instruments to monitor the governmental activities.

References:

Andrea Sanhueza, Directora Ejecutiva, Interviewed by mail on Oct. 10, 2008
Silvana Lauzan, Directora del Programa de Derechos Humanos y Democracia, Universidad de Chile, Interviewed by mail on Oct. 28, 2008

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

Comisión Especial Mixta de Presupuestos by Law 18.918, Article 19.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁶²Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

Appointments of higher officers in the civil service is decided by an independent and autonomous body. This mechanism is used to appoint directors of public policy agencies.

References:

LEY N° 18.575, Orgánica Constitucional de Bases Generales de la Administración del Estado (1999), art. 15-20, 43 -51;
Ley n° 18.834, sobre Estatuto Administrativo, art. 9° y ss.;
Decreto 859/2005 Ministerio de Hacienda, aprueba Reglamento del Consejo de Alta Dirección Pública establecido en la ley n° 19.882

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

Law 18.575 states the incompatibility to incorporate people related to the ones who hold leading positions in the service. However, it doesn't establish criteria about political designations based on friendships. For directive positions, the rules are set by Decree 859.

References:

LEY N° 18.575, Orgánica Constitucional de Bases Generales de la Administración del Estado (1999), art. 54-56;
Decreto 859/2005 Ministerio de Hacienda, aprueba Reglamento del Consejo de Alta Dirección Pública establecido en la ley n° 19.882.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

There are two mechanisms. The first one is the council for High Public Service (Consejo de Alta Dirección Pública), which must study the candidacy of civil officers to first level positions (jefes de servicios), suggest those for the second level (jefes de departamento), process the claims about the selection procedure and determine the profile of the civil servant that the position requires (decree 859/2002, art. 1, letras a-j)). The second mechanism is the General Accountability Office (Contraloría General de la República), which has to inform about the appointments of each civil service employee.

References:

Decreto 859/2005 Ministerio de Hacienda, aprueba Reglamento del Consejo de Alta Dirección Pública establecido en la ley n° 19.882, art. 1, letras a-j));
Ley 18.995 Ley De Organización Y Atribuciones De La Contraloría General De La República

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

It is not prohibited automatically, yet there is the possibility to ban for life a person who has been convicted for corruption crimes. Penal Code, art 248 bis and 249 offers the option to ban those who accept bribes or misuse their influence (because of their position or connections). Article 233 and following, allows to ban temporarily or for life those who misuse public money. Law 19.653 bans people convicted for any crime to assume any position in the public service for the time they have been punished. Administrative Normative (Law 18.834), art. 158, about the extinction of administrative punishment, states that the punishment will end as soon as the penal action ends.

References:

Penal Code, arts.233-following; 248bis & 249; Ley n° 18.834, sobre Estatuto Administrativo, art. 158;
Ley 19.653 (1999) sobre Probidad Administrativa Aplicable de los Órganos de la Administración del Estado

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

61

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In recent years, the civil service has been moving towards a total professionalization of public servants. Soon, only ministers and vice ministers and their closer collaborators will be appointed by political criteria. The rest of the public employees will have to be appointed through an open mechanism, where every professional can compete. However, this system is not fully operative yet for all services, and it has not been very effective in attracting people from the private sector (which was one of the main goals). Until this is fully operating, independence should not be considered guaranteed.

References:

El Mercurio, Pablo Obregón, 08/19/2008, Sólo 14% de los elegidos por la Alta Dirección Pública proviene del mundo privado”, <http://www.economiaynegocios.cl/noticias/noticias.asp?id=51776>; “Sistemas de servicio civil:una comparación internacional”,

María de los Ángeles Mascott Sánchez, Centro de Estudios Sociales y de Opinión Pública de la Cámara de Diputados, Estados Unidos Mexicanos, LVIII Legislatura, s.f. en http://www.bcn.cl/carpeta_temas_profundidad/temas_profundidad.2007-08-14_5482851150/pdf-para-subtitulos/congreso%20mexicano.pdf

Revista Capital, Lorena Rubio, may 2008, “Sistema de Alta Dirección. Gerente Público se busca en <http://www.capital.cl/reportajes-y-entrevistas/sistema-de-alta-direcci-n.-gerente-p-blico-se-5.html>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointments have been moving towards a-political criteria, encouraging professionals from private or public services to apply, but positions are still assigned to people close to the government coalition.

References:

Presentación de Rosana Costa, Instituto Libertad y Desarrollo al II Foro de Políticas Públicas para una Sociedad Libre”, abril 2008 en http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3747/deploy/Rosana%20Costa.pdf

“Sistema de Alta Dirección Pública: Camino Recorrido y por Recorrer”, en Temas Públicos Num. 880, Instituto Libertad y Desarrollo en http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3754/deploy/880%20Alta%20Direccion%20Publica%20LL.pdf

“Sistema de Alta Dirección. Gerente Público se busca”, Lorena Rubio, Revista Capital Num. 227 (2 al 15 de mayo de 2008) en <http://www.capital.cl/reportajes-y-entrevistas/sistema-de-alta-direcci-n.-gerente-p-blico-se-5.html>

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

Presentacion de Rosana Costa, Instituto Libertad y Desarrollo al II Foro de Políticas Públicas para una Sociedad Libre”, abril 2008 en http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3747/deploy/Rosana%20Costa.pdf

“Sistema de Alta Dirección Pública: Camino Recorrido y por Recorrer”, en Temas Publicos Num. 880, Instituto Libertad y Desarrollo en http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3754/deploy/880%20Alta%20Direccion%20Publica%20LL.pdf

“Sistema de Alta Dirección. Gerente Público se busca”, Lorena Rubio, Revista Capital Num. 227 (2 al 15 de mayo de 2008) en <http://www.capital.cl/reportajes-y-entrevistas/sistema-de-alta-direcci-n-gerente-p-blico-se-5.html>

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants appointed through the Civil Service System should achieve the goals identified by authorities. This goals should be assessed following performance contracts” (convenios de desempeño). LyD report states that the performance tools are not well defined, which makes it very difficult for these civil servants to be clear about how their bosses will assess their work.

References:

Presentacion de Rosana Costa, Instituto Libertad y Desarrollo al II Foro de Políticas Públicas para una Sociedad Libre”, abril 2008 en http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3747/deploy/Rosana%20Costa.pdf

“Sistema de Alta Dirección Pública: Camino Recorrido y por Recorrer”, en Temas Publicos Num. 880, Instituto Libertad y Desarrollo en http://www.lyd.com/LYD/Controls/Neochannels/Neo_CH3754/deploy/880%20Alta%20Direccion%20Publica%20LL.pdf

“Sistema de Alta Dirección. Gerente Público se busca”, Lorena Rubio, Revista Capital Num. 227 (2 al 15 de mayo de 2008) en <http://www.capital.cl/reportajes-y-entrevistas/sistema-de-alta-direcci-n-gerente-p-blico-se-5.html>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

The article shows a reality that has been reported several times. Bonuses for civil servants represent in extreme cases almost 50 percent of their earnings.

