

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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ORIENTAL REPUBLIC OF URUGUAY

FINAL REPORT

(Adopted at the December 15, 2006 plenary session)

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

**FINAL REPORT ON IMPLEMENTATION IN THE ORIENTAL REPUBLIC OF
URUGUAY OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE
SECOND ROUND, AND ON FOLLOW-UP TO THE RECOMMENDATIONS
FORMULATED TO THAT COUNTRY IN THE FIRST ROUND¹**

INTRODUCTION

1. Contents of the Report

This Report presents, first, a review of implementation in the Oriental Republic of Uruguay of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the second round: Article III, paragraphs 5 and 8, and Article VI.

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

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, the Oriental Republic of Uruguay ratified the Inter-American Convention against Corruption on October 28, 1998, and deposited the respective instrument of ratification on December 7, 1998.

In addition, the Oriental Republic of Uruguay signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001.

I. SUMMARY OF INFORMATION RECEIVED

Response of the Oriental Republic of Uruguay

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Oriental Republic of Uruguay, and in particular from the Advisory Board on Financial and Economic Matters of State, which was evidenced, *inter alia*, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its Response, the Oriental Republic of Uruguay sent the provisions and documents it considered pertinent.

For its review, the Committee took into account the information provided by the Oriental Republic of Uruguay up to July 17, 2006, and that requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on December 15, 2006, at its tenth meeting, held at OAS Headquarters in Washington D.C., United States, December 11-16, 2006.

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

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

1.1. SYSTEMS OF GOVERNMENT HIRING

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

The Oriental Republic of Uruguay has a set of provisions related to the above systems, applicable to public servants generally, among which the following should be noted:

- Constitutional provisions such as those found in Section 76, which provides that all citizens may be called upon to work for the public service and Section 60, which provides that the law shall establish the Civil Service of the Central Administration, Autonomous Entities and Decentralized Services. This Section further establishes the administrative career whereby those public servants budgeted for the Central Administration are immovable, unless both the Senate and House of Representatives vote by majority to remove them.

- The Oriental Republic of Uruguay has a set of provisions applicable to public servants of the Executive branch, among which the following should be noted:

- Constitutional provisions such as those found in Section 59, which provides that the law shall establish the Public Servant Statute on the fundamental basis that the public servant exists for the function and the function does not exist for the public servant;² and Section 61, which provides that the aforementioned Statute shall establish, among others, the conditions for entry into the public administration for career staff, regulate their right to permanency in their posts, promotions, as well as their annual leave and leave for sickness.

- Statutory provisions such as Decree-Law 10.388 of February 13, 1943, which establishes the Public Servant Statute aforementioned in Section 59 of the Constitution. Articles 1 and 40 of this law provide that it is applicable to all public servants that hold a permanent, remunerated and pensionable position in the Executive branch, among others. Article 2 establishes the requirements to enter the public service, which includes submission to tests, examinations or competitions provided by the Statute or its regulations.³ This Decree-Law has been incorporated into the Arranged Text on Standards Concerning Public Servants (TOFUP), a compilation of provisions found in different laws regarding the conduct of public servants.⁴

² This section further provides that the Public Service Statute is also applicable to public servants that work for the judicial branch and the Court of Administrative Judicial Review, except those who hold a judicial office; the Court of Accounts; the Electoral Court and its dependencies; and the Decentralized Services. The military, police and diplomats are excluded, as they are regulated by their own law.

³ Other conditions for entry include being registered with the Civil Registry, have fulfilled the obligations with the law of Military Instruction, given evidence of moral aptitude, such as providing satisfactory information regarding the applicant's life, habits and be physically competent; see Article 2 of Decree-Law 10.388 of February 13, 1943, <http://www.parlamento.gub.uy/leyes/ley10388.htm>.

⁴ A copy of the TOFUP is found at the following internet address:
<http://www.jasesora.gub.uy/documentos/respuesta/TOFUP/tofup.doc>.

- Statutory provisions such as Law 16.127 of August 10, 1990,⁵ Article 5 and Law 16.170 of December 28, 1990,⁶ Article 44, provide that the following classified posts are to be filled through open competition and merit or merit and aptitude exam: University Professional; Technical Professional; Administrative; and Specialized.⁷ These are to be applied by the Executive branch, with exception of the military, police and diplomats, who are regulated by their own law; the Electoral Court; the Court of Accounts; the Court of Administrative Judicial Review; the Decentralized Services and Governmental Departments.

- Statutory provisions such as Law 16.134 of September 20, 1990,⁸ Article 11, provide the same regime for the following classified posts: Labor Personnel; Custodial and Similar Services; and those that are not found in the classification regime.

- Statutory provisions such as Law 17.556 of September 19, 2002⁹, Articles 30 and 31, regulate fixed term contracts¹⁰ for those that work in the Executive branch.¹¹ These positions are to be filled through public advertisement, and the selection be made based on a merit based competition and background and shall be made known through adequate electronic means. Article 8 of Decree 85/003 of February 28, 2003¹² further developed the provisions for disseminating the announcement of a post, requiring that it be made through the Official Journal, two national newspapers and by official electronic means. Article 9 of this Decree further provides that an Evaluation Tribunal shall be established by the agency where the post is available, for analysis and selection of candidates.

- Statutory and regulatory provisions such as Law 16.736 of January 5, 1996¹³ and Decree 303/96 of July 31, 1996,¹⁴ which provides for the hiring of Highly Specialized positions. These posts are to be publicized in the Official Journal 180 days before the starting date of the position (Article 718 of the Law, Article 4 of the Decree). They are to be hired through open public competition and the candidates should go through the same conditions and requirements of the Constitution and Laws to become a public servant (Article 3 of the Decree).

- Statutory provisions such as Law 16.320 of November 1, 1992,¹⁵ which provides a list of posts that are considered High Priority. There are three ways in which a candidate is chosen for these posts. 1) a Minister proposes a candidate, whose background is sent to the Technical Selection Commission to evaluate the candidate's qualifications; 2) if the Commission does not believe the candidate has the

⁵ Law 16.127 of August 10, 1990, <http://www.parlamento.gub.uy/leyes/ley16127.htm>.

⁶ Law 16.170 of January 10, 1991, <http://www.parlamento.gub.uy/leyes/ley16170.htm>.

⁷ Law 15.809 of April 21, 1986, Article 28, describes the classification regime of posts in Oriental Republic of Uruguay, see <http://www.parlamento.gub.uy/leyes/ley15809.htm>. This regime was further modified in Law 15.851 of December 24, 1986, see <http://www.parlamento.gub.uy/leyes/ley15851.htm>.

⁸ Law 16.134 of October 17, 1990, <http://www.parlamento.gub.uy/leyes/ley16134.htm>.

⁹ Law 17.556 of September 19, 2002, <http://www.parlamento.gub.uy/leyes/ley17556.htm>.

¹⁰ These contracts are awarded for a term of no more than 12 months and may be renewed as many times as deemed advisable, though the person under contract does not acquire the status of a civil servant, Articles 32 and 34 of Law 17.556, see <http://www.parlamento.gub.uy/leyes/ley17556.htm>.

¹¹ This Law is also applicable to those that work in the Judicial branch, the Court of Administrative Judicial Review; the Court of Accounts; the Electoral Court; Autonomous Entities; the Decentralized Services; and the Industrial or Commercial State Corporation.

¹² Decree 85/003 of February 28, 2003, <http://www.presidencia.gub.uy/decretos/2003031101.htm>.

¹³ Law 16.736 of January 5, 1996, <http://www.parlamento.gub.uy/Leyes/Ley16736.htm>.

¹⁴ Decree 303/96 of July 31, 1996,

http://www.cepre.opp.gub.uy/mambo/index.php?option=com_content&task=view&id=30

¹⁵ Law 16.320 of November 1, 1992, <http://www.parlamento.gub.uy/leyes/ley16320.htm>.

necessary qualifications, then through a competition limited to those employed in the public administration or 3) through a competition open to the public, as long as the candidate does not already work for the public administration (Article 50 of TOFUP).

- The Oriental Republic of Uruguay has a set of provisions applicable to public servants of the Legislative branch, among which the following should be noted:

- Constitutional provisions such as those found in Section 107, which provides that each chamber (Senate and House of Representatives) are to appoint their secretaries and personnel of their dependencies, in accordance with the regulatory provisions that are to be established in regards to the rights provided for in Sections 58 – 66 of the Constitution (including the ones found under the aforementioned Sections 59 – 61), when applicable.

- Statutory provisions such as the aforementioned Decree-Law 10.388 of February 13, 1943, which is also applicable to public servants that work in the Legislative branch.

- The Oriental Republic of Uruguay has a set of provisions applicable to public servants of the Judicial branch, among which the following should be noted:

- Constitutional provisions such as those found in Section 239, which provides that the Supreme Court may name, promote and remove, by a vote of 4 of the 5 justices, employees to the Judicial branch, in accordance with Sections 58 – 66 of the Constitution (including the ones found under the aforementioned Sections 59 – 61), when applicable.

- Statutory provisions such as the aforementioned Decree-Law 10.388 of February 13, 1943, which is also applicable to public servants that work in the Judicial branch.

- Statutory provisions such as the aforementioned Law 17.556 of September 19, 2002, which also apply to the Judicial branch regarding hiring persons under fixed term contracts.

- The Oriental Republic of Uruguay has a set of provisions applicable to the Departmental Governments, among which the following should be noted:

- Constitutional provisions such as those found in Section 62, which provides that the Public Service Statute of Section 59 be applicable to the public servants of the Departmental Governments.

- Statutory provisions such as the aforementioned Law 16.127 of August 10, 1990, and Law 16.134 of September 20, 1990, by which the steps to fill the types of posts listed in those laws are also applicable to Departmental Governments.

