

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 13, 2012 plenary session)

SUMMARY

This report contains the comprehensive review of the implementation in the Oriental Republic of Uruguay of Article III, paragraph 9, of the Inter-American Convention against Corruption, covering “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts,” which was selected by the MESICIC Committee of Experts for the Fourth Round; and of the follow-up of the implementation of the recommendations formulated to the Oriental Republic of Uruguay during the First Round.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee’s Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fourth Round, including the criteria set out therein for guiding the review based on equal treatment for all the States Parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the States Parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out taking into account the Oriental Republic of Uruguay’s response to the questionnaire, information provided by civil society organizations, information gathered by the Technical Secretariat, and, as a new and important source of information, the on-site visit conducted between April 8 and 10, 2013, by the members of the review subgroup for the Oriental Republic of Uruguay, comprising of Antigua and Barbuda and Argentina, with the support of the Technical Secretariat. During that visit, the information furnished by the Oriental Republic of Uruguay was clarified and expanded and the opinions of civil society organizations were heard. This provided the Committee with objective and complete information on those topics, assisting with the gathering of information on best practices.

The review of the oversight bodies was intended, in accordance with the terms of the methodology for the Fourth Round, to determine whether they have a legal framework, whether that framework is suitable for the purposes of the Convention, and whether there are any objective results; then, taking those observations into account, the relevant recommendations were issued to the country under review.

The following oversight bodies in the Oriental Republic of Uruguay are reviewed in this report: the Transparency and Public Ethics Board, the Office of the Attorney General and Prosecutor, the Court of Accounts, and the Supreme Court of Justice.

Some of the recommendations formulated to the Oriental Republic of Uruguay for its consideration in connection with the aforementioned bodies are aimed toward objectives, such as the following:

Provide to the Transparency and Public Ethics Board, the Office of the Attorney General and Prosecutor and the Court of Accounts with the financial and human resources to fully perform their attributions and functions, within available resources.

With regard to the Transparency and Public Ethics Board, consider establishing measures or mechanisms that assure its independence with respect to administrative matters; adopt manuals and other documents describing the functions of its staff; maintain results on investigations carried out by the Board with respect to declarations of net worth; establish procedures for opening and verifying

the contents of a declaration of net worth by the Board; and promote coordination mechanisms between the Board and other oversight bodies.

Regarding the Office of the Attorney General and Prosecutor, consider establishing measures or mechanisms that assure its administrative independence; implement comprehensive and generalized training courses, in particular in areas related to the prevention of corruption; establish an internal audit unit; and maintain statistics on the detection of corrupt practices.

Pertaining to the Court of Accounts, consider publicizing in its annual reports those expenditures that have been reiterated by the Court and in need of ‘urgent consideration;’ as well as for the country under review consider establishing mechanisms that can be applied by Uruguay for noncompliance of established law relating to expenses and payments of public bodies.

With respect to the Supreme Court of Justice, promote coordination mechanisms with other important government bodies; document the reasons that files are closed in both administrative investigations and disciplinary proceedings; and make available on the website of the Judicial Branch the administrative proceedings and disciplinary proceedings carried out by the Supreme Court of Justice with respect to judges.

The best practice that the Oriental Republic of Uruguay provided information is an initiative by the Court of Accounts to encourage government bodies to promote a best practice of rendering of accounts by honoring those that have adhered to the standards that govern performance in all matters relating to public finance. It is known as “Recognition of Best Practices in the Public Administration.”

With regard to follow-up on the recommendations formulated to the Oriental Republic of Uruguay in the First Round and with respect to which, the Committee, in the Second and Third Round reports, found required additional attention, based on the methodology for the Fourth Round and bearing in mind the information provided by the Oriental Republic of Uruguay in its response to the questionnaire and during the on-site visit, a determination was made as to which of those recommendations had been satisfactorily implemented, which required additional attention, and which required reformulation. A list of those still pending was also prepared, and has been included in Annex I of the report.

Among the progress related to the implementation of those recommendations, the following are noted: strengthening training with respect standards of conduct, including conflicts of interest; the promotion of standards on the proper conservation and use of public resources; and its continued efforts to provide cooperation to other States Parties.

Some of the recommendations formulated to the Oriental Republic of Uruguay in the First Round that are still pending or have been reformulated address issues such as: supplementing the restrictions provided in the law for those who leave the public service; facilitate reporting mechanisms for acts of corruption through the use of communication media; extending the regime of sanctions for the omission of information on the declarations of net worth; establish and implement mechanisms for public consultation; and strengthen participation by civil society and non-governmental bodies in efforts to prevent corruption, and monitoring of public activities.

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

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

INTRODUCTION

1. Content of the Report

[1] This report presents, first, a comprehensive review of the Oriental Republic of Uruguay's implementation of the provision of the Inter-American Convention against Corruption that was selected for review by the Committee of Experts of the Follow-up Mechanism (MESICIC) for the Fourth Round. That provision appears in Article III (9) of the Convention, pertaining to "Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts."

[2] Second, the report will examine the best practices that the Oriental Republic of Uruguay has voluntarily expressed its wish to share in regard to the oversight bodies under review in this Report.

[3] Third, as agreed by the Committee of Experts of the MESICIC at its Eighteenth Meeting, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, this report will address the follow-up of implementation of the recommendations that the Committee of Experts of MESICIC formulated to the Oriental Republic of Uruguay in the First Round and that it deemed to require additional attention in the reports it adopted for that country in the Second and Third Rounds, which may be consulted at the following web page: www.oas.org/juridico/english/ury.htm

2. Ratification of the Convention and adherence to the Mechanism

[4] 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.

[5] 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

1. Response of the Oriental Republic of Uruguay

[6] 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, which was evidenced, inter alia, in the Response to the Questionnaire and in the constant

¹ 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 13, 2013, at its Twenty-Second meeting, held at OAS Headquarters, September 9 – 13, 2013.

willingness to clarify or complete its contents, and in the support for the on-site visit to which the following paragraph of this report refers. Together with its response, the Oriental Republic of Uruguay sent the provisions and documents it considered pertinent. The Response as well as the provisions and documents may be consulted at the following webpage: www.oas.org/juridico/spanish/mesicic4_ury.htm

[7] The Committee notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.² As members of the preliminary review subgroup, the representatives of Antigua and Barbuda and Argentina conducted the on-site visit from April 8 – 10, 2013, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report, and its agenda of meetings is appended thereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[8] For its review, the Committee took into account the information provided by the Oriental Republic of Uruguay up to April 10, 2013, as well as that furnished and requested by the Secretariat and the members of the review subgroup to carry out its functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round*; and the *Methodology for Conducting On-Site Visits*.

2. Information received from civil society organizations and/or, *inter alia*, private sector organizations; professional associations; academics and researchers

[9] The Committee did not receive any documents from civil society organizations within the time period established by the Committee in the schedule, in accordance with Article 34(b) of the Committee's *Rules of Procedure*.

[10] Nonetheless, during the on-site visit to the Oriental Republic of Uruguay, information was gathered from civil society and private sector organizations, professional associations, academics and researchers, who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report.

II. REVIEW, CONCLUSIONS, AND RECOMMENDATIONS ON THE IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISION SELECTED FOR THE FOURTH ROUND:

OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING CORRUPT ACTS (ARTICLE III (9) OF THE CONVENTION)

[11] The Oriental Republic of Uruguay has a set of oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts, among which the following are highlighted: the Transparency and Public Ethics Board, the Supreme Court of Justice, the Court of Accounts (*Tribunal de Cuentas*), the Office of the Attorney General and Public Prosecutor (*Ministerio Público y Fiscal*), the National Internal Audit Office, the Unit for Access to

² Document SG/MESICIC/doc.276/11 rev. 2, which may be consulted at the following webpage: http://www.oas.org/juridico/english/met_onsite.pdf

Public Information, the National Anti-Money Laundering Secretariat, the National Drug Board, the National Secretariat on Drugs, the Financial Intelligence Unit, the Coordinating Commission against Money Laundering and the Financing of Terrorism, the General Directorate for the Control of Illicit Drug Trafficking, the General Directorate against Organized Crime and Interpol, and the National Customs Directorate.

[12] The following is a brief description of the purposes and functions of the four bodies selected by the Oriental Republic of Uruguay that are to be examined in this report:

[13] The Transparency and Public Ethics Board advises the Judicial Branch and the government on combating corruption; receives and keeps sworn declarations of net worth of public servants; and institutes public policies, standards and measures to strengthen transparency in the workings of the State.

[14] The Supreme Court of Justice is the body that issues and enforces judgments for the purpose of ensuring the exercise and protection of the rights of individuals in accordance with the system of laws, as well as the preservation of peaceful coexistence within the framework of the rule of law.

[15] The Court of Accounts (*Tribunal de Cuentas*) is the oversight entity that monitors budget execution and controls all activities connected with state finance.

[16] The Office of the Attorney General and Public Prosecutor is charged with protecting society, defending and representing the State in the areas prescribed by law, and providing advisory services to the Executive Branch and the Judiciary upon request.

1. TRANSPARENCY AND PUBLIC ETHICS BOARD

1.1. Existence of a legal framework and/or other measures

[17] The Transparency and Public Ethics Board (JUTEP) has a set of provisions in its legal framework and other measures concerning, among others, the following:

[18] With respect to its objectives and functions, Article 4 of Law 17060 provides that the JUTEP, *inter alia*, advises the country, in particular, the criminal justice system and the Office of the Attorney General and Public Prosecutor, on matters concerning crimes against the public administration, the economy and the State's finances; manages and monitors the Registration of Declarations of Net Worth; and collects, when it deems it appropriate, information on the regularity and impartiality of the conditions surrounding the preparation, formalization and execution of government procurement of goods, works, and services. Furthermore, Article 11 of Decree 354/999 provides that the JUTEP shall monitor the required disclosure by public entities of decisions on the award of tenders and special contracts for direct procurement, and shall provide advice to public sector agencies, on request, regarding mechanisms in force for the prevention and eradication of corruption. In that regard, the JUTEP furnishes advice on the enforcement of the "Standards of Conduct in the Public Service" established in Decree 30/003. The JUTEP is also responsible for addressing the country's international commitments under conventions and agreements on such matters.³ Finally, Article 51 of Law 18834 provides that the JUTEP may provide specialized advisory

³ See Article 100 of Law 18046, which provides that, "*in carrying out its functions, the Advisory Board on State Economic and Financial Matters may engage with international and foreign agencies in relation to the matters under its responsibility*

services to the speaker of the General Assembly or the Departmental Board when they receive comments marked for their urgent consideration from the Court of Accounts and for irregularities of the rules governing procurement through competitive processes, special contracts for direct procurement, and concession contracts.⁴

[19] Pursuant to Article 4(8) of Law 17,060, the JUTEP enjoys technical independence in the exercise of its functions. In that regard, in exercising its technical independence under the law, the JUTEP has the authority to communicate directly with any state organ or agency. Furthermore, Article 1 of Regulatory Decree 354/999 classifies it as a public sector organ and an organ of the State.⁵

[20] The JUTEP is made up of three members; its decisions are adopted at sole instance with the vote in favor of at least two members (Decree 354/999, Article 4). Any member who votes against the majority may request that their dissenting opinion or vote be placed on the record. In addition, with respect to opinions or reports that the Board is called upon to issue, if one of the members has placed on record their opposition to the majority opinion, they may abstain from signing the relevant opinion or report.⁶ The decisions of the JUTEP are subject to review under administrative appeal to the Court of Administrative Judicial Review.⁷

[21] With respect to the manner in which they are selected, all three members of JUTEP, who shall be persons of recognized experience and professional and moral rectitude, are appointed by the President of the Republic on the advice of the Cabinet with the approval of a three-fifths vote of the Senate. Members of the JUTEP shall serve for a term of five years counted from the date of their appointment.⁸ Except for teaching, members of the JUTEP may not engage in any remunerated activity other than their Board duties.⁹ The President of the Republic, with the agreement of the Cabinet, may, with due cause, remove members of the JUTEP with the approval of the same Senate majority required for their appointment.¹⁰

[22] As regards the manner in which the human resources needed for their operations are identified, in its Response to the Questionnaire the country under review mentions that the human resources requirement may be proposed either by the heads of the organizational units or by the members of the board based on a reorganization of the operational structure.¹¹ In this regard, human resources needs are met in two ways: through the creation of positions approved in the budget or through the transfer of staff from other agencies to serve at the JUTEP on secondment. In the event of the creation of a

and establish cooperation ties with civil society organizations with a view to combining efforts to strengthen social participation in the fight against corruption,”

www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18046&Anchor=

⁴ See Articles 30 and 51 of Law 18834 of November 4, 2011,

www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18834&Anchor=

⁵ See Decree 354/999, www.jutep.gub.uy/documents/10157/27d695d0-69bb-4d90-88bf-69d0ab972482

⁶ See Article 2 of the Internal Rules of Procedure of the Transparency and Public Ethics Board (Reglamento interno de funcionamiento de la Junta de Transparencia y Ética Pública),

www.jutep.gub.uy/documents/10157/18334/709?version=1.2.

⁷ See Response to the Questionnaire by the Oriental Republic of Uruguay, p. 55,

www.oas.org/juridico/PDFs/mesicic4_ury_resp.pdf

⁸ See Law 17060, Article 4(1), www.jutep.gub.uy/c/document_library/get_file?uuid=9f494f34-ac96-4e77-9e32-b85f9bea1150&groupId=10157

⁹ See Law 17904, Article 11, www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=17904&Anchor=

¹⁰ In addition, Article 4(10) of Law 17060 provides that if the Senate does not vote within 60 days, the executive may put the dismissal into effect, *supra* note 8.

¹¹ See Response to the Questionnaire, pg. 56, *supra* note 7.

position approved in the budget, it shall be filled on the basis of a competitive examination and merits, by merit and an aptitude test, or by lottery, depending on the category of the position.¹²

[23] The JUTEP consists of five administrative units: the General Secretariat, Technical Advisory Unit, Sworn Declarations Unit, Administrative Secretariat, and Declarations Custody and Archive Unit.¹³

[24] As regards removal of JUTEP staff, Article 168(10) of the Constitution provides that the President of the Republic, acting in concert with the relevant minister all ministers, or with the Cabinet, may dismiss employees for ineptitude, negligence, or criminal wrongdoing. According to Article 1019 of the TOFUP, a compilation of provisions from different laws governing the conduct of public servants, once the relevant inquiry has been completed, the National Civil Service Office shall have the final say on dismissals of officials, following the decision of the administrative authority.¹⁴

[25] Article 8 of Decree 354/999 provides that the functions of a member of the JUTEP shall be incompatible with public or private activities, either in a professional capacity or as a judicial or administrative expert, in matters that give rise or could give rise to administrative or judicial proceedings in connection with investigations concerning the alleged commission of crimes mentioned in Article 4(1) of Law 17060 or of the administrative faults related to such matters.

[26] As regards the responsibilities of the members of the JUTEP, in its Response to the Questionnaire, the country under review notes that based on their activities, their responsibilities shall be all those established for government officials.¹⁵ In that connection, as regards the members and staff of JUTEP, Article 21 of Law 17060 provides that public servants shall observe *“the principles of respect, impartiality, rectitude and propriety, and shall avoid any conduct that amounts to an abuse, excess, or deviation of power or misuse of their position, or intervention in matters that could be of economic benefit to them or persons directly related to them. Any act or omission that infringes this provision shall*

¹² See Law 16127, Article 5, www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=16127&Anchor= and Law 16134, Article 11, www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=16134&Anchor=. Among others, the categories are as follows: professional staff with a university degree, professional technical staff, administrative staff, specialized staff, general services staff, and auxiliary services staff. In addition, Article 4 of the Consolidated Public Service Standards [*Texto Ordenado de Normas sobre Funcionarios Públicos*] (TOFUP), provides that entry to the civil service requires: registration in the Civic Register, proof of having voted in the last elections, proven moral aptitude, physical aptitude, an oath of allegiance to the flag, a signed sworn declaration of adherence to the republican representative system of government that the nation has instituted through its sovereign organs and proof of a clear commitment to democratic principles, and no a record of dismissal for commission of a serious administrative fault confirmed by a final decision, or for malfeasance in the performance of official duties, whether as a civil servant or under any other form of engagement of services, www.onsc.gub.uy/onsc1/images/stories/Publicaciones/Tofup/Tofup2010.pdf

¹³ See the Response to the questionnaire, pgs. 32-34, *supra* note 7 and Structure and Functions of the JUTEP, www.jutep.gub.uy/estructura-y-funciones

¹⁴ TOFUP, *supra* note 12. Furthermore, Article 957 provides, *“Without prejudice to any other acts or omissions that might be grounds for dismissal, state officials shall be considered to have engaged in ineptitude or negligence when they accumulate 10 or more unjustified faults in one year or make entries pertaining to other staff in attendance monitoring mechanisms.”* For its part, Article 958 provides that the following are grounds for dismissal: 1. Persistence of the grounds that gave rise to the suspension; 2. Habitual negligence or serious fault in the performance of official duties or against discipline; 3 Failure to observe the required confidentiality in matters relating to official duties; and, 4. A sentence of more than six months of imprisonment.

¹⁵ See Response to the Questionnaire, pg. 57, *supra* note 7.

engage the liability of its authors to administrative, civil, or criminal penalties in the manner prescribed by the Constitution and laws."¹⁶

[27] JUTEP officials also provide training to public servants with a view to promoting transparency and public ethics through the National College of Public Education of the National Civil Service Office. With the sponsorship of the United Nations Development Programme, the JUTEP designed and launched in 2009 a training program for civil servants specializing in anticorruption regulations who were willing to help raise awareness about these matters in their respective agencies. The JUTEP publishes training materials on its website.¹⁷ In this regard, in a presentation given during the on-site visit, representatives of the JUTEP offered more details about awareness raising in the areas of public ethics and transparency. In keeping with this requirement, JUTEP has: (a) developed training programs for public servants, (b) organized national and international events, and (c) published educational, refresher, and research materials.¹⁸

[28] With respect to the implementation of modern systems or technologies to facilitate its work, the JUTEP has developed a computer system for managing registration of sworn declarations. It was implemented with funding from the Agency for the Development of Electronic Government and Information Society (AGESIC) in three phases: 1. Development of an online management module on the government's high-speed network; 2. Data migration to an open source code engine at the Ministry of Education and Culture's Computer Center; 3. Development of a web-based payroll management module intended for operation by officials at the State's various implementing units.¹⁹ The country under review notes that "*this system has facilitated access for the agencies where the officials concerned work, making management easier, improving the availability of information, and enhancing security for protecting declarants' personal data.*"²⁰

[29] As for mechanisms for internal control and addressing claims, complaints, or allegations related to the pursuit of its objectives and the performance of its personnel, in the course of the on-site visit representatives of the JUTEP mentioned that the mechanism adopted by this entity is to submit claims and complaints of this type to its executive organ for consideration. Such matters are included on the agenda and addressed at formal meetings by the members of the JUTEP.²¹

[30] As regards mechanisms for informing the general public about its objectives and functions, the JUTEP has a website that contains information for the citizenry on JUTEP's officials, telephone numbers and an e-mail address for submitting queries, statistics information, the legislative framework in place, and news.²² In addition, in accordance with article 5 of Law 18381, the Access to Public Information Law, the JUTEP maintains a page that sets out its Structure, the competences of each Administrative

¹⁶ See also Article 5 of Decree 30/003, Standards of Conduct in the Public Service, www.jutep.gub.uy/documents/10157/aa80ca48-359c-4f99-8819-ae9497e9949f

¹⁷ JUTEP Training (Capacitacion), www.jutep.gub.uy/capacitacion. See also Articles 26 and 27 of Law 17060, which provide that the Ministry of Education and Culture shall coordinate the implementation of training courses on the various aspects of the law with the education entities, placing an emphasis on the rights and duties of citizens vis-à-vis the administration and the responsibilities of officials and civil servants. Those provisions also establish that public entities shall have training programs in place for newly hired staff as well as a refresher program every three years. Civil servants are required to attend these courses, the content of which includes administrative ethics, incompatibilities, prohibitions, and conflict of interest in the civil service, in addition to all the other aspects mentioned in the law, *supra* nota 8.

¹⁸ See Results of awareness raising on public ethics and transparency, www.oas.org/juridico/PDFs/mesicic4_ury_result3.pdf and Response to the Questionnaire, pp. 35-41, *supra* note 7.

¹⁹ See Response to the Questionnaire, pg. 54, *ibid*.

²⁰ *Ibid*.