References:

Informe sobre la situación del servicio civil en América Latina, Koldo Echebarría (Editor), Banco Interamericano de Desarrollo, Washington, DC, 2006, en <http://64.76.175.73/xwdesign/ws001/design/style000001/0000000020000001384.pdf>;

Revista Capital, Elena Martínez y Lorena Rubio, 09/05/2008, El sueldo de los elegidos, available at <http://www.capital.cl/reportajes-y-entrevistas/el-sueldo-de-los-elegidos.html>

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The list for higher ranked positions is available on the Servicio Civil web page. Otherwise, each service must publish on their web page the complete list of civil servants working there. That means the information is available, but it is not in just one place.

References:

Servicio Civil webpage, <http://www.serviciocivil.cl/>;
Public service web pages.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

Comments:

There is not report on how many complaints have been presented because of these appointments.

References:

Documentos de Trabajo n°94, September 2007, Rossana Costa y Mario Waissbluth, Tres Años del Sistema de Alta Dirección Pública en Chile, available online at http://www.mariowaissbluth.cl/descargas/alta_direccion.pdf;

Civil Service <http://www.serviciocivil.cl>

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

World Economic Forum, The Global Competitiveness Report 2008-2009, Chile Report, Available online at <http://www.weforum.org/en/initiatives/gcp/Global%20Competitiveness%20Report/index.htm>

Germán Mieres, Vicepresident Asociación Nacional de Funcionarios del Servicio de Impuestos Internos de Chile (Aneich), interviewed on Oct. 24, 2008

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

Caso Coimas was an important case in Chile: three lower chamber representatives were found guilty of bribery and they were banned from future public employment. Another example is that of Julio Rojas, a former governor of a Chilean province, who was accused of using public funds to finance the campaign for a representative of Adriana Muñoz on 2001. In September 2007, he was found guilty, sentenced to 51 days in jail and banned from public service for life.

References:

El Mercurio Online, Carolina Valenzuela, May 10, 2007, Suprema absuelve a Patricio Tombolini en caso Coimas, <http://www.emol.com/noticias/nacional/detalle/detallenoticias.asp?idnoticia=255411>

Itinerario de la corrupción 2007, Instituto Libertad, marzo de 2008, disponible en http://www.institutolibertad.cl/ie_185_it_corrup.pdf

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

78

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

Comments:

Law 19.653 states this compulsory disclosure for all elected authorities and those who were appointed by them. Directors of public policy agencies also have this obligation.

References:

Ley 19.653 (1999) sobre Probidad Administrativa Aplicable de los Órganos de la Administración del Estado, arts. 57-60

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

This article states that public servants and public authorities disrespect the integrity principle if they decide over matters in which they or their relatives have any involved interest. In these situations, they should inform their direct boss.

References:

Ley 19.653 (1999) sobre Probidad Administrativa Aplicable de los Órganos de la Administración del Estado, art. 62, nr. 6

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

They are banned for six months after leaving office to join the private sector companies they were overseeing.

References:

Ley 19.653 (1999) sobre Probidad Administrativa Aplicable de los Órganos de la Administración del Estado, art 56

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

It does not state a minimum amount. They are allowed to accept official donations, protocol gifts and small courtesy and good manners gestures.

References:

Ley 19.653 (1999) sobre Probidad Administrativa Aplicable de los Órganos de la Administración del Estado, art. 62, nr. 5

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

Asset disclosures should be filed in the General Accountability Office (Contraloría General de la República), at the national or regional levels.

References:

Ley 19.653 (1999) sobre Probidad Administrativa Aplicable de los Órganos de la Administración del Estado, art. 59

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Más de lo mismo, el camino de la derrota", Carlos Huneeus, El Mostrador, 6 octubre 2008 http://www.elmostrador.cl/modulos/noticias/constructor/noticia_nueva.asp?id_noticia=259962;

Jorge Insunza y omisión de sus asesorías a Codelco: Cometí un error y concurriré a la Comisión de Etica , La Tercera, 23 de agosto de 2008, en http://latercera.cl/contenido/23_42913_9.shtml;

"De funcionario público a director de empresa: Esa zona gris", Foro Ciudadano, Radio Universidad de Chile, 19 abril 2006, <http://www.radio.uchile.cl/notas.aspx?idNota=29175>;

"Todos los hombres de Lagos", revista Capital número 203 (04 al 17 de may 2007), en <http://www.capital.cl/reportajes-y-entrevistas/todos-los-hombres-de-lagos-4.html>;

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

Comments:

The law is not specific, so there are broad interpretations of what gifts public officers are allowed to accept.

References:

Buenas practicas en probidad, transparencia y acceso a la información en la administración del Estado”, Secretaria Ejecutiva Agenda de Probidad y Transparencia, Gobierno de Chile, julio 2007;

Subsecretaria de Telecomunicaciones, Premian a Subtel por sus buenas prácticas de probidad, transparencia y acceso a la información, available at http://www.subtel.cl/prontus_subtel/site/artic/20070720/pags/20070720121537.html;

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

Comments:

The Ciper article determined that there are no statistics about recusal in the Senate. Only two senators (Andrés Chadwick and Eduardo Frei) excused themselves from voting in the studied period when they had to vote about their brothers' nominations.

References:

Centro de Investigación e Información Periódística (Ciper), Juan Pablo Figueroa y Pedro Ramírez, Oct. 3, 2008, Las acciones y sociedades que los senadores no declararon, <http://ciperchile.cl/> ;

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Ciper article states that Senate asset disclosures are not being audited. However, the article itself is a proof that independent media can do it. The tax agency does not audit asset disclosures.

References:

Centro de Investigación e Información Periodística (Ciper), Juan Pablo Figueroa y Pedro Ramírez, Oct. 3, 2008, Las acciones y sociedades que los senadores no declararon, <http://ciperchile.cl/> ;

Germán Mieres, Vicepresident Asociación Nacional de Funcionarios del Servicio de Impuestos Internos de Chile (Aneiich), interviewed on Oct. 24, 2008

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

67

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

Asset disclosures should be filed in the General Accountability Office (Contraloría General de la República), at national or regional level. Article 61 states that asset disclosures are public records (available to anyone who requires them) and that they have to be updated every four years.