- The Oriental Republic of Uruguay has a set of provisions regarding mechanisms of control, among which the following should be noted:

- Constitutional provisions such as those found in Section 59, which provides that the law establishing the Public Servant Statute shall apply to public servants of the Accounts Tribunal.

- Statutory provisions such as the aforementioned Law 16.127 of August 10, 1990, and Law 16.134 of September 20, 1990, by which the steps to fill the types of posts listed in those laws are also applicable to the Accounts Tribunal.

- Statutory provisions such as Law 15.757 of July 17, 1985,¹⁶ which established the National Office of the Civil Service, a functionally autonomous and technically independent body, whose responsibility is to ensure an efficient administration (Article 2). Article 4 of the Law sets out the functions of the Office, among which is to draft norms so that the Central Administration, Autonomous Entities and Decentralized Services select and appoint personnel through open competition or merit. Each of these bodies is to implement such a system through their own regulations.¹⁷

- Constitutional provisions such as those found in Section 307, which establishes the Court of Administrative Judicial Review. Under Section 317 a person can challenge an administrative decision directly to the body that made the decision. The decision made by the body on the matter can then be appealed to the Court of Administrative Judicial Review once all administrative procedures have been exhausted.¹⁸

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

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

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

Before beginning with these observations, the Committee, however, would like to take note that up to December 31, 2005, there was a hiring freeze in the Oriental Republic of Uruguay that affected the Executive branch; the Court of Administrative Judicial Review; the Court of Accounts; the Electoral Court; Autonomous Entities; and the Decentralized Services, which was scheduled to run until 2015 (Article 1 of Law 16.127 of August 7, 1990 and Article 27 of Law 17.556 of September 18, 2002). This freeze was recently lifted in December of 2005.¹⁹ As of January 1, 2006, persons who are not public servants may be appointed to one of every two vacant posts.²⁰ In addition, laws were being passed that abolished vacant posts once promotions or advancements were made and other vacancies as they occurred.²¹ As such, the Committee believes that these recent developments should be taken into account when undertaking an analysis of the system of government hiring in the Oriental Republic of Uruguay.

As stated in Section 1.1.1., the Constitution provided that the Public Service Statute would establish, among others, the conditions for entry into the public administration for career staff into the Executive branch. This Statute was enacted via Decree-Law 10.388, which included a provision requiring submission to tests, examinations or competitions provided by the Statute or its regulations, and the Oriental Republic of Uruguay has enacted laws in this regard for the following classified

¹⁶ Law 15.757 of July 17, 1985, <http://www.parlamento.gub.uy/leyes/ley15757.htm>.

¹⁷ See also Book XI, Civil Service, of the TOFUP, *supra* note 4.

¹⁸ See also Law 15.869 of July 2, 1987, Organic Law of the Court of Administrative Judicial Review, <http://www.parlamento.gub.uy/leyes/ley15869.htm>.

¹⁹ See Article 10 of Law 17.930 of December 19, 2005, <http://www.parlamento.gub.uy/Leyes/Ley17930.htm>.

²⁰ See the Response to the Questionnaire, pg. 4.

²¹ *Ibid.* The Oriental Republic of Uruguay in its Response further stated that 4% of the abolished posts are reserved for the hiring of persons with disabilities; see for example Article 9 of Law 17.296 of February 21, 2001, <http://www.parlamento.gub.uy/leyes/ley17296.htm>.

posts: University Professional; Technical Professional; Administrative; Specialized; Labor Personnel; Custodial and Similar Services and those that are not found in the classification regime.²² Nevertheless, the Committee observes that there is a lack of further regulations or laws that detail how the open or merit based competitions are to be carried out as well as a lack of specific provisions on the advertisement of such posts when they become open. The Oriental Republic of Uruguay in its Response touches upon this issue of the advertisement of posts, by stating, “[m]ost appointments are not preceded by adequate or minimum advertising, and do not follow rules of any kind, so it is impossible to control them and they are not accessible to the majority of citizens.”²³ The Committee considers that the shortage of such laws or regulations on the manner to conduct recruitment for these posts as well as for their advertisement may not properly assure the openness, equity and efficiency of the government hiring system.

The Committee also takes note of the situation regarding the system for government hiring in the Legislative branch. The Constitution provides that secretaries and personnel working for the Senate and House of Representatives are to be appointed in accordance those Constitutional provisions in place for government hiring in the Executive branch, when applicable. Indeed, Article 40 of Decree-Law 10.388 provides that its provisions are applicable to the Legislative branch, thus requiring submission to tests, examinations or competitions. However, the Committee found a lack of any further information or legislation that provided on how the hiring takes place. The Oriental Republic of Uruguay in its Response notes that in the case of the Legislative branch, “*there are no hiring prohibitions and no hiring system specified by law. Thus, every entity establishes what it deems to be appropriate procedures.*”²⁴

The Committee also acknowledges the system in place for the Judicial branch for government hiring. The Constitution provides that the Supreme Court may name, promote and remove, by a vote of 4 of the 5 justices, employees to the Judicial branch, in accordance with the Constitutional provisions in place for government hiring in the Executive branch, when applicable. Furthermore, Decree-Law 10.388 provides that its provisions are applicable to the Judicial branch, thus requiring submission to tests, examinations or competitions. The Judicial branch is also required to follow the procedures for filling in posts that are fixed term contracts under Law 17.556. However, as with the Legislative branch, the Committee did not find any further information or legislation that provided on how the hiring takes place. The Oriental Republic of Uruguay in its Response notes that the Judicial branch has no hiring system specified by law in place.²⁵

The Committee observes, in regards to Departmental Governments and the Accounts Tribunal, that the Constitution provides that the Public Service Statute be made applicable to the public servants of these entities and that it is required by law to fill through open competition and merit or merit and aptitude exam the following classified posts, University Professional; Technical Professional; Administrative; Specialized; Labor Personnel; Custodial and Similar Services and those that are not found in the classification regime. Nevertheless, as with the Executive branch, there are no further regulations or laws that detail how the open or merit based competitions are to be carried out, nor are there specific provisions on the advertisement of such posts when they become open. In addition, in

²² See Law 16.127 and 16.134 of Section 1.1.1 of this report.

²³ Response to the Questionnaire, pg. 7. The country under review further notes in its Response that, “*advertisement for selection of public servants is not assured in all cases, except when circumstances so require because the authority in charge of the selection so stipulated or the law imposes a competitive system,*” *ibid.* pg. 6.

²⁴ *Ibid.*, pg. 5.

²⁵ *Ibid.*

regards to the Departmental Governments, The Oriental Republic of Uruguay in its Response states, *“the departmental governments have autonomy in hiring, within the framework of the general criteria and competencies stipulated in the Constitution of the Republic itself. As for hiring requirements, there is no standard system, and the situation varies among the 19 departmental governments, as it does throughout the Government in general; the departments generally have broad discretionary powers, and requirements are limited to public competition for certain categories of work where, with a few exceptions, this mechanism is the general rule.”*²⁶

Finally, the Committee observes that though National Office of the Civil Service is responsible for drafting norms so that the Executive branch select and appoint personnel through open competition or merit, it does not have the sufficient authority to assure that a merit based system is in operation. Nor does it have the authority to take preventive or corrective measures against irregular selection processes, such as fraudulent competition, or to declare invalid an irregular appointment. Each of these bodies is to implement such a system through their own regulations.

Taking into account the foregoing, the Committee notes that it would be advisable for the Oriental Republic of Uruguay to analyze the possibility of legislating or regulating, through the appropriate legal and administrative procedures, a system that ensures access to the public service through merit, providing clearly defined criteria on the manner to carry out examinations (see Recommendation 1.1 (a) in Section 1 of Chapter III of this Report).

The Committee also believes that the legislation should provide clearly defined criteria on the advertisement of hiring opportunities in the public service or of vacancies or positions to be filled, such as their content and form, as well as providing a timeframe for publication, making use of the mass media (e.g. newspapers or web pages), along with the requirements for candidates, the dates the selection process will begin and the procedures to be followed to take part in the process (see Recommendation 1.1 (b) in Section 1 of Chapter III of this Report).

The Committee considers it advisable for the Oriental Republic of Uruguay to include in this legislation provisions that establish governing or administrating authorities of the systems and control mechanisms, or strengthen existing ones, so that these authorities have the competence to oversee compliance with the selection standards in place for government hiring and that they have the necessary financial, human and technological resources to carry out their functions (see Recommendation 1.1 (c) in Section 1 of Chapter III of this Report).

Finally, the Committee notes a lack of training programs for those responsible for managing the selection and staffing processes, as well as an absence of training and induction programs for those persons recently hired into public service. In this regard, the Committee will formulate a recommendation. (See Recommendation 1.1 (d) in Section 1 of Chapter III of this Report)

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

As noted earlier, the Oriental Republic of Uruguay stated that a hiring freeze was in place for close to twenty years as well as policies were put in place to encourage the departure or resignation of public servants. Nevertheless, the hiring of new public servants by other than by appointment to budgeted positions could not be prevented. The Oriental Republic of Uruguay further notes that the government has imposed stricter conditions and controls, such as competition for posts, aptitude tests and adequate advertising and that “[t]he recent derogation of the suspension in force for hiring of

²⁶ *Ibid.*, pgs. 4 – 5.

public servants, to the extent that the requirement of aptitude tests or public competition have been maintained, leads one to believe that measures to strengthen the systems for hiring public servants are probably increasing.”²⁷

Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, it will make recommendations in this regard. (See Recommendations 4.1 and 4.2 in Chapter III of this Report)

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

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

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

- Constitutional provisions such as those found in Section 213, which provides that the Accounts Tribunal shall present to the Executive a draft law of Accounting and Financial Management. This draft law shall contain regulatory norms on, among other things, the financial and economic administration and especially the organization of the accounting and collection services and rules to control the procurement and alienation of goods and contracts entered into by the Public Finance.

