

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

FINAL REPORT

(Adopted at the September 18, 2009 plenary session)

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

**REPORT ON IMPLEMENTATION IN THE ORIENTAL REPUBLIC OF URUGUAY OF  
THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND,  
AND ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT  
COUNTRY IN PREVIOUS ROUNDS<sup>1</sup>**

**INTRODUCTION**

**1. Contents of the Report**

[1] This report presents, first, a review of implementation in the Oriental Republic of Uruguay of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the third round: Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the recommendations that were formulated to the Oriental Republic of Uruguay by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at the following web pages: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ury.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ury.pdf) and [www.oas.org/juridico/english/mec\\_rep\\_ury.pdf](http://www.oas.org/juridico/english/mec_rep_ury.pdf)

**2. Ratification of the Convention and adherence to the Mechanism**

[3] According to the official records of the OAS General Secretariat, the Oriental Republic of Uruguay deposited the instrument of ratification of the Inter-American Convention against Corruption on December 7, 1998.

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

**I. SUMMARY OF THE INFORMATION RECEIVED**

**Response of the Oriental Republic of Uruguay**

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Oriental Republic of Uruguay and in particular from the Transparency and Public Ethics Board (JUTEP), which was evidenced, inter alia, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the Oriental Republic of Uruguay sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at: [www.oas.org/juridico/spanish/mesicic3\\_ury\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_ury_sp.htm)

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<sup>1</sup> This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 18, 2009, at its Fifteenth meeting, held at OAS Headquarters, September 14-18, 2009.

[6] For its review, the Committee took into account the information provided by the Oriental Republic of Uruguay up to April 2, 2009, and that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

## **II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND**

### **1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)<sup>2</sup>**

#### **1.1. Existence of provisions in the legal framework and/or other measures**

[7] The Oriental Republic of Uruguay has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[8] – Constitutional provisions such as those found in Section 133 of the Constitution of the Oriental Republic of Uruguay,<sup>3</sup> which provides, “*Any proposed law that establishes tax exemptions or sets minimum wages or prices on the purchase of commodities and goods in the public or private sectors must be introduced by the executive. The legislature may not increase either tax exemptions, or the minimum levels proposed by the executive for wages and prices, nor, furthermore, lower the maximum prices proposed.*”

[9] – Statutory provisions such as the Tax Consolidation Act 1996, Title 4, the Corporate Income Tax,<sup>4</sup> as modified by Law 18.083, the Tax System.<sup>5</sup> The following provisions of Title 4 should be noted:

[10] Article 19, which provides the general principle that in establishing net income, “*Suitably documented expenditures accrued in the fiscal year and which are necessary to earn and preserve the net income shall be deducted from the gross income.*”

[11] Article 22, which provides a list of exceptions to the general principle, by allowing deductions from the gross income, in regards to the fiscal year;

[12] Article 24, which provides the non deductible expenses. Among those found in the list provided therein are Article 24(B) for “*losses deriving from illicit operations.*”

[13] – Statutory provisions such as Decree 150/07, which regulates the Corporate Income Tax.<sup>6</sup> The following provisions should be noted:

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<sup>2</sup> For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

<sup>3</sup> Constitution of the Oriental Republic of Uruguay, <http://200.40.229.134/constituciones/const004.htm>

<sup>4</sup> Tax Consolidation Act 1996, <http://www.dgi.gub.uy/wdgi/hgxpp001?6.4.207.O.S.O.MNU:E:178:2:MNU;>

<sup>5</sup> Law 18.083, Tax System, <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=18083&Anchor=>

<sup>6</sup> Decree 150/007, [http://www.presidencia.gub.uy/ Web/decretos/2007/04/E668A\\_16%2003%202007\\_00001.PDF](http://www.presidencia.gub.uy/ Web/decretos/2007/04/E668A_16%2003%202007_00001.PDF)

[14] Article 25, which states the general principle that the only deductions are “*Those expenses accrued in the tax year that are necessary to earn and preserve the net income, provided they are suitably documented,*”

[15] Article 42, which lists whole deductions “*Provided they are necessary to earn and preserve the net income and are authentically documented.*” Among those to be highlighted are Article 42(19), “*Expenses on accommodation, meals, travel and related items incurred abroad in reasonable quantities, as adjudged by the Tax Bureau [Dirección General Impositiva] (DGI);*” and Article 42(26), “*Commissions paid or accredited to persons abroad for exports, up to a maximum of 2% of the FOB value of the export.*”

[16] Article 59, which provides, “*Income arising from unlawful operations shall be calculated but shall not be taken into account for the purpose of obtaining favorable tax treatment. Expenses and costs corresponding to such income are not deductible.*”

[17] - Statutory provisions such as the Tax Code,<sup>7</sup> among which the following should be noted:

[18] Article 95, which establishes the administrative sanction of Violation (*Contravención*), whereby “*A misdemeanor is a violation of laws or regulations issued by competent organs, which establish formal obligations. Any act designed to obstruct the assessment and oversight activities of the Administration also constitutes a misdemeanor. A misdemeanor is punishable with a fine of \$ 2,000 (two thousand pesos) to \$ 200,000 (two hundred thousand pesos);*

[19] Article 96, which establishes the administrative sanction of Fraud (*Defraudación*), whereby “*Fraud is any fraudulent act carried out by a person with the intent illicitly to enrich themselves or a third party at the expense of the right of the State to receive taxes. Any deception or concealment that induces or is apt to induce tax administration officials to demand or approve sums lower than the correct amount or undue exemptions is considered fraud*” In addition, “*it shall be punished with a fine of between one and 15 times the amount so defrauded or so attempted to be defrauded. The severity of the penalty shall be determined in a reasoned decision taking into account the circumstances of each case.*”<sup>8</sup>

[20] Article 110, which establishes criminal sanctions for Tax Fraud (*Defraudación tributaria*), whereby “*Anyone who, directly or through an intermediary, acts with deception in order to obtain for themselves or a third party an undue advantage at the expense of the right of the State to receive taxes, shall be punished with six months to six years of imprisonment. This offense shall be prosecuted based on charges brought by the Tax Administration, subject to a reasoned decision in that regard.*”

[21] – Statutory provisions such as Law 18.083, the Tax System,<sup>9</sup> whereby Article 68 provides for the substitution of a new provision for Article 469 of Law 17.930. This new provision states: “*All state and*

<sup>7</sup> Tax Code, [http://200.40.229.134/htmlstat/pl/codigos/codigotributario/1997/cod\\_tributario.htm](http://200.40.229.134/htmlstat/pl/codigos/codigotributario/1997/cod_tributario.htm)

<sup>8</sup> Article 96 further states that: “*Unless proven otherwise, attempted fraud is presumed in any of the following circumstances: A) Clear contradiction between the tax returns presented and the documents on the basis of which they must be submitted; B) Manifest inconsistency between the rules and their application in determining the tax or in information presented to the Administration; C) Exclusion of assets that leads to a reduction of the tax base; D) Inaccurate information that lowers the amount of tax credit; E) Infringement of the obligation to maintain or produce books and documents, or existence of two or more sets of books for the same accounting with different entries; F) Failure to provide documents required by the law or regulations for control purposes; G) Declaration, admission, or upholding before the Administration of legal forms that are manifestly at odds with the reality of the taxed events; H) Failure to declare withholdings made; I) Failure to disclose events stipulated by law as generating tax or to make the necessary entries in the appropriate records.*”

<sup>9</sup> Law 18.083, Tax System, *supra* note 5.

*non-state governmental organs or agencies are required to provide free of any charge, whether in terms of a cost, tax, or any other analogous instrument, all data not protected by bank or statistical secrecy that they are requested in writing to provide by the Tax Bureau (DGI) or the Social Insurance Bank (BPS) for the purpose of tax control.”*

## **1.2. Adequacy of the legal framework and/or other measures**

[22]With respect to the provisions that refer to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

[23]Notwithstanding, the Committee considers it appropriate to make an observation on the advisability of developing and complementing certain legal provisions that refer to the tax treatment in the Oriental Republic of Uruguay of expenditures made in violation of anticorruption laws.