References:

Ley 19.653 (1999) sobre Probidad Administrativa Aplicable de los Órganos de la Administración del Estado, arts. 59 and 61

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In some cases, disclosures are not available or can only be consulted but not downloaded from the internet.

References:

Centro de Investigación e Información Periodística (Ciper), Juan Pablo Figueroa y Pedro Ramírez, May 29, 2008, Los bienes, platas y deudas que el Senado no ha querido publicar <http://ciperchile.cl/2008/05/29/los-bienes-platas-y-deudas-que-el-senado-no-ha-querido-publicar/>

Jorge Burgos (diputado, lower chamber representative), La transparencia activa y el patrimonio de las autoridades, June 23, 2008 Blog post, <http://jburgos.blogspot.com/2008/06/la-transparencia-activa-y-el-patrimonio.html>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In some cases, disclosures are not available or can only be consulted but not downloaded from the internet.

References:

Centro de Investigación e Información Periodística (Ciper), Juan Pablo Figueroa y Pedro Ramírez, May 29, 2008, Los bienes, platas y deudas que el Senado no ha querido publicar <http://ciperchile.cl/2008/05/29/los-bienes-platas-y-deudas-que-el-senado-no-ha-querido-publicar/> ;

Jorge Burgos (diputado, lower chamber representative), La transparencia activa y el patrimonio de las autoridades, June 23, 2008, Blog post, <http://jburgos.blogspot.com/2008/06/la-transparencia-activa-y-el-patrimonio.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

38

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

This Law modifies the administrative statute (Law 18.834), protecting civil servants from being administratively punished, transferred to another city or demoted.

References:

LEY NUM. 20.205 (2007) Protege al Funcionario que Denuncia Irregularidades y Faltas al Principio de Probidad

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Protection is very weak. Public servants cannot be removed within three months after they blow the whistle. The law does not encourage public servants to report corruption.

References:

Audidores internos denuncian acoso y despidos, Teletrece, 24 julio 2008 en <http://teletrece.canal13.cl/t13/html/Secciones/Reporteros/349152limprimirq1.html>;

Varios ex funcionarios de Codelco fueron despedidos por denunciar o saber de ciertas irregularidades, En la mira, Chilevisión, http://www.chilevision.cl/home/index.php?option=com_content&task=view&id=118046&Itemid=670;

La Tercera, Leonidas Montes, op-ed, Corrupción: Una ley ineficaz, http://www.cepchile.cl/dms/lang_1/doc_4027.html

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

There is no special protection for citizens who report corruption. There is some protection for public servants.

References:

LEY NUM. 20.205 (2007) Protege al Funcionario que Denuncia Irregularidades y Faltas al Principio de Probidad

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

There is no protection for private sector employees.

References:

LEY NUM. 20.205 (2007) Protege al Funcionario que Denuncia Irregularidades y Faltas al Principio de Probidad

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is no internal mechanism. It is the responsibility of the Public Prosecution Agency.

References:

LEY NUM. 20.205 (2007) Protege al Funcionario que Denuncia Irregularidades y Faltas al Principio de Probidad

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The law states civil servants should report corruption to the national prosecutor (Ministerio Público), police, or competent authority.

References:

LEY NUM. 20.205 (2007) Protege al Funcionario que Denuncia Irregularidades y Faltas al Principio de Probidad, art 1.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no internal mechanism. It is the responsibility of the Public Prosecution Agency.

References:

LEY NUM. 20.205 (2007) Protege al Funcionario que Denuncia Irregularidades y Faltas al Principio de Probidad

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no internal mechanism. It is the responsibility of the Public Prosecution Agency.

References:

LEY NUM. 20.205 (2007) Protege al Funcionario que Denuncia Irregularidades y Faltas al Principio de Probidad

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

The law states that civil servants should report corruption to the national prosecutor (Ministerio Público), police, or competent authority.

References:

LEY NUM. 20.205 (2007) Protege al Funcionario que Denuncia Irregularidades y Faltas al Principio de Probidad, art 1.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

13
IV-3. Procurement

51. Is the public procurement process effective?

55

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

Article 62 states that public servants and public authorities disrespect the integrity principle if they decide over matters in which they or their relatives have any involved interest. In these situations, they should inform their direct boss.

References:

Ley 19.653 (1999) sobre Probidad Administrativa Aplicable de los Órganos de la Administración del Estado, art. 62, nr. 6

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

Professional training is encouraged in all services, but it is not mandatory.

References:

Ley n° 18.834, sobre Estatuto Administrativo;
LEY NUM. 19.886 Ley de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios;
Decreto 250/2004 Ministerio de Hacienda aprueba Reglamento de la Ley N°19.886 de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes job requirements are specific enough to fit just the preferred candidate.

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

Just like all other civil servants, public procurement officials should provide this information when they start their job and then update it every four years, but there is no mechanism or agency that monitors them over a short term.

References:

Ley 19.653 (1999) sobre Probidad Administrativa Aplicable de los Órganos de la Administración del Estado, art. 59

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

When contracts are higher than 1.000 unidades tributarias mensuales (UTM) (US\$70.000), public (open) bidding is mandatory.

References:

Decreto 250/2004 Ministerio de Hacienda aprueba Reglamento de la Ley N°19.886 de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios, art. 9

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

The law specifies the exceptions.

References:

Decreto 250/2004 Ministerio de Hacienda aprueba Reglamento de la Ley N°19.886 de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios, arts. 10, 51 & 62

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

The law states the review procedures.

References:

LEY NUM. 19.886 Ley de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios, arts. 24-27

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

LEY NUM. 19.886 Ley de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios, art. 26

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | **NO**

References:

Ley n° 18.834, sobre Estatuto Administrativo;

LEY NUM. 19.886 Ley de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios;

Decreto 250/2004 Ministerio de Hacienda aprueba Reglamento de la Ley N°19.886 de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | **0**

Comments:

There is no such black list.”

References:

Ley n° 18.834, sobre Estatuto Administrativo;

LEY NUM. 19.886 Ley de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios;

Decreto 250/2004 Ministerio de Hacienda aprueba Reglamento de la Ley N°19.886 de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

The constitution stipulates that all state documents should be considered public. Decree 250, art. 56 states that the information system is open to public oversight.

References:

Constitución Política de Chile, art. 8;
Decreto 250/2004 Ministerio de Hacienda aprueba Reglamento de la Ley N°19.886 de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Decreto 250/2004 Ministerio de Hacienda aprueba Reglamento de la Ley N°19.886 de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios, art. 57

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In this aspect the system is efficient.

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They are available for free online.

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The system is efficient. However, sometimes public procurements are advertised very late, which means that some companies do not have enough time to prepare the necessary documentation or to develop the project.