²¹ See Results and internal control mechanisms, www.oas.org/juridico/PDFs/mesicic4_ury_result2.pdf

²² See, Citizenry (Ciudadano), www.jutep.gub.uy/ciudadano

Unit, the salary scale of its staff; its assigned budget and execution; and public procurements; as well as information on statistics and mechanisms for citizen participation, containing its address, telephone number and email.²³

[31] As regards the manner for ensuring the necessary budgetary resources for its operations, in its Response to the Questionnaire, the country under review mentions that *"resources are provided through the different budget mechanisms (Budget and Accountability Laws); if insufficient, outlays that exceed those approved by law may not be made. In light of the foregoing, the planning must be done based on legally approved credits (resources)."*²⁴ In this regard, during the on-site visit representatives explained that the JUTEP, as part of the Ministry of Education and Culture and, therefore, of the central administration, proposes a budget that is included in the national budget. In this process, the budget may be modified in line with the policies designed for the government term and availability of resources. The total annual budget (in pesos, 000) for the last five years was as follows: 2008 – 11,461; 2009 – 12,303; 2010 – 13,272; 2011 – 14,253 and 2012 – 14,984.²⁵

[32] As for coordination with other authorities, Article 25 of Law 17060 provides for the creation of a six-member Honorary Committee composed of one representative from the JUTEP, one from the Ministry of Economy and Finance, one from the Planning and Budget Office, one from the Court of Accounts, one from the National Civil Service Office, and one from the organization that represents the most public servants. The purpose of the Committee is to draw up legislative and administrative updating and organization proposals on transparency in government procurement and conflict of interest in public office. In addition, in its Response to the Questionnaire, the country under review notes that the Board *"has established contacts with different public sector agencies and members of civil society in order to work in partnership in detecting and preventing corruption."*²⁶ In that regard, Article 100 of Law 18046, provides that, *"in carrying out its functions, the Advisory Board on State Economic and Financial Matters [now the Transparency and Public Ethics Board] may ... establish cooperation ties with civil society organizations with a view to combining efforts to strengthen social participation in the fight against corruption."*

[33] In relation to accountability mechanisms to the performance of its duties, Article 4(5) (e) of Law 17060 provides that the JUTEP shall submit an annual report to the executive, legislative, and judicial branches. In its Response to the Questionnaire, the country under review says that *"those reports are the mechanism by which the law requires the Board to report on its operations each year. The reports for the years 1999 to 2011 are posted on the Board's website."*²⁷ The reports are on the JUTEP website: www.jutep.gub.uy/documentos. During the on-site visit, JUTEP representatives offered more-detailed information about accountability mechanisms, explaining the process and formal steps for monitoring the annual budget, and that there is a Uruguayan government portal on accountability and budget execution that can be accessed by the public: www.presidencia.gub.uy.²⁸ In that connection, Article 214 of the Constitution provides, *"Within six months after the close of a fiscal year, to coincide with the calendar year, the executive branch shall submit to the legislative branch a an accountability report and a budget execution statement for that year, and it may propose any changes deemed indispensable in the*

²³ See article 5 of Law 18381, which provides that each public agency is to maintain, on its website, and in permanent manner, the following information: structure, competences of each administrative unit; salary structure of its staff; assigned budget and its execution; the public procurements carried out by the agency; all relevant statistical information; and mechanisms for citizen participation, 200.40.229.134/leves/AccesoTextoLey.asp?Ley=18381&Anchor

²⁴ See Response to the Questionnaire, pg. 59, *supra* note 7.

²⁵ See Determination of budget and human resources, www.oas.org/juridico/PDFs/mesicic4_ury_deter.pdf

²⁶ See Response to the Questionnaire, pg. 59, *supra* note 7.

²⁷ *Ibid.*

²⁸ See Results and internal control mechanisms, *supra* note 22.

total amount of expenditures, investments, and salaries or resources, and may create new items, and make deletions and modifications, in programs for duly justified reasons.” This accountability is done in accordance with the provisions contained in Articles 128 to 131 of the Consolidated Text on State Accounting and Financial Administration (TOCAF).²⁹

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

[34] The JUTEP has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 1.1 of this report. However, the Committee believes it timely to make a number of observations in relation thereto:

[35] The representatives of the JUTEP, during the on-site visit, provided information with respect to the technical independence with which it carries out its work. For instance, clarification was provided on the conduct of its work, though it is located within the Ministry of Education and Culture. The representatives also provided background on the initial deliberations with respect to where to place the JUTEP upon its formation. Three options were presented, under the Court of Accounts, the Judicial Branch or the Executive Branch, and there was a fear, among some legislators, that this oversight body could become a super body overseeing all administration.³⁰ With Decree 354/999 of November 12, 1999, this oversight body is placed in the Executive Branch as part of the Ministry of Education and Culture, described as an “agency of the State.”³¹ The Committee also notes that Law 17060 provides, under article 4(8), that the JUTEP has “technical independence in exercising its functions.”³² In this respect, it can directly contact and address any other government agency or body in order to carry out its functions, without having to go through the Ministry of Education and Culture.³³ Nevertheless, during the on-site visit, the representatives expressed some concerns regarding its placement in this Ministry. Specifically, if it is to act as an oversight body, it might not be convenient to be placed in a Ministry it is to act some sort of control over. For example, a new competence recently granted to the JUTEP is to audit and investigate expenses that are in need of urgent consideration, as determined by the Court of Accounts, and to provide a technical opinion within forty days to the General Assembly for its consideration, and when appropriate, the Judicial Branch.³⁴ The Committee observes that it may prove to be inconvenient if the situation arises whereby the JUTEP will have to audit and investigate the Ministry in which it is placed, for example, in instances where it is alleged the rules for public procurement have not been followed. Therefore, it may exercise control over officials that control the administrative matters of the JUTEP.³⁵ This possible situation is identified as a major challenge by the JUTEP, and this oversight body has

²⁹ Consolidated Text on State Accounting and Financial Administration (TOCAF), www.tcr.gub.uy/archivos/nor_64_TOCAF.pdf

³⁰ See Institutional Placement and Independence (Adscripcion Institucional e Independencia) page 2, www.oas.org/juridico/spanish/mesicic4_ury.htm

³¹ See Article 4 of Decree 354/999, www.jutep.gub.uy/documents/10157/27d695d0-69bb-4d90-88bf-69d0ab972482

³² Law 17060, *supra* note 8.

³³ See Article 302 of Law 18362, www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=18362&Anchor=

³⁴ See Articles 50 and 51 of Law 18834, www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=18834&Anchor=. Article 50 provides that that Court of Accounts may consider an expense in need of urgent consideration, and, for purposes of the JUTEP, in three cases: when there has been a violation of the rules in place and there have been administrative proceedings or founded complaints on irregularities by individuals on, a) competitive procurements of over thirty million Uruguayan pesos, b) direct contracts for emergency reasons of over one million five hundred thousand Uruguayan pesos; or c) concession contracts of over seven million five hundred thousand Uruguayan pesos.

³⁵ The Committee notes that one of the topics of collective interest adopted by the Conference of States Parties to the MESICIC at its Third Meeting are “*measures to promote the independence of specialized anticorruption bodies or authorities and to safeguard them from threat or undue influence*” See paragraph 16(c) of the Recommendations of the Third Meeting of the Conference of States Parties of the MESICIC, www.oas.org/juridico/english/cepIII_recom_en.pdf

proposed a joint study with the Executive Branch on alternative institutional placement of this oversight body, in order to ensure its technical independence.³⁶

[36] The Committee notes that there has been some thought of how to provide the JUTEP with not only technical independence, but also independence over its administrative matters. For example, in the document “Institutional Placement and Independence” that was presented by the JUTEP during the on-site visit, proposals have been made to place this body in another Ministry, the Presidency of the Republic, or as a decentralized service.³⁷ The Committee believes that the country under review should consider studying the possibility of providing the JUTEP with the necessary independence over administrative functions, subject to its Constitution and the fundamental principles of its legal system. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.1 in Section 1.4 of Chapter II of this Report)

[37] In this respect, during the on-site visit, the representatives from Transparency Uruguay mentioned the lack of administrative autonomy as an issue to examine for the JUTEP, given that it is a unit of the Ministry of Education and Culture, which might be subject to its oversight functions in certain cases.

[38] The Committee further notes that the country under review may consider the human and operational resources provided to the JUTEP. During the on-site visit, the team was informed that the JUTEP has always had a staff of fewer than 15 persons.³⁸ As noted in its 2011 Annual Report, the JUTEP has been stating that the oversight body lacks sufficient personnel to carry out its work. At the time of this Annual Report, only 11 persons worked there, with no sufficient professional support in the JUTEP’s legal area.³⁹ The staff in place consists of an Attorney, an Accountant, a professional Librarian, an Attorney for administrative matters, 5 administrative officers, two staff that provide general services, and an information technology person. In addition, at the on-site visit, the representatives stated there are 4 persons responsible for carrying out the functions of receiving and processing the declarations of net worth, which amount to approximately 8 thousand a year, with the number of those required to file these increasing from 11305 persons in 2009, to 12547 in 2012, for example.⁴⁰ This has led to the JUTEP, in its Annual Report, to declare that “[d]espite its high level of functional performance, there is not enough staff to meet all of the tasks that were assigned to the JUTEP.”⁴¹ There have been efforts to address this apparent shortfall in staff. For example, Law 18996 of November 7, 2012 authorized the JUTEP to receive three staff member in secondment.⁴² In cases that the JUTEP needs advice with respect to its competences, it is authorized to contract professionals and technical personnel, who are not considered public servants.⁴³ Nevertheless, there appears to be a continued shortfall of personnel in the JUTEP. It also appears that this shortage of human resources will only exacerbate with the increased

³⁶ 2011 Annual Report of the Transparency and Public Ethics Board, pg. 50, www.jutep.gub.uy/documents/10157/18106/informe2011.pdf?version=1.1

³⁷ See this discussion in Institutional Placement and Independence, *supra* note, 30.

³⁸ See Existence of Manuals (Existencia de Manuales), www.oas.org/juridico/PDFs/mesicic4_ury_exist.pdf

³⁹ 2011 Annual Report of the Transparency and Public Ethics Board, pg. 8, *supra* note 36.

⁴⁰ Response to the Questionnaire, pgs. 54 – 55, *supra* note 7.

⁴¹ 2011 Annual Report of the Transparency and Public Ethics Board, pg. 8, *supra* note 36. Moreover, on page 23 of this Report, the JUTEP states: “Finally it should be noted that the Registry of Sworn Statements, which had 5 public officers, lost one in 2011 as that officer’s secondment ended, which affected overall performance. At the same time, these officers had to attend numerous meetings and workshops on the project for the development of a new computer system during the second half of the year, and therefore devote a considerable amount of work hours for testing and overseeing the new “software” which has been perceived as an additional burden to their duties, a burden that would be desirable to reduce by the incorporation of a new officer.”

⁴² Law 18996, www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18996&Anchor=. See also Determination of Budget and Human Resources, www.oas.org/juridico/PDFs/mesicic4_ury_deter.pdf

⁴³ Determination of Budget and Human Resources, *ibid*.

responsibilities provided to the JUTEP in auditing and investigating expenses deemed in need of “urgent consideration” by the Court of Accounts. The Committee notes that Article 51 of Law 18834, which entrusted this new responsibility to the JUTEP, provides that the Executive Branch is to provide to this oversight body with the necessary human, material and financial resources to fully comply with this new mandate.⁴⁴

[39] The Committee further notes that the lack of human resources appears to also affect the operational resources at its disposal. For example, as stated under section 1.1.1, the JUTEP has implemented an electronic system to receive the basic identification information of a person required to file a declaration of net worth, as well as their spouse or significant other. However, this database is not located within the JUTEP, but rather with the Information Technology Division of the Ministry of Education and Culture, which is responsible for the installation and maintenance of this database. Given that there are proposals to establish an electronic system to receive the confidential information by public servants with respect to their declarations, this information should be the sole responsibility of the JUTEP, give the sensitive information contained in these declarations.

[40] As such, the Committee believes that the country under review should consider reviewing the resources provided to the JUTEP to carry out its tasks. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.2 in Section 1.4 of Chapter II of this Report)

[41] The Committee notes that the JUTEP was asked by the Ministry of Education and Culture to present a proposal for the Accountability Law in 2010, to be studied by the administrative sections of this Ministry. The JUTEP proposed a) an increase in its personnel to the necessary minimum number to perform its duties and functions; b) to incorporate information and communication technologies to modernize their management; c) to implement an ongoing program of prevention of corruption with a training component and other media; and d) to increase appropriations intended to hire consultants in technical and professional areas. This proposal was not granted.⁴⁵

[42] The human resources question is also affected by budget issues. In documents presented during the on-site visit, it was stated that JUTEP does not receive enough funds in its budget to carry out all of its tasks. For this reason, it seeks outside sources, in particular through agreements with international organizations, to meet its needs, in particular for providing training to public servants.⁴⁶ The need for an increased budget is also reflected in the 2011 Annual Report of the JUTEP, where it states that it is very difficult to progress with their tasks at hand, especially with respect to training, as it makes it difficult to hire instructors: “*To date, the activities carried out are in thanks to the agreements signed with ENAP [the National Public Administration School] and with the UNDP [United Nations Development Programme], and with the collaboration of numerous professionals, who in many instances participated in workshops or in the preparation of materials for free, as well as the participation of members of the JUTEP as instructors.*”⁴⁷ As a result, the JUTEP claims there is a need for an increased budget, which the oversight body has been asking for, especially so that it may have a stable team of instructors. However, this increase has not been provided, which the oversight body states makes its impossible to fully develop a training program.⁴⁸

⁴⁴ Article 51 of Law 18834, *supra* note 4.

⁴⁵ 2011 Annual Report of the JUTEP, pg. 28 and Annex III, *supra* note 36.

⁴⁶ See Determination of Budget and Human Resources, *supra* note 42.

⁴⁷ 2011 Annual Report of the JUTEP, pg. 36, *supra* note 36.

⁴⁸ *Ibid.* Also see pg. 48 of the Annual Report.

[43] Moreover, although the budget for the past five years has steadily increased, from approximately 11 and half million Uruguay pesos in 2008 to close to 15 million Uruguay pesos in 2012, the JUTEP noted that this is a reflection of annual increases in salary as well as the funds received from outside sources.⁴⁹ The Committee notes that the country under review should consider reviewing the budget allocated to the JUTEP in order to carry out its functions. Not only does it appear to be affecting its mandate to carry out training to the public service on matters of transparency, it appears to also affect the aforementioned amount of personnel it has in place. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.2 in Section 1.4 of Chapter II of this Report)

[44] In addition, in this respect, the Committee notes that the JUTEP does not have in place manuals that describe the functions of its personnel, though a brief description of its administrative units are available online.⁵⁰ During the on-site visit, the representatives explained that since the JUTEP has always had a staff of less than 15 persons, there was no pressing need to have manuals describing the functions, as the members of the JUTEP have direct and daily contact with the staff.⁵¹ Nevertheless, the JUTEP did prepare a revised organizational structure, made up of the Board, an Accounting Financial Management Consulting Unit, Legal Advisory Unit, General Secretariat, Pro-Secretary, Declarations of Net Worth, Custody and Storage, Administration and Finance, Training, Information Technology and General Services.⁵² This structure was accompanied with a description of the functions assigned to each unit. This was presented to the National Civil Service Office, so that it could be approved and set out in a Decree of the Executive Branch.⁵³ However, the representatives, during the on-site visit, stated that the National Civil Service Office turned down this proposal, as the JUTEP has so few staff. Given the importance of the work of the JUTEP in preventing corruption in the public service and training of public servants in this regard, the country under review should consider approving a revised organizational structure for this oversight body and adopt manuals that outline the functions of its personnel in order to facilitate its work. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.3 in Section 1.4 of Chapter II of this Report)

[45] The Committee also notes the work of the Honorary Commission, established under article 25 of Law 17060 of December 23, 1998, and referred to in section 1.1 of this Report. It brought together various important government bodies and produced two important documents: Parameters for Conduct in the Public Service and Transparency in Public Procurement.⁵⁴ These served as the basis for Decree 30/003 of January 23, 2003, the Standards of Conduct in the Public Service. Having met and produced these documents, this Commission was dissolved as it had carried out its mandate under the law. Since then, no similar mechanism has been put in place to promote consultation and collaboration among pertinent government bodies in the areas of transparency in the public service as well as conflicts of interest. The JUTEP, in their draft law on strengthening transparency that is being considered by the Senate, has proposed the establishment of this Commission again at the behest of the JUTEP, to provide advice on transparency in the public administration and conflicts of interest.⁵⁵ The Committee believes that the country under review should consider promoting coordination mechanisms and the exchange of information among the relevant government bodies in order to further encourage transparency and

⁴⁹ *Ibid.*

⁵⁰ See Organizational Chart of the JUTEP, www.jutep.gub.uy/estructura-y-funciones.

⁵¹ See Existence of Manuals, *supra* note 38.

⁵² Currently, the structure consists of a General Secretariat and Units for Technical Consultation, Declarations of Net Worth, an Administrative Secretariat and one for Custody and Storage of Declarations, www.jutep.gub.uy/estructura-y-funciones.

⁵³ *Ibid.*

⁵⁴ See Coordination with other Authorities, www.oas.org/juridico/PDFs/mesicic4_ury_coord.pdf

⁵⁵ See article 3 of the Draft Law on Strengthening Transparency, which states: “*The JUTEP may convene the Honorary Commission established under Article 25 of this Law, in order to provide advice on areas of transparency in the public administration and conflicts of interests.*” www.jutep.gub.uy/documents/10157/18334/712?version=1.1

standards on conflicts of interest. The Committee will formulate a recommendation in this regard (see Recommendation 1.4.4 in Section 1.4 of Chapter II of this Report)

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

[46] In its Response to the Questionnaire, the country under review provides results on the various activities it carries out. For example, it provides detailed information on the training provided by the JUTEF to public officials on transparency and the standards in place for the public service. From the second half of 2010 to the first half of 2012 over 800 public officials received training on anti-corruption laws and legislation, who, in turn are to disseminate these norms among the public agencies they work in.⁵⁶ A detailed list of all the training workshops carried out are found in the Response, from those conducted in Montevideo and in the interior of the country.⁵⁷

[47] In addition, the country under review provided a list of the instances it was called upon to provide advice to various government agencies, as set out in article 4(1) of Law 17060, on crimes committed by public servants against the Public Administration and against the Economy and the Public Treasury, as set out in the Criminal Code.⁵⁸ Advice is also provided on the Standards of Conduct contained in Decree 30/003 on the possible violation of public ethics, as well as on advice on identifying those public servants required to submit a declaration of net worth and the occasions to do so.⁵⁹

[48] In this respect, the country under review provides, in its Response, the instances that it provided advice, with respect to the Judicial Branch; the Public Administration; and to the Legislative Branch.⁶⁰

[49] In addition, in the Response to the Questionnaire, the country under review provides information on the system of declaration of sworn statements. Under articles 10 and 11 of Law 17060, which provide a comprehensive list of public officials that are to present these declarations, as well as the occasions when they are to be presented: at the time of taking up a post, every two years thereafter, and upon leaving a post. Up to October 31, 2012, the JUTEF has received 76,649 declarations, which has been increasing each year.⁶¹ A total of 12,547 public servants are required to file a declaration, divided as follows: 1% in the Legislative Branch, 43% in the Central Administration and Parastatal Agencies; 9% in the Judicial Branch; 22% in Autonomous Agencies and Decentralized Services and 25% in Departmental Governments. Those required to submit a declaration have been increasing each year, from 11,305 in 2009 to the current total of 12,547 in 2012.⁶²

⁵⁶ Response to the Questionnaire, pg. 35, *supra* note 7.

⁵⁷ *Ibid*, pgs. 36 – 37.

⁵⁸ *Ibid*, pg. 42.

⁵⁹ As set out in the previous sections, the JUTEF is to also provide specialized advice when the Court of Accounts provides an observation to an expense, which is to have “urgent consideration” and brought to the attention of the General Assembly or Departmental Board, as the case may be. The President of the General Assembly or Departmental Board may request the JUTEF to provide specialized advice and conduct an audit and investigation on that expense. Another tool available to the JUTEF is access to the identity of those that hold bearer shares in the country, which is to be kept by the Central Bank. This information is secret and access restricted to certain government bodies, including the JUTEF, and is only to be used when a declaration is opened at the request of the declarant, by the Criminal Justice, with written reasons, by the JUTEF, on stated grounds, and when there is an investigation on whether the declaration contains information on assets that are non-existent or belong to third parties or the concealment of assets in subsequent declarations, see Law 18930, [200.40.229.134/Leyes/ AccesoTextoLev.asp?Lev=18930&Anchor=](#)

⁶⁰ Response to the Questionnaire, pgs. 44 – 49, *supra* note 7.

⁶¹ *Ibid*, p. 52.

⁶² *Ibid.*, p. 54.

[50] The 2011 Annual Report of the JUTEP, the last annual report available, contains further information on the work being carried out by this important oversight body with respect to their mandate over declarations of net worth. It contains information on the number of declarations received in a year, number destroyed or returned to a declarant, which occurs after five years has passed since an individual left the public service, and the number received per year.⁶³ It also provides disaggregated statistics on the number of declarations to be received in a year. As public servants are to present declarations every two years, 5,044 public servants of approximately 12,500 in total, were required to file for the year 2011. This total is broken down by the government entity where the public servant works, for example, if in the legislative branch or judicial branch.⁶⁴

[51] Further information is provided such as the number of public servants who did not file a declaration as required. In 2011, of 5,044 public servants required to file, 1,356 did not do so within the prescribed timeframe. The annual report further breaks down this number of 1,356 by the amount that complied with their obligation to file after being notified of their duty. If after this notification a public servant has still not filed, the report provides the number of those that had 50% of their salaries or pensions withheld, in accordance with article 99 of Law 18046 of October 24, 2006.⁶⁵ After this final mechanism is applied, for 2011, the total number of public servants that did not file for the year dropped to 2.⁶⁶ The foregoing demonstrates that the JUTEP has impressively undertaken its mandate in ensuring that public servants file their declarations, as required under law.