[24]The Committee believes that it would be beneficial for the country under review to consider taking such steps as it deems appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment. (see Recommendation 1.4(a) in Section 1.4 of Chapter II of this Report)

## **1.3. Results of the legal framework and/or other measures**

[25] With respect to results in this field, the Oriental Republic of Uruguay states the following.<sup>10</sup>

[26]“*The aforementioned body of rules is and has been correctly enforced within the framework of powers of the agencies concerned and in accordance with the operational capacities of each of said agencies. Attention should be drawn to the institution-building efforts of a number of agencies, in particular the Tax Bureau and the Social Insurance Bank, which have provided training to their staff of experts and inspectors as well as significantly modernizing their logistics organization in recent years, all of which has notably improved their performance. The available statistical data in this area is being collected and will be forwarded at the earliest convenience.*”

[27] The country under review provided the following information regarding proceedings under articles 96 and 110 of the Tax Code, from January 1, 2007 – April 21, 2009:<sup>11</sup>

- Resolutions by the Tax Bureau applying the sanctions under Article 96 of the Tax Code, Fines for Tax Fraud.....	662
- Criminal Sanctions through reasoned decision, in accordance with Article 110 of the Tax Code, Crime of Tax Fraud.....	69

[28]Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will

<sup>10</sup> Response of Oriental Republic of Uruguay to the Questionnaire for the Third Round, pgs. 7 - 8:  
[http://www.oas.org/juridico/spanish/mesicic3\\_ury\\_resp\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_ury_resp_sp.pdf)

<sup>11</sup> This information was provided in its Observations to the Draft Preliminary Report.

formulate a recommendation to the country under review so that, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 1.4(b) in Section 1.4 of Chapter II of this Report)

#### **1.4. Conclusions and recommendations**

[29] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 7 of the Convention:

**[30] The Oriental Republic of Uruguay has considered and adopted measures intended to create, maintain and strengthen standards on the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in section 1 of Chapter II of this report.**

[31] In light of the comments formulated in the above-noted sections, the Committee suggests that the Oriental Republic of Uruguay consider the following recommendation:

[32] Strengthen the standards for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, the Oriental Republic of Uruguay could take the following measures into account:

- a. Consider adopting the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment, such as the following: (see Section 1.2 of Chapter II of this Report)
  - i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to confirm the origin of the expenditure or payment on which the claims are based.
  - ii. The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions.
  - iii. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.
  - iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, and such aspects as certifying the authenticity of the documents submitted with the applications.

- v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications.
  - vi. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.
- c) Select and develop, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto. (See section 1.3 of chapter ii of this report)

## **2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)**

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

[33]The Oriental Republic of Uruguay has a set of provisions related to prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[34]– Statutory provisions such as the Commercial Code,<sup>12</sup> of which the following should be noted:

[35]Article 54, which provides the requirement that all businesspersons are required to “have books of account and of their business correspondence.”<sup>13</sup> Article 55, further states that each merchant must maintain three indispensable books, a daily journal, general account book and a letter book.

[36]Article 56, which states that in the daily journal “shall be written up on a daily basis, and in the order in which they are conducted, all the operations in which the merchant engages as well as any bills of exchange or other credit instruments that they issue, receive, guarantee, and endorse; and, in general, anything that, for any reason, they receive or deliver, on their own account or that of another, such that each entry shows who is the creditor and who is the debtor in the trade in question.”

[37]Article 59, which provides that the general account book “shall be opened with an exact description of the monies, movable property and real estate, credits, and any other kind of securities that comprise the merchant’s capital upon starting his business. Subsequently, within the first three months of each year, all businesspersons shall draw up and set out in the same book the balance sheet of their business, which shall include all assets, credits, and shares, together with all outstanding debts and liabilities on the date of the balance sheet, without any reservations or omissions. Inventories and balance sheets shall be signed by all of the interested parties of the establishment who are present at the time of their drafting.”

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<sup>12</sup> The Commercial Code, [http://sip.parlamento.gub.uy/htmlstat/pl/codigos/codigocomercio/1997/cod\\_comercio.htm](http://sip.parlamento.gub.uy/htmlstat/pl/codigos/codigocomercio/1997/cod_comercio.htm). Articles 2 - 7 provide the scope of coverage of the Commercial Code.

<sup>13</sup> Article 44 also provides that businesspersons are required to do the following: 1) Registration at a public registry office of documents that by law have to be registered; 2) The obligation to keep to a uniform Spanish language accounting order and to keep the books needed to that end; 3) Preservation of correspondence related to the business activity as well as all correspondence relating to the accounting ledgers; and 4) Accountability, as prescribed by law.

[38]Article 65, which states that the three books are to be “bound, jacketed, and their pages numbered, in which form all businesspersons in the Capital Department shall present them to the Commercial Court for the Judge and the Clerk thereof to sign all their pages and include on the first page a dated note signed by both of the number of pages that the book contains. In all other departments, these formalities shall be carried out by the Mayor acting with the Clerk or, in the absence of the latter, two witnesses. In neither instance may any fee or remuneration be demanded.”

[39]Article 66, which provides that in terms of the books to be maintained under Article 55, it is prohibited: “1) To alter the consecutive order in which dates and operations must be entered pursuant to Article 56; 2) to leave blank spaces or gaps, since all entries must be made one after the other, and no space left for interspersed entries or additions; 3) To make between-line entries, erasures or amendments; rather all errors and omissions must be rectified by means of a fresh entry made on the date on which the omission or error is noted; 4) To cross out any entry; and, 5) To mutilate any part of the book, tear out any page, or alter the binding and paging.”

[40]Article 80, which states that “All businesspersons have the obligation to keep their company books for 20 years counted from the closure of their business or company.”

[41] – Statutory provisions such as Law 16.060, the Commercial Companies Law,<sup>14</sup> of which the following should be noted:

[42]Article 75, which provides that partners have the right to to examine the company books and documents and to obtain from the management such information as they deem pertinent.

[43]Article 87, which provides that within four months from the close of the fiscal year, the administrators of a company are, at a minimum, to formulate an inventory of the various elements that comprise the company assets and liabilities on that date; financial statements (balance sheet); and, the proposed distribution of profits, if any. Article 89, further states, that the financial statements are to be drawn up and presented in accordance with accepted accounting standards. , and if required by these standards, require the preparation of consolidated financial statements,.. The regulations are to determine the basic information to be included in the financial statements. In addition, Article 91 provides that the regulations are to prescribe the accepted accounting standards to which the financial statements of publicly held companies shall conform. These regulations may also authorize these companies to use any available technologies to replace or supplement the mandatory books required of businesspersons.

[44]Article 92, which provides that the management of companies are to provide an account of the company’s business as well as the position of the company, presenting an annual report that explains the financial position (balance sheet and statement of income) and informing the partners about the points deemed to be of interest. This annual report is to set out, among other things, the reasons for any

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<sup>14</sup> Law 16.060, the Company Law, <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=16060&Anchor=> , as amended by Law 18.362, <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=18362&Anchor=> Article 1 of the Law 16.060 provides that the law applies to any enterprise in which “two or more parties commit resources for an organized commercial activity with the intent to share its profits and assume its losses.” The Law provides that commercial enterprises can adopt one of seven forms, including partnerships, corporations and limited liability companies. In addition, Articles 194 – 195 provide that foreign companies that establish branches or other type of permanent representation are to keep separate accounts in Spanish and submit to the corresponding administrative controls. In addition the administrators or representatives of foreign companies have the same responsibilities as those administrators of companies established in Uruguay.

significant changes in the assets and liabilities positions; an adequate explanation of extraordinary expenditures and windfall profits and their origin, as well as adjustments for profits and expenditures from previous years, if significant; and detailed reasons for any proposed payment of dividends or distribution of profits in any form other than cash.

[45]Article 95, which states that for corporations that are legally or contractually required to maintain internal control organs, those organs are to receive the balance sheet and statement of income, the information required to accompany them, and the management's annual report, at least 30 days before the meeting of the partners or of the shareholders. The control organs are to examine these documents and submit a report with such comments and proposals as they deem appropriate.

[46]Article 97bis, which provides that "Any company, regardless of their form, whose total assets at the close of each year exceed 30.000 UR (thirty thousand readjustable units), or which report net revenue from operations in excess of 100.000 UR (one hundred thousand readjustable units), are required to register their financial statements with the state oversight body within the period provided in the regulations. These statements are to remain in the registering entity at the disposal for any interested party.<sup>15</sup>

[47]Article 339, which provides for the full disclosure of company books, both those required by the Commercial Code and those provided in Law 16.060, when ordered by a judge when so requested by shareholders who represent at least 10% (ten percent) of the paid-in capital and there is evidence of a violation of the law or of the contract that created the business association; or there is reason to believe that serious irregularities have been committed by any of the company organs, and it is demonstrated that the remedies provided by law and the contract that created the business association have been exhausted.

