

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION (MESICIC)

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THE ORIENTAL REPUBLIC OF URUGUAY

FINAL REPORT

(Adopted at the plenary session)

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

FINAL REPORT ON THE IMPLEMENTATION

IN THE ORIENTAL REPUBLIC OF URUGUAY

**OF THE PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW WITHIN THE
FRAMEWORK OF THE FIRST ROUND¹**

INTRODUCTION

1. Legal-institutional framework²

The institutional system prevailing in the Oriental Republic of Uruguay is based on a Constitution first written in 1830 and subsequently amended on a number of occasions by universal suffrage. Respect for the Constitution of the Republic is a constant in the life of the country, around which the entire political-institutional system revolves. The form of government is a democratic republic (Article 82 of the Constitution), under which the representative bodies arise from the direct exercise of sovereignty through a popular vote for national and municipal legislators, the President and Vice-President of the Republic and Municipal Councilors, and indirectly for the three branches of government (Executive, Legislative and Judicial); this is without prejudice to bodies with constitutional hierarchy that carry out specific functions with respect to the external audit of expenditures and payments (Court of the Exchequer), jurisdictional review of the legality of administrative acts (Court of Administrative Judicial Review) and electoral justice (Electoral Court).

The system of universal suffrage for the election of the President and Vice-President of the Republic includes a provision for a second ballot when an absolute majority of voters has not been obtained during the first round. The President of the Republic is both the Head of State and the head of the government. Executive powers are exercised by the President with the respective Minister or Ministers, or with the Cabinet of ministers. The ministers must have a parliamentary majority and can be censured by Parliament. The term of government is five years, both for the national government as well as for municipal governments, although elections for municipal commissioners and departmental and local councilors do not coincide with the election of national authorities.

Parliament is comprised of three houses: the Senate, the House of Representatives, and the General Assembly. The Vice-President of the Republic is the President of the Senate, which is comprised of 31 senators; the House of Representatives is comprised of 99 congressmen; and the General Assembly brings together both houses. The electoral system provides for complete proportional representation, with certain attenuating circumstances.

¹ This report was adopted in accordance with the provisions of Articles 3 g), and 26, of the Rules of Procedure of the Committee, in the plenary session on February 6, 2004, within the framework of the Fifth Meeting of the Committee of Experts, held on February 2 – 6, 2004.

² Response of the Oriental Republic of Uruguay to the Questionnaire, approved on May 24, 2002, and in relation with the provisions selected by the Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption to be reviewed within the framework of the first round, August 2002, pgs. 1 and 2. Pursuant to the request of the Oriental Republic of Uruguay, its response to the questionnaire, along with respective annexes and supplementary information, as well as the documents submitted by Civil Society, in accordance with the Rules of Procedure and Other Provisions, are published on the Mechanism's website at the following internet address: http://www.oas.org/juridico/english/corresp_ury.htm

The designation of each member of the Supreme Court of Justice (Article 236 of the Constitution), of the Court of Administrative Judicial Review (Articles 236, 307 and 308 of the Constitution), the Electoral Court (Article 234 of the Constitution) and the Court of the Exchequer (Article 208 of the Constitution) is determined by decision of the General Assembly by a special majority. Both the Judiciary as well as each of the bodies with constitutional hierarchy mentioned above independently exercises their respective functions in their area of jurisdiction.

The national budget is adopted for a five-year period with accounts being rendered on an annual basis; at that time, Parliament considers the approval of the accounts and may introduce amendments that it considers indispensable to the national budget approved for the 5-year period of governance (Article 214 of the Constitution). This annual rendering of accounts is mandatory for the Executive Branch except for the budgets of bodies with constitutional hierarchy (The Judiciary, the Court of Administrative Judicial Review, the Electoral Court and the Court of the Exchequer) that can do so on their own initiative and then present to the executive branch for examination and incorporation into the Draft National Budget as it sees fit, with consideration for the General Assembly's decisions within the context of approval of the Special Budgetary Law. Each of the legislative chambers shall approve its own budget and inform the executive branch of the same so that it can be included in the National Budget (Article 108 of the Constitution).

The government of each of the Republic's 19 territorial departments is headed up by a departmental executive known as a Municipal Commissioner and by Departmental Councils made up of 31 members known as councilors, who exercise legislative functions in the municipal arena.

Public expenditures are subject to an internal audit, carried out by the same bodies which make said expenditures, to an external audit carried out by the Court of the Exchequer and to an audit of the legality of expenditures and payments (Article 211 paragraph B of the Constitution). The Internal Auditor's Office acts as internal auditor within the central administration, which comprises all departments of the executive branch, and the General Auditor's Office of the Republic intervenes in the actual process of making expenditures. With respect to the audit of public investments, the Planning and Budgetary Office of the Presidency of the Republic is the competent authority. It is mandatory to receive approval from the Executive Branch in order to sanction taxes, create public jobs, and establish retirement benefits and monetary compensations (Article 86 of the Constitution).

The industrial and commercial activity of the State is carried out through entities with a degree of decentralization as determined by the law; they are known as Autonomous Entities and Decentralized Services. These entities plan their budgets, which are approved by Executive Decree in a complex procedure, with the participation of the Court of the Exchequer, the Planning and Budgetary Office and potentially the General Assembly (Article 221 of the Constitution). As well, autonomous entities exist that carry out public educational activities at the university, primary, secondary, and technical levels.

2. Ratification of the Convention and adherence to the Mechanism

According to the official registry of the General Secretariat of the OAS, the Oriental Republic of Uruguay ratified the Inter-American Convention against Corruption on the 28th of October 1998, deposited the respective instrument of ratification on the 7th of December 1998 and formulated the reservation mentioned in section 5.1.1.

Similarly, the Oriental Republic of Uruguay subscribed to the Declaration on the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption on the 4th of June 2001 at the 31st regular meeting of the General Assembly of the OAS, in San José, Costa Rica.

I. SUMMARY OF INFORMATION RECEIVED

The Committee wishes to underline the cooperation received from the Oriental Republic of Uruguay during the entire review process and, particularly, from the Advisory Board on Financial and Economic Matters of State, which acted as a coordinating body; this cooperation was made evident, among other things, by its timely response to the questionnaire and its ongoing availability to clarify or complete the contents of said questionnaire.

In its response, Oriental Republic of Uruguay appended a list of pertinent provisions and documents, which had been included in the appendix to this report.

In carrying out its review, the Committee took into account information provided by the Oriental Republic of Uruguay up to the 18th of August 2003 and the information subsequently provided to the Secretariat and to the members of the subgroup for it to perform its functions, in accordance with the Rules of Procedure.

The Committee also received, within the time frame adopted by the Committee of Experts at its Third Regular Meeting,³ the documents sent by the national chapter of Transparency International “*Uruguay Transparente*”, which, according to this document, is a non-governmental organization whose basic principles include, among others, to propose measures designed to combat the development of corruption.⁴

II. REVIEW OF THE IMPLEMENTATION BY THE ORIENTAL REPUBLIC OF URUGUAY OF THE PROVISIONS SELECTED

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

1.1 CONFLICTS OF INTEREST

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

As detailed in response to the questionnaire,⁵ the Oriental Republic of Uruguay has a set of standards of conduct at the constitutional, legal and regulatory levels, as well as mechanisms and other measures designed to prevent conflicts of interest that may occur within the public service.

The legal basis for these measures in Uruguay can be found in Article 59 of the Constitution for Public Servants which states: “*The law shall establish the status of the public servant on the fundamental basis that the public servant exists for the function; the function does not exist for the public servant.*” This status was approved through Decree Law 10.388 of 13 February 1943, which in essence established the rights, guarantees and procedures applicable to public servants. The decree has the status of law and was incorporated into the TOFUP. Law 17.060 and Decree 30/003 establish the scope of the obligations and prohibitions placed on public servants. Article 20 of Law 17.060, which provides that public servants

³ Decision entitled “Update of Responses to Questionnaire”. This decision was adopted by the Committee of Experts at its meeting on February 13th, 2003 as part of its Third Regular Meeting held from February 10 to 13, 2003 at OAS headquarters in Washington D.C., United States of America.

⁴ Document tabled by the national chapter of Transparency International, “Uruguay Transparente”, page 9.

⁵ Response of the Oriental Republic of Uruguay to the Questionnaire, page 1.

must strictly observe the principle of probity, which implies honest conduct in the performance of one's function, with the preeminence of the public interest over all others.

In accordance with this latter article, public interest is expressed through the satisfaction of collective needs, the use of good will in the exercise of power, the impartiality of decisions adopted, the performance of the assignments and obligations of the function, honesty in exercising one's duties and the suitable administration of public resources.

Similarly, the principles governing public service are regulated. Indeed, the performance of public duties is governed by a series of principles, including the preeminence of the public interest in the exercise of a public function (Article 59 of the Constitution and Article 8 of Decree No. 30/003 dated 23/01/03); the observance of honest, proper and upright conduct (Articles 20 and 21 of Law 17.060 and Article 11 of Decree No. 30/003 dated 23/01/03); good faith and loyalty in performing a public function (Article 20 of Law 17.060 and Article 13 of Decree No. 30/003 dated 23/01/03); impartiality (Article 21 of Law 17.060 and Article 16 of Decree No. 30/003 dated 23/01/03); transparency and openness (Article 7 of Law 17.060 and Article 18 of Decree No. 30/003 dated 23/01/03), among others.