- Statutory provisions such as the Accounting and Financial Management Integrated Text (known as the Spanish acronym TOCAF), which fulfills the Constitutional requirement of Section 213 and provides the legal framework for public financial management and procurement in the Oriental Republic of Uruguay.²⁸ Article 2 provides that the TOCAF is applicable to all three branches of government, the Accounts Tribunal, the Electoral Court, the Court of Administrative Judicial Review, the Departmental Governments, the Autonomous Entities, Decentralized Services and in general, all government organs, services and entities.²⁹ The following provisions of the TOCAF should be noted:

- Article 33, which states that all contracts, which also contemplates public works, shall be entered into through public tender, whenever such contracts entail operating costs or investment or outlays of government monies, and by public tender or auction, whenever such contracts engender income or resources.³⁰ This Article also provides exceptions to this principle, providing for an abbreviated bidding procedure or direct procurement, depending on the amount of the contract.¹ Special contracting procedures, based on the principles of openness and equality among bidders, may also be put in place by the Executive branch whenever market conditions or the characteristics of the goods or services would make it

²⁷ *Ibid.*, pg. 7.

²⁸ The TOCAF is a compilation of legally binding provisions on the subject and was enacted through Law 15.903 of November 18, 1987, <http://www.parlamento.gub.uy/leyes/ley15903.htm>. The TOCAF is available at the following address: http://www.parlamento.gub.uy/OtrosDocumentos/TOCAF/tex_tocaf.htm.

²⁹ Article 131 of the TOCAF further provides that the following six principles are to be followed for public procurement: (i) flexibility, (ii) delegation, (iii) absence of ritualism, (iv) materiality against formality, (v) truthfulness unless prove to the contrary and (vi) publicity, equality to the bidders and fairness in the competitive bidding process.

³⁰ In the Oriental Republic of Uruguay, there is no distinction made between procurement for public works and those of the general procurement system, Response to the Questionnaire, pg. 11.

convenient for the government to do so.³¹ Articles 44 and 45 contain the general and specific terms, conditions and specifications for a public tender, such as conditions for admissibility of the bids, effect of noncompliance, penalties, purpose of the tender, special or technical conditions and principal factors in evaluating a bid. These conditions were further regulated under Decree 53/993 of January 28, 1993, Unified Bidding and Document for Procurement of Goods and Services by Public Agencies.³² Articles 47, 48 and 49 provide the publication and content requirements of a public tender for public and abbreviated tenders, respectively.³³ Finally, Article 43 provides the minimum conditions for eligibility for foreign or local individuals and businesses to contract with the government.ⁱⁱ

- Articles 92 and 94, which provides that the internal and external governing authorities for the accounting and financial management in the Oriental Republic of Uruguay, including procurement of goods and services, are carried out by the National Internal Audit Office and the Accounts Tribunal, respectively. In addition, the Executive Committee for State Reform (CEPRE) has taken a leading role in modernizing the public procurement process in the Oriental Republic of Uruguay.³⁴
- Article 65, which states that the Executive branch is to establish a General Registry of State Suppliers, which was carried out in Decree 342/999 of October 26, 1999.³⁵ Article 2 of the Decree provides that the Registry shall contain: a) data identifying the suppliers and the persons representing them, along with any other information that the National Treasury deems relevant; b) sanctions imposed on suppliers for noncompliance with government contracts; and c) background information on transactions and operations of the suppliers (confidential in nature). Article 3 of the Decree further provides that the registration is compulsory for all parties interested in contracting with the government.³⁶ Also, Article 66 provides that those interested in bidding for public works contracts must also register with the National Registry of Public Works, which is managed by the Ministry of Transport and Public Works.³⁷
- Article 81, which provides that all acts and operations contemplated by the TOCAF is to be carried out and registered through the use of a uniform documentation system and electronic data processing, which was established through the Integrated Financial Information System (SIIF).ⁱⁱⁱ In addition, the Oriental Republic of Uruguay has also established the Integrated State Procurement and Contracting System (SICE), an electronic system that registers all

³¹ Article 34 of the TOCAF. The Executive branch must first receive a favorable opinion from the Accounts Tribunal before proceeding and must report to the General Assembly (meetings of both the Senate and House of Representatives) and published in the Official Gazette.

³² Decree 53/993 of January 28, 1993, http://www.oas.org/juridico/spanish/mesicic2_ury_sp.htm.

³³ Article 48 of the TOCAF provides that at least six companies operating in the relevant field of the tender will be invited to bid for an abbreviated tender. Invitations must be received at least three days prior to the opening of the bid, notwithstanding any advertising deemed advisable. All submitted bids must be accepted, even if a firm was not invited to bid.

³⁴ See http://www.cepre.opp.gub.uy/index.php?option=com_content&task=view&id=1#

³⁵ See http://www.cepre.opp.gub.uy/mambo/index.php?option=com_content&task=view&id=31

³⁶ This Decree provides that the General Registry is to be managed by the National Treasury through List of Beneficiaries of the Integrated Financial Information System (SIIF).

³⁷ See the Regulation of the National Registry of Public Works, <http://www.mtop.gub.uy/secretaria/reglamentorneo.php>.

information relative to the contracts carried out by the State, which is to be interfaced with the SIIF.^{iv}

The Oriental Republic of Uruguay also has in place the Expenditure Execution System (SEG), by which the National General Accounting Office earmarks the appropriations for every entity authorized by the National Budget Law.³⁸ All expenditures are to be registered within this system.³⁹ Under Articles 15 – 17 of the TOCAF, an executing agency cannot commit operating or investment expenditures unless there is available credit.⁴⁰ In addition, Decree 525/003 of December 18, 2003 provides a further requirement to publish and advertise all bidding invitations to the State Procurement Website (<http://www.comprasestatales.gub.uy>) before an executing agency can commit operating or investment expenditures.^v

- Article 62, which provides that government acts in contracting procedures may be challenged by filing the appropriate appeals according to the terms and conditions stipulated in the Constitution and laws regulating the subject and they will always have suspensive effect, unless the acting government entity, by well-founded decision, declares that said suspension would adversely affect urgent service needs or cause serious harm. Once all administrative remedies have been exhausted, the challenging party may file a petition to declare a contract null and void to the Court of Administrative Review.⁴¹

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

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

The Committee nevertheless deems it appropriate to express some comments about certain provisions relating to the systems that the country under review could consider supplementing, developing or adapting the legal framework and the government procurement measures now in force, in light of the following:

- With respect to the exceptions to the principle that all contracts shall be through public tender, the Committee notes that the exceptions in Article 33 (h) and (i) contain terms that are ambiguous and the scope of their application are not clearly defined.^{vi} The absence of a definition or explanation as to how these exceptions are to be properly applied could bring about their misuse since there is no clarity as to when the discretion found in these provisions is to be properly used. As such, it could lead to situations where the exception to the general principle that all contracts are to be entered into through competitive public tender becomes the rule. The Committee believes that the Oriental Republic of Uruguay should consider developing these provisions so as to provide better transparency and clarity in the public contracting process. In this regard, the Committee will formulate a recommendation. (See recommendation 1.2.1 (a) in Section 1 of Chapter III of this report).

³⁸ See Decree 395/98 of December 30, 1998, http://www.cepre.opp.gub.uy/mambo/index.php?option=com_content&task=view&id=35.

³⁹ *Ibid.*, Art. 1.

⁴⁰ Article 15 does provide certain exceptions to this rule.

⁴¹ Section 317 of the Constitution. See also Law 15.869 of July 2, 1987, Organic Law of the Court of Administrative Judicial Review, <http://www.parlamento.gub.uy/leyes/ley15869.htm>.

- With respect to the differing methods of public contracting provided for in the TOCAF, the Committee finds an absence of provisions guaranteeing transparency in those cases where direct contracting is used, such as clear provisions establishing the procedure to be followed. In this regard, the Committee will formulate a recommendation. (See recommendation 1.2.1 (b) in Section 1 of Chapter III of this report).
- The Committee observes that there are no provisions within the legislative regime in place that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to verify the appropriateness and timeliness of the purchase. The Committee believes that adopting measures that require prior planning would assure the openness, equity and efficiency of the system in place for the procurement of goods and services. In this regard, the Committee will formulate a recommendation. (See recommendation 1.2.1 (c) in Section 1 of Chapter III of this report).
- With respect to the establishment of bid evaluation committees, the Committee notes that they are conformed for all competitive public bids but only for abbreviated bids of more than \$480000 Uruguayan Pesos (\$21000 US dollars).⁴² These evaluation committees, known as Advisory Award Committees, provide a nonbinding opinion on the best bid. However, the Committee believes that the threshold for the establishment of this Advisory Committee leaves too much discretion for a potentially significant amount of money without the need to substantiate or justify clearly the outcome of the bid evaluation. As such, the Committee believes that the Oriental Republic of Uruguay could reevaluate this threshold amount. In this regard, the Committee will formulate a recommendation. (See recommendation 1.2.1 (d) in Section 1 of Chapter III of this report).
- The Committee also notes that interested parties have limited opportunities to review all files pertaining to a bid, including the opinion of the Advisory Committee and bids received. Article 58 of the TOCAF provides that these files are made available for review for five days, by which bidders may formulate comments and file written complaints to the contracting agency with a copy provided to the Accounts Tribunal. Though the right to review and provide comments is made applicable to all competitive public bids, for abbreviated bids, this only occurs in bids of a value above four times the threshold for this process (which is currently \$6 400000 Uruguay Pesos or approximately \$268 000 US dollars). The Committee observes that the amounts below the current threshold represents a significant amount of money to not give bidders an opportunity to address any errors in their bid and submit observations, criticisms or comments on the evaluation. In this regard, the Committee will formulate a recommendation. (See recommendation 1.2.1 (e) in Section 1 of Chapter III of this report).
- The Committee has no information regarding provisions that allow for the participation of citizen overseers or watchdogs to monitor the execution of contracts where the nature, importance or magnitude so warrants. In this regard, the Committee will formulate a recommendation. (See recommendation 1.2.1 (f) in Section 1 of Chapter III of this report).