[48]Article 397, which states that the internal oversight of corporations shall be assigned to trustees or an oversight committee composed of three or more members who, subject to the bylaws, may or may not need to be shareholders. Private oversight is obligatory in the case of publicly held companies; in the case of closely held corporations it is optional.

[49]Article 402, which states that, among others, the trustees and oversight committee have the power to examine the books and documents, the cash position, receivable loans and securities, as well as the company's liabilities, and to request the preparation of trial balances whenever it is deemed necessary; and, to verify the annual financial statements as provided in Article 95 and also to submit to the regular meeting a reasoned written report on the financial position of the company, expressing an opinion on the annual report, inventory, balance sheet (statement of financial position and statement of income), and, in particular, on the proposed distribution of profits.

[50]Article 412, which provides that in the event of a violation of the law, statute, or regulations, the state oversight body may impose on the company, its management, directors, or persons in charge of its private control a public warning and a fine. The regulations shall classify the violations that give rise to the imposition of administrative penalties and, in each case, the severity and amount of the latter. The

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<sup>15</sup> Decree 253/01 regulates this provision. It states that the Financial Statement Registry is to be maintained by the National Internal Audit Office and contain the following: 1) Particulars of the company: Name, Trade Name, Domicile, Date of Balance Sheet, Tax Registry Number, principal line of business according to the International Standard Industrial Classification (ISIC); 2) Balance Sheet; 3) Statement of Income; 4) Statement of Fixed Assets, Intangible Assets, and Investments in Real Property -Depreciation; 5) Statement of Changes in Shareholders' Equity; 6) Statement of Cash Flow, and, 7) Notes to the Financial Statements. The Decree is found at the following site: [http://www.ain.gub.uy/marco\\_normativo/decretos/decretos\\_soc\\_253\\_2001.html](http://www.ain.gub.uy/marco_normativo/decretos/decretos_soc_253_2001.html)

amount of any fines to be imposed shall be commensurate with the seriousness of the violation and shall not exceed the amount equivalent to 10.000 U.R. (ten thousand readjustable units).

[51] Article 413, which provides that corporations are required to exhibit their corporate books and documents for inspection to the state oversight body. Article 416 further states publicly held companies are required to publish the annual financial statements approved by their shareholders' meetings, once certified by the state oversight body..”

[52] – Statutory provisions such as Decree 335/990, which regulates Law 16.060 and provides under its Article 1 that the State agency responsible for the external audit of the books and records of a company is the National Internal Audit Office.<sup>16</sup>

[53] – Statutory provisions such as the Tax Code,<sup>17</sup> of which Articles 66 and 70 of the Tax Code provide the obligation to not only keep and conserve books and records, but also provides for the conservation of all documentation on operations, pursuant to the legal or regulatory provisions.

[54] – Statutory provisions such as Decree 597/988,<sup>18</sup> among which article 41 provides that taxable entities must document all tax-related operations with invoices, tickets, debit notes, credit notes or vouchers with correlative numbering and imprint, and pre-printed with the business name, trade name, registered address, type of voucher and destination of each copy.

[55] – Statutory provisions such as Decree 103/91, which sets out the mandatory template of company financial statements. Under this decree, the directors must present a report to shareholders containing relevant explanations on financial statements, including a) significant changes in relation to the previous year's financial statements, b) exceptional items, c) commercial relations with related parties and d) future prospects for the business.

[56] – Statutory provisions such as Decree 162/004,<sup>19</sup> which adopted the International Financial Reporting Standards of the International Accounting Standards Board as the accounting standard for the Oriental Republic of Uruguay. This has continuously been updated through Decree 222/004 and Decree 90/005.

[57] – Statutory provisions such as Decree 266/007,<sup>20</sup> among which the following should be noted:

[58] Article 1, which adopts as accounting standards the “International Financial Reporting Standards as adopted by the International Accounting Standards Board (IASB) at the date of publication of this Decree, translated into Spanish by permission of the aforesaid Board, and published on the website of the National Internal Audit Office. The aforesaid standards include: a) The International Financial Reporting Standards, b) the International Accounting Standards, and, c) the interpretations of the International

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<sup>16</sup> Decree 335/990, [http://www.ain.gub.uy/marco\\_normativo/decretos/decretos\\_soc\\_335\\_1990.html](http://www.ain.gub.uy/marco_normativo/decretos/decretos_soc_335_1990.html). The *Inspección General de la Hacienda* was named as the State agency responsible; it was later transformed into the National Internal Audit Office by Law 16.736, <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=16736&Anchor=>

<sup>17</sup> Tax Code, *supra* note 7.

<sup>18</sup> Decree 597/988, <http://www.dgi.gub.uy/wdgi/agxppdwn?6.4.213.O.S.0.7978%3BS%3B5%3B877>.

<sup>19</sup> Decree 162/004, <http://www.presidencia.gub.uy/decretos/2004051203.htm>. The accounting standards are described under Article 1 of the Decree as follows: “Accepted accounting standards are all those technical guidelines previously established and known by users that are used as the basis for the preparation and presentation of financial reports (financial statements), the purpose of which is adequately to describe an organization's financial position.”

<sup>20</sup> Decree 266/07,

[http://www.presidencia.gub.uy/ Web/decretos/2007/07/E%20735AS2202\\_28%2005%202007\\_00001.PDF](http://www.presidencia.gub.uy/ Web/decretos/2007/07/E%20735AS2202_28%2005%202007_00001.PDF)

Financial Reporting Interpretations Committee or its predecessor, the Standing Interpretations Committee. Where appropriate, the Framework for the Preparation and Presentation of Financial Statements adopted by the International Accounting Standards Board shall apply.”

[59]Article 2, which states that accounts will continue being presented in the template found in Decree 103/91, in particular as it relates to the, a) the Balance sheet, b) Statement of income, c) Statement of cash flow, d) Statement of changes in shareholders’ equity, and, e) Notes to the financial statements.”

[60]– The Code of Professional Ethics of the College of Accountants, Economists and Business Administrators,<sup>21</sup> Article 10(a) of which provides that public accountants have the obligation to “closely guard professional secrets and divulge them only in the cases and circumstances specifically recognized by law.” Articles 10(b) and 10(c) further provide that accountants are to abstain, directly or indirectly, from authorizing or executing accounting records that conceal, falsify or disguise actual administrative or financial transactions and from authorizing or certifying financial/economic statements that are intrinsically or extrinsically irregular. In addition, Articles 19 to 24 of the Code of Professional Ethics also provides for disciplinary action to be taken and sanctions applied by the Honor Tribunal.

[61]– Statutory provisions as those found in the Code of Criminal Procedure,<sup>22</sup> that provides under Article 220 that only ecclesiastics and ministers of the Catholic Church; lawyers and attorney generals; doctors, pharmacists, obstetricians and other medical technical assistants; and military members and public officials are to abstain from testifying from secret acts that come to their knowledge for reason of their status, office or profession. In addition, this provision expressly states that if professional secrecy is invoked in error, the Judge must proceed forthwith to interrogate the witness.

[62]– Statutory provisions as those found in the Criminal Code that provide for relevant sanctions, among which the following should be noted:

[63]Article 240, which provides the following: “(Falsification or alteration of a private document): Whomsoever makes a false private document or alters a genuine one shall, if they use it, be punished with 12 months to five years of imprisonment.”

[64]Article 244, which provides the following: “(Destruction, suppression, or concealment of a document or of a genuine certificate): Whomsoever destroys, conceals, or causes to disappear any part of a document or genuine certificate shall be punished with the penalties that the Code provides for falsification of such documents.”

[65]Article 347, which provides the following: “(Fraud): Whomsoever, by cunning or deceit, induces anyone to commit an error in order to obtain undue gain for themselves or for a third party to the detriment of another shall be punished with six months to four years of imprisonment.”

[66]In addition, there are also provisions applicable to other types of entities, such as those contained in Law 15.322, the Financial Intermediation Law,<sup>23</sup> which regulates banks and other financial institutions, Law 16.246, the Demonopolization Insurance Law,<sup>24</sup> which regulates insurance companies, Law 16.749,

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<sup>21</sup> The Code of Professional Ethics of the College of Accountants, Economists and Business Administrators, [www.ccea.com.uy/institucional/etica.doc](http://www.ccea.com.uy/institucional/etica.doc)

<sup>22</sup> Code of Criminal Procedure, [http://www.oas.org/juridico/mla/sp/ury/sp\\_ury-int-text-cpp.html](http://www.oas.org/juridico/mla/sp/ury/sp_ury-int-text-cpp.html)

<sup>23</sup> Law 15.322, the Financial Intermediation Law, <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=15322&Anchor=>

<sup>24</sup> Law 16.246, the Demonopolization Insurance Law, <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=16426&Anchor=>

the Securities Market Law, which regulates the stock market,<sup>25</sup> and Law 18.407, the Law on Cooperatives.<sup>26</sup>

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

[67] With respect to the provisions that refer to the prevention of bribery of domestic and foreign government officials that the Committee has examined, based on the information available to it, they constitute a set of measures relevant for promoting the purposes of the Convention.