Public servants must avoid all conduct resulting in an abuse, excess or misuse of power, and the undue use of their position or their involvement in affairs that may benefit them economically or individuals directly related to them. Any act or omission in contravention of this principle shall result in the administrative, civil or criminal liability of its authors (Article 21 of Law No. 17.060).

In addition, Decree No. 30/003 dated 23/01/03 regulates in great detail standards of conduct in the public service. These standards apply to public servants in the legislative, executive and judicial branches, as well as the Court of the Exchequer, the Electoral Court, the Court of Administrative Judicial Review, departmental governments, autonomous entities and decentralized services, and non-state controlled public entities (Article 3).

As well, this Decree specifically includes the obligation of the public servant to distinguish and clearly separate personal interests from the public interest and expressly indicates the types of conduct that are prohibited.⁶

Law 17.060 also prohibits public servants from using their position to influence an individual with the object of obtaining a direct or indirect benefit for themselves or for a third party and using for one's benefit or for the benefit of a third party reserved or privileged information obtained in the exercise of the public function (Article 22 of Law 17.060, Article 12 of Decree No. 20/003 of 23/01/03).

Along these same lines, Article 303 of the TOFUP stipulates that public servants involved in or who may become involved in private activities subject to direct and specific control of the department in which the position is held, must submit a sworn declaration describing such involvements. As well, TOFUP states that it is incompatible for such public servants to carry out any tasks in the performance of their functions that may be related to private activities in which they have an involvement. Similarly, Decree No. 30/003 dated 23/01/03 establishes and regulates sworn declarations of involvement; by virtue of this decree, public servants must describe the category of involvement or activity as laid down in the legislation, with specific reference to individuals or companies, and the type of relationship or interest maintained with them (Articles 29 and following of Decree No. 30/003 dated 23/01/03).

⁶ Country Progress Report, submitted in compliance with the provisions of Article 30 of the Rules of Procedure of the Committee of Experts, at its fourth meeting held from July 14 – 18, 2003.

The Committee also noted the existence of standards with respect to conflicts of interest applicable to special categories of public servants. For example, at the constitutional level, a regime of incompatibilities applicable to members of the House of Representatives, of Senators and members of the Court of the Exchequer is provided for in Articles 91, 92, 122 to 125, and 208 of the Constitution.

The Constitution also refers to the incompatibilities of members of directorates or directors general of autonomous entities or decentralized services. For example, they may not be appointed to positions, even honorary positions that directly or indirectly form part of the entity to which they belong (Article 200 of the Constitution).

With respect to public tendering, the Committee also observes Article 43, paragraph 1 and Article 301 of the TOCAF (Amended Text on Financial Administration and Accounting) as well as Article 15 of Decree No. 30/003 mentioned above, which prohibit 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;⁷ their involvement is similarly prohibited when they are 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.⁸

The Oriental Republic of Uruguay also has mechanisms to ensure the effective implementation of the measures designed to prevent conflicts of interest. Of those mechanisms, those mentioned below deserve to be highlighted.

A first mechanism corresponds to the power conferred on the administration to impose, through the appropriate organizations, administrative, civil or criminal sanctions on public servants that do not observe “*principles of respect, impartiality, probity and honesty... and any conduct which involves an abuse, excess or misuse of power, and the undue use of their position or their involvement in matters that can benefit them economically or benefit individuals directly related to them*” (Article 21 of Law 17.060, Article 5 of Decree No. 30/003 dated 23/01/03); as well as the administrative disciplinary procedure (Decree 5000/991, Articles 168 to 231 and Articles 1051 to 1127 of TOFUP).

A second mechanism has to do with the work carried out within each of their respective jurisdictions by the senior managers of each public service unit or agency in ensuring the application of the public service standards of service. These management employees are responsible for monitoring application of rules of conduct in the performance of job-related duties and have the obligation to respond, within a reasonable amount of time, to any requests for consultation in these matters made by the public servants in their agency in regard to the application of the institution’s rules of conduct (Article 5, Decree No. 30/003 dated 23/01/03).⁹

A third mechanism can be found in Article 28 of Law 17.060, which details the obligation of public entities to provide training programs for personnel entering the public service; as well, refresher courses must be carried out every three years and cover aspects related to conflicts of interest in the public service as well as other aspects referred to in said Law (Article 28). Similar standards are also contained in Article 22 of Decree No. 30/003.

⁷ Response of Oriental Republic of Uruguay to the Questionnaire, page 9.

⁸ Response of Oriental Republic of Uruguay to the Questionnaire, page 9.

⁹ Articles 1051 to 1127 of TOFUP are reproduced by in Articles 1016 to 1094 of the updated 2002 TOFUP, with the additions made by Decree 486/2000 of 19/12/2002 introducing Articles 1032bis, 1068bis, 1068bis 1, 1068 bis 2, 1068bis 3, 1068bis 4 and 1089, and lending a new wording to Article 1033. Article 1083 is been redrafted by order of Article 6 of Law 17.678 of 30 July 2003

The Committee also wishes to highlight the use of sworn declarations of involvement as mechanisms to ensure the effective implementation of these measures. Such declarations are regulated in Article 29 of Decree No. 30/003 dated 23/01/03 and, as mentioned in previous paragraphs, apply to all public servants who, as of the effective date of the Decree, find themselves in situations regulated by said Decree.

Another of the prevailing mechanisms mentioned by the Oriental Republic of Uruguay in its response is the definition of the offence of *adjunctio* of personal interest and the public interest; this is regulated by Article 161 of the Criminal Code according to the wording of Article 8 of Law 17.060. The article states that public servants who “*with or without fraudulent intent, directly or by a third party, take an interest in any category of activity or contract in which they must be involved in by virtue of their position*” shall be punished. As well, obtaining any sort of monetary benefit is typified as an aggravating circumstance for this type of criminal offence (Article 163 of the Criminal Code).

1.1.2 Adequacy of legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms in the area of conflicts of interest, based on the information made available to the Committee, are relevant when it comes to promoting the objectives of the Convention. However, the Committee believes it to be appropriate to express some comments with regard to some aspects of these standards and mechanisms.

At the constitutional level, the Committee noted the existence of mechanisms designed to enforce standards of conduct for public servants. For example, the principle of integrity in the public service is enshrined in Article 59 of the Constitution, and developed further in Law 17.060 and Decree No. 30/003 dated 23/01/03.

The general regime that includes or covers all public servants is established by Law 17.060 and by Decree No. 30/003 mentioned above, by means of which the public service and duties of public servants in general in their relationships with the public administration are regulated. Both regimes establish a comprehensive set of standards of conduct for the correct, honorable and appropriate performance of public service, and are designed to achieve the principles laid out in the Convention.

It should be pointed out that Decree No. 30/003 represents an effort to integrate all the standards of conduct for the public service within a single regulatory corpus, and as such constitutes progress in terms of implementing the Convention.

With respect to provisions concerning *involvements*, the Decree mentioned in the above paragraph notes the obligation of certain public servants to submit a sworn declaration indicating the type of involvement or activity, in particular those contained in said Decree, and to identify clearly the individuals or companies in question and the type of relationship maintained with them. Furthermore, the Decree contains a broad and complete list of the prohibitions to which the public servant is subject. This also constitutes progress in terms of implementing the Convention.

Nevertheless, the Committee notes a lack of regulation when it comes to those activities performed by public servants once they no longer exercise their public functions, with the exception of the conflict of interest provisions applied to national legislators for one year following their term, in accordance with Article 125 of the Constitution, and to Ministers of State (Article 178) and judges of the Court of the Exchequer (Article 208). The Committee believes it would be advisable for the Oriental Republic of Uruguay to consider adopting provisions to be applied, when appropriate, to public servants

in general, such as prohibiting public servants from participating in the management of official matters of which they were aware or vis-à-vis entities in which they were recently involved; in general, the Committee believes it is important for the Oriental Republic of Uruguay to consider making provision for situations that could lead to ex-civil servants taking undue advantage of their former position. The Committee wishes to highlight that it would be appropriate for the Oriental Republic of Uruguay to consider developing regulations that, for example, could limit or prohibit the holding of administrative or management posts in private institutions subject to the control or regulation of the State, wherein such individuals have exercised a certain level of public jurisdiction in the respective oversight or regulating organization, with such prohibition covering a reasonable period of time following the departure of the civil servant, when appropriate.

The Committee acknowledges the existence of the provision in Article 200 of the Constitution, which has similar characteristics to those mentioned in the above paragraph. However, Article 200 refers only to members of Directorates or to Directors General of autonomous entities or decentralized services. A similar provision should be adopted to cover other categories of civil servants.

The Committee also notes the limited existence of programs designed to systematically promote the awareness and training of all public servants with respect to standards of conduct, including those relative to conflicts of interest, as well as periodic updating and training programs with respect to said standards. In this respect, the Committee acknowledges that standards do exist establishing the obligation of public servants to train themselves in order to act in full knowledge of the matters submitted for their consideration. Article 22 of Decree No. 30/003 dated 23/01/03 points out the express obligation of public servants to attend training courses concerning administrative probity, incompatibilities, prohibitions and conflicts of interest in the public service. The Committee also acknowledges the progress made in implementing the Convention through the efforts carried out by the “*Doctor Aquiles Lanza*” School of Public Servants as well as the others mentioned by the Oriental Republic of Uruguay in the update to its response to the questionnaire.¹⁰ Nevertheless, based on the information received, it not possible to conclude whether these standards and efforts have been implemented or applied in a general and periodic fashion.