[52] The Committee observes that while the JUTEP has been carrying out its mandate and has provided a detailed information on the results of their work, it does not appear that the JUTEP follows up on the advice given to the various branches of government or the public administration in general, with respect to crimes committed by public servants against the Public Administration and against the Economy and the Public Treasury. The country under review could consider having the JUTEP maintain results on the outcome of their advice, which could assist this important oversight body in evaluating the impact and quality of assistance being provided. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.5 in Section 1.4 of Chapter II of this Report)

[53] Similarly, while there are detailed results maintained on the work undertaken on receiving and maintaining the declarations of net worth, there are no results maintained when the Office of the Attorney General and Prosecutor requests the JUTEP to undertake an investigation, compiling and systematizing the documentary evidence, when missing or misleading information was provided in a declaration. Moreover, article 4(3) of Law 17060 provides that the JUTEP is to also compile and systematize all documentary evidence at the request of the Office of the Attorney General, or an investigating judge, when a complaint is made with respect to a violation of the Law.⁶⁷ Again, by providing information on the outcome of their work, this could help evaluate the JUTEP on the impact and quality of assistance being provided to the Office of the Attorney General, or an investigating judge, as well as provide an opportunity to demonstrate to the public at large the important and successful work of this oversight body. The Committee will formulate a recommendation in this regard. (see Recommendation 1.4.6 in Section 1.4 of Chapter II of this Report)

⁶³ 2011 Annual Report, pg. 15, *supra* note 36.

⁶⁴ *Ibid.*, p. 17.

⁶⁵ *Ibid.*, p. 19.

⁶⁶ *Ibid.*, p. 22.

⁶⁷ See also the JUTEP Training Manual No. 1, Ethics and Public Service, where on page 57, it states that complaints made to the Board with respect to the commission of a crime against the Public Administration or against the Economy and Public Treasury are to be immediately reported to the Office of the Attorney General and the Public Prosecutor, www.jutep.gub.uy/documents/10157/de195ce4-d1e3-4409-b4c3-346f808d0e4a

[54] Finally, the Committee notes that the JUTEF, during the on-site visit, commented that recently it had been clarified that, in certain situations, it had the competence to conduct investigations into the content of the declarations of net worth on its own initiative. As noted in a document submitted to the team during the on-site visit, the JUTEF has not been conducting investigations into declarations of net worth on its own, in part because the legal framework in place is not clear on this point.⁶⁸ Nevertheless, the JUTEF believes that these investigations may now take place, in certain situations. Article 15 of Law 17060 provides that the JUTEF is responsible for the custody of declarations of net worth and these declarations are only opened at the request of the declarant; on the basis of a well-founded resolution of a criminal court; on the basis of a well-founded request by the Parliamentary Investigation Commission; or on the initiative of the JUTEF upon a majority vote of its members, based on well founded reasons. The declarations may also be opened when the JUTEF believes that it contains information on assets that belong to third persons or are non-existent or the concealment of assets in subsequent declarations, which should have been reported in the net worth of the declarant, or their spouse or significant other. In these cases, the JUTEF is to conduct an investigation.⁶⁹

[55] Given that only recently has it been clarified that the JUTEF may conduct these types of investigations on its own initiative, the Committee observes the country under review should consider establishing procedures for opening and verifying the contents of a declaration of net worth by this oversight body. In addition, the JUTEF should consider publishing the outcomes of its investigations of these declarations in its annual reports. The Committee will formulate recommendations in this regard. (See Recommendation 1.47 and 1.4.8 in Section 1.4 of Chapter II of this Report)

[56] In this respect, the Committee notes that during the on-site visit, the representatives from the Center for Archives and Access to Public Information stated that the JUTEF has limited its function to that of an advisory role and has not looked into a sworn declaration for some time.

1.4. Conclusions and recommendations

[57] Based on the comprehensive review conducted with respect to the Transparency and Public Ethics Board in the foregoing sections, the Committee offers the following conclusions and recommendations:

[58] The Oriental Republic of Uruguay has considered and adopted measures intended to maintain and strengthen the Transparency and Public Ethics Board as an oversight body, as described in Chapter II, Section 1 of this report.

[59] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1. Subject to its Constitution and the fundamental principles of its legal system, institute measures or mechanisms to ensure the independence of the Transparency and Public Ethics Board in its administrative affairs. (See section 1.2 of Chapter II of this Report)
- 1.4.2. Provide the Transparency and Public Ethics Board with the necessary human, material and financial resources to perform its functions properly, within available resources. (See section 1.2 of Chapter II of this Report)

⁶⁸ See Investigation of Declarations of Net Worth, www.oas.org/juridico/PDFs/mesicic4_ury_invest.pdf

⁶⁹ See Article 15 of Decree 354/999, *supra* note 5.

- 1.4.3. Consider approving a revised organizational structure for the Transparency and Public Ethics Board and adopt manuals or other documents that outline the functions of its personnel. (See section 1.2 of Chapter II of this Report)
- 1.4.4. Promote coordination mechanisms and the exchange of information between the Transparency and Public Ethics Board and other oversight bodies, as appropriate. (See section 1.2 of Chapter II of this Report)
- 1.4.5. Follow-up on the advice provided by the Transparency and Public Ethics Board to the executive branch, judicial branch, and the public administration, with respect to investigations carried out on crimes committed by public servants. (See section 1.3 of Chapter II of this Report)
- 1.4.6. Follow-up on the work carried out by the Transparency and Public Ethics Board, when the Office of the Attorney General or an investigating judge requests the Transparency and Public Ethics Board to compile and systematize evidence. (See section 1.3 of Chapter II of this Report)
- 1.4.7. Establish procedures for opening and verifying the contents of a declaration of net worth by the Transparency and Public Ethics Board. (See section 1.3 of Chapter II of this Report)
- 1.4.8. Include in the annual reports of the Transparency and Public Ethics Board the results on investigations that it carries out on its own accord with respect to declarations of net worth. (See section 1.3 of Chapter II of this Report)

2. OFFICE OF THE ATTORNEY GENERAL AND PUBLIC PROSECUTOR

2.1. Existence of a legal framework and/or other measures

[60] The Office of the Attorney General and Public Prosecutor [*Ministerio Público y Fiscal*] has a set of provisions in its legal framework and other measures concerning, among others, the following:

[61] With respect to its purpose, it should be noted that pursuant to Article 1 of Law 15365 (Organizational Law of the Office of the Attorney General and Public Prosecutor) its objectives are to protect society, defend and represent the state in the areas prescribed by law, and provide advisory services to the executive branch and the judiciary upon request.⁷⁰ In that regard, the purpose of the Office of the Attorney General is to protect and defend the overall interests of society, while the purpose of the Office of the Public Prosecutor is to safeguard and defend the property interests of the state.⁷¹

[62] The Office enjoys technical independence in the exercise of its functions. Accordingly, it must “*defend the interests entrusted to it as its convictions dictate, establishing such conclusions as it believes to be in accordance to law.*”⁷²

[63] The head of the Office is the Attorney General and Public Prosecutor of the Nation. He or she has functional responsibilities in the judicial realm, such as representing the Office before the Supreme Court of Justice and representing it in cases under the original jurisdiction of the Supreme

⁷⁰ Law 15365, www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=15365&Anchor=

⁷¹ See Article 3, *ibid.*

⁷² See Article 2, *ibid.*

Court of Justice. They also have functional responsibilities in the administrative sphere, such as acting as the direct and overall head of the Office with executive, corrective, consultative, and investigative oversight and supervision powers where its employees are concerned. It also makes proposals to the executive branch regarding the appointment, transfer, and promotion of magistrates within the Office. Finally, it provides advisory services to the executive branch when the latter requires its opinion on legal matters; and to the Supreme Court of Justice in procedures corresponding to the administrative affairs of this institution.⁷³

[64] With respect to the decisions of the Attorney General in the exercise of internal administrative functions, they are subject to review in administrative appeal proceedings before the Court of Administrative Judicial Review.⁷⁴

[65] With respect to the way in which senior officers are selected, the Attorney General is appointed by the executive branch with the approval of the Senate or the Permanent Committee, as appropriate, which requires a three-fifths vote of all its members.⁷⁵ They serve for a term of 10 years.⁷⁶

[66] National, Departmental, and Assistant prosecutors are appointed in the same way as the Attorney General. Prosecutors have tenure and shall remain in their posts so long as their conduct is good; they retire at the age of 70.⁷⁷

[67] In general, entry to the Office is by means of a competition held by the National Civil Service Office.⁷⁸ However, for magistrates' positions, the provisions contained in Article 168 (13) of the Constitution and Article 7 of Decree Law 15365 shall apply. Recruitment to the positions of Legal Secretary and Category III Advisors is through a competition organized by the Ministry of Education and Culture with the appointment made by the executive branch.⁷⁹

[68] The Attorney General has corrective supervisory authority over its staff, in accordance with Article 7(1) of Decree Law 15365. In its Response to the Questionnaire, the country under review says, "*Although prosecutors are protected by the principle of technical independence in the exercise of their jurisdictional functions, in the event of a violation of their functional duties the common disciplinary procedure governed by Decree 500/991 shall apply.*"⁸⁰

[69] The prosecutorial and technical professional positions in the Office are subject to the rules governing impediments contained in Article 27 of Law 15365. The causes for impediment with respect to representatives of the Office are the same as those stipulated by the law for judges. Likewise, the rules on recusal for prosecutors are the same as those for judges.⁸¹

[70] With respect to manuals describing the functions of its personnel, in its Response to the Questionnaire the country under review notes, "*At the administrative level, there are several*

⁷³ See Articles 5-8, *ibid.*

⁷⁴ See Response to the Questionnaire, pg. 90, *supra* note 7.

⁷⁵ See Article 168 (13) of the Constitution of the Republic, www.parlamento.gub.uy/constituciones/const004.htm

⁷⁶ See Response to the Questionnaire, pg. 90, *supra* note 7.

⁷⁷ See Article 25 of Law 15365, *supra* note 70 and Response to the Questionnaire, pg. 90, *supra* note 7.

⁷⁸ See Article 50 of Law 18719, www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18719&Anchor=#art49

⁷⁹ See Law 18974, www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18974&Anchor=. The Office website also contains resolutions inviting candidates to compete through examinations and on the basis of merits for technical positions in the office of the Attorney General and Public Prosecutor (http://www.mpf.gub.uy/index.php?option=com_docman&task=doc_view&gid=42&Itemid=84)

⁸⁰ Response to the questionnaire, pg. 92, *supra* note 7.

⁸¹ See Articles 28 and 29 of Law 15365, *supra* note 70.

*supervisory resolutions governing different aspects of technical functions to be carried out by the technical teams of the Attorney General's Office which complement the legal framework contained in the Organizational Law of the Office of the Attorney General and Prosecutor.”*⁸²

[71] As regards training, in its Response, the country under review mentions that *"both administrative and technical staff receives regular continuous training through on-site and distance courses."*⁸³ In this connection, the Office website contains information about the training program implemented by this oversight body in 2009 and 2012.⁸⁴

[72] In addition, with respect to the way in which the Office informs the public about its objectives and functions, the country under review mentions that requests for information were made possible by Law 18381, which guarantees access to public information.⁸⁵ Institutional information is also available on its official website (www.mpf.gub.uy).⁸⁶

[73] In its response, the country under review notes that the budget of the Office is established in the Budget Law and in the successive accountability laws. In addition, as part of the Ministry of Education and Culture it is included in the national budget under Article 214 of the Constitution, which provides that the executive branch shall forecast, with the advice of the Planning and Budget Office, the national budget for its term, which it shall present to the legislative branch within the first six months of its term.⁸⁷ Details about the execution of the 2012 budget may be found at the Office website: www.mpf.gub.uy/index.php?option=com_docman&Itemid=65. This accountability is done in accordance with Articles 128 to 131 of the TOCAF.⁸⁸

[74] The Office of the Attorney General and Public Prosecutor is required to submit the annual report of the Ministry of Education and Culture within the first six months of each year.⁸⁹

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

[75] The Office of the Attorney General and Public Prosecutor has a set of provisions and/or other measures relevant for the purposes of the Convention, some of which were described in brief in section 2.1 of this Report. However, the Committee believes it timely to make a number of observations in relation thereto:

[76] During the on-site visit, it was made known that there is a draft law to reform the Criminal Procedure Code, currently before the Senate Committee on the Constitution and Legislation, to transition the criminal legal system in Uruguay from an inquisitorial system to an adversarial one. The draft law was prepared from a Commission made up of a representative from the Executive Branch, the Supreme Court of Justice, the Office of the Attorney General, the University of the Republic, the Association of Judicial Magistrates, the Association of Prosecutors, the Association of Public Defenders, the College of Lawyers of Uruguay, the Association of Judicial Officers, the

⁸² See Response to the Questionnaire, pg. 91, *supra* note 7.

⁸³ *Ibid.*

⁸⁴ Office of the Attorney General and Prosecutor, Training, http://www.mpf.gub.uy/index.php?option=com_docman&Itemid=75

⁸⁵ Response to the questionnaire, pg. 91, *supra* note 7.

⁸⁶ Office of the Attorney General and Prosecutor, www.mpf.gub.uy

⁸⁷ Response to the questionnaire, pg. 91, *supra* note 7.

⁸⁸ TOCAF, *supra* note 30.

⁸⁹ See Decree Law 15365, Article 7 (10), *supra* note 70.

Association of Court Clerks, and the Ministry of Economy and Finance.⁹⁰ It was instructed to take into account modern principles of criminal policy and include exemplary norms with respect to the persecution of organized crime. In the explanation to the draft law that was submitted by this Commission, it stated, among other things, that: “[t]he primary manner to ensure efficiency of law for each and every person, is to have a modern, transparent, efficient, secure, and independent administration of justice and accessible to all social sectors.”⁹¹

[77] The team was informed, during the on-site visit, by Senator Rafael Michelini, a member of the aforementioned Senatorial Committee that this draft law would be voted on before October 2013.

[78] This impending change to the criminal legal system in the country under review will have an impact on the Office of the Attorney General and Public Prosecutor and its institutional framework. For example, mention was made that this Office is located, institutionally, within the Ministry of Education and Culture (MEC). Though located within this Ministry, the technical independence for which this oversight body carried out its work was cited by all. Nevertheless, the representatives from the Office stated that the biggest challenge for the oversight body is the lack of institutional autonomy, affecting important matters such as the budget process for this oversight body. As it is part of the MEC, any budget proposal is first sent to through this Ministry, which acts a filter, and then subsequently sent to the Executive Branch, which acts a second filter.

[79] There is a draft law in place to remove the Office of the Attorney General and Prosecutor from the MEC and establish it as a Decentralized Service, which was presented in 2010 and is currently with the Senate Commission on Constitutional and Legal Matters.⁹² In the Explanatory Memorandum to the draft law, there is recognition that placing the Office of the Attorney General under the Executive Branch through the MEC is not the most suitable environment for ensuring the technical independence of the Prosecutors. As noted: “[t]he Constitutional provisions that attribute to said Branch of government [Executive] the competence to appoint Prosecutors represents an important counterpoint to the legal concept of technical independence. If we also consider that the Executive is also the one who prepares the draft budget for the service and sends it for consideration to the Legislature, and that even a simple service order of the Office of the Attorney General may, by way of the administrative appeal, be subject to the decision of the Executive, the result obtained is far from ideal, in order to ensure the conditions for prosecutors really act independently.”⁹³

[80] Given the foregoing, the institutional placement of this oversight body takes on particular significance. Under the accusatorial one, the prosecutor, not the Judge, will have the competence to undertake investigations with respect to alleged criminal acts. With this new role, this requires that the Office of the Attorney General, as set out in the Explanatory Memorandum, “acts with absolute independence from the branches of Government” and that, “[t]he reputation that the new criminal procedures may have in the eyes of society, will depend largely on which citizens can be convinced that prosecutors perform their duties with true independence from the government in power.”⁹⁴

⁹⁰ See Article 22 of Law 17897 of September 14, 2005,

www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=17897&Anchor=

⁹¹ Presentation of Draft Law on Criminal Procedure Code. , pg. 2, www.oas.org/juridico/pdfs/mesicic4_ury_penal1.pdf

⁹² Draft Law on the Establishment of the Office of the Attorney General and Public Prosecutor as a Decentralized Service, in Accordance with Section XI of the Constitution of the Republic,

www.parlamento.gub.uy/sesiones/AccesoSesiones.asp?Url=/sesiones/diarios/senado/html/20101117s0055.htm#pagina304

⁹³ *Ibid.*, para. 5.

⁹⁴ *Ibid.*, para. 6.

[81] Though the Office acts independently with respect to its mandate, it may prove problematic to have a prosecutorial service under a Ministry that may be subject of a criminal investigation, and which has control over its budget and resources. As such, the Committee believes that the country under review should consider establishing mechanisms that ensure its administrative independence, subject to its Constitution and the fundamental principles of its legal system. The Committee will formulate recommendation in this regard. (see Recommendation 2.4.1 in Section 2.4 of Chapter II of this Report)

[82] In this respect, during the on-site visit, the representatives from the Association of Prosecutors in Uruguay, which participated in the preparation of the draft law on reforming the Criminal Procedure Code, stated that although the Office of the Attorney General and Prosecutor falls under the MEC, it is free from influence and has technical independence. Irrespective, the representatives indicated that it should be independent from the MEC as it would help with public perception that it is free of influence. They also made reference to the aforementioned draft law and hoped that it would pass before the next Presidential election. With the change from the inquisitive to the adversarial system, the representatives stated this as another reason that the Office should not fall under the MEC, as it should become independent given the additional responsibilities of conducting investigations and gathering evidence.⁹⁵ Similarly, the civil society organization, Transparency Uruguay mentioned the reliance of the Office to the Executive Branch and the perception that this contributes to this oversight body not being as independent as it can be, as it is reliant on the MEC for its budget.

[83] The Committee, during the on-site visit, also heard of the problems with respect to the budgetary and human resources available to the Office. For example, the team was informed that one of the important reasons the Office has difficulty in compiling results is the lack of an electronic system in place, which is due to a lack of resources and human personnel to carry out information technological work. The representatives were informed that only recently positions were created for information technology personnel to work in the Office.⁹⁶ Another important manner that budgetary shortfall and lack of resources has affected the work of the Office is in terms of protection of witnesses. For example, when a criminal proceeding reaches the court stage, there are no barriers or protection measures put in place to separate witnesses or victims from the relatives or friends of an accused in a court house. As such, witnesses or victims often find themselves in the elevators, hallways or entrances to the court room or court house with these relatives or friends, which generate stressful situations. The representatives from the Office stated that it is usually such situations that many witnesses or the victims themselves retract their testimony. The Committee believes that the country under review should consider providing adequate budgetary and human resources so that the Office can carry out its important work in detecting and punishing criminal offenses, and in particular, as it relates to acts of corruption. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.2 in Section 2.4 of Chapter II of this Report)⁹⁷

[84] The issue of budget and significant resources for the transfer and implementation of the new adversarial system was echoed by Senator Rafael Michelini, during the on-site visit, as well as by Transparency Uruguay.

⁹⁵ See also the submission by the Association of Prosecutors in Uruguay to the Senate Committee on the Constitution and Legislation, www.oas.org/juridico/spanish/mesicic4_ury.htm

⁹⁶ See Article 189 of Law 18996, www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=18996&Anchor=

⁹⁷ The country under review presented information with respect to the recent appointment of new prosecutors to the Office of Attorney General and Public Prosecutor. For appointments carried out by competition for prosecutors, please see, www.mpf.gub.uy/index.php?option=com_docman&Itemid=85 and notification of these appointments in the Official Gazette: www.impo.com.uy/copetes/pdf/20130827/indice.pdf

[85] Another important issue that the Committee considers that the country under review may take into account is the creation of manuals that describe the functions of its personnel. These manuals should be put in place to help facilitate the work of this oversight body in detecting acts of corruption. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.3 in Section 4.4 of Chapter II of this Report)

[86] During the on-site visit, the representatives made mention of the training received by Prosecutors through a training center. In this respect, Article 193 of Law 18996 of November 7, 2012 transformed the Training Area of the Office of the Attorney General and Public Prosecutor into a Training Centre, responsible for the training and continuous academic improvement of Prosecutors, technicians and administrative staff of this institution.⁹⁸ The Committee notes that on the website of the Office, information is provided on the annual training plans of this oversight body, as well as a training seminar recently provided to new prosecutors to the service.⁹⁹ However, upon reviewing the training plans, the Committee notes that they appear not to be consistently carried out. The website only contains training programs for the years 2009 and 2012, and do not contain any information with respect to training with respect to standards of conduct in the public service. The Committee will formulate a recommendation in this regard. (See Recommendation 2.4.4 in Section 2.4 of Chapter II of this Report)

[87] With respect to public outreach and accountability, the Committee takes note that the Office of the Attorney General and Public Prosecutor has a website in place, containing important information on its activities and that assist in making this oversight body transparent in its function, such as budget expenditures for the year 2012, public procurements carried out, the salary scale for its personnel, its training activities, as well as two statistical documents on the number of criminal proceedings undertaken each year, and by department, for the years 2000 – 2008.¹⁰⁰ The Committee, however, notes that though this Office is required, under its Organic Law, to present to the Ministry of Education and Culture an annual report of its activities, this report is not available on its website. The Office of the Attorney General and Public Prosecutor should consider making all its annual reports easily available on its website, containing important information that encourages transparency, such as significant detail on its activities, its budget allocation and expenditures as well as training provided. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.5 in Section 2.4 of Chapter II of this Report)

[88] Moreover, the country under review should also consider public outreach program to civil society, in order to build awareness among the populace of the planned transition to an accusatorial criminal legal system. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.6 in Section 2.4 of Chapter II of this Report)

[89] The importance of raising awareness among the general public of this transition was also touched upon by the Association of Magistrates of Uruguay during the on-site visit.