[68] Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of developing and complementing certain legal provisions that might be useful for the country under review to consider.

[69] With respect to the Code of Professional Ethics of the College of Accountants, Economists and Business Administrators, the Committee notes that Article 10(a) thereof specifies that public accountants have the obligation to “*closely guard professional secrets and divulge them only in the cases and circumstances specifically recognized by law.*” The Committee believes it advisable for the country under review, notwithstanding the existing legal limitations, to consider adopting, through the appropriate means, pertinent measures to ensure that “professional secrecy” is not an obstacle for professionals whose activities are governed by the Code to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work.<sup>27</sup> The Committee will formulate a recommendation in this regard. (see Recommendation 2.4(a) in Section 2.4 of Chapter II of this Report)

[70] The Committee it would be useful for the country under review to consider holding awareness campaigns targeted at persons responsible for maintaining accounts and verifying their accuracy, on the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation, and also to consider implementing training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of detecting acts of bribery in the course of their work. (see Recommendation 2.4(b) in Section 2.4 of Chapter II of this Report)

[71] The Committee also believes that it would be beneficial for the country under review to consider strengthening measures as it deems appropriate to make it easier for the organs and agencies responsible for the prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records. (see Recommendation 2.4(c) in Section 2.4 of Chapter II of this Report)

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

[72] With respect to results in this field, the Oriental Republic of Uruguay states the following:<sup>28</sup>

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<sup>25</sup> Law 16.749, the Securities Market Law, <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=16749&Anchor=>

<sup>26</sup> Law 18.407, the Law of Cooperative Systems, <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=18407&Anchor=>

<sup>27</sup> It should be noted that in a World Bank study of the Accounting and Auditing Standards in the Oriental Republic of Uruguay, it noted that the Code of Professional Ethics dates from 1944, and as such, do not specifically address other critical aspects such as independence of auditors and situations leading to conflicts of interests, see Uruguay: Report on the Observance of Standards and Codes, Accounting and Auditing, [www.worldbank.org/ifa/rosc\\_aa\\_ugy.pdf](http://www.worldbank.org/ifa/rosc_aa_ugy.pdf)

<sup>28</sup> Response of Oriental Republic of Uruguay to the Questionnaire for the Third Round, supra note 10 at pgs. 12 – 13.

*“The above-described control systems have worked relatively well, notwithstanding their permanent adjustment to new demands. While it could not be said that bribery is a particularly inconspicuous crime in the country, it is thought that the laws in force are quite suitable, in both preventive and punitive terms, for the purposes of the Inter-American Convention. The foregoing is without prejudice to the proposed law which has been approved by the lower of the two houses of Parliament and which would include officials of international agencies in the concept of transnational bribery. The financial reporting system to which publicly held companies are subject has gradually been refined and, as noted, the latest international standards in this area have been adopted. Furthermore, at the same time, the agencies in charge of their control have been strengthened, which has resulted in a more effective and efficient system for monitoring these corporations. The available statistics on these matters are being collected and the relevant information will be transmitted at the earliest convenience.”*

[73] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the appropriate manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 2.4(d) in Section 2.4 of Chapter II of this Report)

#### **2.4. Conclusions and recommendations.**

[74] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 10 of the Convention:

**[75] The Oriental Republic of Uruguay has considered and adopted measures intended to create, maintain and strengthen provisions for the prevention of the bribery of domestic and foreign government officials, as described in section 2 of Chapter II of this report.**

[76] In light of the comments formulated in the above-noted sections, the Committee suggests that the Oriental Republic of Uruguay consider the following recommendation:

[77] Strengthen the provisions on the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, the Oriental Republic of Uruguay could take the following measures into account:

- a. Adopt the appropriate measures, notwithstanding existing legal limitations, that ensure that “professional secrecy” is not an obstacle for professionals, whose activities are governed by the Code of Professional Ethics of the College of Accountants, Economists and Business Administrators, to bring to the attention of the competent authorities any acts of corruption that they discover in the course of their work. (see Section 2.2 of Chapter II of this Report)

- b. Hold awareness campaigns targeted at persons responsible for keeping accounts and verifying their accuracy, as to the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation, and implement training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of detecting acts of bribery in the course of their work. (see Section 2.2 of Chapter II of this Report)
- c. Consider strengthening the measures it deems appropriate to facilitate the work of the organs or bodies responsible for preventing or investigating noncompliance with measures for safeguarding the accuracy of accounting records, and to help them detect amounts paid for corruption that are concealed in those records, such as the following (See section 2.2 of chapter II of this report):
  - i. Review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption.
  - ii. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred.
  - iii. Manuals, guidelines or directives on the manner in which accounting books should be reviewed to detect sums paid for corruption.
  - iv. Computer programs that allow ready access to the information needed to verify the truthfulness of accounting records and their substantiating documentation, and the possibility of obtaining information from financial institutions for this purpose.
  - v. Institutional coordination mechanisms to facilitate timely collaboration from other institutions or authorities as necessary to perform such verification or to establish the authenticity of the substantiating documentation.
  - vi. Training programs for their employees, designed specifically to alert them to the methods used to disguise bribes in accounting records, and to instruct them on ways of detecting such payments.
- d. Select and develop, through the authorities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents, as well as the other authorities or entities that have responsibility in this area, procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in this report in relation thereto. (see Section 2.3 of Chapter II of this Report)

### 3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

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

[78]The Oriental Republic of Uruguay has a set of provisions related to transnational bribery, among which the following should be noted:

[79]- Statutory provisions, such as Law 17.060, which provides under Article 29 that: “(Transnational bribery). *Whomsoever, in order to conduct or facilitate a Uruguayan foreign business transaction, offers or grants, whether in the country or abroad and provided that the circumstances provided in Article 10(5) of the Criminal Code are met, money or any other financial advantage to a government official of another state, be it for themselves or for another, shall be punished with three months to three years of imprisonment.*”<sup>29</sup>

[80]Article 10(5) of the Criminal Code states: “(Criminal law. Principle of defense and standing) *With the exception of the following, all offenses committed by nationals and foreigners on foreign soil are removed from the scope of Uruguayan law...*

*5) Offenses committed by a Uruguayan that are punishable under both foreign and domestic law, when the perpetrator is found in the territory of the Republic and is not sought by the authorities of the country where they committed the crime, in which case the more lenient law is applicable.”*

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

[81]With respect to the provisions that refer to transnational bribery that the Committee has examined, based on the information available to it, they constitute a set of measures relevant for promoting the purposes of the Convention.

[82]Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of developing and complementing certain legal provisions that might be useful for the country under review to consider.

[83]The Committee notes the following in the Response to the Questionnaire by the Oriental Republic of Uruguay, in regards to the scope of application of Article 29:

[84]“*The person who offers the bribe may be a national or a habitual resident. As legal persons cannot be held to criminal liability under Uruguayan law, a company domiciled in the country cannot be charged with this crime. In such cases, the offence is attributed to the individual in the company who made the offer.*”<sup>30</sup>

[85]While the Committee takes note that the crime of transnational bribery applies to businesses through those natural persons that carried out the bribe, Article VIII of the Convention does not make this distinction and provides that businesses domiciled in the Oriental Republic of Uruguay are to be prohibited from this conduct and punished as well. As such, the Committee considers it advisable for the country under review, subject to its Constitution and the fundamental principles of its legal system, to

<sup>29</sup> Law 17.060, <http://200.40.229.134/leyes/AccesoTextoLey.asp?Ley=17060&Anchor=>

<sup>30</sup> Response of Oriental Republic of Uruguay to the Questionnaire for the Third Round, supra note 10 at pg. 13.

consider adopting the measures necessary for the application of appropriate sanctions with respect to those “businesses domiciled” therein, and which are responsible for the conduct described in Article VIII of the Convention, irrespective of the sanctions that are applicable to the persons associated with those businesses, and who are involved in the acts which constitute the offense. The Committee will make a recommendation in this regard. (see Recommendation 3.4(a) in Section 2.4 of Chapter II of this Report)