Taking into account these considerations, the Committee will formulate recommendations with respect to this issue.

1.1.3 Results of the legal framework and/or of other measures and enforcement mechanisms

According to the response of the Oriental Republic of Uruguay¹¹ “*the above-mentioned standards of conduct designed to prevent conflicts of interest are, for the most part, the object of a long-standing tradition in this country. Article 221 of Decree 500/991 establishes the obligation to communicate the decisions resulting from administrative committal proceedings to the General Registry of Administrative Committal Proceedings administered by the National Office of the Civil Service of the Presidency of the Republic. During the ten-year period between 1991 and 2001 there were 10 indictments for the crime of adjunctio of public and private interests, none of which reached a final judgment.*”¹²

In this respect, the Committee wishes to call attention to the fact that over a ten-year period there was an average of only one indictment per year for the crime of adjunctio of public and private interests

¹⁰ Update of the Response of the Oriental Republic of Uruguay to the Questionnaire, page 5.

¹¹ Response of the Oriental Republic of Uruguay to the Questionnaire, page 13.

¹² Response of the Oriental Republic of Uruguay to the Questionnaire, page 16.

(between 1991 and 2001) and that none of these cases reached a final judgment.¹³ It would be appropriate for the Oriental Republic of Uruguay to consider identifying the causes leading to the low number of indictments for that crime, and the reasons why a final judgment is not reached and on that basis to consider adopting the appropriate measures.

In this regard, the response dated June 30, 2003 from the Bar Association of Uruguay to the inquiry made by the Advisory Board on Financial and Economic Matters of State relative to the response to the questionnaire pointed out: *“Specifically, no information is available on the degree of compliance with the obligation imposed by the law to publicize the conflicts of interest involving public servants of different ranks; nor are we aware of the application of procedures designed to ensure that such a report is made in all cases. This is a significant shortcoming.”*

Furthermore, the Committee wishes to put on record the comment contained in the update to the response to the questionnaire presented by the Oriental Republic of Uruguay; it indicates that over the past two years, courses have been provided to 1,000 public servants through the Doctor Aquiles Lanza School of Public Servants. The topics covered, among others, include conflicts of interest in the public service.¹⁴ The Committee believes that this represents progress in the implementation of the Convention.

The general nature of the existing information and the lack of information do not allow the Committee to assess the results in this field. Taking into account this circumstance, the Committee will formulate a recommendation.

1.2. STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS.

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

The legal system of the Oriental Republic of Uruguay contains a set of standards and mechanisms designed to ensure the proper conservation and use of resources entrusted to public servants. In this respect, the following comments apply.

According to Article 20 of Law 17.060 and Article 11 of Decree No. 30/003 dated 23/01/03, public servants must strictly observe the principle of probity, which implies honest conduct in the performance of their duties, with preeminence of the public interest over any other.

Public servants must avoid all conduct resulting in an abuse, excess or misuse of power, and the undue use of their position or their involvement in affairs that may benefit them economically or individuals directly related to them (Article 21 of Law No. 17.060).

Article 22 of Law No. 17.060 details the types of conduct that run contrary to probity. The list contained in the Article includes taking advantage of one’s position to influence another with the objective obtaining a direct or indirect benefit for oneself or for a third party. Similar sentiments are also expressed in Article 12 of Decree No. 30/003 dated 23/01/03.

¹³ Response of the Oriental Republic of Uruguay to the Questionnaire, page 16.

¹⁴ Update of the Response of the Oriental Republic of Uruguay to the Questionnaire, page 5.

This latter Decree also stipulates in Article 12 C) that taking a loan or money or property from the institution where one works, except when the law so expressly authorizes, is conduct that runs contrary to public probity.

Articles 153 and following of the Criminal Code include offences against the public administration. These offences include graft (Article 153), extortion (Article 156), bribery (Articles 157 and 158), and corruption (Article 159). As well, the Criminal Code also lists offences related to abuse of authority and violation of duties inherent in the public service (Articles 160 to 165); offences related to the usurpation of public functions and titles (Articles 166 and 167); and those related to the appropriation of objects in the custody of public organizations (Articles 168 to 170).

Public servants have the obligation to use moveable and immoveable property belonging to the public agency in which they provide their services or assigned for their use or consumption exclusively to provide the services related to their position.¹⁵

As well, certain public servants who carry out tasks or duties related to managing the assets of the State bear administrative liability in financial and accounting matters. This liability also extends to senior managers and employees of non-governmental public entities or legal corporations that improperly use public funds or incorrectly manage property of the State, and to public servants in oversight agencies who may have been involved in an illegal or irregular act or who may have failed to oppose such an act.¹⁶

Contravening the principles and procedures of good management with respect to the handling of money or public securities and the custody of state property constitutes an administrative misdemeanor, even when the State suffers no economic prejudice.¹⁷

Section II of Decree 500 establishes the disciplinary procedure and regulates the set of steps and formalities that the administration must observe in exercising these powers.

The system of oversight with respect to economic and financial management activities of government bodies forming part of the central administration is the responsibility of the Internal Auditor's Office. The acts and auditing activities carried out by this entity include budgetary matters, as well as economic, financial, patrimonial, regulatory and management aspects, in addition to the assessment of programs and projects.¹⁸

Uruguay's legal system also includes a state tendering procedure that is amply regulated by articles 33 and following of the TOCAF. Any contract concluded with the State must be subject to the public tendering process when such contract involves financing or investment expenses or outlays by the State, or by auction or tendering in the case of income or resources.

As well, all the property of the State is part of a *general inventory of state property*, which must be maintained up to date by each public organization and its agencies; furthermore, all such information must be centralized within the General Auditor's Office of the Republic (Article 72 of TOCAF).

¹⁵ Article 71 of TOCAF, Articles 34 and 36 of Decree No. 30/003 dated 23/01/03.

¹⁶ Articles 119 and 120 of TOCAF, Article 36 of Decree No. 30/003 dated 23/01/03.

¹⁷ Article 308 of TOFUP, reproduced in Article 351 of TOFUP 2002.

¹⁸ Articles 92 and following of TOCAF.

1.2.2 Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms in the area of the proper conservation and use of resources entrusted to public servants in the performance of their functions, based on the information made available to the Committee, are relevant when it comes to promoting the objectives of the Convention.

In fact, it should be pointed out that legal provisions of an administrative, criminal, fiscal and disciplinary nature exist that describe the misdemeanors or types of conduct that affect the national wealth, as well as the corresponding sanctions for those public servants and individuals responsible.

In accordance with the comments made by the country in its response¹⁹, the standards in the area of public accountability and of the use of public property permits the identification of irregular situations that may arise. As well, mention is made of the role played by the Internal Auditor's Office of the Republic, which publishes audits that call attention to the improper use of public property.

The function being carried out by the Internal Auditor's Office with reference to the oversight system for economic and financial management and acts (Articles 92 and following of TOCAF) and the general inventory of the property under the responsibility of the General Auditor's Office of the Republic (Articles 72 of TOCAF) are adequate to comply with the objectives of the standards being reviewed by this Committee.

Similarly, the response of the country concerning the website of the Presidency of the Republic, which provides a means for reporting the improper use of public vehicles, is adequate and represents progress in terms of the implementation of the Convention.

The Committee notes that the case of private individuals who are in charge of managing these resources is an exception and requires the express authorization of the Administration. The requirements for awarding public works concessions and/or public service contracts include the establishment of guarantees on the faithful performance of obligations, among them guarantees on the maintenance of public resources granted under government concessions and the obligation regarding proper conservation and use of property belonging to others as provided under the current legal system. Cases in which property in the public domain is granted under concession to private individuals are subject to the system of contractual responsibility for the proper conservation and use of the public property covered by each contract. All these contracts are subject to the system of contractual responsibility for the proper conservation and use of public property covered by each contract.

However, the Committee notes the inadequacy of general standards on the proper conservation and use of public resources with respect to individuals responsible for the management of such resources.

Taking the above considerations into account, the Committee will formulate a recommendation.

The Committee calls attention to the statistics presented in the *Comprehensive Study on the Phenomenon of Corruption in Uruguay* concerning the Court of the Exchequer and public tenders. The study mentions that the annual reports of this entity trace the "evolution of irregularities in the handling of public funds"²⁰. The study indicates "between the years 1997 and 2000, the State of Uruguay handled

¹⁹ Response of the Oriental Republic of Uruguay to the Questionnaire, page 18.

²⁰ *Comprehensive Study on the Phenomenon of Corruption in Uruguay*. Executive Summary of the Agreement between Universidad de la República (Political Science Institute) and the Advisory Board on Financial and Economic Matters, page 11.

3,372 tenders, of which 1,092 were overseen by the TCR. This means that for 32% of the tenders let by the State – in 3 out of 10 cases – the expenditure was not made in accordance with legal standards. Of the total amount of tenders let (approximately U.S. \$3.2974 million), some U.S. \$855.2 million, or 26%, were subject to oversight”. As mentioned in the study, these “irregularities” were not necessarily associated with corrupt practices but “should call our attention to the lack of transparency in the handling of resources”²¹. For this reason, the government of the Oriental Republic of Uruguay should be encouraged to take the measures it considers appropriate to ensure the observance of standards governing public tenders.