⁴² See Article 57 of the TOCAF as well as the following link:
<http://www.ine.gub.uy/comunicados/tocaf/tocaf0205.pdf>

- In addition, though the TOCAF, under Article 93.I provides that internal audit units may be established, and Decree 88/000 of March 13, 2000,⁴³ Article 3, provides that these units are to be established on a gradual basis, the available information does not indicate whether this has occurred. With respect to this issue, the Country Financial Accountability Assessment for the Oriental Republic of Uruguay (CFAA), conducted by the World Bank and the Inter-American Development Bank notes that “*Even though the organic structure provides for the existence of internal audit units of staff reporting directly to the ministries and autonomous entities, in addition to the internal auditors placed by IAO (Internal Audit Office), these internal audit units have not been developed due to financial restrictions.*”⁴⁴ Accordingly, the Committee considers that it is important for the widespread installation of an internal control unit in each entity so as to encourage a uniform control environment, which is important for maintaining proper controls over the government procurement system in place. In this regard, the Committee will formulate a recommendation. (See recommendation 1.2.2 in Section 1 of Chapter III of this report).
- In terms of the use of electronic methods and information systems for government procurement, the Committee would like to take note of the ongoing modernization of the procurement system that is taking place and is encouraged by the establishment of the aforementioned Integrated Financial Information System, the Integrated State Procurement and the Contracting System the Expenditure Execution System as well as the State Procurement Website (<http://www.comprasestatales.gub.uy>). The Committee believes that the Oriental Republic of Uruguay should also consider using an electronic procurement system or electronic bidding in order to carry out the contracting needs of the State. In this regard, the Committee will formulate a recommendation. (See recommendation 1.2.3 in Section 1 of Chapter III of this report).
- Finally, the Committee takes note that the TOCAF does not contain a separate regime for public works. Indeed, as stated by the Oriental Republic of Uruguay, aside from general specifications for public works, “*there are no differences between these and other general procurement systems already described.*”⁴⁵ The Committee observes that there are certain aspects which the country under review should consider in order to strengthen the regime in place for the contracting of public works, in addition to the concerns raised in this Section on public contracting in general, such as strengthening the mechanisms for citizen oversight over public works contracts. (See recommendation 1.2.4 in Section 1 of Chapter III of this report).

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

The Oriental Republic of Uruguay states in its Response that “*since the laws established to maintain the system for procurement of goods and services are in place and, as we have indicated, measures to prevent any deviation from the law are gradually being strengthened, so that further improvements or modification to the procedures described above are not ruled out.*”⁴⁶

⁴³ See, http://www.ain.gub.uy/docs/decreto_88_000.htm.

⁴⁴ CFAA, *supra* note 50, pg. 27. See also pg. 40.

⁴⁵ Response to the Questionnaire, pg. 11.

⁴⁶ *Ibid.*, pg. 12.

Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, it will make a recommendation in this regard. (See recommendation 4.2 in Chapter III of this report).

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

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

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

- Statutory provisions such as Law 16.707 of July 19, 1995, which provides that the Executive branch is to implement a program for protection of witnesses and informants of alleged criminal acts.⁴⁷

- Statutory provisions such as Decree 209/2000 of July 25, 2000, which regulates this witness protection program referred to in Law 16.707.⁴⁸ This Decree provides for several measures in place to preserve the identity, such as proceedings shall not include the name, domicile, place of work or profession or any other data that could be used for identification purposes; mechanisms be used to prevent visual identification of the witness that must appear before any evidentiary proceeding; witnesses may be summoned on a confidential basis, and the provision of police protection.⁴⁹ Other measures in place include prohibitions on photographs from being taken or their image from being recorded by any means; they must be informed of the escape or imminent release of the accused or convicted person; they must be informed of the status of the proceedings; and they and their family and property must be granted protection.⁵⁰

- Statutory provisions such as Decree 30/003 of January 23, 2003, which provides that any person or public servant who reports acts of corruption in good faith shall be covered by the witness protection program stipulated in Law 16.707.⁵¹

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

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

The Committee nevertheless deems it advisable for the Oriental Republic of Uruguay to analyze the possibility of supplementing, developing or adapting the provisions in place through the appropriate legal and administrative procedures, in accordance with its Constitution and the basic principles of its domestic legal system, on the protection of public servants and private citizens who in good faith report acts of corruption. In this respect, the country under review should consider the following:

⁴⁷ Article 36, <http://www.parlamento.gub.uy/leyes/ley16707.htm>.

⁴⁸ See <http://www.presidencia.gub.uy/noticias/archivo/2000/julio/2000072509.htm>.

⁴⁹ Article 4.

⁵⁰ Articles 5 and 6.

⁵¹ See <http://www.jasesora.gub.uy/documentos/respuesta/Decreto%2030-003/Dto30.htm>.

- Review the possibility of establishing mechanisms that ensure the safety and the confidentiality of the identity of the public servant and private citizen who, in good faith, report acts of corruption, in order to provide protection from threats or reprisals at the moment of the report, especially taking into account that public servants, under the legal norms in place, must report irregularities or corrupt practices to their superiors.⁵² In this regard, the Committee will formulate a recommendation. (See recommendation 2(a) in Section 2 of Chapter III of this report).
- Mechanisms for reporting threats or reprisals that the public servant and private citizen may face, as a consequence of reporting acts of corruption which, among other aspects, ensures the employment stability of the public servant, especially in cases when the report involves a superior or colleagues from the office. In this regard, the Committee will formulate a recommendation. (See recommendation 2(b) in Section 2 of Chapter III of this report).
- Mechanisms that facilitate international cooperation, when appropriate. (See recommendation 2(c) in Section 2 of Chapter III of this report).
- Finally, Committee considers that the Oriental Republic of Uruguay should also consider strengthening the body that is entrusted with the task of receiving and responding to requests for protection, as well as promoting the provision of the necessary measures of protection; and that they have the necessary resources and personnel to carry out their functions. In this regard, the Committee will formulate a recommendation. (See recommendation 2(d) in Section III of this report).

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

The Oriental Republic of Uruguay states in its Response that “[a]ccording to available information, application of the program for protection of witnesses and reporting parties is limited in Uruguay to guarding the witness and guaranteeing his personal security. There are no previous cases regarding judicial identity protection orders or any other type of application of the program stipulated in Decree 290 of July 25, 2000.”⁵³

Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, it will make a recommendation in this regard. (See recommendation 4.2 in Chapter III of this report).

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

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

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

⁵² See Article 40 of Decree 30/003 and Article 175 of Decree 500/91 of September 27, 1991, <http://www.parlamento.gub.uy/OtrosDocumentos/decreto500/decr500.htm>.

⁵³ Response to the Questionnaire, pg. 18.

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

- Article 156 of the Criminal Code, which provides: “(Extortion) Any public servant⁵⁴ who, in abuse of his position as such or of the duties he performs, compels or induces another to improperly give or promise any amount of money or other benefit to himself or to another shall be punished with a prison term of between 12 months and six years, a fine of between 50 and 10,000 URs (readjustable units), and a period of disqualification of between two and six years.”⁵⁵

- Article 157 of the Criminal Code, which provides: “(Simple bribery.) Any public servant who, in exchange for executing an action corresponding to his position, receives for himself or for another compensation not due to him, or accepts the promise of such, shall be punished by a prison term of between three months and three years, a fine of between 10 and 5,000 URs (readjustable units), and a period of special disqualification of between two and four years.

The sanction shall be reduced by between one third and one half when the public servant accepts payment for a consummated act carried out in accordance with his functions.”

- Article 158 of the Criminal Code, which provides: “(Qualified bribery.) Any public servant who receives, for himself or for another, compensation or other benefit, or accepts the promise thereof, in exchange for delaying or failing to perform an act corresponding to his position or for executing an action contrary thereto, shall be punished by a prison term of between 12 months and six years, a period of special disqualification of between two and six years, and a fine of between 50 and 10,000 URs (readjustable units).

The sanction shall be increased by between one third and one half in the following cases:

- (1) If the effect of the action was the awarding of positions of public employment, stipends, pensions, honors, or any advantage or disadvantage to litigating parties involved in civil or criminal proceedings.
- (2) If the effect of the action was the awarding of a contract in which the office to which the public servant belongs was involved, or if it was carried out with the abuse of the legal procedures to be followed by the public administration in the procurement of goods and services.”

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

- Article 159 of the Criminal Code, which provides: “(Bribery) Any person who induces a public servant to commit any of the crimes described in Articles 157 and 158 shall be punished for the act of instigation alone, with a sanction equal to between one half and two thirds of the main sanction applicable to those crimes.

The following shall be considered special aggravating circumstances:

⁵⁴ Public servant is defined under Article 175 of the Criminal Code, which states: “For the purposes of this Code, public servants are all those that hold a position or carry out duties that are compensated or not, permanent or temporary, of a legislative, administrative or judicial nature, in the State, the Municipality or any other public entity,” see Criminal Code, <http://www.parlamento.gub.uy/Codigos/CodigoPenal/12t4.htm>.