[86] The Committee also notes that Article 29 refers to money or other economic benefit that may be offered to a public official from another country. However, Article VIII of the Convention makes reference to not only to the offer or grant of a monetary value, but also other benefits, such as a gift, favor, promise or advantage. This language does not limit the benefit to just economic ones as contemplated under the Uruguayan legislation. The Committee will make a recommendation in this regard. (see Recommendation 3.4(c) in Section 2.4 of Chapter II of this Report)

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

[87] With respect to results in this field, the Oriental Republic of Uruguay states the following.<sup>31</sup>

[88] *“There is no record of enforcement of this criminal-law provision in Uruguayan case law.”*

[89] The country under review also notes that, *“There is no record of requests for international assistance in connection with this offense.”*

[90] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 3.4(e) in Section 2.4 of Chapter II of this Report)

### **3.4. Conclusions and recommendations.**

[91] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article VIII of the Convention:

**[92] The Oriental Republic of Uruguay has considered and adopted measures intended to create, maintain and strengthen provisions on the offense of transnational bribery as provided in Article VIII of the Convention, as described in section 3 of Chapter III of this report.**

[93] In light of the comments formulated in the above-noted sections, the Committee suggests that the Oriental Republic of Uruguay consider the following recommendation:

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<sup>31</sup> *Ibid.*, pgs. 14 – 15.

[94] Strengthen the provisions for the offense of transnational bribery. To comply with this recommendation, the Oriental Republic of Uruguay could take the following measures into account:

- a) Subject to its Constitution and the fundamental principles of its legal system, adopt the measures necessary for the application of appropriate sanctions applicable to “businesses domiciled” within the country that carry out transnational bribery, as provided for by Article VIII of the Convention. (See Section 3.2. of Chapter II of this Report)
- b) Amend or strengthen Article 29 of Law 17.060, so as to be more fully consistent with Article VIII of the Convention, by incorporating thereto the element of the offer or grant to a government official of another State other benefits, such as a gift, favor, promise or advantage. (See Section 3.2. of Chapter II of this Report)
- c) Select and develop, through the organs and agencies charged with the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in this report in relation thereto. (See Section 3.3 of Chapter II of this Report)

#### **4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)**

##### **4.1. Existence of provisions in the legal framework and/or other measures**

[95]The Oriental Republic of Uruguay has not yet adopted a set of provisions on illicit enrichment as provided in Article IX of the Convention.<sup>32</sup>

[96]However, the country under review notes, with respect to Article IX (3), that although it has not criminalized illicit enrichment, the Oriental Republic of Uruguay, nevertheless, provides international assistance in these cases, citing, for example, mutual assistance treaties that the country has signed and Uruguayan case law.<sup>33</sup>

##### **4.2. Adequacy of the legal framework and/or other measures**

[97]Based on the observations contained in the preceding section, the Committee will make the relevant recommendations to the country under review in order that, subject to its Constitution and the fundamental principles of its legal system, it establish as an offense the conduct described in Article IX of the Convention. (See Recommendation 4.4 (a) in Chapter II of this report).

[98]The Committee does note that the country under review states the following:<sup>34</sup>

[99]“*As regards Parliament, there was an intense discussion in the Senate in this respect, when, bearing in mind the precepts contained in the IACC, it debated the-now-in-force Law 17.060 of December 23, 1998 (Rules on Misuse of Public Authority (Corruption)), which created the Transparency and Public Ethics Board, made it mandatory for certain government officials to submit sworn declarations of net*

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<sup>32</sup> *Ibid.*, pg. 17.

<sup>33</sup> *Ibid.*, pgs. 17 – 18.

<sup>34</sup> *Ibid.*, pg. 16.

worth, and introduced and amended the classifications of several crimes associated with corruption. Following a great deal of debate both in favor and against, 14 out of 29 senators voted for the bill criminalizing illicit enrichment but it was defeated by a margin of one vote.

[100] *“In view of the fact that Article IX of the Convention provides that the offense of illicit enrichment shall be criminalized ‘subject to its Constitution and the fundamental principles of its legal system’ a majority in Parliament took the view that this criminal classification implies an inversion of the burden of proof, which, in infringing the principle of presumption of innocence, would be incompatible with the country’s constitutional precepts. The criticism was also made that no less than the conduct, the core element of the offense, is missing in this instance and that unjustified possession of wealth -given that if enrichment is ‘illicit,’ it would already be trapped in another wrongdoing- would be, as a number of authors have claimed, a suspected crime, more than a crime of suspicion.”*

[101] *However, during the parliamentary process forceful arguments were put forward in favor of the criminalization of this offence, and it was insisted that it could be a very useful instrument in the fight against corruption, that, in view of the specific nature of the offense, an exceptional inversion of the burden of proof was warranted, and that this position was widely accepted in comparative law.*

[102] *Bearing in mind these firm positions in favor of the criminalization of illicit enrichment (and without this presupposing a definitive end to the discussion), it was decided to include it as a special aggravating circumstance in corruption offences in Article 163 ter (2) of the Criminal Code, under the following wording: “Should the perpetrator have obtained an illicit increase in net worth as a result of any of these offences” (Article 9 of law 17.060).”*

### **4.3. Results of the legal framework and/or other measures**

[103] With respect to results in this field, the Oriental Republic of Uruguay cites the treaties in force and Uruguayan jurisprudence.<sup>35</sup>

[104] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies charged with requesting and/or providing assistance and cooperation with respect of the offense of illicit enrichment, as provided in the Convention, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (see Recommendation 4.4(b) and (c) in Section 2.4 of Chapter II of this Report)

### **4.4. Conclusions and recommendations**

[105] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article IX of the Convention:

[106] **The Oriental Republic of Uruguay has not adopted measures on the offense of illicit enrichment as provided in Article IX of the Convention, as described in Chapter II, Section 4 of this report.**

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<sup>35</sup> *Ibid.*, pg. 18.

[107] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendations:

- a) Reexamine the possible inclusion as a crime, subject to its Constitution and the fundamental principles of its legal system, the conduct of illicit enrichment as described in Article IX of the Convention, which defines it as a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions. (See Chapter II, Section 4.2 of this report).
- b) Provide assistance and cooperation as provided for in the Convention, with respect to illicit enrichment under Article IX, insofar its laws permit. (See Chapter II, Section 4.3 of this report).
- c) If illicit enrichment is criminalized, select and develop, through the organs and agencies that would, in due course, be responsible for the investigation and/or prosecution of the offense of illicit enrichment, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Chapter II, Section 4.3 of this report).

## **5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)**

### **5.1. Existence of provisions in the legal framework and/or other measures.**

[108] The Oriental Republic of Uruguay criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention, but has not yet notified the OAS Secretary General of said criminalization.

[109] However, the Oriental Republic of Uruguay has not criminalized illicit enrichment as provided in Article IX of the Inter-American Convention against Corruption, as was noted in Chapter II, Section 4 of this report.

### **5.2. Adequacy of the legal framework and/or other measures.**

[110] Bearing in mind that the Oriental Republic of Uruguay criminalized transnational bribery as provided in Articles VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention, but has not yet notified the OAS Secretary General of said criminalization, in accordance with Article X thereof, the Committee will recommend that it proceed to that notification. (see Recommendation in Section 5.3 of Chapter II of this Report)

[111] In addition, the Oriental Republic of Uruguay has not criminalized illicit enrichment as provided in Article IX of the Inter-American Convention against Corruption, and when it does, the Committee will recommend that it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention. (see Recommendation in Section 5.3 of Chapter II of this Report)

### **5.3. Conclusions and recommendations.**

[112] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article X of the Convention:

[113] The Oriental Republic of Uruguay criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention, but has not yet notified the OAS Secretary General of said criminalization, in accordance with Article X thereof. Accordingly, the Committee recommends that it proceed to that notification.

[114] In addition, the Oriental Republic of Uruguay has not criminalized illicit enrichment as provided in Article IX of the Inter-American Convention against Corruption. Accordingly, when it does, the Committee recommends that it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention.