1.2.3 Results of the legal framework and/or of other measures and enforcement mechanisms

The Oriental Republic of Uruguay notes in its response that “no statistical information exists”²² in this respect.

However, the Committee takes note of the statistical data from the Attorney General²³ for the year 2002; these statistics were appended to the response, and refer to the incidence of acts of corruption as a percentage of all the cases brought before the criminal courts. The total number of acts of corruption was 81 and the number of enquiries into said acts was 126; these were for offences such as abuse of one’s position and graft. The preceding can be interpreted as an indication of the importance that the country attaches to the prosecution of these offences.

The general and limited nature of the information made available to the Committee does not permit a comprehensive assessment of the results in this area.

Taking into account these circumstances, the Committee will formulate a recommendation.

1.3 MEASURES AND SYSTEMS REQUIRING PUBLIC OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS OF WHICH THEY ARE AWARE

1.3.1 Existence of provisions in the legal framework and/or other measures and enforcement mechanisms.

The Oriental Republic of Uruguay has standards that clearly and specifically establish the obligation of public servants to report to appropriate authorities’ acts of corruption in the performance of public functions. These standards cover all public servants in general.

Article 175 of Decree No. 500/991, Article 177 of the Criminal Code, Article 29562 of TOFUP and Article 40 of Decree No. 30/003 dated 23/01/03 establish the obligation for all public servants to report irregularities or corrupt practices in the performance of their duties, including those acts that occur in their department, or the impact of any such acts. Articles 1022 and following of TOFUP govern the procedure to be followed in such cases.

²¹ Comprehensive Study on the Phenomenon of Corruption in Uruguay. Executive Summary of the Agreement between Universidad de la República (Political Science Institute) and the Advisory Board on Financial and Economic Matters, page 13.

²² Response of the Oriental Republic of Uruguay to the questionnaire, page 18

²³ Ministry of the Attorney General. Support Centre for the Attorney General in Criminal Matters, Statistics Section. Statistics on Acts of Corruption on the Civil Service. Montevideo and interior for the year 2002.

Similarly, the obligation of public servants to process reports of corruption is laid down in Article 171 of Decree 500, and Article 40 of the Decree No. 30/003 dated 23/01/03. In both cases such reports must be brought to the attention of one's hierarchical superiors. In the case of irregularities that could result in an economic loss or damages, the public servant is obliged to report in writing to his or her hierarchical superior and to the Court of the Exchequer {Article 103 of TOCAF and Article 295 of TOFUP}²⁴. The Committee notes that reporting to the hierarchical superior may be a limitation if that superior is involved in the irregularity. In turn, the authority in charge of reaching a decision on internal investigations resulting from the possibility of an offence, is obliged to file immediately a police or judicial report (Article 177 of the Criminal Code based on the wording of Article 8 of Law 17.060).²⁵

In addition, in Article 43 of Decree No. 30/003 dated 23/01/03, the prevailing legal system establishes a regime for protecting witnesses and those who report offences applicable to any individual or public servant who, in good faith, reports offences related to public corruption.²⁶

1.3.2 Adequacy of the legal framework and/or other measures and enforcement mechanisms

The standards and mechanisms related to the measures and systems that require public servants to report acts of corruption in the public service of which they are aware, as reviewed by the Committee based on the information made available, are relevant for the promotion of the objectives of the Convention.

In this respect, the particular importance of Article 40 of Decree 30/003 should be pointed out, since it applies in general to all public servants.

The Committee notes that the last Article cited refers to irregularities or corruption practices public servants become aware of in the performance of their duties, including those acts that occur in their department, or the impact of any such acts. This formulation excludes the hypothetical situation whereby the public servant becomes aware of these acts or facts without necessarily being in the process of performing his or her duties. The Committee notes that it is important that the Oriental Republic of Uruguay may wish to consider receiving this formulation, with the objective of being able to require public servants to report to appropriate authorities acts of corruption they become aware of in the performance of public functions. The Committee will formulate a recommendation in this regard.

The Committee believes it would be appropriate for the Oriental Republic of Uruguay to consider establishing a regulation that encourages the presentation of these reports and that improves requirements for presenting such reports that do not inhibit individuals wishing to make such a report, such as enabling reports to be made by telephone or using other means of communication. This is particularly important if one takes into account the results of the Opinion Survey carried out in Montevideo and Canelones in December 2001, which show that 36% of individuals interviewed do not report acts of corruption out of fear of reprisals.²⁷ Despite the fact that this survey involved the general public rather than public servants in specific, it can be considered as an indicator of behavior in this regard.

The survey carried out by the Universidad de la República – Faculty of Social Sciences – confirms the result of the previous survey; indeed, 47.7% of public servants interviewed admitted that

²⁴ The text of Article 278 of TOFUP is reproduced in Article 313 of TOFUP 2002

²⁵ Response of the Oriental Republic of Uruguay to the Questionnaire, page 12.

²⁶ Response of the Oriental Republic of Uruguay to the Questionnaire, page 12.

²⁷ Opinion Survey in Montevideo and Canelones, December 2001, page 3.

fear was a factor that inhibited the reporting of acts of corruption.²⁸ The Committee will formulate a recommendation in this respect.

The Committee also observes that the Oriental Republic of Uruguay could benefit from the creation and strengthening of training programs related to the obligations and responsibilities of public servants to report to appropriate authorities acts of corruption in the performance of public functions.

In this regard, the survey carried out by the Universidad de la República mentioned above shows that *“lack of knowledge and complexity of the procedures may also appear to constitute obstacles to the reporting of acts of corruption by one-third of public servants surveyed”*.²⁹

Taking into account this circumstance, the Committee will formulate a recommendation.

The Committee also notes with satisfaction the existence of regulations that provide a regime of protection for witnesses and persons who, in good faith, report acts of public corruption.

1.3.3 Results of the legal framework and/or of other measures and enforcement mechanisms

In its response, the Oriental Republic of Uruguay indicated that: *“No statistical information is available related to the application of the above standards and mechanisms; however, as a result of the public dissemination of several of the said mechanisms, a number of themes related to public corruption were collected from articles in the press. A review of the information at the parliamentary library between January 1993 and December 2001 uncovered 4,963 articles related to corruption; in 1995 and 1996, there was a spectacular increase in said published articles.”*³⁰

The statistical information provided concerning 2001 and 2002 refers to the number of legal judgments related to offences against the public administration. Nevertheless, this information does not allow the identification of those offences wherein criminal proceedings were initiated following a report made by a public servant.³¹

The limited nature and lack of available information do not make it possible to assess the results in this area.

Taking into account this circumstance, the Committee will formulate a recommendation.

²⁸ Comprehensive Study on the Phenomenon of Corruption in Uruguay. Executive Summary of the Agreement between the Universidad de la República (Political Science Institute) and the Advisory Board on Financial and Economic Matters, page 23.

²⁹ Comprehensive Study on the Phenomenon of Corruption in Uruguay. Executive Summary of the Agreement between the Universidad de la República (Political Science Institute) and the Advisory Board on Financial and Economic Matters, page 24.

³⁰ Response of the Oriental Republic of Uruguay to the Questionnaire, page 12.

³¹ Update of the Response of the Oriental Republic of Uruguay to the Questionnaire. Attachments: statistics on acts of corruption in the public administration. Years 2001 and 2002 page 6.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 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 standards and measures with respect to disclosing income, assets and liabilities. This system is provided for and regulated by Articles 10 and following of Law 17.060 and by Decree 354/999.

Law 17.060 comprehensively regulates the system of sworn declarations of net worth, and contains provisions on those who are obliged to make such declarations (Articles 10 and 11); their contents (Article 12); the time periods within which they must be updated (Article 13); the body to which they should be sent (Article 13); and the consequences in case of lack of compliance (Articles 16 and 17).

Similarly, Decree 354/999 contains standards related to the contents of these declarations (Article 28); presentation format (Article 29); and custody (Article 32).

These declarations must contain not only a precise and detailed list of all the public servant's assets (property) and liabilities (obligations), but also all assets, liabilities and income of the spouse and of dependents by virtue of patria potestas, custodianship or guardianship (Article 12 of Law 17.060).

Such declarations are presented in sealed envelopes and are only opened in the circumstances provided for under Article 15 of Law 17.060 and Article 33 of Decree 354/999. The other cases in which these declarations are opened se circumstances are as follows: i) upon request of the individual who submitted the declaration; ii) through a judgment based in criminal justice; and iii) ex officio, when the Advisory Board so determines based on grounds and by an absolute majority of votes.

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

The standards and mechanisms related to systems for the disclosure of income, assets and liabilities reviewed by the Committee, based on the information made available, are relevant for the promotion of the objectives of the Convention.

Without entering into a detailed review of each of the existing provisions and measures concerning the declaration of income, assets and liabilities, the Committee formulates the following considerations.

The Oriental Republic of Uruguay has a set of provisions that clearly enshrine the obligation to submit a sworn declaration of net worth on the part of expressly identified public servants; furthermore, regulations concerning this declaration are found in Articles 10 through 19 of Law 17.060. The above is pertinent to the achievement of the objectives and standards of the Convention whose implementation is being reviewed.

Similarly, the Committee wishes to underscore the existence of "*directives for the presentation of sworn declarations of public servants covered by Law 17.060*", which explain in a clear and detailed fashion the content and format of such declarations; this directive is available at the following internet address: <http://www.jasesora.gub.uy>

The Committee believes it would be appropriate for the Oriental Republic of Uruguay to consider strengthening such systems by adding a regulation relative to the review of declarations. In addition, the

Committee believes it is important for the Oriental Republic of Uruguay to consider publishing a larger number of declarations, as appropriate, as in the case of the President and Vice-President.