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can get information about the winner, but not about the rest of the candidates (therefore it is impossible to know which were the options that were set aside.)

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

100

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

There has been no privatization in this period. There are no specific laws. Public companies belonged to Corporación de Fomento de la Producción (Corfo), and later were transferred to Sistema de Empresas Públicas (SEP) for its management. Corfo can decide in a board meeting whether or not to sell any of its companies, and then call an open bid. In the open bid, there will be technical and economical criteria to be considered.

References:

There are no specific laws.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

This article states that public servants and public authorities disrespect the integrity principle if they decide over matters in which they or their relatives have any involved interest. In these situations, they should inform their direct boss.

References:

Ley 19.653 (1999) sobre Probidad Administrativa Aplicable de los Órganos de la Administración del Estado, art.w 62, nr 6

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

There were no privatizations in the period.

References:

María Olivia Monckeberg, Investigative Journalist, Author of El Saqueo (The robbery, the history of Chilean privatization process), interviewed on Oct. 24, 2008; Alvaro Medina, journalist (he reported on economic issues during the last privatization process), interviewed on Oct. 24, 2008.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

80

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:

All documents are public now. Privatization decisions should be made on a Corfo Board, and these records are public. There were no privatizations in the period of time under study.

References:

Constitución Política de Chile, art. 8;
LEY NUM. 6.640 (1941) Aprueba el Texto Refundido de la Ley N° 6,334, que Creó las Corporaciones de Reconstrucción y Auxilio y de Fomento a la Producción

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

They were effectively advertised during the last privatization process (water companies), according to both journalists interviewed.

References:

María Olivia Monckeberg, Investigative Journalist, Author of El Saqueo (The robbery, the history of Chilean privatization process), interviewed on Oct. 24, 2008; Alvaro Medina, journalist (he reported on economic issues during the last privatization process), interviewed on Oct. 24, 2008.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

As there is no privatization law, what will rule is the mandatory public character of all governmental documents. Besides, the public procurement procedure could be taken as a precedent. It says the results should be announced 24 hours after the decision is formally made (when resolution was signed). This law and the constitution article did not exist when the last privatizations were made.

References:

Chilean Constitution, art. 8;
Decreto 250/2004 Ministerio de Hacienda aprueba Reglamento de la Ley N°19.886 de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios, art. 50

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There were no privatizations during the months covered by this study. The last privatizations held in Chile (water companies were sold from 1998 to 2000) were more transparent than those held during the dictatorship. However, according to Medina, citizens did not have direct access to information, only to what the press reported. Back then, governmental documents were not considered public" (available to citizens): article 8th of the constitution did not yet exist, and Law 19.653 was approved in 1999.

References:

María Olivia Monckeberg, Investigative Journalist, Author of El Saqueo (The robbery, the history of Chilean privatization process), interviewed on Oct. 24, 2008; Alvaro Medina, journalist (he reported on economic issues during the last privatization process), interviewed on Oct. 24, 2008.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Today, it would be possible. However, when the last privatizations were made (1998-2000) article 8th of the constitution did not exist and integrity Law (19.653) had just been approved. During that time, citizens could only get the information through media reports, according to Medina. There have not been any privatizations during the months covered by this study.

References:

María Olivia Monckeberg, Investigative Journalist, Author of El Saqueo (The robbery, the history of Chilean privatization process), interviewed on Oct. 24, 2008; Alvaro Medina, journalist (he reported on economic issues during the last privatization process), interviewed on Oct. 24, 2008.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-1. ⁹⁵ National Ombudsman

56. Is the national ombudsman effective?

30

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

This is not an autonomous body, but a council created by the president, who appoints all members, the president and the general secretary of this commission. The General Accountability Office (Contraloría General de la República) is independent, but it is not its mission to act as an ombudsman.

References:

Decreto Supremo 65/2001, Ministerio General de la Presidencia, Crea Comisión Asesora Presidencial para la Protección de los Derechos de las Personas;
Ley 18.995 Ley De Organización Y Atribuciones De La Contraloría General De La República

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Chile does not have an ombudsman proper. It is a political officer appointed by the president. Therefore, he/she should satisfy his/her orders.

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Chile does not have an ombudsman proper. It is a political officer appointed by the president. Therefore, he/she can be removed by the president anytime.

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The staff is professional.

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

This service staff is not appointed through the system that warrants professionalizing the public service.

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

It is not considered specifically in the budget.

References:

Presupuesto año 2008, <http://geminis.djpres.cl/virlib/Vista1.aspx?idMinisterio=-1&idSistema=1&idVista=1&intPeriodo=2008>;
Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman produces reports, but it is not forced to do so; these reports do not have a deadline or schedule. Mainly, the core mission of the ombudsman is to make reports to the president.

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

This happens very rarely. The April-June 2008 reports says it had only managed eight cases.
The problem is that the Ombudsman does not have the power to force other institutions to collaborate with it.

References:

Segundo informe Trimestral 2008, Comisión Defensora Ciudadana, http://www.comisiondefensoraciudadana.cl/download.php?file_name=publicaciones/publicacion_48987e5377b27.pdf;

Primer informe Trimestral 2008, Comisión Defensora Ciudadana, http://www.comisiondefensoraciudadana.cl/download.php?file_name=publicaciones/publicacion_482dbdd6e5bf9.pdf;

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

It does not have the power to impose penalties. It can recommend that to other authorities.

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Sources do not remember a high impact case about this.

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman acts on complaints in a very short period and the response to citizens is very fast. The problem is that not many citizens know about its existence, and even fewer know what it actually does. Fundación Pro Bono has worked very closely with the Ombudsman office, even helping them with its cases. The problem is that the Ombudsman does not have the power to force other institutions to collaborate with it.

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues

can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

All public records should be available to public oversight. That includes those made by the ombudsman. However, there is not an explicit clause on that. Their reports are intended to help the president make decisions.

References:

Constitución política de Chile, art 8;
Decreto Supremo 65/2001, Ministerio General de la Presidencia, Crea Comisión Asesora Presidencial para la Protección de los Derechos de las Personas;

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available online.

References:

Comisión Defensora Ciudadana, Publicaciones, http://www.comisiondefensoraciudadana.cl/pub/publicaciones.php?tipo_publicacion_id=1;

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;

Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

This agency receives all the claims citizens have about the public services of the Executive branch. The General Accountability Office (Contraloría General de la República) also receives complaints about Executive branch procedures (national, regional or local governments.)

References:

Decreto Supremo 65/2001, Ministerio General de la Presidencia, Crea Comisión Asesora Presidencial para la Protección de los Derechos de las Personas;

Ley 18.995 Ley De Organización Y Atribuciones De La Contraloría General De La República

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

88

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The General Accountability Office (Contraloría General de la República) is an independent, autonomous body. Its head is appointed by the president with Senate approval. He/she (or the second in line) cannot be removed by the executive branch.