⁵⁵ Criminal Code, *ibid.*, See also Law 17.060 of January 8, 1999, which modified the provisions of the Criminal Code regarding corruption in the public administration, <http://www.parlamento.gub.uy/Leyes/Ley17060.htm>

- (1) If the person so induced is a police officer or otherwise responsible for the prevention, investigation, and elimination of illicit activities, provided that the crime was committed as a result of or during the exercise of this function, or on account of his position as such, and that this last circumstance is evident to the perpetrator of the crime.
- (2) If the person so induced is one of those individuals identified in Articles 10 and 11 of the Law on Corruption Prevention and Combat.”⁵⁶

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

- Article 3 of the Criminal Code, which provides: “(Causal connection) No one may be punished for an act provided for by the law as an offence, if the damage or danger of such depends on the existence of the offence and is not a result of the consequence of the act or its omission. Failure to prevent something occurring when one is under the obligation to prevent it is equivalent to causing it to occur.”

- Article 153 of the Criminal Code, which provides: “(Embezzlement.) Any public servant who appropriates money or property that is in his possession by reason of his position, whether belonging to the state or to private persons, for his own benefit or that of another, shall be punished by a prison term of between one and six years and a period of special disqualification of between two and six years.”

- Article 160 of the Criminal Code, which provides: “(Fraud.) Any public servant who, directly or through another, acting deceitfully in the actions or contracts in which he is involved by reason of his position, inflicts harm on the public administration, to his own benefit or to that of another, shall be punished by a prison term of between 12 months and six years, a period of special disqualification of between two and six years, and a fine of between 50 and 15,000 URs (readjustable units).

- Article 161 of the Criminal Code, which provides: “(Conflict of personal and public interest.) Any public servant who, either deceitfully or not, and either directly or through another, acquires an interest in order to secure an undue advantage for himself or for another in any action or contract in which he is involved by reason of his position, or who fails to report or declare any circumstance personally associating himself with a private citizen with an interest in said action or contract, shall be punished by a prison term of between six months and three years, a period of special disqualification of between two and four years, and a fine of between 10 and 10,000 URs (readjustable units).

- Article 162 of the Criminal Code, which provides: “(Abuse of functions in cases not expressly provided for in law.) Any public servant who, in abuse of his position, commits or orders the commission of any arbitrary act to the detriment of the public administration or of private citizens that is not expressly set out in the terms of the Code or the special laws, shall be punished by a prison term of between three months and three years, a period of special disqualification of between two and four years, and a fine of between 10 and 3,000 URs (readjustable units).

- Article 163 bis of the Criminal Code, which provides: “(Improper use of privileged information.) Any public servant who, in order to secure an economic advantage for himself or for another, makes improper use of confidential information or data known to him by reason of his position, shall be punished by a prison term of between three months and four years, a period of special

⁵⁶ Articles 10 and 11 referred to in Article 159 are found in Law 17.060, *ibid*.

disqualification of between two and four years, and a fine of between 10 and 10,000 URs (readjustable units).”

▪ With respect to paragraph (d) of Article VI(1):

- Article 30 of Law 17.060 of January 8, 1999, which provides: “(Money laundering.) Anyone who hinders the identification of the origin, investigation, seizure, or confiscation of money or other valuables knowing that they originate from any of the crimes set out in Articles 156, 158, 158 bis, 160, 161, 162, 163, 163 bis, and 163-ter of the Criminal Code, or from the crime described in Article 29 of this law, shall be punished with a prison term of between three months and six years.”⁵⁷

- Article 8 of Law 17.835 of September 29, 2004,⁵⁸ which provides: “The crimes set out in Articles 54 to 57 of Decree-Law No. 14.294 of October 31, 1974 – incorporated by Article 5 of Law No. 17.016 of October 22, 1998 – would also arise when the material purpose thereof is the assets, proceeds, or instruments of offenses criminalized by our laws in connection with the following activities: terrorism; contraband in an amount greater than US\$ 20,000 (twenty thousand U.S. dollars); illicit trafficking in arms, explosives, ammunition, or materials intended for use in the production thereof; illicit trafficking in organs, tissues, and medical supplies; illicit trafficking in human lives; extortion; kidnapping; sexual procurement; illicit trafficking in nuclear materials; illicit trafficking in works of art, animals, and toxic substances; fraud, when committed by individuals or by representatives or employees of corporate bodies subject to the oversight of the Central Bank of Uruguay in the performance of their duties; and all the crimes identified in Law No. 17.060 of December 23, 1998.

In the cases described in this article, the provisions contained in Articles 58 to 67 and 71 to 80 of Decree-Law No. 14.294 of October 31, 1974, incorporated by Article 5 of Law No. 17.016 of October 22, 1998, shall apply.

The provisions of this article shall apply even when the antecedent fact that gave rise to the assets, proceeds, or instruments took place abroad, as long as it was punishable in the place where it was committed and in the Oriental Republic of Uruguay.”^{vii}

- Article 55 of Decree-Law 14.294 of October 31, 1974, which provides: “Any person who acquires, possesses, uses, holds, or in any way transacts with assets, proceeds, or instruments arising from any of the crimes punishable under this law or related crimes, or that are the product of such crimes, shall be punished by a prison term of between twenty months and ten years.”⁵⁹

▪ With respect to paragraph (e) of Article VI(1):

- Article 5 of the Criminal Code, which provides: “(Attempt and impossible offence) Anyone who begins to commit a crime through external action but fails to complete it, for reasons beyond his control shall be punished.”

⁵⁷ Article 29 states: “(Offering and accepting crossborder bribes.) Any person who, in order to secure or facilitate a Uruguayan foreign trade deal offers or gives, either in the country or abroad, provided that the circumstances described in section No. 5 of Article 10 of the Criminal Code arise, to a public official of another state, money or other economic advantage, for himself or for another, through his own offices or through those of another, shall be punished with a prison term of between three months and three years.”

⁵⁸ See: <http://www.parlamento.gub.uy/leyes/ley17835.htm>.

⁵⁹ Decree-Law 14.294 of October 31, 1974, <http://www.parlamento.gub.uy/leyes/ley14294.htm>.

- Article 60 of the Criminal Code, which provides: “(Definition of principal) The following are considered principals to a crime:

- Those who commit the acts whereby the crime is consummated.
- Those who make individuals who cannot be charged or who cannot be punished commit the crime.”

- Article 61 of the Criminal Code, which provides: “(Definition of coprincipal) The following are considered coprincipals to a crime:

- Those, other than those covered by the second paragraph of the previous article, who make others commit a crime.
- Those public officials required to prevent, clarify or punish a crime who instead, prior to its commission and to allow it to take place, promise to conceal it.
- Those who cooperate directly, during its consummation.
- Those who cooperate in its execution, during either the phase of preparation or the phase of execution, by means of an action without which the crime could not have been committed.”

- Article 62 of the Criminal Code, which provides: “(Accomplices.) Accomplices are those who, while not covered by the above articles, morally or materially cooperate in the crime through actions that are prior to or simultaneous with its execution but separate and prior to consummation.”

- Article 197 of the Criminal Code, which provides: “(Accessories after the fact.) Any private citizen or public official who, after a crime is committed, without agreement prior to its execution with the perpetrators, joint perpetrators, or accomplices, even if the latter cannot be charged with the crime, assists them in securing the benefit or result or in hindering or avoiding their punishment, or who suppresses, conceals, or otherwise alters the evidence of a crime, the effects thereof, or the instruments whereby it was committed, shall be punished with a prison term of between three months and ten years.”

- Article 150 of the Criminal Code, which provides: “(Association to commit a crime) Those who associate for the commission of a crime shall be punished, for the simple fact of that association, with a prison term of between six months and five years.”

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

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

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

The Oriental Republic of Uruguay, in its Response, provided information by the Supreme Court of Justice on the number of criminal proceedings brought forward from 2002 - 2005 for Articles 153

(Embezzlement), 156 (Extortion), 158 (Qualified bribery), 159 (Bribery), 160 (Fraud) and 162 (Abuse of functions in cases not expressly provided for in law) of the Criminal Code, as follows:⁶⁰

<u>Article 153</u> (Embezzlement)	<u>Article 156</u> (Extortion)	<u>Article 158</u> (Qualified bribery)
1. 2002: 32 proceedings 2. 2003: 49 proceedings 3. 2004: 22 proceedings 4. 2005: 33 proceedings	1. 2002: 26 proceedings 2. 2003: 15 proceedings 3. 2004: 5 proceedings 4. 2005: 9 proceedings	1. 2002: 10 proceedings 2. 2003: 8 proceedings 3. 2004: 9 proceedings 4. 2005: 14 proceedings
Total: 136 proceedings	Total: 55 proceedings	Total: 41 proceedings
<u>Article 159</u> (Bribery)	<u>Article 160</u> (Fraud)	<u>Article 162 (Abuse of functions in cases not expressly provided for in law)</u>
1. 2002: 4 proceedings 2. 2003: 7 proceedings 3. 2004: 5 proceedings 4. 2005: 2 proceedings	1. 2002: 31 proceedings 2. 2003: 24 proceedings 3. 2004: 12 proceedings 4. 2005: 16 proceedings	1. 2002: 17 proceedings 2. 2003: 7 proceedings 3. 2004: 11 proceedings 4. 2005: 10 proceedings
Total: 18 proceedings	Total: 83 proceedings	Total: 45 proceedings

The above results indicate that the existing provisions in the Oriental Republic of Uruguay which criminalize several of the acts referred to in Article VI of the Convention, have been applied to concrete cases. The Committee considers that this is a positive step towards implementation of the Convention.

Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of the criminal investigations referred to, it will formulate a recommendation to the Judicial Branch in this regard (See recommendation 4.2 in Chapter III of this report).