In addition, consideration should be given to the fact that the presentation of these declarations in “*sealed envelopes*” constitutes an obstacle to facilitating the presentation and management of such declarations through the use of new information and communications technologies. Taking into account these circumstances, the Committee will formulate a recommendation.

The Committee notes that the offense of illicit enrichment is not defined in Uruguayan law. Bearing in mind that the systems for the disclosure of income, assets and liabilities could represent an effective tool for detecting crimes and offenses detrimental to the public interest, the Committee considers it important for the Oriental Republic of Uruguay to consider changes in the use it might make of the information contained therein, in order to promote measures and regulatory changes that would encourage the detection of illicit acts or activities and avoid conflicts of interests.

With respect to the regime of offences and sanctions, the Committee notes that there are provisions governing failure to present the declaration on time, presenting it with false information, and omitting information in subsequent declarations (Articles 17 and 17 of Law 17.060). This regime could be expanded to cover other types of offenses such as omitting information when presenting the first declaration.

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

With respect to the results of the juridical framework and other measures, the response of the Oriental Republic of Uruguay indicates that: “*As of July 24, 2003 the relevant update indicates that the Advisory Board possesses 22,423 sworn declarations that correspond to 14,171 public posts and functions designated by the law; of the public servants required to submit the corresponding declaration, 10,666 occupy posts and functions within the national state, crown corporations or para-public entities, and 3,505 occupy posts and functions belonging to departmental governments. A high level of compliance on the part of active public servants was once again noted during this period.*”³²

“*A 97% rate of compliance was achieved for active public servants.*”³³

Based on this information, the Committee wishes to underline the high level of compliance with respect to the presentation of sworn declarations.

The Committee notes the lack of use of the declarations to detect illicit acts and to detect and avoid conflicts of interest due to the fact that these declarations remain sealed and are only opened in exceptional cases provided for under the law. Taking into account this circumstance, the Committee will formulate a recommendation.

³² Update of the Response of the Oriental Republic of Uruguay to the Questionnaire, page 28.

³³ Response of the Oriental Republic of Uruguay to the Questionnaire, page 22.

3. OVERSIGHT BODIES RELATED TO THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 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 standards related to oversight bodies in charge of performing functions concerning compliance with the provisions contemplated in paragraphs 1, 2, 4 and 11 of Article 3 of the Convention; this system includes a set of diverse provisions, of which the following should be highlighted.

Oversight bodies include, specifically, the Court of the Exchequer,³⁴ the Internal Auditor's Office,³⁵ the General Auditor's Office of the Nation,³⁶ the National Treasury,³⁷ the Advisory Board on Financial and Economic Matters,³⁸ and the General Auditor's Office of each departmental government.³⁹

3.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms concerning oversight bodies in relation to the selected provisions reviewed by the Committee, based on the information made available, are relevant for the promotion of the objectives of the Convention, of which the following should be highlighted.

The system of internal audit of financial-economic management and acts is headed up by the Internal Auditor's Office; its tasks include, among other duties, carrying out audits in accordance with generally accepted auditing standards and overseeing the movements of funds and securities on the part of the General Treasury (Article 92 de TOCAF).

The Court of the Exchequer, in accordance with Article 211d) of the Constitution, has the jurisdiction to issue judgments and to report relative to the rendering of accounts and overall management of all State bodies; it also has jurisdiction for initiating corresponding proceedings in case of liability, setting out pertinent observations and considerations and intervening in matters related to the financial management of State bodies, departmental governments, autonomous entities and decentralized services (Articles 208 through 213 of the Constitution).

The General Auditor's Office of the Republic is the organization responsible for the national budgetary system, particularly its operative and technical aspects. Its functions include issuing technical standards for the formulation, amendment, monitoring and implementation of the national budget (Article 141 of TOCAF).

The General Treasury of the Republic is the body within the treasury system that coordinates and controls the treasuries of the implementing agencies of the central administration (Article 155 of TOCAF). The general treasury of each departmental government and of each agency or entity making it up fulfills the same function as the General Treasury within the corresponding jurisdiction.

³⁴ Article 208 of the Constitution, Article 94 of TOCAF, Article 473 of Law 17.296

³⁵ Articles 92, 93 and 94, Paragraph 6 of TOCAF.

³⁶ Articles 89, 141 and 146 of TOCAF.

³⁷ Articles 75 and 155 of TOCAF.

³⁸ Article 4 of Law 17.060 dated December 23, 1998.

³⁹ Paragraphs 2, 5, 6, Article 89, Paragraphs 1 and 2 of Article 91, Paragraph 3 of Article 91 of TOCAF; and Paragraph C of Article 211 of the Constitution.

Furthermore, the General Auditor's Office of each departmental government has the same jurisdiction and tasks as the General Auditor's Office of the Republic with respect to the central government (Article 96 of TOCAF).

The Advisory Board on Financial and Economic Matters of State is a body with technical independence in carrying out its functions. It has the following powers, among others: to provide advice at the national level with respect to offences detailed in Law 17.060 against the public administration, the economy and the public treasury; to advise judicial bodies by issuing opinions within the framework of its competence and at the request of the Ministry of Justice or the Attorney General; to collect information concerning the conditions of regularity and impartiality under which public tenders for goods, work and services are prepared, concluded and carried out; to receive sworn declarations; and to propose amendments to standards on topics within its jurisdiction (Article 4 of Law 17.060).

The Committee notes that the Oriental Republic of Uruguay may wish to consider, when appropriate, strengthening mechanisms for coordination and cooperation among oversight bodies.

Taking into account this circumstance, the Committee will formulate a recommendation.

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

The response provided by the Oriental Republic of Uruguay in the questionnaire states: *"With respect to the control of conflicts of interest, the Advisory Board on Financial and Economic Matters of State has received the first case of a formalized consultation in compliance with the Standards of Conduct (Decree 30/003), which is currently being processed."*⁴⁰

This response also refers to a number of consultations provided by Advisory Board on Financial and Economic Matters of State to the criminal courts from 2000 to 2003.⁴¹ This is a sign of the increasingly dynamic role being taken on by this Board.

The Committee calls attention to the fact that it has received no information relative to the functions carried out by other oversight bodies, such as the Court of the Exchequer, the Internal Auditor's Office, the General Auditor's Office of the Republic, the General Treasury and the General Auditor's Office of each departmental government.

The limited nature of the information made available to the Committee does not permit a comprehensive review of the results in this area. Taking into account this circumstance, the Committee will formulate a recommendation.

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

4.1 GENERAL PARTICIPATION MECHANISMS

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

⁴⁰ Update of the Response of the Oriental Republic of Uruguay to the Questionnaire, page 34.

⁴¹ Update of the Response of the Oriental Republic of Uruguay to the Questionnaire, page 34.

The Oriental Republic of Uruguay has provisions and measures of greatly differing nature, characteristics and scope related to the participation of civil society and of non-governmental organizations in public activities.

In accordance with Uruguay's response to the questionnaire, these measures include, among others, Articles 30 and 318 of the Constitution. Article 30 enshrines the right to petition, defined as the right of any citizen to present petitions before any and all competent authorities of the Republic. Article 318 refers to the obligation of all administrative authorities to rule on any petition filed by the holder of a subjective right or legitimate interest in having a given administrative act ordered or implemented.

Furthermore, Articles 117 through 119 of Decree 500/991 regulate in detail the right to petition and the formalities that such petitions must meet. In addition, other substantive rights are provided that guarantee or facilitate the participation of civil society in the activities of the administration. For example, Articles 105 through 110 of the Criminal Code of Procedure stipulates that any person who is aware, by any means, of the commission of an indictable offence ex officio can report such offence to the judicial or police authorities.

Law 17.060 also establishes a number of mechanisms designed to facilitate citizen oversight, including, among others, those related to the contracting of goods and services; Article 5 establishes the obligation of public agencies to adequately advertise public tenders and Article 7 guarantees the disclosure of such tenders, documents and other elements related to the public service, except those whose nature requires that they remain reserved or secret.

There are also internal standards that make provision for citizen participation in a number of public bodies, in specific areas, as indicated in paragraph 4.3.1.

4.1.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms designed to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption, as reviewed by the Committee based on the available information, are relevant for the promotion of the objectives of the Convention.

The Committee notes that the Oriental Republic of Uruguay has standards and measures, as mentioned in the previous section, related to the participation of civil society and non-governmental organizations in public activities; in principle, these standards and measures stimulate or have the direct or indirect effect of facilitating the prevention of corruption.

Taking into account the above, the Committee, in accordance with the classification of mechanisms of participation provided for in the review methodology, will formulate specific recommendations in this respect.

4.1.3 Results of the legal framework and/or other measures

With respect to the results of the juridical framework and other measures, the response of the Oriental Republic of Uruguay indicates that: *"the country is in an early phase of interaction with civil society organizations specifically linked to the fight against corruption. Nevertheless, worthwhile ties do exist with Uruguay Transparente and with the mass media"*⁴²

⁴² Response of the Oriental Republic of Uruguay to the Questionnaire, page 27.

The lack of available information on objective results does not permit the assessment of results achieved in this area.

Taking into account this circumstance, the Committee, in accordance with the classification of mechanisms of participation provided for in the review methodology, will formulate specific recommendations in this respect.