[90] The Committee considers that the Office of the Attorney General may benefit if it established coordination mechanisms with other oversight bodies that play an important role in preventing, detecting, punishing and eradicating corrupt acts. During the on-site visit, the representatives spoke

⁹⁸ *Ibid.*, Article 193.

⁹⁹ Training, Office of the Attorney General and Public Prosecutor, www.mpf.gub.uy/index.php?option=com_docman&Itemid=75 and Training Seminar for New Prosecutors, www.mpf.gub.uy/index.php?option=com_docman&Itemid=91

¹⁰⁰ Statistics, Office of the Attorney General and Public Prosecutor, http://www.mpf.gub.uy/index.php?option=com_docman&Itemid=80

highly of the coordination and assistance it receives from its counterparts in other countries. However, no information arose about its coordination with domestic agencies. There does seem to be coordination with the JUTEP with respect to the advice this oversight body is asked to provide to the Office of the Attorney General and Public Prosecutor for its criminal proceedings. However, the country under review may benefit in promoting coordination mechanisms among these oversight bodies, and other relevant ones as well. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.7 in Section 2.4 of Chapter II of this Report)

[91] Finally, as with the Transparency and Public Ethics Board, the Committee could not find the existence of an internal audit unit within the Office of the Attorney General and Public Prosecutor. When looking at the website of this Office and its organizational chart available online, there is no indication of an internal auditor working within the Office, nor an internal audit unit in place, though there is a section on budgetary execution and rendering of accounts.¹⁰¹ Given that the Office of the Attorney General and Public Prosecutor should set an example for other government agencies in its conduct and operations, the Committee considers that the establishment of these units for internal control should be carried out as soon as possible. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.8 in Section 2.4 of Chapter II of this Report)

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

[92] The Committee notes that though some statistics are provided on the website with respect to an overview of the work of the Office of the Attorney General and Public Prosecutor, in a summarized form, for the years spanning 2000 – 2008, this oversight body finds it difficult to maintain results on its work.¹⁰² As mentioned in section 2.2, there are issues of resources within the Office that limit the information it can compile with results, such as the lack of an electronic system. As a result, it does not have any relevant statistics that can be provided to the Committee that could help evaluate its performance. The Committee does note that the oversight body does have a statistical unit in place; nevertheless, it is with some concern that results on its work cannot be tabulated.

[93] As such, the Committee suggests that the country under review consider, with respect to detecting corrupt acts that trigger disciplinary; administrative; financial or civil; or criminal responsibility for persons involved therein, to maintain statistics as set out in the Questionnaire for the Fourth Round of Review. This type of information would assist the Committee in enabling it to make a comprehensive evaluation with respect to the objective results obtained in the application of the legal framework and other measures in place of the Office of the Attorney General and Public Prosecutor, as it corresponds to the implementation of Article III, paragraph 9 of the Convention. The Committee will formulate a recommendation in this regard. (see Recommendation 2.4.9 in Section 2.4 of Chapter II of this Report)

[94] Finally, the Committee suggests that the country under review consider maintaining results on the disciplinary proceedings carried out with respect to the personnel of the Office of the Attorney General and Public Prosecutor. The publication of the number and outcome of any investigations and proceedings would help build awareness among the populace on its efforts in promoting transparency and ethics and combating corruption in this oversight body. (see Recommendation 2.4.10 in Section 2.4 of Chapter II of this Report)

¹⁰¹ Organizational Chart of the Office of the Attorney General and Public Prosecutor, www.mpf.gub.uy/index.php?option=com_docman&Itemid=81

¹⁰² See the Prosecutorial Work in Numbers, Part 1 and Part 2, www.mpf.gub.uy/index.php?option=com_docman&Itemid=80

[95] In this respect, during the on-site visit, the representatives of the Center for Archives and Access to Public Information stated that there is no information on sanctions imposed by the Office of the Attorney General and Public Prosecutor for improper conduct by its personnel, as these are not publicly made available.

2.4. Conclusions and recommendations.

[96] Based on the comprehensive review conducted with respect to the Office of the Attorney General and Public Prosecutor in the foregoing sections, the Committee offers the following conclusions and recommendations:

[97] The Oriental Republic of Uruguay has considered and adopted measures intended to maintain and strengthen the Office of the Attorney General and Public Prosecutor as an oversight body, as described in Chapter II, Section 1 of this Report.

[98] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 2.4.1 Subject to its Constitution and the fundamental principles of its legal system, establish measures or mechanisms that assure the administrative independence of the Office of the Attorney General and Public Prosecutor. (See section 2.2. of Chapter II of this Report)
- 2.4.2 Provide the Office of the Attorney General and Public Prosecutor with the budgetary and human resources needed for the proper performance of its function, particularly those relating to investigation of acts of corruption, within available resources. (See section 2.2. of Chapter II of this Report)
- 2.4.3 Establish manuals that describe the functions of the personnel of the Office of the Attorney General and Public Prosecutor. (See section 2.2 of Chapter II of this Report)
- 2.4.4 Implement, through the Training Center of the Office of the Attorney General and Public Prosecutor, a comprehensive and generalized training course for all personnel of the this oversight body, with respect to the proper fulfillment of their functions; and provide additional training in areas related to the prevention of corruption. (See section 2.2 of Chapter II of this Report)
- 2.4.5 Publish the annual report on the activities of the Office of the Attorney General and Public Prosecutor that is easily and publicly available. (See section 2.2 of Chapter II of this Report)
- 2.4.6 Consider establishing public outreach programs to the populace to build awareness on the planned transition to the accusatorial criminal legal system. (See section 2.2 of Chapter II of this Report)
- 2.4.7 Promote coordination mechanisms between the Office of the Attorney General and Public Prosecutor with other relevant government agencies that prevent, detect, punish and eradicate corrupt acts, as appropriate. (See section 2.2. of Chapter II of this Report)

- 2.4.8 Establish an internal audit unit within the Office of the Attorney General and Public Prosecutor. (See section 2.2 of Chapter II of this Report)
- 2.4.9 Maintain statistics on the detection of corrupt practices incurring disciplinary, administrative, financial, civil, or criminal liability, as follows: the total number of investigations begun each year and indicate how many remain ongoing; how many have been suspended for whatever reason; how many have been shelved due to statute of limitations; how many have been shelved without a decision being reached on the merits in the case under investigation; how many are at a stage that allows a decision to be reached on the merits of the case under investigation; and how many have been referred to the competent body in order for such a decision to be taken, in order to identify challenges and recommend remedial measures. (See section 2.3. of Chapter II of this Report)
- 2.4.10 Publicize the number and outcome of administrative investigations, disciplinary proceedings and the sanctions imposed on personnel of the Office of the Attorney General and Public Prosecutor. (See section 2.3 of Chapter II of this Report)

3. COURT OF ACCOUNTS

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

[99] The Court of Accounts has a set of provisions in its legal framework and other measures concerning, among others, the following:

[100] As regards its objectives and functions, Article 211 of the Constitution provides that the Court, *inter alia*, presents opinions and reports on budget-related matters; intervenes on a preventive basis in spending and payments in accordance with the statutory regulatory standards and only for the purpose of certifying their legality, making, where appropriate, the necessary observations; offers opinions and reports on financial reporting and performance of all state organs, including departmental governments, autonomous entities, and decentralized services, regardless of their nature, and also with respect to the appropriate measures in the event of responsibility, setting forth the pertinent considerations and objections; presents to the General Assembly an annual report on the financial reporting of all state organs; and intervenes in all matters relating to the financial management of state organs, departmental governments, autonomous entities and decentralized services, and reports to the appropriate authorities all irregularities in the management of public funds and violations of the budget laws and accounting standards. In addition, Article 228 provides that the Court of Auditors is the oversight entity that monitors budget execution and controls all activities connected with state finance.

[101] According to Article 210 of the Constitution, the Court shall act with functional autonomy and shall have supervisory authority over all matters under its responsibility, particularly all offices responsible for accounting, revenue collection, and payments of the state, departmental governments, autonomous entities, and decentralized services, regardless of their nature, and has the authority to

propose such reforms as it deems advisable to whomever it sees fit.¹⁰³ It shall also prepare budget forecasts, which it will transmit to the executive branch for inclusion in the appropriate budgets.¹⁰⁴

[102] With respect to the way in which their senior officers are selected, all seven members of the Court are appointed by the General Assembly by a two-thirds vote of all its members. The members of the Court shall cease to serve when the General Assembly that appointed them is replaced by another one, and this General Assembly makes their own appointments for a new term. In that connection, members shall be eligible for reelection and each one shall have three alternatives to replace them in the event of vacancy, temporary impediment, or leave by regular members.¹⁰⁵

[103] Members of the Court may not accept paid employment from any branch of government, departmental governments, autonomous entities, decentralized services, or any other public sector organ, nor provide any kind of services for consideration to them. This restriction shall apply to members for one year after their term ends. In addition, they may not hold any other elected public office, regardless of its nature, or serve as directors, administrators, or employees in enterprises that engage in contracts for works or the supply of goods or services to the state, departmental governments, autonomous entities, decentralized services, or any other public sector organ, or process or oversee the affairs of third parties before the central administration, departmental governments, autonomous entities, or decentralized services.¹⁰⁶ Members of the Court may be dismissed for violation of the Constitution or other serious offenses, or for ineptitude, negligence, or commission of a criminal offense.¹⁰⁷

[104] The decisions of the Court are adopted at sessions of ministers and by a simple majority of its members. Other than administrative decisions that are subject to review under administrative appeal to the Court of Administrative Judicial Review, the opinions of the Court are not open to review or appeal.¹⁰⁸

[105] In its Response to the Questionnaire, the country under review notes that the body's staff is appointed on the basis of competitive examinations and merits, with different requirements depending on the category of the post in question.¹⁰⁹

[106] As regards the responsibilities of Court officials, in its Response to the Questionnaire, the country under review mentions that they are subject to standards of conduct (duties, prohibitions, and incompatibilities), violation of which may give rise to their administrative, civil, and criminal liability.¹¹⁰ In that connection, Article 21 of Law 17060 provides that civil servants shall observe "*the principles of respect, impartiality, rectitude and propriety, and shall avoid any conduct that amounts to an abuse, excess, or deviation of power or misuse of their position, or intervention in matters that could be of*

¹⁰³ See Article 212 of the Constitution of the Republic, *supra* note 75.

¹⁰⁴ See Article 211(G) of the Constitution of the Republic, *ibid.*

¹⁰⁵ See Article 208 of the Constitution of the Republic, *ibid.* This provision also states that members of the Court shall satisfy the same conditions as those required for Senators. In this connection, Article 98 of the Constitution provides that to be eligible to become a Senator a candidate must be a citizen from birth or a naturalized citizen for at least seven years and in either case at least 30 years of age.

¹⁰⁶ See Articles 122-125 and 208 of the Constitution of the Republic, *ibid.*

¹⁰⁷ See Articles 93, 102, 103, and 209 of the Constitution of the Republic, *ibid.*, and Response to the Questionnaire, p. 79, *supra* note 7.

¹⁰⁸ See Response to the Questionnaire, *supra* note 7 and Article 309 of the Constitution, *supra* note 75.

¹⁰⁹ Response to the Questionnaire, *ibid.* In this regard, staff is recruited on the basis of a competitive examination and merits, by merit and an aptitude test, or by lottery, depending on the category of the position. See Article 5 of Law 16127, Article 11 of Law 16134, and Section III of the TOFUP, *supra* note 12.

¹¹⁰ See Response to the Questionnaire, pg. 79, *supra* note 7 and Article 137 of the TOCAF, *supra* note 30.

economic benefit to them or persons directly related to them. Any act or omission that infringes this provision shall engage the liability of its authors to administrative, civil, or criminal penalties in the manner prescribed by the Constitution and laws."¹¹¹

[107] In its Response to the Questionnaire, the country under review notes the existence of a set of internal regulations that include enforceable rules of procedure for its human resources, including a description of the functions of each post.¹¹²

[108] Training for the officials of the Court is provided by the Government Audit School, which was created by Article 414 of law 17,930. The School imparts training to staff with a view to contributing to the improvement and transparency of the management of state finances.¹¹³ In this connection, in its Response to the Questionnaire, the country under review mentions that this training is continuous and covers standards of conduct and public ethics, as well as topics connected with the various duties that its officials perform.¹¹⁴ The objectives of the School are to: (a) design, impart, and maintain the Government Auditors Training and Updating Program; (b) include in the Program modern techniques for prevention, detection and correction of fraud and administrative corruption in the public sector; (c) establish training systems based on the latest technology for transmission and real exchange of knowledge and experience at the national, regional, and international level; (d) operate the auditor's update system to annually refresh their knowledge and skills, in addition to keeping a record of the process; and (e) organize technical events on its areas of expertise by holding forums, workshops, or seminars open to the public.¹¹⁵

[109] As regards providing the public with information about its objectives and functions, the country under review mentioned in its Response to the Questionnaire that *"communication with the public has been a constant concern of the Court of Auditors. Societal oversight of government accounts through the external oversight body with authority for that purpose is critical in the fight against corruption. In that respect, in our view the electronic case file contributes substantially to transparency in proceedings, as does the organ's website, which is continuously updated, making the Court's opinions and general information available to the public. In addition, the foregoing unquestionably creates a better impression among common citizens of the organ that monitors public funds.*"¹¹⁶

[110] With respect to internal control mechanisms, the Court has an Internal Audit Unit, which, inter alia, advises on the design of internal control systems, encourages staff assessments of their own effectiveness; assists in implementation of quality-assurance plans, investigations, and issuance and updating of auditing and control standards; supervises budget execution statements and other statements of account; supervises the preparation and presentation of the annual report; and provides continuous updates on audit findings and progress in the execution of plans.¹¹⁷

[111] As regards the mechanism for ensuring the necessary funds for its operations, Article 211(G) of the Constitution provides that it prepares its own proposed budget, which it submits to the executive

¹¹¹ See also Article 3 of Decree 30/003, Standards of Conduct in the Public Service, *supra* note 16.

¹¹² See Response to the Questionnaire, pgs. 79-80, *supra* note 7.

¹¹³ See Article 414 of Law 17930, www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=17930&Anchor=

¹¹⁴ See Response to the Questionnaire, pg. 80, *supra* note 7.

¹¹⁵ See Government Audit School, www.tcr.gub.uy/institucional_competencias.php

¹¹⁶ *Ibid.*

¹¹⁷ See Internal Auditing, www.tcr.gub.uy/institucional_competencias.php and Response to the Questionnaire, pg. 78, *supra* note 7.

branch for inclusion in the respective budgets. The executive branch, having made such amendments as it deems appropriate, refers it to the legislative branch and awaits its decision.¹¹⁸

[112] In relation to mechanisms for coordination with other public institutions, in its response the country under review underscores its link to the JUTEP. Articles 125 and 126 of the TOCAF provide that in cases where the Court marks any of its comments for "urgent consideration," upon being informed of such comments the national and departmental legislative branches may request the JUTEP for specialized advisory services in regard thereto. The Court also mentions its participation in the Honorary Commission created by Article 25 of law 17060. That Commission drew up legislative and administrative updating and organization proposals with respect to transparency in government procurement and prevention of conflict of interest.¹¹⁹

[113] Finally, one of the Court's duties is used to present an annual report on financial reporting by all government organs, including departmental governments, autonomous entities, and decentralized services, regardless of their nature, as well as on the appropriate measures in the event of liability, setting out the relevant comments and considerations.¹²⁰

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

[114] The Court of Accounts has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 3.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[115] The Committee notes that during the on-site visit, mention was made by the representatives of the Court of Accounts of the budgetary and human resource problems within this oversight body. This was reflected in the Response the Questionnaire, where the country under review noted:

[116] *“With respect to the budget, the lack of autonomy and scarce resources do not allow, for example, for servants to work on a full-time basis or for the incorporation of new and modern tools of control, especially when the body is still suffering the loss of staff to other areas that are better paying.”*¹²¹

[117] As noted under section 3.1, though the Court of Accounts prepares its own budget to be presented to the Executive Branch, the Constitution provides that the Executive Branch may modify the proposal before submission to the Legislative Branch.¹²² As a result, the Court does not have an autonomous budget, and therefore the country under review, in its Response to the Questionnaire, reports that the Court's resources are not ensured and it depends on the General Assembly for what it receives.¹²³ During the on-site visit, the representatives mentioned that in 2010, they did receive what they wanted in terms of a budget, however in subsequent yearly accountability laws, they have not received the amount proposed, which makes it a struggle to obtain the necessary resources to perform its work. In this sense, the representatives stated that it gave off the impression that it is not being sufficiently supported. The representatives also noted that although competitions have taken place in the last five years to recruit new staff, the Court is losing people to the private sector because of low pay.

¹¹⁸ See Article 211(G) of the Constitution of the Republic, *supra* note 75.

¹¹⁹ See Response to the Questionnaire, pg. 80, *supra* note 7.

¹²⁰ See Article 211(C) and (D) of the Constitution of the Republic, *supra* note 75.

¹²¹ Response to the Questionnaire, pg. 81, *supra* note 7.

¹²² See Articles 211(G) and 220 of the Constitution of the Republic, *supra* note 75.

¹²³ See Response to the Questionnaire, pg. 80, *supra* note 7.

[118] Moreover, the Committee notes that in the Response to the Questionnaire, the country under review observes that there are difficulties in modernizing its auditing and management procedures:

[119] *It is not easy, as well, to modernize auditing and management procedures, especially since the Court was established in the Constitution in 1934, one of the most rigid in our history, which provides for many difficulties when trying to adapt its provisions to the new demands for modern auditing.*

[120] *However, the Court has tried to overcome these circumstances, claiming the traditional audit tools under its competence and that it allows it to contribute to the perception, internationally, of the low levels of corruption in the country.*¹²⁴

[121] During the on-site visit, the representatives mentioned a proposal to strengthen and restructure the Court of Accounts, through a loan by the Inter-American Development Bank. This would include establishing standardized procedures for the development of their tasks in order to improve their quality of service. In this respect, it is foreseen that more contact will be made with the public with respect to its work and more specialists in auditing will be hired. Human resources would be improved as well and the representatives noted that there are currently 412 personnel in the Court and they would need and additional 35 – 40 persons in order to fully implement this new restructuring. A consultancy will also be provided on technology to help modernize the work of this oversight body. The Court hopes that such a restructure will be carried out with the support of the IADB, considering that the IADB uses the Court to look over international agreements exercised in Uruguay.

[122] Given the foregoing, the Committee considers that the country under review should strengthen the Court of Accounts, ensuring that it has the necessary budgetary and human resources to carry out its important work, with modern tools and mechanisms for preventing and detecting corrupt acts. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.1 in Section 3.4 of Chapter II of this Report)

[123] The Committee observes that the Court of Accounts does not have jurisdictional powers or impose sanctions. It performs an administrative function, ruling and reporting on budget matters.¹²⁵ In this respect, it plays an important role in the country under review in preventing and detecting acts of corruption. However, in the Response to the Questionnaire, the country under review states:

[124] *One of the major weaknesses that have marked the Court of Accounts is precisely that their objections are not accompanied by the respective sanction to the government agency or public officer whose act or omission resulted in irregular behavior, liable to cause damage to the public treasury and to be considered a crime.*¹²⁶

[125] The Committee notes that under article 211(B) of the Constitution of the Republic, the Court supervises expenditures and payments, in accordance with the rules and regulations established by law, for the sole purpose of certifying as to their legality, appending whenever necessary any pertinent objections. Should an accounting officer persist with the expenditure or payment that has been objected to, it shall be communicated to the Court.¹²⁷ If the Court, in turn, maintains its objections, it shall communicate that fact to the General Assembly, for appropriate action. If in this instance, no action is taken, and if the Court insists on its objection, it may communicate it back to the General Assembly for

¹²⁴ Response to the Questionnaire, pg. 81, *ibid.*,

¹²⁵ See 2011 Annual Report of the Court of Accounts, pg. 9, www.tcr.gub.uy/documentos/memoria%20anual%202011.pdf

¹²⁶ Response to the Questionnaire, pg. 81, *supra* note 7.

¹²⁷ See article 114 of the TOCAF, *supra* note 29.