## **6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)**

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

[115] The Oriental Republic of Uruguay has a set of provisions related to extradition, among which the following should be noted:

[116] - Statutory provisions such as Law 17.060, which amended the Criminal Code and provided for new offenses in order to comply with the Inter-American Convention against Corruption. Article 31 provides, "Extradition for acts criminalized in this law is governed by the standards contained in the international treaties or conventions in force ratified by the Republic. In the absence of such instruments, the relevant provisions set forth in the Criminal Code and the Code of Criminal Procedure, as well as the special provisions set forth in the following articles, shall apply."<sup>36</sup>

[117] - Statutory provisions such as the Criminal Code, where Article 13 provides, "(Extradition) Extradition is not admissible for political crimes, for common crimes connected with political crimes, or for common crimes whose suppression is motivated by political purposes. Extradition is also inadmissible when the act on which the request is based is not criminalized under national law. Extradition may be granted or offered for offenses not covered by treaties, provided that there is no prohibition therein."

[118] Article 14 further states "(Conditions that govern extradition in the absence of a treaty) In the absence of a treaty, the extradition of a foreigner may only be ordered if the following rules are met: 1) That the crimes concerned are punishable by this Code with more than six years of imprisonment; 2) that the request is submitted by the relevant government to the executive branch, accompanied by a conviction or a detention order, together with the justifying documents required by the laws of the Republic in order to proceed with the arrest; 3) that there is a court ruling declaring extradition admissible, following a hearing for the accused and the Office of the Attorney General."

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<sup>36</sup> Law 17.060, *supra* note 29. Article 32 of this Law further provides, "Extradition for acts recognized in this law is not admissible when the penalty imposed is less than two years of imprisonment and there are less than six months of the sentence left to be served. In the case of persons sought for prosecution, when the minimum prison sentence for the penalty that the foreign law provides for the offense is less than six months, without prejudice to Article 54 of the Criminal Code."

[119] – Statutory provisions such as the Code of Criminal Procedure, where Article 32 provides, “(Rules on extradition).- If no treaty exists, extradition may only be ordered if these rules are met: A) That the crimes concerned are punishable with at least two years of imprisonment; B) that the request is submitted by the relevant government to the executive branch, accompanied by a conviction or a detention order, together with the justifying documents required by the laws of the Republic in order to proceed with the arrest; C) that there is a court ruling declaring extradition admissible, following a criminal hearing for the accused and the Office of the Attorney General.”

[120] The country under review has also entered into bilateral extradition treaties with Argentina, Canada, Chile, Mexico, and the United States of America. It has also entered into multilateral treaties such as the Agreement on Extradition between the States Parties of Mercosur, and the Agreement on Extradition between the States Parties of Mercosur and Bolivia and Chile.<sup>37</sup>

[121] The country under review also states in its Response to the Questionnaire that the Inter-American Convention against Corruption serves as a legal basis to solicit and grant extradition requests for the offenses in that treaty that it has criminalized.<sup>38</sup>

## **6.2. Adequacy of the legal framework and/or other measures.**

[122] With respect to provisions related to extradition, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[123] The Committee nevertheless deems it appropriate to express the following comment that could be considered by the country under review, as follows:

[124] The Committee believes it is necessary that pursuant to Article XIII(6), of the Convention, the country under review should consider adopting the relevant measures to inform a requesting state that its extradition for offenses covered in the Convention has been denied because it believes itself to have jurisdiction, and to report on the final result of the case that, as a result of that denial, it brings before its competent authorities for prosecution. (see Recommendation 6.4(a) in Section 6.4 of Chapter II of this Report)

## **6.3. Results of the legal framework and/or other measures.**

[125] With respect to results in this field, the Oriental Republic of Uruguay presented information on the number of extradition requests sent and received from 2004 – 2009, which is found as follows:<sup>39</sup>

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<sup>37</sup> These bilateral treaties and agreements can be found at the following website:

<http://www.oas.org/juridico/mla/en/ury/index.html>

<sup>38</sup> Response to the Questionnaire, *supra* note 10 at pg. 19.

<sup>39</sup> Extraditions sent and received, 2004 – 2009, [www.oas.org/juridico/spanish/mesicic3\\_ury\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_ury_sp.htm)

Year	Extraditions Administered
2004	108
2005	93
2006	100
2007	97
2008	101
2009 <sup>40</sup>	30

[126] Nevertheless, the country under review states that there is no data on the content of these extradition requests,<sup>41</sup> therefore it is not possible for the Committee to determine how many of these requests were based on the Convention.

[127] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs or agencies responsible for processing incoming and outgoing extradition requests, respectively, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. The Committee will formulate a recommendation in this regard. (see Recommendation 6.4(b) in Section 6.4 of Chapter II of this Report)

[128] In addition, the Committee considers that it might be useful for the country under review to consider adopting the appropriate measures in order to benefit from a greater use of the Inter-American Convention against Corruption in extradition cases. This could consist, among other measures, in the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (see Recommendation 6.4(c) in Section 6.4 of Chapter II of this Report)

#### **6.4. Conclusions and recommendations.**

[129] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article XIII of the Convention:

[130] **The Oriental Republic of Uruguay has adopted measures regarding extradition as provided in Article XIII of the Convention, as described in Chapter II, Section 6 of this report.**

[131] In light of the comments formulated in that section, the Committee suggests that the Oriental Republic of Uruguay consider the following recommendations:

- a. Consider the convenience to establish relevant measures to inform, on a timely basis, to a requesting state that its extradition for offenses covered by the Convention has been denied because the State believes itself to have jurisdiction, and to report on the final result of the case that, as a result of that denial, it brings before its competent authorities for prosecution. (See Section 6.2 of Chapter II of this Report)

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<sup>40</sup> Up to March 26, 2009.

<sup>41</sup> Extraditions sent and received, 2004 – 2009, *supra* note 39.

- b. Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to verify the follow up to the recommendations formulated in this report with respect to this area; and to analyze objective results obtained in relation to requests for extradition formulated to other States Parties to the Convention, for the investigation or prosecution of the crimes that have been criminalized pursuant thereto and the steps that have been taken to respond to similar requests from other States Parties. (See Section 6.3 of Chapter II of this Report)
- c. Consider adopting the appropriate measures in order to benefit from a greater use of the Inter-American Convention against Corruption in extradition cases, which could consist of, among other measures, the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See Section 6.3 of Chapter II of this Report)

### **III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FROM PREVIOUS ROUNDS**

#### **FIRST ROUND**

[132] With respect to the implementation of the recommendations issued to the Oriental Republic of Uruguay in the report from the First Round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered in Section IV of the report for that round that they needed additional attention, and on the basis of the information available to it, referring to progress in implementation subsequent to that report, the Committee notes the following:

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

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

###### Recommendation 1.1:

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>42</sup>

- a. *Supplement the restrictions provided in the law for those who leave public service, including, when appropriate, other situations that could constitute conflicts of interest following the departure of the public official, applicable for a reasonable period of time after said departure (see section 1.1.2 of Chapter II of the present Report).*

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<sup>42</sup> Report on Implementation in Uruguay of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 23 – 24, [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ury.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ury.pdf)

- 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.*

[133] With respect to measures a), b) and c) of the foregoing recommendation, in its Response, the country under review presents information that it considers related, additional to that reviewed by the Committee in the Report from the Second Round.<sup>43</sup>

[134] The Committee reiterates the need for the country under review to give additional attention to implementation of measures a), b) and c) of the foregoing recommendation.

[135] With respect to measure d) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[136] - The Transparency and Public Ethics Board, in 2008, began a compilation of the various existing Standards of Conduct found in the Public Administration. This Arranged Text, which is expected to be approved in 2009, will allow for an evaluation of the gaps and overlaps of the provisions in place.<sup>44</sup>

[137] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure d), as well as reiterates the need for it to continue to give attention thereto.

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

Recommendations suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:<sup>45</sup>

### Recommendation 1.2.1:

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

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<sup>43</sup> Response to the Questionnaire, *supra* note 10 at pgs. 24 – 25.

<sup>44</sup> *Ibid.* at pg. 24.

<sup>45</sup> Report of the Second Round, *supra* note 42 at pgs. 24 – 25.

- *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.*

[138] With respect to the measure of Recommendation 1.2.1, in its Response, the country under review presents information that it considers related, additional to that reviewed by the Committee in the Report from the Second Round.<sup>46</sup>

[139] The Committee reiterates the need for the country under review to give additional attention to implementation of the measure of Recommendation 1.2.1.