4.2 MECHANISMS FOR ACCESS TO INFORMATION

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

In its response, the Oriental Republic of Uruguay mentions a series of provisions that enshrine the principle of transparency in public administration and that are also related to the right to request access to public information in the hands of or known by public institutions.

Mention must be made of Article 29 of the Constitution, which establishes the right to freedom of thought -- be it spoken or written, private or public, without the need for prior censure and the principle of free disclosure of the acts and documents of the public service (Article 7 of Law 17.060 and Article 694 of the National Budgetary Law 16.736).

Article 22 1) of Law 17.060 indicates as official conduct contrary to probity in public office the *“refusal to provide information or documentation that has been requested in accordance with the law.”* Article 694 of National Budgetary Law 16.734 guarantees those being administered *“full access to information of interest to them.”*

“The right of access to information is a principle embodied in Article 19 of the Universal Declaration of Human Rights and in Article 14 of the Pact of San Jose. Both provisions are part of Uruguayan law.”

Mention should be made of Article 30 of the Constitution which grants the right to all citizens to file petitions and Article 318 which establishes that all administrative authorities are obliged to rule on any petition filed by the holder of a subjective right or a legitimate interest in having a given administrative act decided or implemented. The Constitution of the Oriental Republic of Uruguay recognizes the appeal for all who feel that their rights have been violated.

Along the same lines, Article 106 of Decree 500 stipulates that all administrative authorities are obliged to rule on any petition filed by the holder of a legitimate interest in the implementation of a given administrative act, prior to the proceedings that correspond to the due examination of the matter, within the time frames laid out in this same Article. Correspondingly, in accordance with Article 318 of the Constitution, the petition is deemed to be dismissed if unresolved by the administrative authority within the indicated time frame.

In practice, a general mechanism for informing civil society and the public in general is present in the form of the website of the Presidency of the Republic (www.presidencia.gub.uy); this website discloses constitutional standards, decrees and resolutions, as well as other aspects related to the number of public servants, their compensation, public administration purchases, etc. This site also provides links with other governmental organizations and highlights aspects of their activity. For example, the website of the Court of the Exchequer (www.tcr.gub.uy) and of the Advisory Board on Financial and Economic Matters of State (www.jasesora.gub.uy) mentioned by Uruguay in its response.

4.2.2 Adequacy of legal framework and/or other measures

The standards and mechanisms related to access to information reviewed by the Committee, based on the available information, are relevant for the promotion of the objectives of the Convention.

The Committee believes that the Oriental Republic of Uruguay could consider making further progress by establishing a special regime in the area of access to information that would ensure a timely response to any requests made by citizens.

This is particularly the case if one takes into consideration that expressed by the Bar Association of Uruguay in its comments on the Response to the Questionnaire as requested by the Advisory Board on Financial and Economic Matters of State: *“the right to access information is regularly obstructed by a culture of secrecy among civil servants at varying levels, making it necessary to carry out wide-ranging and complex administrative procedures in order to access information which should be subject to easy, rapid and free access.”*⁴³

The adoption of a special regime in this area should help to overcome the problems mentioned by the Bar Association of Uruguay in the previous paragraph.

Taking into account this consideration, the Committee will formulate a recommendation.

4.2.3 Results of the legal framework and/or other measures

According to the response of the State: i) *“Systematic and objective statistical data are not available in this area. ii) Nevertheless, in recent years, seminars, workshops and task forces have been held and have made a positive contribution when it comes to public debate concerning the standards and mechanisms of the fight against corruption in the country following the adoption of the law ratifying the Inter-American Convention and based on the adoption of the anti corruption legislation”*.⁴⁴

The limited nature of existing information and the lack of information in this area do not enable the assessment of this matter. Taking into account this consideration, the Committee will formulate a recommendation.

4.3 CONSULTATIVE MECHANISMS

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

The Oriental Republic of Uruguay has provisions and mechanisms designed to enable those who perform public functions to carry out and receive consultations from civil society and non-governmental organizations on issues related to activities within their jurisdiction.

In the special regulations, specific areas exist that provide room for citizen participation, such as those related to the National Economic Council, which has participation from private sectors representing industry and the economy, and the Honorary Commission, which also has, among its members, civil society representatives.

⁴³ Letter from the Bar Association of Uruguay with comments on the Response to the Questionnaire as requested by the Advisory Board on Financial and Economic Matters of State. Montevideo, June 30, 2003, page 1.

⁴⁴ Response of the Oriental Republic of Uruguay, page 29.

4.3.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms with respect to consultation reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

Nevertheless, with reference to the existence of general regulations, no provisions exist that define specific cases and procedures for consulting civil society and the citizenry before governmental decisions are made, as applicable.

Finally, the Committee notes the lack of information programs on consultative mechanisms designed to train and help civil society, non-governmental organizations and public servants to use such mechanisms.

Taking into account this circumstance, the Committee will formulate a recommendation.

4.3.3 Results of the legal framework and/or other measures

With respect to consultative mechanisms, no information was received concerning the objective results of these mechanisms. This lack of information makes it not possible to assess the results in this area.

Taking into account this consideration, the Committee will formulate a recommendation.

4.4 MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION

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

The Oriental Republic of Uruguay has a set of provisions relative to mechanisms to stimulate participation in public administration; this includes provisions of a diverse nature, such as Article 30 (right to petition), Article 318 (obligation to issue a judgment on petitions), of the Constitution; Articles 117 to 119 of Decree 500/991 and Articles 5 and 7 of Law 17.060 referred to in Section 4.1.1.

In particular, the Committee wishes to highlight the work of Uruguay Transparente -- an entity whose objectives include, among others, to inform public opinion when irregularities on the part of the public administration occur and the corresponding corrective measures are not taken.

As well, the response of the Oriental Republic of Uruguay⁴⁵ makes reference to various activities, such as seminars, workshops and task forces held with non-governmental organizations that have enabled or facilitated the formalization of public policy.

4.4.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms designed to encourage participation in public administration that have been reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

⁴⁵ Response of the Oriental Republic of Uruguay, page 30.

Based on this information, the Committee observes that the Oriental Republic of Uruguay has standards and measures related to mechanisms designed to promote the active participation of civil society in public administration, as pointed out in the previous section.

Nevertheless, some of these mechanisms do not appear to form part of a comprehensive and permanent regime in this area. The Committee also notes the absence of programs to publicize these mechanisms and to train civil society and non-governmental organizations in their use.

Taking into account the importance of institutionalizing and regulating these mechanisms in a comprehensive, permanent fashion, the Committee will formulate a recommendation in this regard.

4.4.3 Results of the legal framework and/or other measures

With respect to the mechanisms to promote the participation of civil society in public administration, the response of the country points out that this information is “*not available*”⁴⁶This lack of information does not permit the assessment of results in this area.

Taking into account this consideration, the Committee will formulate a recommendation.

4.5 PARTICIPATION MECHANISMS IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION

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

Although the response of the Oriental Republic of Uruguay indicates that information “*is not available*” on this topic⁴⁷, in the same response⁴⁸ reference is made to public institutions that include members who represent civil society, such as those mentioned in Section 4.3.1 of this report; based on the functions they perform, they could be considered to be a mechanism in the follow-up of public administration.

4.5.2 Adequacy of the legal framework and/or other measures

Based on the above information, the Committee notes that the mechanisms mentioned are pertinent for the promotion of the objectives of the Convention. However, their scope appears to be restricted or limited to the areas within which they operate.

4.5.3 Results of the legal framework and/or other measures

In accordance with the response of the country that such information “*is not available*”⁴⁹, the lack of said information does not permit an assessment of the objective results in this area.

Taking into account this circumstance, the Committee will formulate a recommendation.

⁴⁶ Response of the Oriental Republic of Uruguay, page 30.

⁴⁷ Response of the Oriental Republic of Uruguay, page 30.

⁴⁸ Response of the Oriental Republic of Uruguay, page 26.

⁴⁹ Response of the Oriental Republic of Uruguay, page 30.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

5.1 MUTUAL ASSISTANCE

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

The Oriental Republic of Uruguay has a set of provisions and measures for mutual legal assistance as referred to in Article XIV, paragraph 1 of the Convention, including, most importantly, Articles 31 to 36 of Law 17.060. These standards establish the legal framework and the process for facilitating requests for international criminal legal cooperation originating from foreign authorities with jurisdiction to investigate and prosecute acts of corruption⁵⁰ and regulate the extradition process for acts described as offences in this legislation and in ratified international conventions. In the absence of these instruments, standards from the Criminal Code and Criminal Procedures apply.

In accordance with Articles 75 to 80 of Decree Law 14.294, based on the wording of Article 5 of Law 17.016, requests for international criminal legal cooperation from foreign authorities who have jurisdiction to investigate or prosecute the offences described in this law, or related offences, for legal assistance in terms of court proceedings, evidence, preventive measures or freezing of assets, confiscation, seizure or transfer of property are received and processed by the Justice and International Legal Cooperation Directorate of the Ministry of Education and Culture. This directorate must forward, without delay, the respective requests to the appropriate administrative or jurisdictional authorities based on the characteristics of each case for due processing in accordance with the prevailing legal system.

The national courts with jurisdiction to provide international criminal cooperation process these requests ex officio with the involvement of the Attorney General and after having checked the corresponding requirements.