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

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

⁶⁰ Response to the Questionnaire, pgs. 22 – 23.

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

1.1. Systems of government hiring

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

In light of the comments made in the above-noted section, the Committee suggests that the Oriental Republic of Uruguay consider the following recommendation:

- Establish, maintain and strengthen the systems of government hiring of public servants, when applicable, that assure the openness, equity and efficiency of such systems.

In meeting this recommendation, the Oriental Republic of Uruguay could take into account the following measures:

- a) Adopt, through the appropriate legislative and administrative procedures, a legal instrument that regulates the system for all government hiring based on the principles of merit and equality, providing clearly defined criteria on the manner to carry out examinations. (See Section 1.1.2. of Chapter II of this report);
- b) Adopt, through the appropriate legislative and administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities for all vacancies within the public service, ensuring that use is made of the mass media (e.g. newspapers or web pages). (See Section 1.1.2. of Chapter II of this report);
- c) Implement or strengthen, when applicable, legal provisions that establish governing or administrating authorities of the systems and control mechanisms, so that these authorities have the competence to oversee compliance with the selection standards in place for government hiring and that they have the necessary financial, human and technological resources to carry out their functions. (See Section 1.1.2. of Chapter II of this report);
- d) Increase training programs for those responsible for managing public service selection and staffing processes, as well as training and induction programs for those who have who have recently entered the public service, so as to allow all employees to understand their duties and the functions expected of them. (See Section 1.1.2. of Chapter II of this report).

1.2. Government systems for the procurement of goods and services

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

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

- 1.2.1. Strengthen the procurement systems with and without public tenders. In meeting this recommendation, the Oriental Republic of Uruguay could take into account the following measures:
- a) Implement provisions that define the scope of application and clarify the ambiguous terms used in the exceptions found in Articles 33 (h) and (i) of the TOCAF, in order to limit the broad discretion that these provisions currently allows. (See Section 1.2.2. of Chapter II of this report);
 - b) Implement provisions outlining clear procedures for the selection of contractors in those situations where direct contracting is used. (See Section 1.2.2. of Chapter II of this report);
 - c) Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to verify the appropriateness and timeliness of the purchase. (See Section 1.2.2. of Chapter II of this report);
 - d) Reevaluate the threshold for the formation of bid evaluation committees for abbreviated bids. (See Section 1.2.2. of Chapter II of this report);
 - e) Reevaluate the threshold that allow government entities to notify interested parties on the outcome of the evaluation of bids prior to the final selection decision, in order to allow those parties to submit comments, observations, or challenges prior to award. (See Section 1.2.2. of Chapter II of this report);
 - f) Implement provisions that facilitate the participation of citizen overseers or watchdogs in monitoring the execution of contracts where the nature, importance or magnitude so warrants. (See Section 1.2.2. of Chapter II of this report);
- 1.2.2. Make widespread the establishment of internal audit units as provided for under the TOCAF and Decree 88/000. (See Section 1.2.2. of Chapter II of this report).
- 1.2.3. Develop and implement electronic procurement systems or electronic bidding for the acquisition of goods and services. (See Section 1.2.2. of Chapter II of this report).
- 1.2.4. Strengthen mechanisms allowing for citizen oversight over public works contracts, notwithstanding the existing institutional internal and external controls. (See Section 1.2.2. of Chapter II of this report).

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

The Oriental Republic of Uruguay has considered and adopted certain measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption, as discussed in Section 3 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Oriental Republic of Uruguay consider the following recommendation:

- Strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption.

In meeting this recommendation, the Oriental Republic of Uruguay could take into account the following measures:

- a) Strengthen mechanisms for protection of identity of whistleblowers. (see Section 2.2. of Chapter II of this report);
- b) Strengthen mechanisms for reporting threats or reprisals that the public servant and private citizen may face, as a consequence of reporting acts of corruption which, among other aspects, favors employment stability of the public servant, especially in cases when the report involves a superior or colleagues from the office. (see Section 2.2. of Chapter II of this report);
- c) Establish Mechanisms that facilitate international cooperation in addressing this topic, when appropriate. (see Section 2.2. of Chapter II of this report);
- d) Strengthen the body entrusted with the task of receiving and responding to requests for protection, as well as promoting the provision of the necessary measures of protection; and ensure that they have the necessary resources and personnel to carry out their functions. (see Section 2.2. of Chapter II of this report).

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

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

No recommendations are formulated by the Committee in this section.

4. GENERAL RECOMMENDATIONS

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

- 4.1 Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.
- 4.2. Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein. (See Section 3.3 of Chapter II of this report).

5. FOLLOW-UP

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

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

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

The Committee observes, in relation with the implementation of the recommendations formulated for the Oriental Republic of Uruguay in the Report in the First Round of review, based on the information at its disposal, the following:

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

Recommendation 1.1:

Further strengthen the implementation of laws and regulatory systems related to conflicts of interest.

Measures suggested by the Committee:

- a. *Supplement the restrictions provided in the law for those who leave public service, including, when appropriate, other situations that could constitute conflicts of interest following the departure of the public official, applicable for a reasonable period of time after said departure (see section 1.1.2 of Chapter II of the present Report).*
- b. *Promote the appropriate measures to allow for the identification of causes leading to the low number of indictments for the crime of adjunction of public and private interests and the reasons why no final judgment is reached.*
- c. *Strengthen existing mechanisms for informing and training all public servants with respect to the standards of conduct, including those relating to conflicts of interest, as well as to provide periodic training and updating with regards to said standards, as provided for in Article 28 of Law 17.060 and Decree 30/003 dated 23/01/03. Finally, consider the possibility of obliging newly hired civil servants to participate in these programs.*
- d. *Enact Decree 30/003 and continue efforts already begun to integrate within a single law the new provisions governing standards of conduct in public service.⁶¹*

⁶¹ The Committee notes that Decree 30/003 of January 23, 2003, under its Articles 2 and 3, represents an effort to integrate all the standards of conduct for the public service with a single regulatory corpus, and as such constitutes progress in implementing the Convention.

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

- The preliminary Draft Law on “Amendments to Law 17.060,” which was sent twice by the State Advisory Board on Economic and Financial Matters (State Advisory Board) to the Ministry of Education and Culture for presentation to Parliament for its consideration (Article 17 provides for post-employment prohibitions and incompatibilities for public servants for a period of up to two years).^{viii}
- An agreement is being implemented with the Dr. Aquiles Lanza School of Government Officials, by which the aforementioned State Advisory Board will provide technical support for a course on “Government Ethics and Transparency” to be included in all the training programs offered by that School.^{ix}

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Oriental Republic of Uruguay to continue giving attention to the implementation of this recommendation. Similarly, the Committee takes note of the difficulties mentioned by the country under review in implementing this recommendation by virtue of the drafting process of this law is still under way.⁶²

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

Recommendation 1.2.1:

Strengthen the standards concerning control and accountability of public servants in order to ensure the proper conservation and use of public resources.

Measure suggested by the Committee:

- *Promote the enactment of standards on the proper conservation and use of public resources with respect to individuals in charge of handling resources of this nature.*

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

- The preliminary Draft Law on “Amendments to Law 17.060,” which was sent twice by the State Advisory Board to the Ministry of Education and Culture for presentation to Parliament for its consideration (Article 3 provides that officials responsible for the management of public funds or the administration of State property are personally responsible for poorly fulfilling their duties).⁶³

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

⁶² Response to the Questionnaire, pgs. 24 – 26.

⁶³ *Ibid.* pg. 26.

Recommendation 1.2.2:

Take steps considered pertinent to ensure the observance of standards relating to public tenders and establish mechanisms that ensure that they are consistent with legal provisions in effect to ensure the proper conservation and use of public resources.

In its Response, the country under review provided information condensed in the TOCAF with respect to the above recommendation. In addition, legal control is exercised by the Court of Accounts, the National Internal Audit Office, the National General Accounting Office and the National General Treasury, each in its own field of competence. Therefore, as a rule, bidding procedures are subject to regular administrative and legal controls. Nonetheless, the Court of Administrative Judicial Review or the Judiciary itself could possibly intervene, at the request of a party.⁶⁴

The Committee takes note of the need for the country under review to give additional attention to its implementation.

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

Recommendation 1.3:

Adapt existing legislation and mechanisms in the Oriental Republic of Uruguay to require civil servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

Measures suggested by the Committee:

- a. *Promote training programs among public servants related to the existence and purpose of the responsibility to report to appropriate authorities' acts of corruption in the performance of public functions, including the witness protection system applicable in such cases.*
- b. *Evaluate the relevance of making regulatory changes needed to ensure protection for public servants making reports in cases where their hierarchical superiors are involved.*
- c. *Facilitate reporting mechanisms through the use of compliance with this obligation by using the communication media.*
- d. *Carry out a comprehensive review of the existing witness protection program system in order to ensure, as regards specific cases related to public servants that report acts of corruption in the public service, that effective remedies exist vis-à-vis potential threats or retaliation that may be directed toward them as a consequence of complying with this obligation. Establish programs that encourage people to come forward as complainants and/or witnesses.*

In its Response, the country under review provided information with respect to the above recommendation.⁶⁵

⁶⁴ *Ibid.* pg. 26 – 27.

⁶⁵ *Ibid.* pg. 27 – 28. In addition, Decree 500/91 regulates all regarding the Proceedings and Administrative Investigations applicable to the Central Administration.

- Article 175 of Decree 500/991, Article 177 of the Criminal Code, Article 295 of the TOFUP and Article 40 of Decree 30/003 establish the obligation that all public servants must report irregularities or corrupt practices of which they are aware in the performance of their functions, or which were committed in their section, or the effects of which are felt there, and TOFUP regulates the procedure to be followed in these cases.