“urgent consideration.”¹²⁸ These objections of urgent consideration are to be immediately published on the website of the Court.

[126] During the on-site visit, the representatives noted that this process of objections and urgent consideration has little effect as there are no sanctions or mechanisms of persuasion behind them. Recently, another step has been included in this process. After the Court has qualified an objection as one having “urgent consideration”, the General Assembly may then ask the Transparency and Public Ethics Board to investigate and look into the matter. The Board, after its own investigation, is to report back to the General Assembly, and if applicable, to the Judicial Branch. However, the Committee notes that in this process, no mechanisms of persuasion are put into place. The situation may still arise where an irregular expenditure or payment is made contrary to law; however no action takes place to correct it, though it has been looked at in three different instances.

[127] The country under review, in its Response to the Questionnaire, does state that although there are no sanctions, the government bodies have shown to follow the laws in place on accounting and financial management.¹²⁹ In this respect, the Committee observes in the 2011 Annual Report of the Court of Accounts, with respect to the national budget, objections amount to 2.66% of its total. For the financial entities of the State, such as the Central Bank, this amounts to 0.07%. These low rates of objections demonstrate that in general, the expenditures and payments are being made in accordance to law.¹³⁰ Within these numbers, however, the Committee observes that there are some important bodies with objected expenditures of payments that are higher than the aforementioned low percentage. For example, in the Office of the Presidency, this amounts to 14.07% and in the Ministry of Education and Culture, 14.91%. Moreover, when looking at the numbers provided for autonomous entities and decentralized services that encompass industrial and commercial matters of the State, 26.47% of expenditures and payments have been objected,¹³¹ while in Departamental Governments, this amounts to 16%.¹³² This is a significant amount that may be better addressed if stronger mechanisms of enforcement are put in place.

[128] Given the foregoing, the country under review should consider the possibility of establishing mechanisms that can be applied by Uruguay for noncompliance of established law relating to expenses and payments of public bodies. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.2 in Section 2.4 of Chapter II of this Report)

[129] In this respect, the civil society organization, Transparency Uruguay, during the on-site visit, noted its concern that the Court can only make objections to an expenditure or payment, and has no power to issue sanctions for any detected irregularities. They also stated that the public officials of the Court are very dedicated, but cannot carry out their duties on monitoring public expenditures. Though in the past the objections of the Court have been usually for small amounts, there have been increasingly larger ones. However, it appears no one takes into account the legality of an expenditure.

[130] In terms of transparency and accountability, the Committee observes that while the Court of Accounts submits an annual report on the public accounts of the country under review, it does not submit an annual report on the functions of the Court itself. For example, there are no publicly available details on the budget allocation and expenditures of the Court of Accounts, or its training activities. The country under review should consider making annual reports on the activities of the Court easily available on its

¹²⁸ See article 125 of the TOCAF, *ibid.*

¹²⁹ Response to the Questionnaire, pg. 79, *supra* note 7.

¹³⁰ 2011 Annual Report of the Court of Accounts, pgs. 293 and 295, *supra* note 125.

¹³¹ *Ibid.*, pg. 294

¹³² *Ibid.*, pg. 296.

website, containing the aforementioned information, for example. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.3 in Section 2.4 of Chapter II of this Report)

[131] With respect to manuals that describe the functions of its personnel, the country under review, in its Response to the Questionnaire, noted that there exists an Internal Regulation that contains procedural and performance standards, as well as job descriptions for its posts.¹³³ The Committee notes, however, that this Internal Regulation is not publicly available online at the Court's website. Given the important information contained in this document, and in terms of promoting transparency, the Committee considers that it should be made publicly available online. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.4 in Section 2.4 of Chapter II of this Report)

[132] The Committee notes the important work undertaken by the Government Audit School. As mentioned under section 3.1 of this Report, this School provides training to its staff to improve transparency in the management of the National Treasury. In this respect, the Response to the Questionnaire mentions that the School offers courses on integrity in the public service. These courses complement the training received from the Transparency and Ethics Board on standards of conduct in the public service, and other courses offered by the National Civil Service Office.¹³⁴ Moreover, during the on-site visit, the representatives stated that there are courses on standards of conduct carried out in the Court and provided to the Judicial Branch. These courses look at ethical aspects and international conventions. It is carried out as workshops involving practical cases and with post evaluations. There is a network of schools throughout the country, which assists in disseminating these standards of conduct.

[133] The Committee observes, however, that information on its courses and training program is not available online, unlike the training activities carried out by other oversight bodies, such as the Transparency and Public Ethics Board. In the interests of promoting transparency and demonstrating its commitment to this end, the Committee considers that the training program as well as the courses undertaken by the Court should be made publicly available on its website. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.5 in Section 2.4 of Chapter II of this Report)

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

[134] The Committee notes that results on the work of the Court of Accounts was provided in the Response to the Questionnaire for the year 2010 and is made available in its Annual Reports, the last one published being for 2011. In this respect, the information is very comprehensive, providing a breakdown, for example, by government branch, ministry and those independent entities such as the Court of Accounts itself and the Electoral Court. Furthermore, it provides the amount of budget that was executed for each of these government entities, the amount, in Uruguay pesos, that were objected, and the percentage of the budget that was objected.¹³⁵ For example, the following sample information is found in a table contained in the 2011 Annual Report, among others:¹³⁶

National Budget by Subsection			
(in thousands of \$)			
SUBSECTION	OBJECTIONS	TOTAL EXECUTED	% OBJECTED /EXECUTED
Legislative Branch	11.799	2.521.315	0.47%

¹³³ See Response to the Questionnaire, pgs. 79 – 80, *supra* note 7.

¹³⁴ *Ibid.*, pg. 78.

¹³⁵ For example, see Response to the Questionnaire, pgs. 83 – 86, *ibid.*

¹³⁶ 2011 Annual Report of the Court of Accounts, pg. 293, *supra* note 125.

Presidency	219.519	1.560.731	14.07%
Min. National Defense	115.924	9.455.525	1.23%
Interior Ministry	213.873	12.771.947	1.67%
Min. Economy/Finance	545.110	3.871.392	14.08%
Foreign Affairs	0	1.644.729	0.00%
Min. Industry/Energy	8.872	607.193	1.46%
Min. Education/Culture	382.186	2.563.740	14.91%
Judicial Branch	1.537	3.024.726	0.05%
Court of Accounts		344.991	0.00%
Electoral Court		598.489	0.00%
Court of Administrative Judicial Review		93.551	0.00%
Total National Budget	5.914.487	222.632.958	2.66%

[135] The reasons for the objections is also provided, with the legal provision cited, whether the payment or expense was made in violation of the rules on public procurement (article 33 and subsequent provisions of the TOCAF), or the objection was raised when certifying its legality (article 211(B) of the Constitution), or for other reasons:¹³⁷

Reason for the Objection	Amount
Article 33 TOCAF	2.137.668
Article 211(B)	1.440.424
Article 211(B) and other norms	498.684
Other	1.833.841
Total	5.914.487

[136] The Annual Reports also provide information, in similar form, for the autonomous entities and decentralized services of the State involved in industrial and commercial matters:

ENTITY	NO OBJECTIONS	OBJECTED AND REITERATED	EXECUTED	% OBJECTED REITERATED /EXECUTED
Ports Administration	1.743.137	401.215	2.144.352	18.71%
Sanitary Works	5.250.341	3.585.120	8.835.461	40.57%
Fuel, Alcohol and Portland	86.472.299	645.489	87.117.788	0.74%
Communications	20.089.606	581.013	20.670.619	2.81%
Power plants/ Electrical Transmissions	4.119.118	37.235.896	41.355.014	90.04%
PLUNA (national airline)	4.410	68.829	73.239	93.97%
State Railways	648.956	101.337	750.293	13.50%
Settlement	495.313	200.194	695.507	28.78%

¹³⁷ *Ibid.*, pg. 294.

Postal Service	811.602	263.856	1.075.458	24.53%
TOTAL	119.634.782	43.082.949	162.717.731	26.47%

[137] Similar tables are found for the financial entities of the State, such as the Central Bank and the National Insurance Bank.¹³⁸

ENTITY	NO OBJECTIONS	OBJECTED AND REITERATED	EXECUTED	% OBJECTED REITERATED /EXECUTED
Central Bank	262.389.234	56.653	262.445.887	0.02%
National Insurance Bank	10.903.036	101.677	11.004.713	0.92%
National Mortgage Bank	3.707.463	80.976	3.788.439	2.14%
Bank of the Republic	10.406.928	30.212	10.437.140	0.29%
Social Insurance Bank	129.907.954	5.734	129.913.688	0.004%
National Housing Agency	874.895	31.042	905.937	3.43%
TOTAL	418.189.510	306.294	418.495.804	0.07%

[138] Important information also found in the Annual Reports is the Court's examination of public procurements. In this respect, comprehensive information is provided and broken down by government branch, ministry and independent entities such as the Court of Accounts itself and the Electoral Court. Furthermore, it provides the amount of money of these procurements that were objected.¹³⁹

[139] The Committee notes that the Court of Accounts is undertaking its work in examining the accounts and public procurement carried out in the country under review. Nevertheless, the Committee observes that although the Court provides information on the amounts objected with respect to a payment or expenditure, it does not break down that information further in the cases those that are considered of 'urgent consideration.' The country under review might consider it useful to present this information as well. As discussed under section 3.2, one of the weaknesses the Court has identified is its lack of enforcement or sanction powers. In an effort to assist the Court, perhaps the country under review can consider identifying, in the Annual Reports, those government entities that are not carrying out their budgetary payment and expenditures in accordance with law and are identified in need of 'urgent consideration.'" The Committee does observe that the Court is to publish on its website those objections it characterizes as needing 'urgent consideration'.¹⁴⁰ However, the Committee considers that including this information in the annual reports of those entities whose budgetary actions have attained the level of 'urgent consideration' may encourage them to take appropriate action to correct the detected irregularities. The Committee will formulate a recommendation in this regard. (see Recommendation 3.4.6 in Section 2.4 of Chapter II of this Report)

[140] Finally, the Committee notes that one of the constitutional competences of the Court is to deliver opinions and furnish information with respect to the submission of accounts and activities of all the organs of the State, as well as, insofar as appropriate action in cases of responsibility is concerned,

¹³⁸ *Ibid.*, pg. 295.

¹³⁹ *Ibid.*, pg. 333 and subsequent pages.

¹⁴⁰ See article 126 of the TOCAF, *supra* note 29.

setting forth the pertinent considerations and observation.¹⁴¹ In this respect, if the Court finds that there are grounds of suspicion of irregularities in the handling of public funds or violations of the budgetary and accounting laws, it is to report to the superior of the accounting officer this fact.¹⁴² The Committee notes, however, that the Court of Accounts does not maintain results on the outcome of these reports once they are made, either in its annual reports or its webpage. The Committee believes that the Court of Accounts should maintain results on how many reports it has made and that the country under review should consider implementing a mechanism whereby the Court receives feedback whether action was taken to correct the detected irregularity and if sanctions were imposed. This information should be made publicly available, in their Annual Reports as well as on its website. The Committee will formulate recommendations in this regard. (see Recommendations 3.4.7 and 3.4.8 in Section 3.4 of Chapter II of this Report)

3.4. Conclusions and recommendations.

[141] Based on the comprehensive review conducted with respect to the Court of Accounts in the foregoing sections, the Committee offers the following conclusions and recommendations:

[142] The Oriental Republic of Uruguay has considered and adopted measures intended to maintain and strengthen the Court of Accounts as an oversight body, as described in Chapter II, Section 1 of this Report.

[143] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1 Strengthen the Court of Accounts, ensuring that it has the necessary budgetary and human resources to carry out its important work, with modern tools and mechanisms for preventing and detecting corrupt acts. (See section 3.2. of Chapter II of this Report)
- 3.4.2 Consider the possibility of establishing mechanisms that can be applied by Uruguay for noncompliance of established law relating to expenses and payments of public bodies. (See section 3.2 of Chapter II of this Report)
- 3.4.3 Publish an annual report on the activities of the Court of Accounts that includes information such as its budget allocation, expenditures and training provided. (See section 3.2 of Chapter II of this Report).
- 3.4.4 Publish the Internal Regulations of the Court of Accounts on the website of the Court of Accounts. (See section 3.2 of Chapter II of this Report)
- 3.4.5 Make available on the website of the Court of Accounts information on the courses and training program carried out by this oversight body. (See section 3.2 of Chapter II of this Report)
- 3.4.6 Include in the annual reports of the Court of Accounts comprehensive information on those expenditures that have been reiterated by the Court and in need of 'urgent

¹⁴¹ See article 211(C) of the Constitution of the Republic, *supra* note 75.

¹⁴² See article 141 of the TOCAF, *supra* note 29.

consideration,' as well as the entities from which they arise. (See section 3.2 of Chapter II of this Report)

- 3.4.7 Maintain results on how many reports it has made to the superior of an accounting officer when it has grounds for suspicion of irregularities in the handling of public funds or violations of the budgetary and accounting laws, in order to identify challenges and recommend corrective measures. (See section 3.3 of Chapter II of this Report)
- 3.4.8 Implement a mechanism whereby the Court of Account receives feedback on whether action was taken to correct a detected irregularity and if sanctions were imposed, with respect to the reports it has submitted. (See section 3.3 of Chapter II of this Report)

4. SUPREME COURT OF JUSTICE

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

[144] The Supreme Court of Justice has a set of provisions in its legal framework and other measures concerning, among others, the following:

[145] As regards its objectives and functions, Article 239 of the Constitution provides that the Court has authority, *inter alia*, to judge anyone who violates the Constitution, without exception; over crimes against international law and admiralty cases; to exercise directive, corrective, consultative, and financial oversight of the courts and all other areas of the judicial branch; to appoint, promote, and dismiss employees of the judicial branch by a vote in favor of four of its members; and to perform such other obligations as the law may provide. Furthermore, as part of its jurisdictional duties, it takes cognizance both of cassation appeals filed in criminal and non-criminal matters against decisions issued at second instance by the courts of appeals, and of motions for review in criminal and noncriminal matters.¹⁴³

[146] Within the judiciary, there are also the Courts of Appeals for Criminal Matters, Criminal Courts of First Instance, Criminal Courts specializing in Organized Crime, and the Pro-Secretariat of the Supreme Court of justice. The Courts of Appeals for Criminal Matters take cognizance at second instance of appeals filed against first-instance judgments issued by the lower courts in such matters; the Criminal Courts of First Instance take cognizance of both stages—preliminary inquiry and trial—of proceedings at first instance that come about as a result of any criminal charge, including of corruption. The Courts of First Instances on Organized Crime have jurisdiction over crimes against the public administration and, *inter alia*, those established in Law 17060; among other functions, the Pro-Secretariat of the Supreme Court of Justice processes complaints brought against judges and disciplinary proceedings in that connection.¹⁴⁴

[147] Where it comes to exercising jurisdictional functions, members of the judicature enjoy absolute independence and tenure so long as the conduct is good.¹⁴⁵ Furthermore, Article 1 of the

¹⁴³ See Response to the Questionnaire, pgs. 62-63, *supra* note 7.

¹⁴⁴ See Response to the Questionnaire, pgs. 62-65, *ibid*.

¹⁴⁵ See Article 84 of Law 15750 (Organizational Law of the Judicature and Courts), www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=15750&Anchor=

Organizational Law of the Judicature and Courts provides, *inter alia*, that the judicial branch is independent of all other authorities in the exercise of its functions.

[148] The Supreme Court is a five-member collegiate body.¹⁴⁶ It cannot function with fewer than three members, and a concurring vote of the majority of its members is required for final judgments.¹⁴⁷ In its Response to the Questionnaire the country under review notes that “its decisions are not appealable; however, in exceptional cases a motion may be filed for their review in accordance with the provisions of Articles 281-292 of the General Code of Procedure” (Section VII, Motion for Review).¹⁴⁸ In addition, in administrative proceedings, the only recourse against a Supreme Court decision is a motion for its annulment, without prejudice to the relevant administrative judicial review actions.¹⁴⁹

[149] The decisions of Criminal Courts of Appeal, which are also collegiate bodies composed of three members, are open to a cassation appeal before the Supreme Court Justice.¹⁵⁰ Criminal courts of First Instance and the Courts of First Instances on Organized Crime are one-person bodies whose decisions may be challenged through motions for reversal, appeal, and reconsideration of denial of appeal.¹⁵¹

[150] With respect to the way in which senior officials are selected, members of the Court are elected to a 10-year term by a special majority of two thirds of the members of the General Assembly; they are not eligible for reelection until five years after their termination.¹⁵² The Chamber of Representatives has exclusive authority to impeach members of the Supreme Court of Justice before the Senate for violation of the Constitution or other serious offenses after examining a petition against them brought by a third party or one of its members and finding that there is cause to proceed. The Senate has the authority to open a public trial of those indicted by the Chamber of Representatives and to pass judgment solely for the purpose of removing them from office by a majority vote of two thirds of all its members.¹⁵³

[151] Members of Criminal Courts of Appeal are appointed by the Supreme Court of Justice and ratified by the Senate or, if the latter is in recess, by the Permanent Committee, “*with their appointment subject to the following requirements: (a) the vote in favor of three of its members for candidates belonging to the Judicature or the Office of the Attorney General; and (b) to a vote in favor of four for candidates without the qualities mentioned in the preceding paragraph.*”¹⁵⁴ In the

¹⁴⁶ See Article 234 of the Constitution of the Republic, *supra* note 75.

¹⁴⁷ See Article 85 of Law 15750, *supra* note 145.

¹⁴⁸ See Response to the Questionnaire, pg. 66, *supra* note 7 and General Code of Procedure, www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=15982&Anchor=

¹⁴⁹ See Article 115 of Law 15750, *supra* note 145.

¹⁵⁰ See Response to the Questionnaire, pg. 66, *supra* note 7 and Articles 269-282 of the General Code of Procedure, *supra* note 149.

¹⁵¹ See Response to the Questionnaire, pg. 66, *ibid.* and Articles 250-266 of the General Code of Procedure, *ibid.*

¹⁵² See Articles 236 and 237 of the Constitution of the Republic, *supra* note 75. Furthermore, Article 235 provides that candidates to the Supreme Court of Justice must be at least 40 years of age; be a citizen from birth or a naturalized citizen for at least 10 years and resident in the country for at least 25 years; have been a lawyer for at least 10 years or practiced in that capacity in the Judicature or the Office of the Attorney General or Public Prosecutor for at least eight years.

¹⁵³ See Articles 93 and 102 of the Constitution, *ibid.* In addition, Article 103 of the Constitution provides that members of the Supreme Court of Justice whom the Senate has removed from office shall, nevertheless, be subject to trial under the law.

¹⁵⁴ See Article 239 (4) of the Constitution, *ibid.* Furthermore, Article 242 provides that to be a member of a court of appeals candidates must be at least 35 years of age; be a citizen from birth or a naturalized citizen for at least seven years; and have been a lawyer for at least eight years or have practiced in that capacity in the Judicature or the Office of the Attorney General or Public Prosecutor for at least six years.

case of Criminal Courts of First Instance and Courts of First Instances on Organized Crime, judges are appointed by the Supreme Court of Justice by an absolute majority of its members.¹⁵⁵

[152] Article 239(7) of the Constitution provides that the Supreme Court of Justice has the power to appoint, promote, and dismiss on its own authority, by a vote in favor of four of its members, judicial employees in accordance with Articles 58 to 66 of the Constitution, where appropriate. In that regard, Article 59 provides that the law shall establish the Civil Service Statute (*Estatuto del Funcionario*) on the fundamental premise that the functionary exists for the function, not the function for the functionary. Said Statute, *inter alia*, is applicable to all civil servants who work in the judiciary except those who serve in judicial posts; Article 61 recognizes that the Statute shall establish, *inter alia*, their conditions of entry and govern their right to remain in the position, promotion, and annual leave and sick leave. Furthermore, Article 413 of Law 18,362 provides that “*entry of civil servants to any of the categories in the judicial branch, except those pertaining to posts in the judicature, as established in Article 59 of the Constitution, shall only be by means of a competition and on merits, or on merits and an aptitude test. In the general services and auxiliary services categories employees may be recruited by lottery. In all cases, vacancy announcements shall be public and open.*”¹⁵⁶

[153] The Supreme Court of Justice appoints judges of the judicial branch to their posts¹⁵⁷ Furthermore, Article 79 of Law 15,750 provides that to enter the judicature a candidate must be a citizen from birth or a naturalized citizen for at least two years, as well as be a lawyer and have no physical or mental impediment.¹⁵⁸ A person who is under criminal prosecution for a publicly actionable offense may not be appointed judge. The final part of Article 70 provides that the Supreme Court of Justice shall “*propitiate the holding of postgraduate courses specially aimed at training potential candidates for entry to the judicature. In such cases, lawyers who have taken and passed the course shall be given priority in the recruitment process.*” The Judicial Studies Center of Uruguay was created in that connection. The Center is under the direct supervision of the Supreme Court of Justice and in the Response to the Questionnaire, the Country under review notes,

[154] “*Under the above constitutional and legal framework, authority to select and appoint new judges rests exclusively with the Supreme Court of Justice. However, its decisions in this area are appropriately regulated and, by law, it is required that it accord absolute priority for the purposes of entry as new judges to legal professionals who have passed the initial training course imparted by the Judicial Studies Center of Uruguay.*”¹⁵⁹

[155] With respect to responsibility for their actions, Article 23 of the Constitution provides that all judges are answerable under the law for the slightest violation of human rights as well as for

¹⁵⁵ See Article 239(5) of the Constitution, *ibid*. Furthermore, Article 245 provides that to be a judge of a court of first instance candidates must be at least 28 years of age; be a citizen from birth or a naturalized citizen for at least four years; and have been a lawyer for at least four years or have practiced in that capacity in the Office of the Attorney General or been a Justice of the Peace for at least two years.