The national courts also determine whether the conduct motivating the investigation, prosecution or proceeding constitutes an offence in the requesting State, in accordance with national law.

In cases that involve requests for searches, a lifting of bank secrecy, embargo, seizure or surrender of property, the national court proceeds with the request if it determines that such requests contain all the information justifying the measure requested. This measure must comply with the prevailing substantive and procedural law (Article 77 of Law 14.294).

It should be pointed out that according to paragraph 5 of Article 34 of Law 17.060: *“Requests can be rejected when they seriously affect public order, as well as security or other essential interests of the Republic.”* To this effect, on August 7, 2001, in the instrument ratifying the Convention, the Permanent Mission of the Oriental Republic of Uruguay to the OAS expressed the following reservation: *“Uruguay makes express reservation of the application of public order, when the cooperative measure requested affects in a concrete, manifest and serious fashion the standards and principles on which Uruguay bases its legal individuality.”*

In addition, through the promulgation of Law 17.574 dated October 29, 2002, Uruguay ratified a *Complementary Agreement to the Protocol on Jurisdictional Assistance and Cooperation in Civil, Commercial, Labour and Administrative Matters*, subscribed on June 19, 1997 by the member states of

⁵⁰ Verbal note No. 046/63 of the Permanent Mission of the Oriental Republic of Uruguay to the Organization of American States to the Technical Secretariat for Legal Cooperation Mechanisms of the Secretariat for Legal Affairs on June 6, 2003.

MERCOSUR. Through this protocol, 11 model forms were approved for proceeding with judicial requests.

The Oriental Republic of Uruguay has also ratified, within the framework of MERCOSUR, the “*Complementary Agreement to the Protocol on Jurisdictional Assistance and Cooperation in Civil, Commercial Labour and Administrative Matters Among Member States*”; under this agreement, State Parties commit to providing mutual assistance and broad jurisdictional cooperation in civil, commercial, labour and administrative matters; Uruguay also subscribed to the “*Protocol of Mutual Legal Assistance in Criminal Matters*.”⁵¹

The response of the Oriental Republic of Uruguay also describes the special procedure for mutual assistance and international cooperation that applies to offences such as drug trafficking, money laundering, etc., that are covered Articles 54 to 61 of Decree Law 14.294 dated October 31, 1974, based on the wording of Article 5 of Law 17.016 dated October 22, 1998; Uruguay also describes the procedures that apply when the material object of such offences is property, goods or instruments stemming from offences typified or defined by national legislation in the area of terrorism, contraband greater than twenty thousand dollars, illegal trafficking in arms, explosives, munitions or material used to produce munitions, illegal trafficking in organs, tissue, medications, and illegal traffic in works of art, animals or toxic materials.⁵²

5.1.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms with respect to mutual assistance reviewed by the Committee, based on the information made available, are relevant for the promotion of the objectives of the Convention.

The legal standards contained in Articles 31 to 36 in Law 17.060 that regulate the extradition process, provide that requests can be rejected if they run contrary to the public order, security or other essential interests of the Republic.

Articles 75 to 80 of Decree Law 14.294 also refer to legal assistance in terms of court proceedings, evidence, preventive measures or freezing of assets, confiscation, seizure or transfer of property; these activities are handled by the Directorate of Justice and International Legal Cooperation of the Ministry of Education and Culture and are also considered to be relevant to the success of said mutual assistance.

In addition, the agreements subscribed by the Oriental Republic of Uruguay and mentioned in the Response can also contribute to achieving the objectives of the Convention of promoting and facilitating mutual assistance among State Parties; these agreements can also serve to meet the specific goals of the Convention related to the investigation and prosecution of acts of corruption, to the extent that they can be used for such purposes.

It can be deduced from the review these provisions that the above-mentioned legislation is appropriate for the promotion of the objectives of the Convention.

⁵¹ Verbal Note No. 046/63 of the Permanent Mission of the Oriental Republic of Uruguay to the Organization of American States to the Technical Secretariat for Legal Cooperation Mechanisms of the Secretariat for Legal Affairs on June 6, 2003.

⁵² Update of the Response of the Oriental Republic of Uruguay to the Questionnaire, pages 43 and 44.

5.1.3 Results of the legal framework and/or other measures

In its response, the Oriental Republic of Uruguay submitted results on requests for legal assistance that had been processed in relation to the mutual assistance provisions of the Convention.⁵³

In this respect, the Central Advisory Board for International Legal Cooperation has collected the following data from the year 2000 to the 8th of October 2002 related to the list of petitions received in the area of corruption and money laundering: *“Out of a total of 57 petitions processed by the Central Authority, 22 were answered and the rest are being processed. Of this number, 50 were from the Republic of Argentina, 4 from the United States of America, 1 from Peru, 1 from Mexico and 1 from Brazil. It can be concluded that the Central Authority took the necessary care in forwarding foreign petitions to the competent national criminal institutions. The most frequent petitions are related to information on bank accounts and records.”* These actions could be described as resulting from the spirit of mutual assistance that the Convention is designed to foster, although they may not be a direct consequence of implementing the Convention.

The response of the Oriental Republic of Uruguay also notes that *“one of the conditions that makes it difficult to comply with the time frame for such proceedings is the fact that the preparation of the requests made in the petitions do not meet the required legal conditions.”* The response adds: *“It should be pointed out that formal requirements as well as pertinent evidentiary elements to process petitions are essential requirements for requests being handled, both by national judges as well as foreign judges. For this reason, if these legal requirements were more widely publicized, it would facilitate the more rapid processing of petitions.”*⁵⁴

The above comments seem to suggest that it would be advisable for the Oriental Republic of Uruguay to consider circulating, among the competent authorities of the countries that are States Parties to the Convention and with which the Oriental Republic of Uruguay maintains relations of mutual cooperation, the requirements that must be met when preparing petitions as well as the documentation that should be attached to them. The Committee will formulate a recommendation in this respect.

5.2 MUTUAL TECHNICAL COOPERATION

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

The Oriental Republic of Uruguay has provisions and measures to provide mutual technical cooperation to other State Parties to the Convention, in accordance with the provisions of Article XIV, Paragraph 2 of the Convention.

Included among such provisions and measures are the agreements subscribed between the Anti-Corruption Office of the Ministry of Justice and Human Rights of the Republic of Argentina and the Advisory Board on Financial and Economic Matters of State, of the Ministry of Education and Culture. Another measure is the subscription of a functional instrument in the form of a network of government institutions for public ethics; such a network promotes assistance and the exchange of technical information and experiences designed to enhance the programs to encourage transparency, to combat corruption and to strengthen public ethics and probity that are being developed in the respective States.

The Oriental Republic of Uruguay also hosted a visit from the Anti-Corruption Office of the Office of the Ministry of Justice and Human Rights of the Republic of Argentina with a view to

⁵³ Update of the Response of the Oriental Republic of Uruguay to the Questionnaire, page 46.

⁵⁴ Update of the Response of the Oriental Republic of Uruguay to the Questionnaire, page 46.

demonstrating the operation of the mechanism for computerizing sworn declarations of income and property. As well, it accepted the offer from the above Office and from the Office of Government Ethics of Puerto Rico to participate in a workshop related to conflicts of interest in the public service.⁵⁵

5.2.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms related to mutual technical cooperation reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

The Oriental Republic of Uruguay has formalized several agreements and has carried out some cooperation and mutual technical assistance activities with other States Parties to the Convention.

5.2.3 Results of the legal framework and/or other measures

The response of the Oriental Republic of Uruguay mentions a number of mutual technical cooperation activities and agreements carried out with State Parties to the Convention. For example, mention is made of the subscription of an agreement with the public ethics offices, or their equivalent, of a number of State Parties to the Convention; and the visit of the Anti-Corruption Office of the Ministry of Justice and Human Rights of the Republic of Argentina for the purposes mentioned in section 5.2.1.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

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

The Oriental Republic of Uruguay has designated a central authority for the purposes of mutual international assistance described in the Convention. Article 35 of Law 17.060 designates the *International Criminal Legal Cooperation Section of the Central Advisory Council on International Legal Cooperation*, which reports to the Justice and International Legal Cooperation Directorate of the Ministry of Education and Culture.

As well, the country's response states that:⁵⁶ *“Although the Advisory Board on Financial and Economic Matters of State has not been designated as a central authority for the purposes of facilitating mutual technical cooperation as described in Article XIV, paragraph 2, it does in fact perform these functions since it has been designated to act as an oversight body in this area according to the provisions of Article 334 of Law 17.296. As a consequence, it should be understood that the above-mentioned state entity performs the functions of a Central Authority described in Article XIV, paragraph 2 of the Convention.”*

6.2 Adequacy of the legal framework and/or other measures

The standards and mechanisms related to central authorities reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

The designation of the International Criminal Legal Cooperation Section of the Central Advisory Council on International Legal Cooperation, which reports to the Justice and International Legal Cooperation Directorate of the Ministry of Education and Culture, to facilitate the mutual assistance provided for in paragraph 1 of Article XIV of the Convention, and the designation of the Advisory Board

⁵⁵ Response of the Oriental Republic of Uruguay to the Questionnaire, page 34.

⁵⁶ Response of the Oriental Republic of Uruguay to the Questionnaire, page 35.

on Financial and Economic Matters of State to facilitate the mutual technical cooperation provided for in the second paragraph of Article XIV, are appropriate for the promotion of the objectives of the Convention. Taking into account that these two designations have not been communicated to the General Secretariat of the OAS, thereby complying with the necessary formalities, the Committee will formulate a recommendation.