Recommendation 1.2.2:

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

[140] With respect to Recommendation 1.2.2, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the Recommendation, the following:

[141] - The Transparency and Public Ethics Board reports that the percentage of agencies required to comply with the norms on public procurement increased from 40% in 2006 to currently 85%. In providing oversight on compliance by these agencies, the Board counts on the collaboration of the Purchasing and State Contracting Area of the Agency for the Information and Knowledge Society and this information is available at: [www.compraestatales.gub.uy](http://www.compraestatales.gub.uy).<sup>47</sup>

[142] The Committee takes note of the steps taken by the country under review to advance in its implementation of Recommendation 1.2.2 as well as reiterates the need for it to continue to give attention thereto.

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

Recommendation 1.3:

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

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<sup>46</sup> Response to the Questionnaire, *supra* note 10 at pgs. 25 – 26.

<sup>47</sup> *Ibid.* at pg. 26.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>48</sup>

- 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.*

[143] In its Response, the country under review did not present additional information that was not already reviewed by the Committee in the Report of the Second Round with respect to the measures of the foregoing recommendation. As such, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.<sup>49</sup>

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

### Recommendation 2:

*Improve the use of sworn declarations of net worth.*

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>50</sup>

- 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.*

<sup>48</sup> Report of the Second Round, *supra* note 42 at pgs. 25 – 26.

<sup>49</sup> Response to the Questionnaire, *supra* note 10 at pg. 27.

<sup>50</sup> Report of the Second Round, *supra* note 42 at pgs. 26 – 27.

- d. *Envisage the possibility of amending the current law so as to permit the use of modern information and communication technology.*

[144] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[145] - Article 233 of the Law 18.172 of August 31, 2007 broadened the authority of the Investigatory Commission of Parliament to request the opening and delivery of sworn statements belonging to officials who are under investigation.<sup>51</sup>

[146] - Article 299 of Law 18.362 of October 6, 2008 authorizes the Transparency and Public Ethics Board to audit and ensure in the state agencies that the officials required to present their sworn statements are doing so. Article 301 of the same Law establishes the obligation on government agencies that have instituted disciplinary proceedings against officials who fail to present their sworn statement, to communicate to the Board of the outcome of these proceedings within 30 days of their decision.<sup>52</sup>

[147] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) as well as reiterates the need for it to continue to give attention thereto.

[148] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[149] - Article 99 of Law 18.046 of October 23, 2006, which took effect January 1, 2007, provides that officials and ex officials who fail to submit their sworn statement must pay the equivalent of 50% (fifty per cent) per month of their salary or pension until they comply. This provision has contributed to reduce the number of non-complying officials and currently there is a 96% compliance rate.<sup>53</sup>

[150] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) as well as reiterates the need for it to continue to give attention thereto.

[151] With respect to measure d) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[152] - In the area of computer systems, an agreement has been concluded with the *Universidad de la República*, whereby its Central Computer Service will update the sworn declaration information management system, adapting it to the recent legislative changes on persons required to submit sworn

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<sup>51</sup> Response to the Questionnaire, *supra* note 10 at pg. 28.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

declarations of assets and income. The computer equipment renewal program using self-generated funds also continues to be implemented. This enables the service to keep operating efficiently.<sup>54</sup>

[153] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure d) as well as reiterates the need for it to continue to give attention thereto.

[154] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information that it considers related, additional to that reviewed by the Committee in the Report from the Second Round.<sup>55</sup>

[155] The Committee reiterates the need for the country under review to give additional attention to implementation of measure c of the foregoing recommendation.

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

Recommendation suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:<sup>56</sup>

*Strengthen the mechanisms for cooperation and coordination among oversight bodies.*

[156] In its Response, the country under review did not present additional information that was not already reviewed by the Committee in the Report of the Second Round with respect to the foregoing recommendation. As such, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.<sup>57</sup>

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

#### **4.2. Mechanisms for access to information**

Recommendation 4.2:

*Establish legal standards that facilitate access to government information.*

Measure suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:<sup>58</sup>

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

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<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.* at pgs. 27 – 28.

<sup>56</sup> Report of the Second Round, *supra* note 42 at pg. 27.

<sup>57</sup> Response to the Questionnaire, *supra* note 10 at pg. 29.

<sup>58</sup> Report of the Second Round, *supra* note 42 at pgs. 27 – 28.

[157] With respect to the measure of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes the following as steps that lead it to conclude that said measure have been satisfactorily considered:

[158] - On October 17, 2008, Law 18.381 came into force, titled “Standards that regulate the right to access to government information.” The objective of the Law is to promote transparency in the administrative function of all public agencies and ensure the fundamental right of persons to government information, without discriminating based on nationality or the character of the requesting person. The Law provides which information must be made available on government websites and provides the administrative procedure to be followed in order to request information and the recourse mechanism in the instances the information is not obtained through administrative means.<sup>59</sup>

[159] - Article 72 of Law 18.362 of October 15, 2008 establishes within the Agency for Electronic Government Management and Information Society and Knowledge, the Citizen’s Rights Directorate, which has the responsibility to attend to enquiries, provide advice in the protection of personal information and in access to government information.<sup>60</sup>

[160] The Committee takes note of the satisfactory consideration by the country under review of the measure of the foregoing recommendation, which, by its nature, requires a continuation of efforts in its implementation, without entering into an analysis of the substance of the Law.

### **4.3. Mechanisms for consultation**

#### Recommendation 4.3:

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>61</sup>

- 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.*

[161] In its Response, the country under review provides information which it considers related to measures a) and b) of the foregoing recommendation, additional to that reviewed by the Committee in the Report from the Second Round.<sup>62</sup>

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<sup>59</sup> Response to the Questionnaire, *supra* note 10 at pgs. 29 – 30.

<sup>60</sup> *Ibid.* at pg. 30.

<sup>61</sup> Report of the Second Round, *supra* note 42 at pg. 28.

<sup>62</sup> Response to the Questionnaire, *supra* note 10 at pgs. 30 – 31.

[162] The Committee reiterates the need for the country under review to give additional attention to implementation of measures a) and b) of the foregoing recommendation.

#### **4.4. Mechanisms to encourage participation in public administration**

##### Recommendation 4.4:

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>63</sup>

- 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.*

[163] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[164] - Article 100 of Law 18.046 of October 23, 2006, which took effect January 1, 2007, provides that the Board is to establish “*ties of cooperation with civil society organizations for the purpose of joining forces to strengthen society’s participation in anti-corruption efforts.*”<sup>64</sup>

[165] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) as well as reiterates the need for it to continue to give attention thereto.

[166] With respect to measures b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related, additional to that reviewed by the Committee in the Report from the Second Round.<sup>65</sup>

[167] The Committee reiterates the need for the country under review to give additional attention to implementation of measure b) of the foregoing recommendation.

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<sup>63</sup> Report of the Second Round, *supra* note 42 at pgs. 28 – 29.

<sup>64</sup> Response to the Questionnaire, *supra* note 10 at pg. 31.

<sup>65</sup> *Ibid.*

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

##### Recommendation 4.5:

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>66</sup>

- 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.*

[168] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[169] - Article 100 of Law 18.046 of October 23, 2006, which took effect January 1, 2007, provides that the Board is to establish “*ties of cooperation with civil society organizations for the purpose of joining forces to strengthen society’s participation in anti-corruption efforts.*”<sup>67</sup>

[170] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) as well as reiterates the need for it to continue to give attention thereto.

[171] With respect to measures b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related, additional to that reviewed by the Committee in the Report from the Second Round.<sup>68</sup>

[172] The Committee reiterates the need for the country under review to give additional attention to implementation of measure b) of the foregoing recommendation.

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<sup>66</sup> Report of the Second Round, *supra* note 42 at pgs. 29 – 30.

<sup>67</sup> Response to the Questionnaire, *supra* note 10 at pg. 31.

<sup>68</sup> *Ibid.*

## 5. ASSISTANCE AND COOPERATION (ARTICLE XIV)

Recommendations suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:<sup>69</sup>

### Recommendation 5.3:

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

### Recommendation 5.4:

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

### Recommendation 5.5

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

[173] Taking into account that the foregoing recommendations are of a continuous nature and should continue to be developed, the Committee looks forward to the country under review reporting on actions developed in this regard, in the annual progress reports provided for by Article 32 of the Rules of Procedure.

Recommendation suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:<sup>70</sup>

### Recommendation 5.1:

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

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<sup>69</sup> Report of the Second Round, *supra* note 42 at pg. 31.