¹⁵⁶ See Article 413 of Law 18362, *supra* note 33.

¹⁵⁷ See Article 55(3) of Law 15750, *supra* note 145.

¹⁵⁸ Article 79(5) provides that physical impediments include chronic or permanent illnesses that prevent the physical or mental personality from functioning fully. Moral impediment is that which results from socially degrading conduct or a criminal conviction, *ibid*.

¹⁵⁹ Response to the Questionnaire, pg. 68, *supra* note 7. In the course of the on-site visit, representatives of the Supreme Court of Justice explained that those who enter by means of open competitions are candidates to lower-echelon positions in the judiciary, given that, as of the first category in the judicial career, promotions occur within the judicial branch itself; that is, for officials who have joined the career at the entry level, and said promotions are awarded depending on progress in the career system and the grades obtained by lawyers from assessments in the judicial branch and the Judicial Studies Center of Uruguay.

deviating from the procedure established by the law. With respect to members of the Supreme Court of Justice, the Constitution provides that to be liable to criminal prosecution they must first be tried in impeachment proceedings. All other members of the judicature are liable to criminal, civil, and administrative proceedings on account of their professional activities.¹⁶⁰ When the judge undergoes criminal prosecution they are suspended from their duties.¹⁶¹

[156] Disciplinary liability is governed by Articles 112 to 116 of Law 15750. In this regard, Article 112 provides that judges shall incur disciplinary liability, *inter alia*, through any acts and omissions in the performance of their duties that might prove injurious to public interests or discredit the administration of justice; through unjustified absence, neglect of duties or delay in reassuming their duties or returning to their post; when, by their irregular moral conduct, they compromise the good standing of their ministry; when they contract financial obligations with subordinates; and when they commit abuse of authority in the performance of their functions, regardless of their purpose in doing so. According to Article 114 of said Law, the penalties shall be verbal reprimand, warning, and censure before the Supreme Court of Justice with a record drawn up of the respective proceeding; suspension from duties; transfer to a position not classified as a promotion; loss of the right to promotion for one or five years; demotion to the immediately inferior rank and; and dismissal in the event of ineptitude, omission, or commission of a criminal offense.

[157] Furthermore, in its Response to the Questionnaire the country under review notes that all civil servants in the judicial branch are subject to the provisions of Law 17060 concerning misuse of public authority.¹⁶² Decree 30/003 (Standards of Conduct in the Public Service) applies likewise to public servants in the judicial branch.

[158] With respect to the rules governing ineligibility and conflict of interest, Article 77(4) of the Constitution provides that judges shall refrain, on pain of dismissal and disqualification from employment in the public sector for 2 to 10 years, from being members of political clubs or commissions, signing party political manifestos, authorizing the use of their name and, in general, any other public or private act of a political nature other than voting. Article 251 provides that positions in the judicature shall be incompatible with any other paid civil service position except lecturing in the law at a public institution of higher education, and with any other permanent honorary public post except those specifically connected to the judicial branch. Finally, Article 252 provides that judges and all employees of the chambers and internal offices of the Supreme Court, tribunals, and lower courts are prohibited, on pain of immediate dismissal, from directing, defending or processing judicial matters, or otherwise intervening in them, except as part of their official duties, even if they are voluntary legal proceedings. Articles 91 to 94 of Law 15750 also contain provisions on these matters.

[159] In its Response to the Questionnaire, the country under review also makes reference to the General Rules of Judicial Offices which set out, *inter alia*, the rules on entry, competitions, the grading system, promotions, rights, obligations, prohibitions, and incompatibilities.¹⁶³

[160] With respect to the existence of manuals and other documents describing the functions of its staff, in its Response to the Questionnaire the country under review notes,

¹⁶⁰ See Response to the Questionnaire, pg. 69, *ibid*, and Article 110 of Law 15750, *supra* note 145.

¹⁶¹ See Article 101 of Law 15750, *ibid*.

¹⁶² See Response to the Questionnaire, pg. 70, *supra* note 7.

¹⁶³ *Ibid.*, pg. 71.

[161] “Reference should also be made to the *Organization and Functions Manual* which reflects the organizational structure of the judicial branch. In addition, its purpose is to identify organizational relations, establish assigned responsibilities and functions, as well as each area's sphere of control. The Manual describes all of the administrative and legal support areas of the Supreme Court of Justice and General Directorate of Administrative Services (DGSA) up to the level of department and sections that report directly to hierarchically superior units.¹⁶⁴

[162] The Organization and Functions Manual is available at the following link: www.poderjudicial.gub.uy/images/stories/manualdeorganizacid3nyfunciones.pdf

[163] As far as training is concerned, the already mentioned Judicial Studies Center of Uruguay should be referred to. In this connection, the country under review notes that “*the core purposes of the Judicial School are initial training, which refers to training for aspirants to positions in the magistracy, and continuous training which covers updating serving judges. With regard to the latter aspect, throughout the year programmed courses targeting all the country's judges are continuously imparted, covering the most diverse fields.*”¹⁶⁵

[164] With respect to institutional strengthening or quality improvement measures implemented, the country under review mentions that it is pushing ahead with the Judicial System Strengthening Program in Uruguay.¹⁶⁶ The aim is to improve judicial services in the country, which would be reflected in users' perception of judicial services. Specifically, the program has three objectives: (i) to improve the quality and productivity of the administrative services in the judicial branch (General Directorate of Administrative Services, Planning and Budget Division, Secretariat of the Supreme Court of Justice); (ii) to strengthen the management of the Supreme Court of Justice and streamline nonsubstantive administrative tasks; and (iii) reduce the processing time for judicial cases at pilot offices to within the time limits established in the procedural regulations.

[165] To achieve its specific operational objectives, the Program is organized into three projects: (i) Reorganizing and strengthening administrative management in the judiciary; (ii) Strengthening management of the Supreme Court of Justice; and (iii) Improving services at tribunals and lower courts.¹⁶⁷ All the activities proposed for the three projects are under the authority of the Supreme Court of Justice.

[166] As regards providing the public with information about its objectives, functions, and services, the country under review has launched a new official judicial branch website (www.poderjudicial.gub.uy). The website includes a link that allows remote consultation of the status of cases and offers free access to the judiciary's National Case Law Database, which includes the rulings of the Supreme Court of Justice and the courts of appeals on all matters. The judicial branch also makes visits to educational institutions (primary and secondary schools) to raise awareness about the population's rights in terms of access to judicial files and/or attending hearings which, barring

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.* See also Training, www.poderjudicial.gub.uy/capacitacion1.html

¹⁶⁶ See Response to the Questionnaire, pg. 72, *supra* note 7 and Modernization of the Justice System, www.poderjudicial.gub.uy/modernizacion-del-sistema-de-justicia.html

¹⁶⁷ See Response to the Questionnaire, *ibid.*, and Organization of the Program's Administration, www.poderjudicial.gub.uy/modernizacion-del-sistema-de-justicia/120-modernizacion-del-sistema-de-justicia/335-organizacion-para-la-administracion-del-programa.html

exceptions, are public in nature, and about court procedures and who the principal actors are in them.¹⁶⁸

[167] As for internal control mechanisms, the country under review mentions that the judicial branch has its Inspective Services Division, an area devoted to operational oversight at its various offices. Its main functions are: a) To inspect and evaluate the operations of jurisdictional and administrative offices, providing advice and answering queries within the framework of its powers; (b) to collect information, prepare reports, and provide advisory services at the request of the Supreme Court of Justice and General Directorate of Administrative Services, whenever needed or as a result of inspection procedures carried out; and (c) to open administrative investigations and disciplinary proceedings on the orders of higher authorities.¹⁶⁹

[168] As regards the receipt of complaints and denunciations concerning fulfillment of objectives and staff performance, the Criminal Courts of First Instance receive and process all petitions alleging unlawful or irregular acts in connection with the activities of the judicial branch, as well as those concerning matters between private citizens or between the latter and any other government office. In its Response to the Questionnaire, the country under review also notes that members of the public may present their concerns by telephone and e-mail (info@poderjudicial.gub.uy). In that regard, according to the state, “*the Supreme Court of Justice receives written complaints on a daily basis from both professionals and users of the justice administration’s services. These are appropriately processed, usually by the Pro-Secretariat of the Supreme Court of Justice, which requests the relevant information and, in certain cases, refers the proceedings to the competent authority.*”¹⁷⁰

[169] As regards the mechanism for ensuring the necessary funds for its operations, Article 220 of the Constitution provides that the judicial branch prepares its own proposed budget, which it submits to the executive branch for inclusion in the draft budget. The executive branch may amend it and submits it together with any amendments to the legislature.¹⁷¹ In that connection, Article 214 of the Constitution provides that the executive branch, with advice from the Planning and Budget Office, plans the national budget that will be in effect for its term of government and submits it to the legislature within the first six months of its administration. Furthermore, within six months after the close of a fiscal year, the executive branch shall submit to the legislative branch an accountability report and a budget execution statement for that year, and it may propose any changes deemed indispensable in the total amount of expenditures, investments, and salaries or resources, and may create new items, and make deletions and modifications, in programs for duly justified reasons.¹⁷² The Accountability Program for 2011 is available on the judicial branch website.¹⁷³

[170] In addition, the country under review mentions that the judiciary “*has been pursuing a policy of providing the public with adequate access to the arguments put forward for all court rulings. In that regard, the overview on access to judicial information (Press Office, new website, free public access to*

¹⁶⁸ See Response to the Questionnaire, pg. 73, *ibid.* During the on-site visit, the representatives from this oversight body stated that the National Case Law Database contains Supreme Court decisions from 1989 and from 2005 for the Courts of Appeal. There are approximately 5000 judgments of the Supreme Court, and 40089 from the Courts of Appeal.

¹⁶⁹ See Response to the Questionnaire, pgs. 73 and 74, *ibid.*, and Manual of Organization and Functions of the Judicial Branch, p. 22, www.poderjudicial.gub.uy/images/stories/manualdeorganizacid3nyfunciones.pdf

¹⁷⁰ See Response to the Questionnaire, pg. 74, *ibid.*

¹⁷¹ See Article 211(G) of the Constitution of the Republic, *supra* note 75.

¹⁷² See Response to the Questionnaire, pg. 91, *supra* note 7.

¹⁷³ Accountability Program, 2011,

www.poderjudicial.gub.uy/images/stories/estadisticas/proyecto%20de%20rendicin%20de%20cuentas%20poder%20judicial%202011.pdf

*the National Case Law Database, and case follow-up) is significant progress with respect to accountability mechanisms for the public.*¹⁷⁴

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

[171] The Supreme Court of Justice has a set of provisions and/or other measures that are relevant for promoting the purposes of the Convention, some of which were succinctly described in section 4.1. Nevertheless, the Committee considers it appropriate to set forth some observations with respect to these provisions and/or other measures.

[172] The country under review, in its Response to the Questionnaire, indicated of the existence of a General Regulation on the Offices of the Judiciary, applicable to all officials within this Branch, which sets out requirements on competitions, qualifications, promotions, rights, obligations, prohibitions and incompatibilities, among other things. It also appears to further regulate the disciplinary process that is carried out against Judges. The Committee notes that this important document is not publicly available and not found on the website of the Judicial Branch. Given the important information contained in this document and in terms of promoting transparency, the committee considers that it should be made publicly available online. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.1 in Section 4.4 of Chapter II of this Report)

[173] The Committee also observes that, as a mechanism for internal control, the Supreme Court of Justice counts on the Inspective Services Division.¹⁷⁵ Among its important attributes are to inspect and evaluate the performance of courts and administrative offices and provide advice on these matters; collect information, prepare reports and provide advice at the request of the Supreme Court and Department of Administrative Services when required or as a result of investigatory proceedings conducted c) instruct administrative inquiries and disciplinary proceedings. However, the Committee observes that this Division does not operate as an internal audit unit, under the supervision of the National Internal Audit Office. Such an internal unit is contemplated in the Strengthening Program of the Uruguayan Judicial System, as set out in section 4.1 of this Report. One of the goals in strengthening the administrative management of the Court is to create an Internal Audit Division, encompassing the Economic-Financial Audit Unit and the Administrative Audit Unit.¹⁷⁶ Given the foregoing, the Committee will formulate a recommendation in this regard. (see Recommendation 4.4.2 in Section 4.4 of Chapter II of this Report)

[174] The country under review, in its Response to the Questionnaire, reports that it has difficulty in adopting preventive policies that would allow it to detect corrupt behavior more quickly, in part due to budget constraints that hinder the work of the Judiciary.¹⁷⁷ The country under review should consider ensuring that the Supreme Court of Justice has enough financial and human resources to detect corrupt acts and to effectively carry out administrative investigations and disciplinary proceedings with respect to the Judiciary, within available resources. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.3 in Section 4.4 of Chapter II of this Report)

¹⁷⁴ See Response to the Questionnaire, pg. 75, *supra* note 7.

¹⁷⁵ See National Internal Audit Office, www.ain.gub.uy/index.htm

¹⁷⁶ See Strengthening Management within the Supreme Court of Justice, www.poderjudicial.gub.uy/modernizacion-del-sistema-de-justicia/120-modernizacion-del-sistema-de-justicia/343-fortalecimiento-de-la-gestion-de-la-suprema-corte-de-justicia.html

¹⁷⁷ Response to the Questionnaire, pg. 76, *supra* note 7.

[175] Finally, the Committee notes that the Supreme Court of Justice, in its Response, does not refer to any coordination mechanisms that it carries out with other important government agencies that could assist in the Court's work in punishing acts of corruption. The establishment of these mechanisms with important bodies such as the Office of the Attorney General and Public Prosecutor, as well as with the Transparency and Public Ethics Board, are encouraged, especially with respect to promoting transparency and accountability in the public service. Given the foregoing, the Committee will formulate a recommendation in this regard. (See Recommendation 4.4.4 in Section 4.4 of Chapter II of this Report)

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

[176] The country under review has results with respect to the work of the Judicial Branch that is found on its website, in a section titled "Statistics."¹⁷⁸ In this respect, an Annual Statistical Report is made available, prepared by the Planning and Budget Division of the Judicial Branch, which contain an analysis of the Document prepared by the Planning and Budget Division of the Judiciary which contains an analysis of the demand for judicial services and indicators on the judicial activity of the Supreme Court, the Courts of Appeal and the Courts of the capital and in the interior of the country in all categories. It also contains studies of indicators in the proceedings concluded by a judgment in the Courts of Appeals for all areas, and studies on the activity and duration of proceedings in the courts by areas (juvenile delinquents, criminal, customs, civil, administrative, organized crime, labor, domestic violence / family specialists).

[177] In this respect, the yearly reports by the Courts of First Instance on Organized Crime are pertinent with respect to combating corruption. Under article 414 of Law 18362, one of the areas that fall under the competence of this Court are crimes committed against the Public Administration found under Title IV of Book II of the Criminal Code and those established under the 'corruption' law, Law 17060.¹⁷⁹ The statistical reports on the work of this Court go back to 2009, the first year that it began operating.¹⁸⁰

[178] These reports present information on the number of criminal proceedings begun during a year, the number of those that were concluded, the outcome of those proceedings that were concluded and the average length, in terms of months, for these proceedings. Information is also provided by criminal offense. For example, in 2011, the following information is provided with respect to the number of criminal proceedings initiated for the years 2009 - 2011:¹⁸¹

Court	2009	2010	2011
1	30	63	37
2	27	56	35
Total	57	119	72

¹⁷⁸ Statistics (Estadísticas), www.poderjudicial.gub.uy/estadisticas.html

¹⁷⁹ It should be noted that article 13 of Law 18494, transferred over matters involving contempt of public officials (desacato) found in article 173 of the Criminal Code in the section of crimes committed against the Public Administration, back to the jurisdiction of the Court on Criminal Matters, www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=18494&Anchor=

¹⁸⁰ Report of the Courts of First Instance on Organized Crime, www.poderjudicial.gub.uy/estadisticas/134-estadisticas/282-crimen.html

¹⁸¹ 2011 Report of the Criminal Courts of First Instance on Organized Crime, pg. 14, www.poderjudicial.gub.uy/images/institucional/estadisticas/2011_Informe_Crimen_Organizado.pdf

[179] The following provides information on the number of criminal proceedings concluded, for 2009 – 2011:¹⁸²

Court	2009	2010	2011	Percent
1	12	14	38	30%
2	8	30	90	70%
Total	20	44	128	100%

[180] Another statistic highlighted in the 2011 Report of the Courts of First Instances on Organized Crime is the average duration for the conclusion of a criminal proceeding, by offense. Of the 4 cases involving embezzlement, the average length was 7 months. However, in the case of extortion and fraud, this number is 14.57 and 18.4 months, respectively.¹⁸³ This compares to 2010 numbers of 10.7 months for the case of embezzlement and for bribery, 8 months.¹⁸⁴ In 2009, the case on extortion took 4.7 months. There appears to be a trend that the proceedings are taking longer to conclude, as the years pass on. Overall, for all criminal proceedings that fall under the jurisdiction of the Courts of First Instances on Organized Crime, the average length of duration has gone from 5 months in 2009, to 10.4 months in 2010, to 16.3 months in 2011.¹⁸⁵ One of the possible reasons for this increase provided by the country under review in the 2011 Report of the Courts of First Instances on Organized Crime is the fact this Court was recently created in 2009.¹⁸⁶ The country under review should conduct an analysis on the increase in duration for carrying out criminal proceedings on acts of corruption, in order to examine if the work of this important Court can be carried out more efficiently. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.5 in Section 4.4 of Chapter II of this Report)

[181] The Committee notes that in the annual reports compiled by the Courts on Criminal Matters, information is provided on the outcome of criminal proceedings. For example, in 2011, of 6710 criminal proceedings concluded that year outside of the jurisdiction of Montevideo, 6277 received a final judgment, 213 an interlocutory judgment, 38 final closure, 70 mercy, 25 a reduced sentence, 50 statute barred, 6 suspended, 6 defendants passed away, 1 exculpated and 21 for other reasons.¹⁸⁷ The Committee notes that of 128 proceedings that were concluded in 2011 in the Criminal Courts of First Instance on Organized Crime, all received a final judgment, which would not necessitate that information be provided for cases were decided for other matters, such as being dismissed for violating the statute of limitations.¹⁸⁸ The Committee does consider that the country under review be prepared to provide this type of information, as it would be useful to examine the efficiency in which the Criminal Courts of First Instance on Organized Crime is conducting its work with respect to acts of corruption. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.6 in Section 4.4 of Chapter II of this Report)

¹⁸² *Ibid.*, pg. 15.

¹⁸³ 2011 Report of the Criminal Courts of First Instance on Organized Crime, pg. 22, *supra* note 181.

¹⁸⁴ 2010 Report of the Criminal Courts of First Instance on Organized Crime, pg. 18,

www.poderjudicial.gub.uy/images/stories/anuario/crimen_org.pdf

¹⁸⁵ 2011 Report of the Criminal Courts of First Instance on Organized Crime, pg. 25, *supra* note 181.

¹⁸⁶ *Ibid.*, pg. 21.

¹⁸⁷ 2011 Report of the Courts on Criminal Matters, pg. 31,

www.poderjudicial.gub.uy/images/institucional/estadisticas/Informe_Procesos_Penales_2011.pdf

¹⁸⁸ 2011 Report of the Criminal Courts of First Instance on Organized Crime, pg. 16, *supra* note 181. This is also the case in 2009 and 2010.