References:

Constitución Política de Chile, arts. 98-100;
Decreto 2421, 1964, Fija el Texto Refundido de la Ley de Organización y Atribuciones de la Contraloría General de la República

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;

Revista Chilena de Derecho, vol. 35 N° 2, 2008, Alejandro Vergara Francisco Zúñiga, Contrapunto sobre el Rol de la Contraloría General de la República, available at http://www.scielo.cl/scielo.php?script=sci_arttext&pid=S0718-34372008000200012&lng=es&nrm=iso;

La Tercera, Fernando Villegas, 03/16/2008, Ramiro Mendoza, en el ojo del huracán, available at http://www.icarito.cl/medio/articulo/0,0,3255_5666_342668591_00.html

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Contraloría has 1.512 employees, of which 200 are lawyers and 400 accountants.

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;

Contraloría se apresta a fiscalizar 65 mil millones de dólares, available at http://www.lanacion.cl/prontus_noticias_v2/site/artic/20071129/pags/20071129204720.html;

La Tercera, Fernando Villegas, 03/16/2008, Ramiro Mendoza, en el ojo del huracán, available at http://www.icarito.cl/medio/articulo/0,0,3255_5666_342668591,00.html

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The head of the institution has autonomy to form his governing team.

References:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;

Contraloría se apresta a fiscalizar 65 mil millones de dólares, available at http://www.lanacion.cl/prontus_noticias_v2/site/artic/20071129/pags/20071129204720.html;

La Tercera, Fernando Villegas, 03/16/2008, Ramiro Mendoza, en el ojo del huracán, available at http://www.icarito.cl/medio/articulo/0,0,3255_5666_342668591,00.html

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget assigned by the Treasury, and the Senate has to confirm or reassign it. For 2008, this institution received around US\$60 million.

References:

Presupuesto año 2008, Dirección de Presupuestos, Ministerio de Hacienda, http://www.dipres.cl/fr_presupuesto.html;
Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

They are all available online. Sánchez states that these reports should be written in a more accessible language for all citizens.

References:

<http://www.contraloria.cl>;
Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008;

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Usually the government acts on these findings, but in some cases there are some political considerations that delay this decision.

References:

Cuenta Pública del Contralor General, año 2007, Ramiro Mendoza Zúñiga, 05/08/2008, http://www.contraloria.cl/NewPortal/portal2/ShowBinary/BEA%20Repository/portalCGR/Noticias/Sala_de_Prensa/Noticias/2008/Archivos

La Tercera, 02/19/2008, Escándalo por pago de subvenciones derriba a seremi de Educación, http://www.quepasa.cl/medio/articulo/0,0,3255_255243945_335940113,00.html ;

La Tercera, 02/20/2008, Contraloría advirtió desorden administrativo en Seremi en febrero de 2006 http://www.quepasa.cl/medio/articulo/0,0,3255_255243945_336250928,00.html

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

Comments:

The institution is permanently auditing. However, it cannot reach some important bodies, such as Corporación Nacional del Cobre, the public company that owns public copper mines in Chile, unless the Parliament asks Contraloría to investigate.

References:

La Nación, Claudio Leiva Cortés, 05/14/2008, Contraloría Envía Oficio A Fiscalía, Http://Www.Lanacion.Cl/Prontus_Noticias_V2/Site/Artic/20080513/Pags/20080513224355.Html;

Cuenta Pública Del Contralor General, Año 2007, Ramiro Mendoza Zúñiga, 05/08/2008, Http://Www.Contraloria.Cl/Newportal/Portal2/Showbinary/BEA%20Repository/Portalcgr/Noticias/Sala_De_Prensa/Noticias/2008/Archivos

La Tercera, Mauricio Donoso, 08/29/2008, Contraloría investigará asesorías pagadas por Codelco, http://www.latercera.cl/contenido/23_44900_9.shtml

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

67

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

All documents are public.

References:

Constitución Política de Chile, art. 8

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

They are all available online, but some information takes too long to be downloaded.

References:

<http://www.contraloria.cl>:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

New reports are available online, but some of them can be studied only in their offices, which involves a lot of time investment.

References:

<http://www.contraloria.cl>:

Moisés Sánchez, Director Ejecutivo, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

The General Accountability Office (Contraloría General de la República) is an independent, autonomous body which oversees all branches of the public service.

References:

Constitución Política de Chile, arts. 98-100;

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

85
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Staff names, ranks, positions in all public services can be checked online.

References:

Servicio de Impuestos Internos, Cuenta Pública 2007, Marzo de 2008,

http://www.sii.cl/pagina/actualizada/noticias/2008/270308noti01ym_cp.pdf

Asociación Nacional de Empleados Fiscales (ANEF), 05/03/2008, SII, SERCOTEC Y SERVIU Ganan Premio de la Excelencia Institucional, http://www.anef.cl/portal/index.php?option=com_content&view=article&id=81:sii-sercote-y-serviu-ganan-premio-de-la-excelencia-institucional&catid=39:anef&Itemid=70;

Servicio de Impuestos Internos
<http://www.sii.cl/transparencia/>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In 2008 it received a budget of US\$170 million.

References:

Presupuesto año 2008, Dirección de Presupuestos, Ministerio de Hacienda,
http://www.dipres.cl/fr_presupuesto.html;

Germán Mieres, Vicepresident Asociación Nacional de Funcionarios del Servicio de Impuestos Internos de Chile (Aneiih), interviewed on Oct. 24, 2008

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Cynthia Perisic Ivandic, General Manager, Asociación Logística de Chile A.G., interviewed on Oct. 27, 2008;

Servicio Nacional de Aduana

<http://www.aduana.cl/transparencia/index.html>;

Catalina Silva, Public Relations Officer, Camara Aduanera de Chile

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In 2008 it received a budget of US\$70 million.