<sup>70</sup> *Ibid.* at pg. 30

Recommendation 5.2:

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

[174] In its Response, the country under review did not present additional information that was not already reviewed by the Committee in the Report of the Second Round with respect to Recommendation 5.1 and 5.2. As such, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.<sup>71</sup>

**6. CENTRAL AUTHORITIES (ARTICLE XVIII)**

Recommendation suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:<sup>72</sup>

Recommendation 6.1:

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

Recommendation suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:<sup>73</sup>

Recommendation 6.2:

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

[175] In its Response, the country under review did not present additional information that was not already reviewed by the Committee in the Report of the Second Round with respect to the foregoing recommendation. As such, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.<sup>74</sup>

**7. GENERAL RECOMMENDATIONS**

Recommendation suggested by the Committee that require information on its implementation or which required additional attention within the Framework of the Second Round:<sup>75</sup>

Recommendation 7.1:

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

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<sup>71</sup> Response to the Questionnaire, *supra* note 10 at pg. 32.

<sup>72</sup> Report of the Second Round, *supra* note 42 at pg. 32.

<sup>73</sup> *Ibid.* at pg. 32

<sup>74</sup> Response to the Questionnaire, *supra* note 10 at pg. 34.

<sup>75</sup> Report of the Second Round, *supra* note 42 at pgs. 32 – 33.

Recommendation 7.2:

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

Recommendation 7.3:

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

[176] With respect to Recommendation 7.1, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the Recommendation, the following:

[177] - Various training activities have been carried out by the Transparency and Public Ethics Board at the request of various government agencies and courses and workshops have been organized for public officials and representatives from civil society.<sup>76</sup>

[178] - As well, at the end of 2007, the Board republished the booklet, “Standards of Conduct” which compiles the principal anticorruption provisions and in 2008, the training manual titled “Government Administration and Ethics” was published. These publications support training activities and have been widely distributed in the Public Administration.<sup>77</sup>

[179] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as reiterates the need for it to continue to give attention thereto.

[180] With respect to Recommendations 7.2 and 7.3, in its Response, the country under review did not present additional information that was not already reviewed by the Committee in the Report of the Second Round with. As such, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.<sup>78</sup>

## SECOND ROUND

[181] The Committee offers the following observations with respect to the implementation of the recommendations made to the Oriental Republic of Uruguay in the Report from the Second Round, based on the information available to it:

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<sup>76</sup> Response to the Questionnaire, *supra* note 10 at pg. 35.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

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

### **1.1. Systems of Government Hiring**

#### Recommendation:

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

#### Measures suggested by the Committee:

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

[182] With respect to measure a) of the foregoing recommendation, the country under review presents information. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[183] - Article 9 of Law 18.362 of October 6, 2007, which provides a process for filling a position into the executive branch, and if to be hired through advertisement, then it must be made through open competition and merit or merit and aptitude exam. The National Office of the Civil Service, the Office of Planning and Budget, the Ministry of the Economy and Finance and the Ministry where the position is open, are to develop the profile and establish the competition tribunals.<sup>79</sup>

[184] - Article 413 of Law 18.362, which provides that, “*Entry of civil servants into any of the career services in the judicial branch, except for those corresponding to positions in the judiciary in accordance with Article 59 of the Constitution, shall only be by public entrance examination and merits*

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<sup>79</sup> *Ibid.* at pgs. 36 – 37.

*or by merits and an aptitude test. For career services corresponding to trade staff or auxiliary services employees, entry may be by draw. In all cases, calls for candidates must be public and open*”<sup>80</sup>

[185] - Article 425 of Law 18.362, which provides that “*Entry of civil servants into any of the career services of the Court of Administrative Judicial Review, except for those corresponding to positions in the judiciary in accordance with Article 59 of the Constitution, shall only be by public entrance examination and merits or by merits and an aptitude test. For career services corresponding to trade staff or auxiliary services employees, entry may be by draw. In all cases, calls for candidates must be public and open.*”<sup>81</sup>

[186] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a), as well as the need for it to continue to give attention thereto.

[187] With respect to measure b) of the foregoing recommendation, the country under review presents information. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:

[188] - Article 11 of Law 18.362, which provides that “*All calls for candidates issued by government agencies to fill public administration positions, irrespective of their nature and the length of the prospective of employment, must be published on the website of the National Civil Service Office at least 15 days before they close, notwithstanding the particular publicity that each agency gives them.*”<sup>82</sup>

[189] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b), as well as the need for it to continue to give attention thereto.

[190] The Committee also notes the need for the country under review to give additional attention to measures c) and d) of the foregoing recommendation, bearing in mind that it does not refer to its implementation in its Response.

## **1.2. Government Systems for the Procurement of Goods and Services**

### Recommendation 1.2.1:

*Strengthen the procurement systems with and without public tenders.*

### Measures suggested by the Committee:

- a. *Implement provisions that define the scope of application and clarify the ambiguous terms used in the exceptions found in Articles 33 (h) and (i) of the TOCAF, in order to limit the broad discretion that these provisions currently allows.*
- b. *Implement provisions outlining clear procedures for the selection of contractors in those situations where direct contracting is used.*

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<sup>80</sup> *Ibid.* at pg. 37

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

- c. *Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to verify the appropriateness and timeliness of the purchase.*
- d. *Reevaluate the threshold for the formation of bid evaluation committees for abbreviated bids.*
- e. *Reevaluate the threshold that allow government entities to notify interested parties on the outcome of the evaluation of bids prior to the final selection decision, in order to allow those parties to submit comments, observations, or challenges prior to award.*
- f. *Implement provisions that facilitate the participation of citizen overseers or watchdogs in monitoring the execution of contracts where the nature, importance or magnitude so warrants.*

[191] With respect to measures a), b), d), e) and f) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>83</sup>

[192] The Committee notes the need for the country under review to give additional attention to implementation of measures a), b), d), e) and f) of the foregoing recommendation.

[193] With respect to measure c) of the foregoing recommendation, the country under review presents information. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[194] - Article 81 of Law 18.362 established the Government Purchasing and Procurement Agency, and Article 82 further provides that the purpose of this Agency is to improve the conditions in which the Uruguayan state conducts its procurements as well as develop tools that ensure more transparency in this process. Among its attributes are to “*Contribute to the tasks of planning and decision-making of government agencies through support for market research and evaluation activities.*”<sup>84</sup>

[195] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure c), as well as the need for it to continue to give attention thereto.

Recommendation 1.2.2:

*Make widespread the establishment of internal audit units as provided for under the TOCAF and Decree 88/000.*

Recommendation 1.2.3:

*Develop and implement electronic procurement systems or electronic bidding for the acquisition of goods and services.*

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<sup>83</sup> *Ibid.* at pgs. 37 - 39

<sup>84</sup> *Ibid.* at pg. 38.

Recommendation 1.2.4:

*Strengthen mechanisms allowing for citizen oversight over public works contracts, notwithstanding the existing institutional internal and external controls.*

[196] With respect to Recommendations 1.2.2, 1.2.3 and 1.2.4, in its Response, the country under review presents information that it considers pertinent.<sup>85</sup>

[197] The Committee notes the need for the country under review to give additional attention to implementation of Recommendations 1.2.2, 1.2.3 and 1.2.4.

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

Recommendation:

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

Measures suggested by the Committee:

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

[198] With respect to measures a) to d) of the foregoing recommendation, in its Response, the country under review presents information that it considers pertinent.<sup>86</sup>

[199] The Committee notes the need for the country under review to give additional attention to implementation of measures a) to d) of the foregoing recommendation.

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

[200] No recommendations were formulated by the Committee in this section.

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<sup>85</sup> *Ibid.* at pg. 39.

<sup>86</sup> *Ibid.* at pgs. 39 – 40.

[201] However, the country under review, in its Observations to the Draft Preliminary Report, provided the following information regarding the number of proceedings for 2007 – 2008 time period on corruption crimes:

PROCEEDINGS IN URUGUAY – CORRUPTION CRIMES 2007-2008	
REASON	NUMBER
Tax Fraud	20
Fraud	7
Embezzlement	19
Extortion	9
Conflict of personal and public interest	3
Improper appropriation	5
Abuse of functions	3
Alteration of a public document	1
Bribery	2
Graft	10
Usurpation of functions	1
Use of privileged information	1
Not specified	7

#### 4. GENERAL RECOMMENDATIONS

##### Recommendation 4.1:

*Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.*

##### Recommendation 4.2:

*Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein.*

[202] With respect to Recommendations 4.1 and 4.2, in its Response, the country under review presents information that it considers pertinent.<sup>87</sup>

[203] The Committee notes the need for the country under review to give additional attention to implementation of Recommendations 4.1 and 4.2.

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<sup>87</sup> *Ibid.* at pg. 40.