The Committee takes note of the need for the country under review to give additional attention to its implementation. Similarly, the Committee takes note of the difficulties mentioned by the country under review in implementing this recommendation as there is a lack of effective reaction by public officials when encountering alleged illicit acts.⁶⁶

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

Recommendation 2:

Improve the use of sworn declarations of net worth.

Measures suggested by the Committee:

- a. *Strengthen systems to ensure that competent authorities review in timely fashion and when appropriate the information contained in asset and income statements.*
- b. *Envisage the possibility of extending the regime of offences and sanctions to include offences other than those already covered (such as omitting information). Also include the possibility of establishing a monetary penalty for non-compliance by a former official who, after leaving public service, fails to satisfy the obligation to submit the sworn declaration of net worth.^x*
- c. *Take into consideration the fact that systems for reporting the income, assets and liabilities of those who hold public office can represent an effective instrument for preventing and detecting conflicts of interest and illicit actions or activities.*
- d. *Envisage the possibility of amending the current law so as to permit the use of modern information and communication technology.*

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

- The preliminary Draft Law on “Amendments to Law 17.060,” which was sent twice by the State Advisory Board to the Ministry of Education and Culture for presentation to Parliament for its consideration (Article 16 provides that 5% of any compensation due to a former public official is withheld for not presenting a sworn declaration of net worth).⁶⁷
- A study is underway on a proposal to establish a data processing system for the formulation, receipt, safekeeping and filing of sworn statements with digital signatures.⁶⁸

⁶⁶ *Ibid.*

⁶⁷ *Ibid.* pgs. 24 and 28. See endnote xi.

⁶⁸ *Ibid.* pg. 29.

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

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

Recommendation:

Strengthen the mechanisms for cooperation and coordination among oversight bodies.

In its Response, the country under review provided information with respect to the above recommendation indicating that inter institutional coordination has been strengthening with the new authorities of the Advisory Board on Financial and Economic Matters of State.⁶⁹ The Committee takes note of the need for the country under review to give additional attention to its implementation.

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

4.2. Mechanisms for access to information

Recommendation 4.2:

Establish legal standards that facilitate access to government information.

Measure suggested by the Committee:

- *Develop legislation and mechanisms to ensure citizens' access and protect the right of access to government information.*

In its response, the Oriental Republic of Uruguay presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The preliminary Draft Law on "Amendments to Law 17.060," which was sent twice by the State Advisory Board to the Ministry of Education and Culture for presentation to Parliament for its consideration (Article 19 provides for the obligation of all government authorities to issue a specific response within 45 working days whenever they receive a well-founded request).⁷⁰

- A bill has recently been submitted in the Parliament to establish the right of access to information and an *amparo* process related to that right (Article 1 provides: "Scope of the right to access to information: All legal and natural persons have the right to request, obtain and receive information from any agency belonging to the national or departmental public administration. This involves the right to obtaining information contained in written documents (acts, files, contracts, agreements, etc.) photographs, whether in magnetic, digital or any other format, as well as the right to make consultations).⁷¹

⁶⁹ *Ibid.*

⁷⁰ *Ibid.* pgs. 24 and 29 – 30.

⁷¹ *Ibid.* pg. 30.

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

4.3. Mechanisms for consultation

Recommendation 4.3:

Establish and implement mechanisms that enable public servants to solicit and receive reactions from civil society and non-governmental organizations.

Measures suggested by the Committee:

- a. *Establish and implement mechanisms and procedures for consultation prior to decision making on important public issues, in order to encourage and strengthen the participation of civil society organizations in decision making processes in public administration.*
- b. *Design and implement programs to publicize consultative mechanisms, and when appropriate, to train and provide the necessary instruments to civil society, non-governmental organizations, as well as public servants or public employees in order to use such mechanisms.*

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

- Law 17.935 of December 26, 2005 regulated the establishment and operation of the National Economic Council, a consultative and honorary body provided for in the National Constitution (Article 1 provides that the Council shall obtain the opinions of the economic, professional, social and cultural representatives of the country. Its principle objective is to provide an orderly and institutional dialogue between: a) the economic, professional, social and cultural representatives; b) between these representatives and the State; and c) between these representatives and other similar organisms in other countries).⁷²

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

4.4. Mechanisms to encourage participation in public administration

Recommendation 4.4:

Strengthen and continue to implement mechanisms that encourage civil society and non-governmental organizations to participate in public administration.

⁷² *Ibid.*

Measures suggested by the Committee:

- a. *Establish mechanisms to strengthen the participation of civil society and non-governmental organizations in efforts to prevent corruption and raise public awareness of the problem.*
- b. *Design and implement programs to publicize participatory mechanisms concerning the follow-up of public administration and, when appropriate, train and provide the necessary tools to civil society and non-governmental organizations in order to use such mechanisms.*

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

- The State Advisory Board has included in the preliminary draft budget amendment law, to enter into force on January 1, 2007, an article in which it will undertake “...to establish ties of cooperation with civil society organizations for the purpose of joining forces to strengthen society’s participation in anti-corruption efforts.”^{x1}

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

4.5. Mechanisms to encourage participation in the follow-up of public administration

Recommendation 4.5:

Strengthen and continue to implement measures that encourage civil society and NGOs to participate in the follow-up of public administration.

Measures suggested by the Committee:

- a. *Promote ways, when appropriate, that enable public servants to permit, facilitate or assist civil society and non-governmental organizations to develop activities for monitoring their public activities.*
- b. *Design and implement programs to publicize participatory mechanisms concerning the follow-up of public administration and, when appropriate, train and provide the necessary tools to civil society and non-governmental organizations in order to use such mechanisms.*

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

- The State Advisory Board has included in the preliminary draft budget amendment law, to enter into force on January 1, 2007, an article in which it will undertake “...to establish ties of cooperation with civil society organizations for the purpose of joining forces to strengthen society’s participation in anti-corruption efforts.”⁷³

⁷³ *Ibid.*

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

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

Recommendation 5.1:

Determine those specific areas in which the Oriental Republic of Uruguay may need or could usefully receive mutual technical cooperation to prevent, detect, investigate and sanction acts of corruption; based on this review, design and implement a comprehensive strategy that enables the Oriental Republic of Uruguay to provide assistance to States (party or not party to the Convention) and to institutions or financial agencies involved in international cooperation in obtaining the technical cooperation determined to be required.

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

- The State Advisory Board has started to evaluate the status of corruption in the country, with a view to backing the introduction of new laws on the subject and also to supporting the design of strategies for cooperation with international and interstate organizations.⁷⁴

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

Recommendation 5.2:

Continue efforts to provide cooperation to other States Parties in those areas where the Oriental Republic of Uruguay is already doing so.

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

- The State Advisory Board has started to evaluate the status of corruption in the country, with a view to backing the introduction of new laws on the subject and also to supporting the design of strategies for cooperation with international and interstate organizations.⁷⁵

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

⁷⁴ *Ibid.* pg. 32.

⁷⁵ *Ibid.*

Recommendation 5.3:

Continue efforts to foster technical cooperation exchanges with other State Parties on the most effective ways and means to prevent, detect, investigate and punish acts of corruption, and undertake to exchange information in the context of international cooperation as that will facilitate the implementation of anti-corruption measures.

Recommendation 5.4:

Design and implement a comprehensive program for informing and training competent authorities, in particular, to ensure that they know about and can deal with specific cases of which they are aware Also provide training on provisions related to mutual legal assistance provided for in the Inter-American Convention Against Corruption and in other treaties signed by the Oriental Republic of Uruguay related to the subject of that Convention.

Recommendation 5.5

Disseminate to the competent authorities of those countries with which the Oriental Republic of Uruguay maintains close or ongoing mutual cooperation relations, the requirements which must be fulfilled in preparing petitions, as well as the documentation that should be attached.

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

- The State Advisory Board, along with the Planning and Budget Office, has initiated a project that is designed to strengthen the mechanisms for international legal cooperation in criminal matters. It has already compiled instruments in force between the Oriental Republic of Uruguay and various other States and it will implement training and awareness building programs as well as a program to disseminate requirements and procedures to be considered in the mutual assistance process, directed to those countries with which the Oriental Republic of Uruguay has the most active mutual cooperation relationship.⁷⁶

- The “Declaration of Montevideo” issued during the 24th Meeting of Ministers of Justice of MERCOSUR and Associated States on November 25, 2005, provides for the firm intention to strengthen international legal cooperation among the State Parties, by ensuring that the instruments agreed in the various protocols and agreements for harmonization of regional laws, that have been approved at Meetings of Ministers of Justice held to date, will be widely disseminated among operators in the justice system in each country.⁷⁷

The Committee takes note that the country under review has satisfactorily considered the foregoing recommendations, without prejudice to the fact that they are of a continuous nature and should continue to be developed.

⁷⁶ *Ibid.* pg. 33.

⁷⁷ *Ibid.*

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1:

Forward to the General Secretariat of the OAS the designation of the above-mentioned central authorities, in accordance with established formalities.

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

- The State Advisory Board was designated appropriately and in due time.⁷⁸

The Committee takes note that the country under review has satisfactorily considered the recommendation.

Recommendation 6.2:

Ensure that said central authorities have the necessary resources to ensure adequate performance of their functions.

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

- Law 17.930 of December 23, 2005 strengthens the operation of the State Advisory Board through improved organization and coordination among different offices.⁷⁹

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

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, to ensure their adequate comprehension, handling and implementation.

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

⁷⁸ *Ibid.* pg. 34.