References:

Presupuesto año 2008, Dirección de Presupuestos, Ministerio de Hacienda, http://www.dipres.cl/fr_presupuesto.html;

Cynthia Perisic Ivandic, General Manager, Asociación Logística de Chile A.G., interviewed on Oct. 27, 2008;

Catalina Silva, Public Relations Officer, Camara Aduanera de Chile

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

El Servicio de Impuestos Internos (Inner tax service) is the office that collects taxes. It was created by D.F.L. N° 7/ 1980,

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

100

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Germán Mieres, Vicepresident Asociación Nacional de Funcionarios del Servicio de Impuestos Internos de Chile (Aneich), interviewed on Oct. 24, 2008;

Cristián García-Huidobro, Gerente Corporativo of Acción Emprendedora (NGO), interviewed on Oct. 29, 2008

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

Servicio Nacional de Aduanas, created by LEY-19479/1996 Ministerio de Hacienda, Introduce Modificaciones a la Ordenanza de Aduanas y a la Ley Orgánica del Servicio Nacional de Aduanas, Dicta Normas sobre Gestión y Personal de Dicho Servicio y Sustituye su Planta de Personal

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Cynthia Perisic Ivandic, General Manager, Asociación Logística de Chile A.G., interviewed on Oct. 27, 2008;
Catalina Silva, Public Relations Officer, Camara Aduanera de Chile

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

50

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

The government companies are managed by autonomous public bodies, but these are ruled by people appointed by political criteria. The development corporation (Corfo, Ley 6.640, art 22) is managed by a council directed by the minister of Economy (who presides it); ministers of Treasury, Agriculture, Planification and Foreign Affairs; Corfos vice-president and two councilors are appointed by the president of Chile. The companies are actually ruled by another council, Consejo Directivo del Sistema de Empresas Públicas (SEP). This council has nine members: three appointed by the president of Chile, one of them as council president; two are appointed by the Treasury minister; one appointed by the Economy minister, three appointed by Corfo's vice-president; two of them could be suggested by Ministry of Transportation, and the other by the Mining Ministry. Codelco Board (DL 1350) is lead by the Mining Ministry; three board members are appointed by the president of Chile (one of them should be a high ranked member of the armed forces, and another should be a civil engineer); A representative of Copper Workers confederation, and a representative of the National Association of Copper supervisors are also present. The National TV Channel (Televisión Nacional de Chile) has a seven-member board. One of them is appointed by the president of Chile; the other six are appointed by the president of Chile, with the Senate approval. Mainly, the companies managed by the state are vulnerable to political interference (specially those in the SEP.)

References:

LEY NUM. 6.640 (1941) Aprueba el Texto Refundido de la Ley N° 6,334, que Creó las Corporaciones de Reconstrucción y Auxilio y de Fomento a la Producción;

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Staff names, ranks, positions in all public services can be checked online.

References:

Alvaro Medina, journalist (he reported on economic issues during the last privatization process), interviewed on Oct. 24, 2008;

Sistema de Empresas del Estado
<http://www.sepchile.cl/transparencia/index.html> .

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Alvaro Medina, journalist (he reported on economic issues during the last privatization process), interviewed on Oct. 24, 2008;

Sistema de Empresas del Estado
<http://www.sepchile.cl/transparencia/index.html> .

Presupuesto año 2008,
<http://geminis.dipres.cl/virilib/Vista1.aspx?idMinisterio=-1&idSistema=1&idVista=1&intPeriodo=2008;>

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

It does not initiate its own investigations. Actually, opposition think tanks accused the agency of blocking investigations.

References:

Alvaro Medina, journalist (he reported economic issues during last privatization process), interviewed on Oct. 24, 2008;

Diario Financiero, María Luisa Brahm, 10/29/2007, ¿Cuál es la Reingeniería que requiere el SEP?, available online at http://www.institutolibertad.cl/df_29_10_07_il.pdf;

Diario Financiero, Adela Cerón, 10/29/2007, La comodidad de la privatización, available online at http://www.institutolibertad.cl/df_29_10_07_il.pdf;

Diario Financiero, Cristián Valenzuela, 10/29/2007, Autonomía, ahora, available online at http://www.institutolibertad.cl/df_29_10_07_il.pdf;

La Tercera, Alexander Galetovic y Leonidas Montes, 10/07/2007, EL SEP, LOS PUERTOS Y EL SÍNDROME DE LOS TRES CHIFLADOS, available at http://www.cepchile.cl/dms/lang_1/doc_3973.html

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

A very controversial situation involved former president of Sistema de empresas públicas, Patricio Rojas, when one of his acquaintances was investigated in a public train service embezzlement case. Corruption has not yet been proven (the case is still in court), but Rojas' behavior was certainly not neutral. This revealed that political criteria is still an important element in how state-owned companies are ruled.

References:

Alvaro Medina, journalist (he reported economic issues during last privatization process), interviewed on Oct. 24, 2008;

Diario Financiero, María Luisa Brahm, 10/29/2007, ¿Cuál es la Reingeniería que requiere el SEP?, available online at http://www.institutolibertad.cl/df_29_10_07_il.pdf;

Diario Financiero, Adela Cerón, 10/29/2007, La comodidad de la privatización, available online at http://www.institutolibertad.cl/df_29_10_07_il.pdf;

Diario Financiero, Cristián Valenzuela, 10/29/2007, Autonomía, ahora, available online at http://www.institutolibertad.cl/df_29_10_07_il.pdf;

La Tercera, Alexander Galetovic y Leonidas Montes, 10/07/2007, EL SEP, LOS PUERTOS Y EL SÍNDROME DE LOS TRES CHIFLADOS, available at http://www.cepchile.cl/dms/lang_1/doc_3973.html

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

70

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

The constitution states that public office documents must be available to citizens. All state companies are considered Sociedades Anónimas.

References:

Constitución Política de Chile, art. 8;
Ley N° 18.046 (1981) sobre Sociedades Anónimas, art 54.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

The annual reports and financial records are available online. However, not all state-owned companies have updated web sites.

References:

Alvaro Medina, journalist (he reported economic issues during last privatization process), interviewed on Oct. 24, 2008;

Sistema de Empresas

<http://www.comitesep.cl/>

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

State-owned companies have to be audited by external companies according to the IAS 240 norm.

References:

Alvaro Medina, journalist (he reported economic issues during last privatization process), interviewed on Oct. 24, 2008;

Código SEP (Code for state-owned companies) .

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Annual records are available online.

References:

Alvaro Medina, journalist (he reported economic issues during last privatization process), interviewed on Oct. 24, 2008;

Sistema de Empresas

<http://www.comitesep.cl/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

Annual records are available online.

References:

Alvaro Medina, journalist (he reported economic issues during last privatization process), interviewed on Oct. 24, 2008;

Sistema de Empresas

<http://www.comitesep.cl/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

There are two public corporations. The first one is the National Copper Corporation (Corporación Nacional del Cobre, CODELCO, Decreto Ley 1.350), that exploits national copper mines. The second one is the Corporación de Fomento a la Producción (CORFO, Ley 6.640), which owns the public companies. These companies are managed by the Sistema de Empresas del Estado (SEP), created by CORFO's Council agreement (Acuerdo del Consejo de CORFO N 1.879, de 30 de enero de 1997), puesto en ejecución por la Resolución (A) N 18, de 3 de febrero de 1997, del Vicepresidente Ejecutivo. Mediante este Acuerdo y respectiva Resolución se creó y reglamentó el Comité Sistema Administrador de Empresas – SAE.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

73 V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

Any commercial activity which requires physical space needs to ask for a license. There are different kinds of licenses, depending on the activity that will be developed (school, restaurants, food stores, pubs.)