6.3 Results of the legal framework and/or other measures

The Committee notes that, based on the response of the Oriental Republic of Uruguay,⁵⁷ there is an entity designated as central authority, which *is made up of highly qualified individuals including university professors in private international law and international legal cooperation, and its director and the advisory lawyers have extensive training in this field.*”

III. CONCLUSIONS AND RECOMMENDATIONS

Based on the review carried out and described in Section 2 of this report, the Committee wishes to make the following conclusions and recommendations with respect to the implementation by the Oriental Republic of Uruguay of the provisions contained in Articles III, Paragraphs 1 and 2 (standards of conduct and mechanisms to enforce these standards of conduct); III, Paragraph 4 (systems for disclosing income, assets and liabilities); III, Paragraph 9 (oversight bodies, only with respect to how these bodies perform functions relating to the compliance of the provisions listed in Paragraphs 1, 2, 4 and 11 of Article III of the Convention); III, Paragraph 11 (mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption); XIV (assistance and cooperation); and XVIII (central authorities) of the Convention, all of which were selected within the framework of the first round.

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

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

The Oriental Republic of Uruguay has considered and adopted measures to establish, maintain and strengthen standards of conduct with respect to the prevention of conflicts of interest and mechanisms to enforce these standards, as described in Chapter 2, Section 1.2 of this report.

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

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

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

- a. Supplement the restrictions provided in the law for those who leave public service, including, when appropriate, other situations that could

⁵⁷ Response of the Oriental Republic of Uruguay to the Questionnaire, page 36.

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.

1.2 Standards of conduct and mechanisms to ensure the conservation and proper use of resources entrusted to public officials

The Oriental Republic of Uruguay has considered and adopted measures designed to create, maintain and strengthen standards of conduct for ensuring the proper conservation and use of resources entrusted to public servants in the performance of their functions, as mentioned in Section 1.2.2 and 1.2.3 of Chapter 2 in this report.

In view of the comments made in this section, the Committee suggests that the Oriental Republic of Uruguay consider the following recommendations:

- 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.

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

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.

- 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.

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

The Oriental Republic of Uruguay has considered and adopted measures designed to create, maintain and strengthen standards of conduct and mechanisms related to measures and systems that require civil servants report to appropriate authorities acts of corruption in the performance of public functions, in accordance with the comments in Paragraph 1.3 of Chapter 2 of this report.

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

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.

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

- 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.

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

The Oriental Republic of Uruguay has considered and adopted measure designed to create, maintain and strengthen systems for disclosing the income, assets and liabilities of persons who perform public functions in certain posts as specified by law, and where appropriate, for making such disclosures public, in accordance with the comments in Paragraph 2 B) of Chapter 2 of this report.

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

Improve the use of sworn declarations of net worth.

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

- 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
- 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.

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

The Oriental Republic of Uruguay has considered and adopted measures designed to create, maintain and strengthen oversight bodies that carry out functions related to the effective enforcement of the provisions selected for review within the framework of the first round (Article III, paragraphs 1, 2, 4, and 11 of the Convention), in accordance with the comments in Section 3 of Chapter 2 of this report.

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

Strengthen the mechanisms for cooperation and coordination among oversight bodies.

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

The Oriental Republic of Uruguay has considered and adopted measures designed to create, maintain and strengthen mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption, in accordance with comments in Section 4 of Chapter 2 of this report.

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

4.1 Mechanisms for participation in general

Pursuant to the Methodology adopted by the Committee, no recommendations are considered for the present section

4.2 Mechanisms for access to information

Establish legal standards that facilitate access to government information.

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

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

4.3 Consultative mechanisms

Establish and implement mechanisms that enable public servants to solicit and receive reactions from civil society and non-governmental organizations. In this respect, the Committee recommends that the Oriental Republic of Uruguay consider the following measures, among others:

- 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.

4.4 Mechanisms to encourage participation in public administration

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

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

- 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.

4.5 Mechanisms for participation in the follow-up of public administration

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

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

- 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.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

The Oriental Republic of Uruguay has adopted measures in relation to mutual technical cooperation and mutual assistance, in accordance with the provisions of Article XIV of the Convention, as described and reviewed in Section 5 of Chapter 2 of this report.

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

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

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

The Committee records that the Oriental Republic of Uruguay has complied with Article XVIII of the Convention by adopting measures relative to the designation of the International Criminal Legal Cooperation Section of the Central Advisory Council on International Legal Cooperation, which reports to the Justice and International Legal Cooperation Directorate of the Ministry of Education and Culture. The Committee also notes that, in accordance with the country's response, the Advisory Board on Financial and Economic Matters of State also performs these functions.

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

- 6.1 Forward to the General Secretariat of the OAS the designation of the above-mentioned central authorities, in accordance with established formalities.
- 6.2 Ensure that said central authorities have the necessary resources to ensure adequate performance of their functions.

7. GENERAL RECOMMENDATIONS

In the light of the comments made throughout this report, the Committee suggests that the Oriental Republic of Uruguay consider the following recommendations:

- 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.
- 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.³
- 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.

8. 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 of the provisions of Article 30 of the Rules of Procedure.

Similarly, the Committee will review the progress in implementing the recommendations made in this report, in accordance with the provisions of Article 31 and, when and if appropriate, with the provisions of Article 32 of the Rules of Procedure.

The Committee wishes to place on record the Oriental Republic of Uruguay's request that the Secretariat publish this report on the Mechanism's website, or by any other means of communication, pursuant to Article 25 (g) of the *Rules of Procedure*.

**APPENDIX TO THE PRELIMINARY DRAFT REPORT
ON THE IMPLEMENTATION IN THE ORIENTAL REPUBLIC OF URUGUAY OF THE
PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW WITHIN THE
FRAMEWORK OF THE FIRST ROUND**

- ATTACHMENT 1) Constitution of the Republic
- ATTACHMENT 2) Amended Text on Financial Administration and Accounting (TOCAF)
- ATTACHMENT 3) Amended Text on Standards Concerning Public Servants (TOFUP)
- ATTACHMENT 4) Criminal Code of Uruguay
- ATTACHMENT 5) Law 17.008 dated September 25, 1998
- ATTACHMENT 6) Law 17.060 dated December 23, 1998
- ATTACHMENT 7) Law 17.292 dated January 25, 2001
- ATTACHMENT 8) Law 17.213 dated September 24, 1999
- ATTACHMENT 9) Law 17.296 dated February 21, 2001
- ATTACHMENT 10) Law 17.145 dated August 9, 1999 ratifying the Protocol of Mutual Reciprocal Assistance in Criminal Matters subscribed on June 25, 1996 in San Luis, Republic of Argentina.
- ATTACHMENT 11) Law 17.574 dated October 29, 2002 ratifying the Complementary Agreement to the Protocol for Jurisdictional Assistance and Co-operation in Administrative, Labour, Commercial and Civil Matters.
- ATTACHMENT 12) Decree 354/999 dated November 12, 1999.
- ATTACHMENT 13) Decree 500/991 dated September 27, 1991.
- ATTACHMENT 14) Decree 30/003 dated January 23, 2003
- ATTACHMENT 15) Regulations on Official Missions
- ATTACHMENT 16) Comprehensive Study on the Phenomenon of Corruption in Uruguay. Study conducted by the University of the Republic at the request of the Advisory Board.
- ATTACHMENT 17) Information from the Office of the Attorney General of the Republic for the period up to October 2001.
- ATTACHMENT 18) Information from the Office of the Attorney General of the Republic for the period from January 1, 2002 to December 31, 2002.
- ATTACHMENT 19) Information from the Forensic Technical Institute, an agency of the

Supreme Court of Justice

- ATTACHMENT 20) Opinion survey carried out in the cities of Montevideo and Canelones in December 2001 that provides a number of general measurements concerning the evolution of corruption in the public sector in Uruguay.
- ATTACHMENT 21) Memorandum of Understanding with the Anti-Corruption Office of the Republic of Argentina.
- ATTACHMENT 22) Memorandum of Understanding on the establishment of a network of government institutions for public ethics in the Americas.
- ATTACHMENT 23) Note presented by Uruguay Transparente, a non-governmental organization.
- ATTACHMENT 24) Note presented by the Supreme Court of Justice.
- ATTACHMENT 25) Note presented by the Bar Association of Uruguay.
- ATTACHMENT 26) Note presented by the Association of Court Clerks of Uruguay.
- ATTACHMENT 27) Note presented by the Court of the Exchequer.

Additional legislation provided jointly with the observations made by the Oriental Republic of Uruguay to the draft report drawn up by the Secretariat and to the observations of the subgroup.

1. Law No. 14.589, Water Code
2. Article 42 of Law 15.982, General Procedural Code
3. Resolution 166/001 of June 4, 2001, Municipal Interdependence of Río Negro
4. Resolution 2.193/003, Municipal Interdependence of Maldonado, July 11, 2003
5. Decree-Law No. 10388, Statutes for the Public Employee
6. Law 15.637 that provides regulations on the granting of concessions for building public projects
7. Law 16.011, Protection Proceedings, published D.O. December 29, 1988, No. 22776
8. Law 16243, Debt Refinancing, published D.O. March 20, 1992, No. 23548
9. Law 16736, National Budget, published D.O. January 12, 1996, No. 24457
10. Law 17.016 of October 23, 1998