[182] Related to this, while the Committee notes that information is provided in the annual reports of the Criminal courts of First Instance on Organized Crime on the outcomes of criminal proceedings, the country under review should consider breaking down these results so that information may be maintained on the number of decisions on which responsibilities were established or penalties imposed; the number of those decisions in which no responsibilities were found or acquittals were given, in order to identify challenges and recommend corrective measures. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.7 in Section 4.4 of Chapter II of this Report)

[183] The country under review also presented information, in its Response to the Questionnaire, with respect to the number of administrative investigations and disciplinary proceedings that were carried out against judges for the years 2008 to 2012.¹⁸⁹ These proceedings were carried out using the Iber-American Model Code on Judicial Ethics as a basis, which was adopted by the Supreme Court of Justice in 2010 for the Judiciary. The information provided is as follows:

Administrative Investigations	2008	2009	2010	2011	2012
Initiated	2	0	1	3	0
Outcome	Both files closed		File closed	2 cases ordered closed (2012), 1 disciplinary proceeding initiated (2012)	

Disciplinary Proceedings	2008	2009	2010	2011	2012
Initiated	1	1	2	3	1
Outcome	Dismissed from the Judicial Branch (2010)	Closed	1 file ordered closed, 1 reprimanded	3 dismissed from the Judicial Branch	Still in process

[184] The Committee notes, in looking over the information provided, that it is difficult to determine the reasons as to why files were closed in both administrative investigations and disciplinary proceedings, for example, if no misconduct was found, there was a lack of evidence, or the triggering of administrative statutes of limitations. The Committee will formulate a recommendation in this regard. (see Recommendation 4.4.8 in Section 4.4 of Chapter II of this Report)

[185] The Committee further notes that this valuable information is not found on the website or the annual reports of the Judiciary. The Supreme Court of Justice may consider publicizing these investigations and proceedings, in order to build awareness among the populace on its efforts in promoting transparency and ethics in the Judiciary and combating corruption. In addition, it should also consider better publicizing the Iber-American Model Code on Judicial Ethics, and the administrative document that adopted it within the Judicial Branch, Agreement No. 7.688 of 28/VII/2010, so that the populace may be aware of the standards in place for Judicial conduct, and in general, the transparency

¹⁸⁹ Response to the Questionnaire, pgs. 75 – 76, *supra* note 7.

and ethics initiatives undertaken by the Supreme Court of Justice.¹⁹⁰ Information on the important adoption of this Code is not easily available on the website of the Judicial Branch, for example. The Committee will formulate recommendations in this regard. (see Recommendations 4.4.9 and 4.4.10 in Section 4.4 of Chapter II of this Report)

[186] In this respect, the Committee observes that during the on-site visit, the civil society organization, Transparency Uruguay had stated that there is a fear of reporting judges for misconduct or inappropriate behavior on the part of prosecutors for fear that they will have to work with those same judges in the future. If the Supreme Court of Justice could better publicize its work in public ethics and its commitment to promoting transparency and ethics in the Judiciary, it may help overcome this apparent fear. Moreover, another civil society organization, the Center for Archives and Access to Public Information, stated that there is no readily available information on sanctions imposed by the Supreme Court of Justice on a judge for improper conduct.

4.4. Conclusions and recommendations.

[187] Based on the comprehensive review conducted with respect to the Supreme Court of Justice in the foregoing sections, the Committee offers the following conclusions and recommendations:

[188] The Oriental Republic of Uruguay has considered and adopted measures intended to maintain and strengthen the Supreme Court of Justice as an oversight body, as described in Chapter II, Section 1 of this Report.

[189] In light of the comments made in the above-noted section, the Committee suggests that the country under review consider the following recommendations:

- 4.4.1 Publish the General Regulation on the Offices of the Judiciary on its website. (See section 4.2 of Chapter II of this Report)
- 4.4.2 Establish an internal audit unit within the Supreme Court of Justice. (See section 4.2 of Chapter II of this Report)
- 4.4.3 Ensure that the Supreme Court of Justice has adequate financial and human resources to detect corrupt conducts in the Judiciary and to effectively carry out its administrative investigations and disciplinary proceedings, within available resources. (See section 4.2 of Chapter II of this Report)
- 4.4.4 Encourage the establishment of coordination mechanisms with other important government bodies, such as the Office of the Attorney General and Public Prosecutor and the Transparency and Public Ethics Board, in order to better promote and exchange information on transparency and accountability matters within the public service, as appropriate. (See section 4.2 of Chapter II of this Report)
- 4.4.5 Conduct an analysis on the increase in duration for carrying out criminal proceedings on acts of corruption, in order to examine if the work of this important Court can be carried out more efficiently. (See section 4.3 of Chapter II of this Report)

¹⁹⁰ Iber-American Model Code on Judicial Ethics, www.poderjudicial.gub.uy/images/stories/circulares/2010/072-2010ACORD7688.PDF

- 4.4.6 Maintain results similar to those by the Courts on Criminal Matters, on the outcome of criminal proceedings conducted by the Courts of First Instance on Organized Crime with respect to acts of corruption, in order to identify challenges and recommend corrective measures. (See section 4.3 of Chapter II of this Report)
- 4.4.7 Maintain results that break down the outcome of criminal proceedings with respect to acts of corruption, in order to identify challenges and recommend corrective measures, as follows: i) number of decisions on which responsibilities were established or penalties imposed; ii) number of those decisions in which no responsibilities were found or acquittals were given. (See section 4.3 of Chapter II of this Report)
- 4.4.8 Document the reasons for the closing of files in both administrative investigations and disciplinary proceedings, in order to identify challenges and recommend corrective measures. (See section 4.3 of Chapter II of this Report)
- 4.4.9 Make available on the annual reports and website of the Judicial Branch the administrative investigations and disciplinary proceedings carried out by the Supreme Court of Justice with respect to judges. (See section 4.3 of Chapter II of this Report)
- 4.4.10 Publicize on its website the transparency and ethics initiatives undertaken by the Supreme Court of Justice, such as making easily available the adopted standards in place for judges, the Iber-American Model Code on Judicial Ethics, and the administrative document that adopted it within the Judicial Branch, Agreement No. 7.688 of 28/VII/2010. (See section 4.3 of Chapter II of this Report)

III. BEST PRACTICES

[190] In accordance with Section IV of the *Methodology for the Review of the Implementation of the Provision of the Inter-American Convention against Corruption Selected in the Fourth Round* and the *Format* adopted by the Committee for the Reports of said Round, references is made to the best practices identified by the country under review, which it has expressed its wish to share with the other member States of the MESICIC, as it could be beneficial to them:

[191] **With respect to the Court of Accounts:**

[192] “Recognition of Best Practices in the Public Administration”: This initiative is to honor annually those public bodies that have adhered to the standards that govern performance, in all matters relating to public finance. Thus, the Court publicly recognizes those who best meet current standards on the matter, which serves as an important incentive for public servants.

[193] Moreover, during the on-site visit, the representatives of the Court highlighted that this best practice has recently been adopted, and in their opinion is a very useful measure that will encourage government bodies to promote a best practice on the rendering of accounts. Awards are being contemplated as well as providing incentives to these bodies.

[194] More information is available in page 81 of the Response to the Questionnaire.

IV. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST ROUND OF REVIEW¹⁹¹

[195] The Committee will refer below to the progress, information, and new developments made by the Oriental Republic of Uruguay in relation to the recommendations and measures suggested by the Committee for implementation in the Report of the First Round, and with respect to which the Committee deemed that additional attention was required in the Reports from the Second and Third Rounds,¹⁹² and shall, as appropriate, take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them pursuant to section VI of the Methodology adopted by the Committee for the Fourth Round of Review.

[196] The Committee will also take note in this section of the Report of the difficulties in implementing the aforementioned recommendations and the measures to which the country under review has drawn attention, as well as of its technical cooperation needs to that end.

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

1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce them

Recommendation:

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

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[197] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:¹⁹³

[198] – *“The Executive Branch brought to the National Parliament in February, 2011 the draft law prepared by the Transparency and Public Ethics Board on “Strengthening Public Transparency.” In this draft law, article 4(2) provides for a cooling period for a period of up to one year after having left the public service, whatever the reason for leaving. That is to say, the draft law provides that all public officials who cease to hold office, may not have any job in the private sector related with that of the*

¹⁹¹ The list of recommendations that still require additional attention or which have been reformulated following this analysis, have been included as Annex 1 to this Report.

¹⁹² These Reports are available at: www.oas.org/juridico/english/ury.htm

¹⁹³ See Response to the Questionnaire, pg. 96, *supra* note 7.

*State, for a period of one year. The draft law has been with the Senate Committee on Constitution and Legislation since being presented to the National Parliament, and has yet not been addressed.”*¹⁹⁴

[199] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the draft law has yet to be enacted by the country under review. (see measure a) of section 1.1 of Annex 1 to this Report)

[200] In addition, the Committee takes note that during the on-site visit, Senator Rafael Michelini, a member of the aforementioned Senate Committee on Constitution and Codes, stated that what has held back the draft law on “Strengthening Public Transparency” for the past two years is the inclusion of two provisions that criminalized illicit enrichment and transnational bribery. These provisions will be removed and treated separately, so that a vote can be taken on this draft law by the General Assembly in 2013.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.1.3 of Chapter II of the First Round Report)

[201] In its Response, the country under review noted that Justice does not keep statistics on the number of indictments for the crime of adjunction of public and private interests, which prevents the country in understanding developments on the matter.¹⁹⁵ Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure b) of section 1.1 of Annex 1 to this Report)

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[202] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered:¹⁹⁶

[203] – The JUTEP formulated and initiated, in the course of 2009, the implementation of a new program to train public officials specializing in anticorruption norms and willing to disseminate this information in their respective agencies. In this sense, during the second half of 2010 and the first of

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*, pg. 97.

¹⁹⁶ *Ibid.*, pgs. 35 – 41.

2012, more than 800 public officials of the Interior have received training and at this moment, in accordance with the United Nations Development Programme (UNDP), an agreement is being formalized to cover eight Departments in the Interior. Courses have also been held in conjunction and the request of Customs, the Central Bank, the Armed Forces, the Judiciary, etc. Agreements have also been entered into with the National Public Education Administration to provide training to its employees.

[204] – the JUTEF carried out ten classes and workshops in Montevideo during 2010 – 2011 for public officials in the Ministries of the Interior; Defense; Tourism and Sport; Public Health; Economy and Finance (and its executing agencies such as the National Internal Audit Office); Foreign Affairs, Livestock, Agriculture and Fisheries; Energy and Mining; and Social Development; as well as the Presidency of the Republic; the National Drug Council; the National Civil Service Office; the Court of Accounts; the Court of Administrative Judicial Review; the Electoral Court; and the Office of the Court, among others. In the Interior of the country, six workshops were carried out for public officials for the Municipalities of San Jose y Mayo; Maldonado; Canelones; Minas; Tacuarembó; and Paysandú, including various government agencies, such as Police Headquarters; Customs Departments; National Tax Office and members of the Judiciary, among others.

[205] – the seminar/workshop on ethics, medicine and public health, which was carried out June 29 – 30, 2012, co-financed by the JUTEF and the UNDP, and sponsored by the administration of the Health Services of the State, the National Academy of Medicine, the Medical College of Uruguay, the Medical Union of Uruguay, the Medical Federation of the Interior and the Pan-American Health Organization. Its programming included: 1) plenary sessions, open to the public, where topics on ethics in the medical profession were presented; 2) workshops for those that work in the administration of the Health Services of the State, on ethics in the public service and application of the anticorruption norms in the public sector.

[206] – Workshops on ethics in the public service and anticorruption norms held for departmental municipalities of the country, which covered 4 big areas: “1) *Transparency and access to information. Their links with human rights, governability and rendering of accounts.* 2) *Discussion and policy on corruption. Ethics and corruption. Definition of corruption, terms of debate and areas to focus to combat corruption. Public Servant Statute. Standards of conduct.* 3) *Anti-Corruption criminal provisions. Law 17060. Notion of public official. Concept of corruption, its valuation. National legislation: Law 17060. Offenses against the Public Administration.* 4) *Transparency and Public Ethics Board and System of Sworn Declarations. Corruption and its controls. Background on the creation of the JUTEF. Structure and competences of the JUTEF. System of sworn declarations. In every event, each participant received a folder that contained a copy of each of the following publications: 1) The “Ethics and Public Service” and “Anticorruption Legislation in Uruguay” manuals and 2) Papers on the following topics, “Principles of Public Ethics,” “Institutional Framework against Corruption,” “Conflicts of Interests between the public and private,” and “Sworn Declarations of assets and income, Law 17060.”*

[207] Up to the date of the Response to the Questionnaire, JUTEF has carried out 4 of 8 workshops programmed for the departmental municipalities (Colonia, Rio Negro, Rocha y Treinta and Tres) and has set concrete dates and location for 3 others (Durazno, Soriano, and Flores), with the date and location still to be determined for Florida.

[208] In addition, during the on-site visit, the representatives of the JUTEF stated that there are agreements in place to provide training to primary school teachers, so that they may impart this knowledge to their students and it is also contemplated to provide long distance training. The JUTEF’s

participation in the classes held by the School of the National Civil Service Office on standards of conduct was also highlighted.

[209] The Committee takes note of the satisfactory consideration by the country under review of measure c) of the foregoing recommendation.

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.1.2 of Chapter II of the First Round Report)

[210] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered.¹⁹⁷

[211] – Law 17060 and Decree 30/003 establish standards of ethical conduct in the public service, for the Executive, Legislative and Judicial Branch. Moreover, commercial entities have been establishing, over time, a set of Codes of Ethics that are applicable internally, notwithstanding the application of the aforementioned standards, which operate as a general principal. For example, the country under review cites the Ministry of the Interior, where the Police Procedures Law No. 18315, the Rules of Discipline No. 4, and Police Regulations No. 5 that refer to Courts of Honor govern the actions of their officials. The Ministry of Foreign Affairs has various laws governing its operation, the latest being Law 17930 and 18046. With respect to the Ministry of Economy and Finance, some of its offices have Codes of Ethics themselves, as with the National Tax Office, which has a Code of Ethical Conduct that was approved by Director General Resolution No. 1809/2006 of December 26, 2006 and confirmed by Decree of the Executive Branch of May 30, 2005. The Judiciary adopted as its own the principles of Iber-American Judicial Ethics, by agreement 7688. In November 2012, the Medical Code of Ethics, prepared by the Medical College of Uruguay, was approved. For its part, the National Customs Directorate finds itself in a modernization process, which considers that Institutional Transparency and Ethics are key pillars. Within these ideas and in the framework of the Revised Arusha Declaration of the World Customs Organization, this Directorate has asked advice from the JUTEP in the writing of its Code of Ethics. The same has happened with the Office of the Comptroller General of the nation, which has also asked for consultations from the JUTEP on the writing of their Code of Ethics. Also of note is the Code of Ethics of the Bank of the Oriental Republic of Uruguay, approved by Board Resolution of July 29, 2008.

[212] The Committee takes note of the satisfactory consideration by the country under review of measure d) of the foregoing recommendation.

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

Recommendation:

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

¹⁹⁷ *Ibid.*, pgs. 99 – 101.

First measure suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.2.2 of Chapter II of the First Round Report)

[213] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered.¹⁹⁸

[214] – The country under review notes that article 132 of the Accounting and Financial Management Integrated Text (known in Spanish with the acronym TOCAF), provides: “*All officials or employees, as well as all natural and legal persons in receipt of payments as collector, custodian or payer or that manages, uses or keeps other assets or property of the State, with or without legal authority, are required to render documented accounts or in an ascertainable manner, of their use or management.*”

[215] – As well, article 137 of the TOCAF establishes that “*The transgressions of the provisions of this law constitute administrative offenses, even when they do not cause economic damage to the State*” and that “[a]dministrative responsibility is also applicable to those monitoring officials who have carried out the unlawful or irregular act, or did not oppose that act, as well as to non-state entities or persons and their directors, employees that misuse public funds, or incorrectly manage State property, as appropriate.”

[216] The Committee takes note of the satisfactory consideration by the country under review of measure c) of the foregoing recommendation.

Second measure suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.2.2 of Chapter II of the First Round Report)

[217] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following.¹⁹⁹

[218] – With respect to verifying that public bodies are disseminating their acquisition of goods and services, that falls under the competence of the JUTEP, compliance by these bodies, including the Branches of Government and agencies of Article 220 and 221 of the Constitution and Departmental Governments, is as follows: 100% Executive, 33% Legislative, 100% Judiciary, 37% Departmental Governments, and 50% Agencies of Article 220 (Court of Accounts, Court of Administrative Judicial Review, Electoral Court, Autonomous Entities and Decentralized Services) and Article 221 (Industrial or Commercial Entities of the State). The Transparency and Public Ethics Board fulfills its verification

¹⁹⁸ *Ibid.*, pgs. 99 – 101.

¹⁹⁹ *Ibid.*, pgs. 101 – 102.

competence in coordination with the Agency for Electronic Government and Information Society, which maintains the website: www.comprasestatales.gub.uy.

[219] The Committee takes note of the steps taken by the country under review to advance in its implementation of the second measure of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that while important measures are being carried out to ensure that government purchases by government bodies are being disseminated, it is not clear that these measures ensure that norms on public procurement are being followed. (see sole measure of section 1.2 of Annex 1 to this Report)

[220] The Committee notes that this subject will be dealt with in greater depth in the follow-up to the recommendations of the Second Round.

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:

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.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[221] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered.²⁰⁰

[222] – In this respect, the JUTEP notes that there exists a module dedicated to this end in the training classes set out in measure c) of recommendation 1.1 of Chapter IV of this Report.²⁰¹

[223] The Committee takes note of the satisfactory consideration by the country under review of measure a) of the foregoing recommendation, notwithstanding that recommendations of a similar nature were made during the Second Round with respect to protection of witnesses, the implementation of which will be reviewed in greater detail in the follow-up to that Round.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

²⁰⁰ *Ibid.*, pg. 105.

²⁰¹ For example, see the Manual, Ethics and the Public Service (Etica y Funcion Publica), which is part of the series “Training Manuals” No. 1, published by the JUTEP, *supra* note 67.

Evaluate the relevance of making regulatory changes needed to ensure protection for public servants making reports in cases where their hierarchical superiors are involved. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[224] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following.²⁰²

[225] – The enactment of Law 18494 of June 2009,²⁰³ which establishes protection measures for victims, witnesses and collaborators in the proceedings of the Criminal Courts of First Instance on Organized Crime. Protection measure include physical protection by the police of these persons, the use of mechanisms that prevent their identification; and the relocation, use of another name and granting of new documents, among others.

[226] – The JUTEP, in the Response to the Questionnaire, also notes that: “*For those reporting cases that do not fall under the Criminal Courts of First Instance on Organized Crime, and therefore the aforementioned articles are not applicable, such as the cases of reports made to the Administration itself, the JUTEP has presented the aforementioned draft Law on Strengthening Transparency which contains a an express provision for the protection for whistleblowers. Article 10 refers to the establishment of complaints in various public bodies, by seeking to protect a whistleblower, by hiding their identity as well as proper administrative protection and labor stability, notwithstanding the liability incurred for false or unfounded complaints. The draft law is being studied by Parliament.*”

[227] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the draft law has not been enacted by the country under review. (see measure a) of section 1.3 of Annex 1 to this Report)

[228] In addition, the Committee formulates this observation, notwithstanding that recommendations of a similar nature were made during the Second Round with respect to protection of witnesses, the implementation of which will be reviewed in greater detail in the follow-up to that Round

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Facilitate reporting mechanisms through the use of compliance with this obligation by using the communication media. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[229] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following.²⁰⁴

[230] – The National Tax Office has a system for receiving tax fraud complaints through its website. The complaints may also be made through the telephone.

²⁰² See Response to the Questionnaire, pgs. 106 – 107, *supra* note 7.

²⁰³ Law 18494, www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18494&Anchor=

²⁰⁴ See Response to the Questionnaire, pgs. 108 – 109, *supra* note 7.

[231] – The Ministry of the Interior provides a telephone service to receive complaints from the citizenry with respect to the work of this body. Through this free telephone line, a person can also solicit information on the various services provided by the Ministry, make complaint with respect to the work of the police, or be provided information on how to file a complaint.

[232] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure c) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that while the services provided by the National Tax Office and the Ministry of the Interior are steps that advance this measure, the country under review has not established a specific mechanism to report acts of corruption, as confirmed by the representatives of the JUTEP during the on-site visit. The purpose of this measure is to promote the reporting of acts of corruption, through the use of communication media, such as telephone lines, set up specifically for these acts.

[233] Given the foregoing, the Committee considers the reformulation of measure c) of the recommendation of section 1.3 of Chapter IV of this Report, as follows:

[234] Facilitate reporting mechanisms on acts of corruption by using the communication media. (see measure b) of section 1.3 of Annex 1 to this Report)

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 1.3.2 of Chapter II of the First Round Report)

[235] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following.²⁰⁵

[236] The country under review reiterates the information provided in the Response to the Questionnaire with respect to measure b) of recommendation 1.3 of Chapter IV of this Report. In this respect:

[237] – The enactment of Law 18494 of June 2009,²⁰⁶ which establishes protection measures for victims, witnesses and collaborators in the proceedings of the Criminal Courts of First Instance on Organized Crime. Protection measure include physical protection by the police of these persons, the use of mechanisms that prevent their identification; and the relocation, use of another name and granting of new documents, among others.

[238] – The JUTEP, in the Response to the Questionnaire, also notes that: *“For those reporting cases that do not fall under the Criminal Courts of First Instance on Organized Crime, and therefore the aforementioned articles are not applicable, such as the cases of reports made to the Administration*

²⁰⁵ *Ibid.*, pgs. 106 – 107 y 110.

²⁰⁶ Law 18494, *supra* note 203.

itself, the JUTEP has presented the aforementioned draft Law on Strengthening Transparency which contains an express provision for the protection for whistleblowers. Article 10 refers to the establishment of complaints in various public bodies, by seeking to protect a whistleblower, by hiding their identity as well as proper administrative protection and labor stability, notwithstanding the liability incurred for false or unfounded complaints. The draft law is being studied by Parliament.”