References:

DL 3063 1996 / Ministerio del Interior, Establece normas sobre rentas municipales, art. 23

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

If a license is denied, people can send complaints to the mayor. If they still feel the response was not fair, they can file a complaint in the Appeal Court.

References:

LEY N° 18.695, Orgánica Constitucional de Municipalidades, ART. 141,

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The whole process can take around two months.

References:

Germán Mieres, Vicepresident Asociación Nacional de Funcionarios del Servicio de Impuestos Internos de Chile (Aneiich), interviewed on Oct. 24, 2008;
Mario Astorga De Valenzuela, Director Ejecutivo, Centro de Investigación de Políticas Públicas para la PyME, interviewed on Oct. 24, 2008

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Germán Mieres, Vicepresident Asociación Nacional de Funcionarios del Servicio de Impuestos Internos de Chile (Aneiich), interviewed on Oct. 24, 2008;
Mario Astorga De Valenzuela, Director Ejecutivo, Centro de Investigación de Políticas Públicas para la PyME, interviewed on Oct. 24, 2008

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

D.S. N° 594/99 del Ministerio de Salud, Aprueba Reglamento sobre Condiciones Sanitarias y Ambientales Básicas en los lugares de Trabajo

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

D.S. N° 594/99 del Ministerio de Salud, Aprueba Reglamento sobre Condiciones Sanitarias y Ambientales Básicas en los lugares de Trabajo;
Ley 16.744 Sobre Accidentes de Trabajo y Enfermedades Profesionales

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

D.S. N° 594/99 del Ministerio de Salud, Aprueba Reglamento sobre Condiciones Sanitarias y Ambientales Básicas en los lugares de Trabajo;
Ley 16.744 Sobre Accidentes de Trabajo y Enfermedades Profesionales

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Actually, Astorga and García-Huidobro complained that these inspections do not discriminate about the size of the business, asking small businesses to achieve standards designed for all kinds of business.

References:

García-Huidobro Gerente Corporativo of Acción Emprendedora (NGO), interviewed on Oct. 29, 2008;
Mario Astorga De Valenzuela, Director Ejecutivo, Centro de Investigación de Políticas Públicas para la PyME, interviewed on Oct. 24, 2008

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Actually, Astorga and García-Huidobro complained that these inspections do not discriminate about the size of the business, asking small businesses to achieve standards designed for all kinds of business.

References:

García-Huidobro Gerente Corporativo of Acción Emprendedora (NGO), interviewed on Oct. 29, 2008;
Mario Astorga De Valenzuela, Director Ejecutivo, Centro de Investigación de Políticas Públicas para la PyME, interviewed on Oct. 24, 2008

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Actually, Astorga and García-Huidobro complained that these inspections do not discriminate about the size of the business, asking small businesses to achieve standards designed for all kinds of business.

References:

García-Huidobro Gerente Corporativo of Acción Emprendedora (NGO), interviewed on Oct. 29, 2008;
Mario Astorga De Valenzuela, Director Ejecutivo, Centro de Investigación de Políticas Públicas para la PyME, interviewed on Oct. 24, 2008

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

83
VI-1. Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

Código Penal, art. 7

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

Código Penal, art. 161 B

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Código Penal, art. 250

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Código Penal, arts. 248, 249

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

This was adjusted according to international regulations.

References:
Código Penal, art. 250 bis A

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:
Código Penal, arts. 233-238

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:
Código Penal, art. 247 bis

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:
Ley 19-913 Crea la Unidad de Análisis e Inteligencia Financiera y modifica el Código Penal en materia de lavado o blanqueo de activos, art. 19

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Código Penal, art 292, 293 y ss;

Ley 19-913 Crea la Unidad de Análisis e Inteligencia Financiera y modifica el Código Penal en materia de lavado o blanqueo de activos, art. 20

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

83

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The General Accountability Office (Contraloría General de la República) and The General Prosecutor's Office (Ministerio Público) are headed by officers appointed by the president and approved by the Senate. They serve fixed terms and cannot be removed from their positions by the government. The Unit of Analysis and Financial Intelligence (Law 19.640) belongs to the Treasury Ministry, so it could be more vulnerable than the other two. However, The Anti-Corruption Unit in the Ministerio Público (the agency that has the mandate to trial officers involved in corruption cases) is protected from political interference. The Consejo de Defensa del Estado prosecutes those who have stolen or misused public money.

References:

Constitución Política de Chile, arts. 98-100;

Ley 18.995 Ley De Organización Y Atribuciones De La Contraloría General De La República;

Ley 19-913 Crea la Unidad de Análisis e Inteligencia Financiera y modifica el Código Penal en materia de lavado o blanqueo de activos;

Ley N° 19.640 (1999) Establece la Ley Orgánica Constitucional del Ministerio Público

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

Comments:

Usually, appointments within Contraloría and Ministerio Público follow professional criteria. In the Executive branch, appointments are made through the Public Service System. However, the president of the board of Consejo de Defensa del Estado is appointed by the president of the country.

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Hernán Fernández, Sub-Director of the Anti-Corruption Unit, Ministerio Público, interviewed on Oct. 28, 2008

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

Comments:

There is not a single anti-corruption unit, but several units that perform such tasks. Ministerio Público (Public Prosecutor), Contraloría General de la República (Government Accountability Office), Unidad de Análisis Financiero (in the Treasury Ministry), and Consejo de Defensa del Estado (is an autonomous body that defends Chilean State interests.) The first two are autonomous bodies, whose top people are appointed by the president, with Senate approval. They can be removed only by impeachment. The head of the third unit is appointed through the Civil Service system; his/her work does not depend on his/her boss' or political party support. In the last case there is a board of councilors, among whom the president can choose one to preside. In the last four years, none of the heads of these units have been removed.

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Hernán Fernández, Sub-Director of the Anti-Corruption Unit, Ministerio Público, interviewed on Oct. 28, 2008

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Usually, appointments within Contraloría and Ministerio Público follow professional criteria, but in the Executive branch there are no warranties that appointments achieve standards of independence. The president of the board of Consejo de Defensa de Estado is appointed by the president of the country.