⁷⁹ *Ibid.* The Committee notes that the country under review stated in its response to the draft preliminary report that because of Law 18,046 of October 24, 2006, in force as of January 1, 2007, the Advisory Board's budget has improved substantially, particularly as regards the capacity to hire professionals and technicians, which boosts its work.

- An agreement is being implemented with the Dr. Aquiles Lanza School of Government Officials, by which the aforementioned State Advisory Board will provide technical support for a course on “Government Ethics and Transparency” to be included in all the training programs offered by that School.⁸⁰

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

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.

In its Response, the country under review provided information with respect to the above recommendation indicating that the systems of indicators to verify follow-up of the recommendations formulated by the Committee have not yet been developed. The Advisory Board will have to take up this task, in order to ensure effective compliance with commitments undertaken.⁸¹ The Committee takes note of the need for the country under review to give additional attention to its implementation.

Recommendation 7.3:

Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.

In its Response, the country under review provided information with respect to the above recommendation indicating that the systems of indicators to verify follow-up of the recommendations formulated by the Committee have not yet been developed. The Advisory Board will have to take up this task, in order to ensure effective compliance with commitments undertaken.⁸² The Committee takes note of the need for the country under review to give additional attention to its implementation.

⁸⁰ *Ibid.* pgs. 25 and 34.

⁸¹ *Ibid.* pg. 35.

⁸² *Ibid.*

END NOTES

ⁱ These amounts are currently \$700000 Uruguayan Pesos and \$35000 Uruguayan Pesos, respectively. Article 33 also provides for 17 further exceptions applicable to certain circumstances: a) contracts between government organizations or offices or with nonstate public persons, provided that private companies are not directly or indirectly involved; b) when the public or abbreviated tender or auction receives no bids or no valid or admissible bids are submitted or bids that are clearly inappropriate, in which case the contracting must be done on the basis of identical specifications and terms and conditions as the failed procedure, with an invitation to the original bidders, among others; c) when the tender is for the procurement of goods or services that are exclusively manufactured or supplied by those that have a concession to do so, or that are only in the possession of persons or entities with exclusivity for their sale; d) to acquire, execute, or restore works of art, or scientific or historical works, whenever a competitive process is not possible or the contracts must be awarded to specialized persons or firms of proven competence; e) procurement of goods that are not produced or available in the country and so it is appropriate to arrange such procurement through international organizations to which the country belongs; f) repairs of machinery, equipment, or engines which would be difficult to disassemble, transfer, or test in advance if they were subject to public tender; g) when contracts must necessarily be concluded in foreign countries; h) when circumstance require that the transaction be conducted in secrecy; i) when proven unforeseen reasons for urgency come into play and public tender or auction is not possible or would seriously affect the service in question j) when there is an obvious scarcity of the goods or services to be contracted; k) procurement of goods by public auction, in which case the maximum amount to be paid is the one based on a previously performed appraisal; l) purchase of livestock by selection, in the case of specimens with special characteristics; m) sale of products for economic development or to meet health needs, provided that the sale is made directly to users or consumers; n) procurement of teaching or bibliographic material abroad whenever it is acquired from publishers or companies specializing in the subject; o) procurement of fresh provisions from markets or fairs, or directly from producers; p) procurement abroad of crude oil and its derivatives, basic oils, additives for lubricants, and the corresponding freight charges; and q) purchases under intergovernmental agreements or from foreign government agencies that involve a balance exchange with national exports.

ⁱⁱ These conditions include: a) prohibition on public servants from concluding contracts with the organization to which they belong and from maintaining links, be they management or otherwise, with firms, companies or entities that present offers to conclude contracts with said organizations; b) not have been declared bankruptcy; c) not having defaulted in government contracts; and d) have the capacity, solvency and responsibility to carry out the contract. Article 61 of the TOCAF further provides that purchasers cannot be tied or linked with the party that is contracting with the organization to which they belong within the fourth degree of blood relationship or the third degree of kinship.

ⁱⁱⁱ Article 42 of Law 16.736 of February 5, 1995, <http://www.parlamento.gub.uy/Leyes/Ley16736.htm>. In its Response, the Oriental Republic of Uruguay states, “[i]t is an excellent tool for implementing expenditures by computer, and for control by the competent agencies. Its effectiveness is based on the fact that the computer system does not authorize continuation of the expenditure process under public contracts if the computer does not have a legal appropriation available. In this case, the computer cannot issue the payment order in question,” Response to the Questionnaire, pg. 10. See also <http://www.cgn.gub.uy/siif/queeselsiif.htm>.

^{iv} Articles 8 - 9 of Decree 342/999. The objective of the SICE is to ensure that all information pertaining to an acquisition or contract carried out by the State is entered into the SIIF, as well as its various subsystems that are part of the Financial Administration; provide information that allows for monitoring of the whole process of State contracting; and facilitate public access to information on price and other conditions of State procurement, as well as timely information on the requirements by the State.

^v See Art. 4 of this Decree, <http://www.presidencia.gub.uy/decretos/2003122301.htm>. Also see Decree 232/003 of June 9, 2003, <http://www.presidencia.gub.uy/decretos/2003060901.htm>. All procurements, whether competitive, abbreviated or direct, are to be publicized in this website. This is an information system by which all state agencies must publicize bidding opportunities, the specific terms and condition, and in addition to decisions providing for the awarding of the contract or the rejection of all bids submitted, or declaring that the tender was without bidders, within a maximum of ten days from the date of notification of the decision, Decree

66/002 of February 26, 2002, <http://www.presidencia.gub.uy/noticias/archivo/2002/febrero/2002022604.htm>. In the case of direct procurement procedure, communication of the invitation must be entered on the website and published there for at least 48 hours prior to the close of the bidding process, and the decisions on awarding of contract together with a list of the bidders must be published within ten days of the date of notification. Executing units that have not certified these communications may not commit operating or investment expenditures, Article 5 of Decree 232/003.

^{vi} These read as follows:

Article 33(h)

When circumstance require that the transaction be conducted in secrecy.

Article 33(i)

When proven unforeseen reasons for urgency come into play and public tender or auction is not possible or would seriously affect the service in question.

^{vii} See Article 5 of Law 17.016, of October 28, 1998, <http://www.parlamento.gub.uy/Leyes/Ley17016.htm>; Articles 54 to 57 of Decree-Law 14.294 of October 31, 1974, reads as follows:

“Article 54. Any person who converts or transfers assets, proceeds, or instruments arising from any of the crimes punishable under this law or related crimes shall be punished by a prison term of between twenty months and ten years.

Article 55. Any person who acquires, possesses, uses, holds, or in any way transacts with assets, proceeds, or instruments arising from any of the crimes punishable under this law or related crimes, or that are the product of such crimes, shall be punished by a prison term of between twenty months and ten years.

Article 56. Any person who conceals, suppresses, alters the evidence, or hinders the authentic determination of the nature, origin, location, destination, movement, or true ownership of such assets, or proceeds or other interests related thereto arising from any of the crimes punishable under this law or related crimes shall be punished with a prison term of between 12 months and six years.

Article 57. Any person who assists the agent or agents of the criminal activity in the crimes punishable under this law or related crimes, be it to secure the benefits or results of such activity, to hinder the action of justice, or to evade the legal consequences of his actions, or who provides help, assistance, or advice to such agents, shall be punished by a prison term of between 12 months and six years.”

^{viii} Response to the Questionnaire, pg. 24. Article 17 of the Amendments to Law 17.060 provides: “Public servants as defined by articles 10 and 11 of Law 17.060, that leave their public functions will maintain for a period of one year the same prohibitions, incompatibilities and implications that corresponded to them while in the public service. This period increases to two years in those cases in which the former public servants are hired in either the public or private sphere in the area of the established prohibitions to those applicable activities related or controlled by law with respect to their former public position or function,” www.jasesora.gub.uy.

^{ix} *Ibid.* pg. 25. The Committee notes that the country under review stated in its response to the draft preliminary report that in the agreement entered into with the Dr. Aquiles Lanza School of Government Officials, in addition to the technical backing for the course on “Government Ethics and Transparency”, two Seminars were planned for officials with management responsibilities on “The Debate and Legislation on Corruption” and are scheduled to take place in 2006.

^x The Committee notes that the country under review stated in its response to the draft preliminary report that in Law N° 18,046 of October 24, 2006 on Accountability and Budget Execution 2005, which will take effect as of January 1, 2007, in Article 99 the following provision was approved: “Any officials or ex officials under the obligation to submit a sworn statement of assets pursuant to the provisions of Articles 10 and 11 of Law 17,060 of December 23, 1998 and who have been declared neglectful for not fulfilling their obligation and not giving any legal justification for failing to do, after 15 days have elapsed from the date the notification was issued to them by the State Advisory Board for Economic-Financial Matters, must pay the equivalent of 50% (fifty per cent) per month of the nominal amount of any perquisite, salary, income, fee, pension or subsidy paid by Public Entities upon request by the Board to any of them. The retention shall continue until such time as the interested party demonstrates, through a certificate issued by the Board that it has fulfilled the legal obligation, in which case the amount retained shall be returned to him.” The Committee also takes note that the country under

review additionally stated, “the report should stress that a high proportion of government officials that comply with their obligation to submit sworn statements (96.60% on average and 98.92 % in the case of assets).”

^{xi} *Ibid.* pg. 31. The Committee notes that the country under review stated in its response to the draft preliminary report that the proposal made to Parliament by the Advisory Board was included in Law 18,046 of October 24, 2006, which will enter into effect on January 1, 2007. Article 100 thereof states: “*In fulfillment of its responsibilities, the State Advisory Board for Economic-Financial Matters may liaise with International and foreign organizations on matters related to their area of competence and establish cooperation links with organizations representing civil society in a concerted effort to strengthen society’s participation in the fight against corruption.*”