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Hernán Fernández, Sub-Director of the Anti-Corruption Unit, Ministerio Público, interviewed on Oct. 28, 2008

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Hernán Fernández, Sub-Director of the Anti-Corruption Unit, Ministerio Público, interviewed on Oct. 28, 2008

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Hernán Fernández, Sub-Director of the Anti-Corruption Unit, Ministerio Público, interviewed on Oct. 28, 2008

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Hernán Fernández, Sub-Director of the Anti-Corruption Unit, Ministerio Público, interviewed on Oct. 28, 2008

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

As there are several agencies working together, each case should be studied. Contraloría does not have enough power to impose penalties; Ministerio Público has to take cases to courts; Consejo de Defensa del Estado can develop reports and recommend punishments, but it cannot impose them.

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Hernán Fernández, Sub-Director of the Anti-Corruption Unit, Ministerio Público, interviewed on Oct. 28, 2008

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

During the first semester of 2008, Contraloría investigated the relationship among the computer systems company GMA and some local governments. http://www.tercera.cl/contenido/23_20233_9.shtml
http://www.latercera.cl/contenido/23_32861_9.shtml

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Hernán Fernández, Sub-Director of the Anti-Corruption Unit, Ministerio Público, interviewed on Oct. 28, 2008

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Hernán Fernández, Sub-Director of the Anti-Corruption Unit, Ministerio Público, interviewed on Oct. 28, 2008

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Not all of them receive complaints.

References:

Silvana Lauzán, Directora del Programa de Derechos Humanos y Democracia, Centro de Derechos Humanos, Universidad de Chile, interviewed on Oct. 24, 2008; Hernán Fernández, Sub-Director of the Anti-Corruption Unit, Ministerio Público, interviewed on Oct. 28, 2008

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

Contraloría General de la República (Constitución Política de Chile, arts. 98-100); Ley 18.995 Ley De Organización Y Atribuciones De La Contraloría General De La República); Unidad Anticorrupción de Ministerio Público; Unidad de Análisis e Inteligencia financiera (Ley 19-913 Crea la Unidad de Análisis e Inteligencia Financiera y modifica el Código Penal en materia de lavado o blanqueo de activos); Consejo de Defensa del Estado, Decreto con Fuerza de Ley N° 1/1993, Ministerio de Hacienda, Fija texto refundido, coordinado y sistematizado de la ley orgánica del Consejo de Defensa del Estado

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

References:

Código de Procedimiento Civil, Título XVIII (ARTS. 186-230) De la Apelación

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are huge differences from case to case. CEJA reports that cases might take as long as 260 days.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO

Forja, <http://www.redjusticiaforja.cl>;

Centro de Estudios de Justicia de las Américas (CEJA), Chile Country Report, available online at <http://www.cejamericas.org>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Even in cases where pro-bono lawyers are available, the cost of paperwork associated with an appeal is prohibitive to low-class people. Middle-class citizens do not have access to free attorneys.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

100

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

50

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

For civil penalties (when the individual is not jailed), it is very hard to get some judiciary decisions enforced. This is especially seen in cases pertaining to family matters.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

100

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitución Política de Chile, arts. 76-82

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Código Orgánico de Tribunales, art. 17, 3rd & 4th paragraph; art. 27 ter, h);

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Código Orgánico de Tribunales, arts. 332 & 333

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

Sergio Campos, journalist and anchor of El diario de Cooperativa (radio program), interviewed on Oct. 21, 2008;

Gustavo González, former director of Freedom of Expression Program, Universidad de Chile, interviewed on Oct. 23, 2008

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Sergio Campos, journalist and anchor of El diario de Cooperativa (radio program), interviewed on Oct. 21, 2008;
Gustavo González, former director of Freedom of Expression Program, Universidad de Chile, interviewed on Oct. 23, 2008

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

54

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

There is a region in Chile where ethnic conflicts are very frequent. According to Faúndes, social pressures here might influence judiciary decisions when mapuches are on trial.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

There may be some bias against women.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Constitución política de Chile, art. 19, punto 3

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

The UDP Annual report says that Chile does not achieve international standards in access to justice, mainly because of insufficient budget assigned to this sector.

References:

Informe Anual de Derechos Humanos 2008", Universidad Diego

Atina Chile, Julio Argomedo, 09/28/2007, Reportaje: Acceso a la justicia en Chile. La pobreza que nadie conoce, http://www.atinachile.cl/content/view/75629/Reportaje_Acceso_a_la_justicia_en_Chile_La_pobreza_que_nadie_conoce.html

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

A study cited by Faúndes revealed that a trial costs around US\$4,000. That is four times the salary of a middle-class worker.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

A study cited by Faúndes revealed that a trial costs around US\$4,000. That is more affordable to a small business than to a person, but it is still very expensive.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

For inhabitants of rural areas, courts are far and trips involve high costs. It is important to consider that it also means asking for time off from work, which makes it all the more difficult. For people living in urban areas, courts are accessible.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

83

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Police forces have a professional staff.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

The budget is sufficient for the agency to fulfill its basic mandate. The problem is that sometimes Carabineros undertakes assignments it is not meant to undertake (sch as judiciary notifications). That means they are misusing their resources.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

67

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | **NO**

Comments:

There is no independent mechanism. Citizens can complain to special units (DIPOLCAR, in Carabineros; Departamento V, in Investigaciones), but it is not very clear how these units proceed. Citizens can also file a complaint in court, or report the abuse to the Comisión that works as an ombudsman. There is a great chance that ordinary courts will declare themselves unable to judge Carabineros, as they fall under the jurisdiction of military law.

References:

Código de Justicia Militar

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Departamento V Asuntos Internos, Orden General N° 639, Policía de Investigaciones; Dirección de Inteligencia Policial de Carabineros;
Dirección Nacional de Inteligencia de Carabineros (DIPOLCAR), Orden General N°682, Carabineros de Chile.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

Centro de Investigación e Información Periodística (Ciper), Pedro Ramírez, Nov. 20, 2008, Paco-ladrón: Delinquentes de uniforme, <http://ciperchile.cl/>;

La Nación, Sept. 27, 2007, Detective de Investigaciones denuncia ilegal interceptación a su celular de parte de Asuntos Internos de la institución, available online at http://www.lanacion.cl/prontus_noticias_v2/site/artic/20070926/pags/20070926214134.html

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

It depends on the crime. If it is abuse of power, cases would be judged in military courts. If is bribery, corruption or homicide they are not immune.

References:
Código de Justicia Militar;

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

It depends on the crime. If it is abuse of power, cases would be judged in military courts. If is bribery, corruption or homicide they are not immune.

References:

Juan Jorge Faúndes, Coordinador Observatorio Ciudadano para el Acceso a la Justicia, NGO Forja, <http://www.redjusticiaforja.cl>;
Marcela Fajardo, Directora Ejecutiva, Fundación ProAcceso, interviewed on Oct. 24, 2008

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.