[239] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure d) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the draft law has not been enacted by the country under review. (see measure c) of section 1.3 of Annex 1 to this Report)

[240] In addition, the Committee formulates this observation, notwithstanding that recommendations of a similar nature were made during the Second Round with respect to protection of witnesses, the implementation of which will be reviewed in greater detail in the follow-up to that Round.

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

Recommendation:

Improve the use of sworn declarations of net worth.

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Strengthen systems to ensure that competent authorities review in timely fashion and when appropriate the information contained in asset and income statements. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[241] In its Response, the country under review noted that “*the Transparency and Public Ethics Board, as with its predecessor, the Advisory Board on Economic and Financial Matters of the State, has not made use of the powers provided in the legal framework with respect to the investigation of sworn declarations of assets and income, whether on its own initiative or ex parte. At this moment, its authorities are conducting a feasibility study of using the legislation in place for opening sworn declarations, in case there are suspicions of corrupt practices.*”²⁰⁷

[242] In this respect, during the on-site visit, the representatives stated that only recently has it been clearly established that the JUTEP may carry out investigations with respect to verifying the content of these declarations.

[243] Given that in section 1.3 of this Report, the issue of reviewing and verifying the content of the declarations of net worth is reviewed in a more comprehensive manner, the Committee considers it appropriate to eliminate measure a) of the aforementioned recommendation of section 2 of Chapter IV of this Report, and refer to Recommendation 1.4.8 in section 1.4 of Chapter II of this Report.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

²⁰⁷ See Response to the Questionnaire, pg. 12, *supra* note 7.

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. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[244] With respect to the aforementioned measure, in its Response, the country under review presents information. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:²⁰⁸

[245] – Article 99 of Law 18046 of October 24, 2006, establishes that for those officials and ex officials who are remiss in submitting their sworn declarations, 50% of a nominal amount of any emoluments, salary, compensation, fees, pension or subsidy paid by a public body are to be withheld, solely on the request by one of them. This hold will remain so long as the person does not prove, by a certificate issued by the JUTEP, that it has complied with this legal obligation, in which case the entire amount withheld is returned.

[246] The Committee takes note that although the country under review has established a monetary sanction for noncompliance by an ex public official in presenting his or her sworn declaration, the regime in the Oriental Republic of Uruguay has yet to contemplate the possibility of broadening the regime of infractions and sanctions for other types of conduct than those already addressed, such as the omission of information on these declarations.

[247] Given the foregoing, the Committee considers the reformulation of measure b) of the recommendation of section 2 of Chapter IV of this Report, as follows:

[248] Envisage the possibility of extending the regime of offences and sanctions to include other offences other than those already covered, such as the omission of information. (see measure a) of section 2 of Annex 1 to this Report)

Measure c) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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.

[249] In its Response, the country under review reiterates its observation from measure a) of section 2 of Chapter IV to this Report, where it notes: “*the Transparency and Public Ethics Board, as with its predecessor, the Advisory Board on Economic and Financial Matters of the State, has not made use of the powers provided in the legal framework with respect to the investigation of sword declarations of assets and income, whether on its own initiative or ex parte. At this moment, its authorities are conducting a feasibility study of using the legislation in place for opening sworn declarations, in case there are suspicions of corrupt practices.*”²⁰⁹

²⁰⁸ *Ibid.*, pg. 115.

²⁰⁹ *Ibid.*, pgs. 116 – 117.

[250] In this respect, during the on-site visit, the representatives stated that only recently has it been clearly established that the JUTEP may carry out investigations with respect to verifying the content of these declarations.

[251] Given the foregoing, the Committee takes note of the need for the country under review to give additional attention to implementation thereto. (see measure b) of section 2 of Annex 1 to this Report)

Measure d) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

Envisage the possibility of amending the current law so as to permit the use of modern information and communication technology. (the basis for this measure is found in section 2.2 of Chapter II of the First Round Report)

[252] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following.²¹⁰

[253] – The JUTEP has developed a computer system for managing the Registry for Sworn Declarations. With funding from the Agency for Electronic Government and Information Society and Knowledge, was developed in three phases: 1) development of an online management model through a high speed network; 2) data migration to open source engine residing in the Computer Center of the Ministry of Education and Culture, and 3) development of a payroll management web module (internet) for operation by designated officials in all executing units of the State.

[254] – The JUTEP is carrying out a new system for the electronic presentation of sworn declarations with the due guarantees provided by an advanced digital signature system.

[255] The Committee takes note that during the on-site visit, the representatives of the JUTEP stated that the electronic system was implemented in 2011, and has the capacity to receive basic information on the declarant, but not on the content of that declaration. This registry is maintained for 5 years after a public official has left office, and the JUTEP is now in the process of establishing a database on the content of those declarations.²¹¹

[256] Given the foregoing, the Committee considers the reformulation of measure d) of the recommendation of section 2 of Chapter IV of this Report, as follows:

[257] Implement a system to receive sworn declarations in electronic form. (see measure c) of section 2 of Annex 1 to this Report)

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

Recommendation suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

²¹⁰ *Ibid.*, pgs. 111 – 112 y 110.

²¹¹ The country under review notes that the electronic sworn statement system is being implemented two ways: from the technical standpoint with experts from the AGEIC, the MEC and the Board itself to do the necessary software; the other from Parliament, where the project has already been submitted to provide it with a legal basis.

Strengthen the mechanisms for cooperation and coordination among oversight bodies. (the basis for this measure is found in section 3.2 of Chapter II of the First Round Report)

[258] With respect to the aforementioned recommendation, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in its implementation, the following:²¹²

[259] – Article 25 of Law 17060 provides for the creation of an Honorary Commission made up of six members: a representative of the JUTEP, of the Ministry of Economy and Finance, of the Office of Planning and Budget, of the Court of Accounts, of the Civil Service National Office and the organization most representative of public officials. The Commission made proposals on updating the legislative and administrative legal framework on transparency on public procurement and conflicts of interest.

[260] – Since May 2009, the Anti-Money Laundry Secretariat acts as the operational body responsible for implementing policies to combat money laundering and the financing of terrorism and joint interagency coordination required for these purposes, which has expanded coordination with the JUTEP in this respect.

[261] – The activity of the Coordinating Commission against Money Laundering and the Financing of Terrorism, whose primary role is to propose a National Strategy for the Fight against Money Laundering and Financing of Terrorism, from the development of preventive components, financial intelligence and enforcement systems.

[262] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure d) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that the Honorary Commission is no longer in operation, having fulfilled its mandate in make proposals to update the legal and administrative framework with respect to transparency in public procurement and prevention of conflicts of interest. (see sole recommendation of section 3 of Annex 1 to this Report)

[263] In this respect, the Committee takes note that the draft law prepared by the JUTEP on “Strengthening Public Transparency,” provides under its article 4 that the JUTEP may convene this Commission, in an advisory role, on matters related to transparency in public management and conflicts of interest.

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)

4.1. General participation mechanisms

[264] The Committee did not offer any recommendations in this section.

4.2 Mechanisms for access to information

[265] The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.²¹³

²¹² See Response to the Questionnaire *supra* note 7, pgs. 118 – 119.

4.3. Mechanisms for consultation

Recommendation:

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

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 4.3.2 of Chapter II of the First Round Report)

[266] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following.²¹⁴

[267] – The preparation of the “Uruguay Open Government Action Plan 2012,” which was presented at the “First Annual Conference of the Open Government Partnership” held in Brasilia in April of 2012. One of its general principles is to encourage civic participation, as follows: 1) make more transparent the policy and decision making, by establishing and using means to solicit feedback from the public, and increase public participation in the implementation, monitoring and evaluation of government activities, 2) protect the ability of non-profit organizations and civil society so that its operation is consistent with the commitment to freedom of expression, association and opinion, and 3) develop mechanisms for greater collaboration between governments and civil society organizations and businesses.²¹⁵ In this respect, the country under review notes that: “*It aims to increase the availability of information on government activities, as the citizenry has the right to request information on its activities and support civic participation in policy and decision making, in order to obtain their opinion on the performance, monitoring and evaluation of government activities.*”²¹⁶

[268] Moreover the Committee takes note that during the on-site visit, the representatives from the JUTEP referred to the process of this Open Government Project, which helps facilitate the exchange of information among civil society, and provides a means for the participation by civil society and the public, in the work of government agencies. They also cited the citizen participation in the budget, which

²¹³ The Committee takes note that during the on-site visit, it was informed of recent events that could affect the access to information regime in Uruguay, which occurred subsequent to the satisfactory consideration of the recommendations that were formulated to the country under review in this section. In a decision by the Court of Administrative Judicial Review, it was determined that the resolutions of the Unit for Access to Information were only recommendations, and have no binding power. For the representatives of two civil society organizations, the Center for Archives and Access to Public Information (CAINFO) and Transparency Uruguay, this development is a concern. As well, CAINFO highlighted that the aforementioned Unit depends on the Agency for Electronic Government and Information Society, an agency that is subordinate to the Presidency of the Republic, and that it lacks its own budget. Both organizations noted that there is resistance in applying the Access to Public Information Law by some public agencies, both citing, for example, the Central Bank. Finally, the Institute of Communication and Development mentioned that one of the challenges in Uruguay today is the need to strengthen mechanisms for access to public information as well as mechanisms to ensure that the law and its regulations are being complied.

²¹⁴ See Response to the Questionnaire, pgs. 121 – 123, *supra* note 7.

²¹⁵ See Open Government, www.agesic.gub.uy/innovaportal/v/2053/1/agesic/gobierno_abierto.html?menuderecho=16

²¹⁶ See Response to the Questionnaire, pg. 123, *supra* note 7.

has been established since 2006, and the joint actions undertaken by the Board with Uruguay Transparent on International Anti-Corruption Day on December 6, 2012. Joint publications have also been prepared with the Center for Archives and Access to Public Information and Uruguay Transparent and the Institute for Training and Development. Moreover, with Uruguay Transparent, events were held where Uruguay's placing on the Transparency International Corruption Index is discussed.

[269] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that it is still working on implementing the commitments undertaken in the Uruguay Open Government Action Plan. (see measure a) of section 4.3 of Annex 1 to this Report)

[270] The Committee also observes that the country under review is in the process of preparing a new plan for 2013 – 2014, where all government bodies and representatives from academia and civil society may take part in its preparation. Therefore, a call is being made in order to receive proposals from all those who are working on Open Government initiatives to be included in the Open Government Action Plan 2013 – 2014.²¹⁷

[271] The Committee looks forward to information on the progress made with respect to this Action Plan.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 4.3.2 of Chapter II of the First Round Report)

[272] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following.²¹⁸

[273] – The Unit for Access to Information provides a free on-line course for any citizen or public official for the purpose to knowing their rights in this area and what are the mechanisms by which a citizen can make use of the right to access to public information.

[274] – The JUTEP holds courses that have a Right to Access to Public Information as a Human Right module, and is responsible for disseminating mechanisms for access to information.

[275] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that there are other areas where it might be useful to design and implement programs to publicize consultative mechanisms, such as in monitoring public

²¹⁷ See Open Government National Action Plan 2013 – 2014, www.agesic.gub.uy/innovaportal/v/2647/1/agesic/plan_de_accion_nacional_de_gobierno_abierto_2013_-_2014.html?menuderecho=16

²¹⁸ See Response to the Questionnaire, pg. 124, *supra* note 7.

administration and in the public consultation of draft law, and not just in the area of access to information. (see measure b) of section 4.3 of Annex 1 to this Report)

4.4. Mechanisms to encourage participation in public administration

Recommendation:

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

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 4.4.2 of Chapter II of the First Round Report)

[276] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following.²¹⁹

[277] – As mentioned for measure a) of section 4.3 of Chapter IV of this Report, the preparation of the “Uruguay Open Government Action Plan 2012,” where one of its general principles is to encourage civic participation, as follows: 1) make more transparent the policy and decision making, by establishing and using means to solicit feedback from the public, and increase public participation in the implementation, monitoring and evaluation of government activities, 2) protect the ability of non-profit organizations and civil society so that its operation is consistent with the commitment to freedom of expression, association and opinion, and 3) develop mechanisms for greater collaboration between governments and civil society organizations and businesses.²²⁰ In this respect, the country under review notes that: “*It aims to increase the availability of information on government activities, as the citizenry has the right to request information on its activities and support civic participation in policy and decision making, in order to obtain their opinion on the performance, monitoring and evaluation of government activities.*”²²¹

[278] – The collaboration between the National Customs Directorate and with the private sector in order to promote ethics and transparency. In this respect, it has entered into ten Memorandums of Understanding: with the Customs Brokers Association of Uruguay, the Freight Association, the Uruguayan Association of Business Express Services, the Uruguayan Chamber of Logistics, the Auto Chamber of international land transport of Uruguay, the Chamber of the Uruguay Trade Zone, the Union of Exporters, the Navigation Center, the Chamber of Commerce and the Chamber of Entrepreneurs and Allied Free Shops.²²² Through these agreements, a system to combat, with practical tools, all conduct that may involve acts of corruption is being established, so that it may be eradicated both in the public and private sectors. To that end, each agreement creates a Joint Committee consisting of four persons, two representing the Customs and two the corresponding Association, and prepares an action plan that

²¹⁹ *Ibid*, pgs. 125 – 126.

²²⁰ See Open Government, *supra* note 215.

²²¹ See Response to the Questionnaire, pg. 123, *supra* note 7.

²²² See Presentation by the National Customs Directorate (Dirección Nacional de Aduanas), www.oas.org/juridico/spanish/mesicic4_ury.htm

can be annual or biannual as appropriate, with meetings arranged to monitor and exchange developments of the process. In each plan, short, medium and long term commitments are set.

[279] The Committee takes note that during the on-site visit, it met with representatives from the National Customs Directorate and the Customs Brokers Association of Uruguay. Both bodies highlighted the collaboration being carried out with each other. For example, the National Customs Directorate, in its presentation during the on site visit, emphasized their integrity agreements with the private sector and the implementation of actions plans, while the Customs Brokers Association noted the importance of the Memorandum of Understanding with the Customs Directorate to establish a new ethical regime and the establishment of a mixed committee to receive complaints of unethical conduct.²²³ The representatives of the Customs Brokers also stated that a hotline was established to receive reports of corruption and that there is a notable change in conduct among customs officials and that it showed that the public and private sector can work together.

[280] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that it is still working on implementing the commitments undertaken in the Uruguay Open Government Action Plan, which would provide the country under a review a more comprehensive mechanism to strengthen participation of civil society and nongovernmental organizations in efforts to prevent corruption and raise public awareness of the problem. (see measure a) of section 4.4 of Annex 1 to this Report)

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 4.4.2 of Chapter II of the First Round Report)

[281] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following:²²⁴

[282] The country under review reiterates the information provided in the Response to the Questionnaire with respect to measure b) of recommendation 4.3 of Chapter IV of this Report. In this respect:

[283] – The Unit for Access to Information provides a free on-line course for any citizen or public official for the purpose to knowing their rights in this area and what are the mechanisms by which a citizen can make use of the right to access to public information.

[284] – The JUTEP holds courses that have a Right to Access to Public Information as a Human Right module, and is responsible for disseminating mechanisms for access to information.

²²³ See the draft Memorandum of Understanding between the National Customs Directorate and the Customs Brokers Association of Uruguay, as well as the Professional Code of the Customs Brokers Association of Uruguay, available at: www.oas.org/juridico/spanish/mesicic4_ury.htm

²²⁴ See Response to the Questionnaire, pg. 127, *supra* note 7

[285] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure b) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that although giving greater access to public information is a positive development, the design and implementation of programs to publicize participatory mechanisms in the public administration should also include other forms of participation that address other areas in a more comprehensive manner. (see measure b) of section 4.4 of Annex 1 to this Report)

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

Recommendation:

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

Measure a) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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. (the basis for this measure is found in section 4.5.2 of Chapter II of the First Round Report)

[286] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following:²²⁵

[287] – The country under review notes that this measure is being implemented in accordance with the “Uruguay Open Government Action Plan 2012,” as set out in its Response to measure a) of recommendation 4.3 of Chapter IV of this Report.

[288] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that it is still working on implementing the commitments undertaken in the Uruguay Open Government Action Plan. (see measure a) of section 4.3 of Annex 1 to this Report)

[289] The Committee also observes that the country under review is in the process of preparing a new plan for 2013- 2014, where all government bodies and representatives from academia and civil society may take part in its preparation. Therefore, a call is being made in order to receive proposals from all those who are working on Open Government initiatives to be included in the Open Government Action Plan 2013 – 2014.²²⁶

[290] The Committee looks forward to information on the progress made with respect to this Action Plan.

Measure b) suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

²²⁵ *Ibid*, pg. 128.

²²⁶ See Open Government National Action Plan 2013 – 2014, *supra* note 217.

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. (the basis for this measure is found in section 4.5.2 of Chapter II of the First Round Report)

[291] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as a step that contributes to progress in the implementation of the measure, the following.²²⁷

[292] – The country under review notes that this measure is being implemented in accordance with the “Uruguay Open Government Action Plan 2012,” as set out in its Response to measure a) of recommendation 4.3 of Chapter IV of this Report.

[293] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that it is still working on implementing the commitments undertaken in the Uruguay Open Government Action Plan. (see measure b) of section 4.3 of Annex 1 to this Report)

[294] The Committee also observes that the country under review is in the process of preparing a new plan for 2013- 2014, where all government bodies and representatives from academia and civil society may take part in its preparation. Therefore, a call is being made in order to receive proposals from all those who are working on Open Government initiatives to be included in the Open Government Action Plan 2013 – 2014.²²⁸

[295] The Committee looks forward to information on the progress made with respect to this Action Plan.

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

Recommendation 5.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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.

[296] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in the implementation of the measure, the following.²²⁹

[297] – The JUTEP entered into an Agreement with the with the Association Foundation for Social Science of the Faculty of Social Sciences of the University of the Republic and the Inter-American

²²⁷ Response to the Questionnaire, pg. 129, *supra* note 7.

²²⁸ See Open Government National Action Plan 2013 – 2014, *supra* note 217.

²²⁹ See Response to the Questionnaire, pg. 130, *supra* note 7.

Development Bank in order to formalize the existence of an Observatory on Corruption, which annually could give the Transparency Board the status of this scourge in Uruguay. It would also help in addressing policies to fight this problem.

[298] – In this respect, during the on-site visit, the representatives of the JUTEP stated that they had received two proposals from academic institutions for the establishment of the Observatory on Corruption. As well, the representatives noted that an observatory would allow Uruguay to better identify how corruption is evolving in the country. A quantitative and qualitative analysis would result in better information for the JUTEP.

[299] – Additionally, the JUTEP, in its Response, noted that it requested the assistance of consultants to draft the “National Strategy in the Fight against Corruption,” which was presented in 2002.²³⁰ This document serves to identify courses of action and strategies for the prevention, control and punishment for its implementation, and, secondly, a coordination, follow-up and evaluation mechanism for the implementation of the proposed program.

[300] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, bearing in mind that it is still working to establish the Observatory on Corruption, which could help in determining 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. (see sole recommendation section 5 of Annex 1 to this Report)

[301] The Committee looks forward to information on the progress made with respect to this Observatory.

Recommendation 5.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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

[302] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered.²³¹

[303] – The JUTEP has requested collaboration from the Inter-American Development Bank for carrying out a new specific investigation on corruption in Uruguay and is committed to get funding to install an Observatory on Corruption in Uruguay, where there are several options to carry out this project in collaboration with an institution of civil society.

[304] Moreover, the Committee takes note that the JUTEP organized the “First Meeting of Oversight Bodies on Corruption in the MERCOSUR”, with financing from the World Bank, which took place in Montevideo, April 27, 2012. The principal aim consisted in exchanging information and perspectives on bodies or systems responsible for preventing, detecting, suppressing or eradicating corruption in each of

²³⁰ See “National Strategy in the Fight against Corruption” (Estrategia Nacional en la Lucha contra la Corrupción), www.jutep.gub.uy/documents/10157/18334/719

²³¹ See Response to the Questionnaire, pg. 132, *supra* note 7.

the participating countries, trying to assess results and identify best practices amenable to implementation in the region.²³²

[305] The Committee observes that one of the goals for the JUTEP is to strengthen the relations and exchange of experiences with respect to the prevention, control and eradication of corruption among the oversight bodies in the countries of the MERCOSUR.²³³

[306] Given the foregoing, the Committee takes note of the satisfactory consideration by the country under review of recommendation 5.2 of Chapter IV of this Report, notwithstanding the fact that it is continuous in nature, and by the Committee expects the country under review to report on the actions taken in this regard in the annual progress reports provided for in Article 32 of the Rules of Procedure of the Committee.

Recommendation 5.3:

[307] The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 5.4:

[308] The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 5.5:

[309] The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1:

[310] The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

Recommendation 6.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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

[311] The country under review did not provide information with respect to the foregoing recommendation.²³⁴

[312] The Committee takes note that the purpose of the recommendation is to ensure that the central authorities designated by the country under review, the International Criminal Legal Cooperation Section

²³² See Controlling Corruption in the MERCOSUR (El Control de la Corrupción en el MERCOSUR), www.jutep.gub.uy/publicaciones

²³³ 2011 Annual Report of the JUTEP, pg. 50 *supra* note 36,

²³⁴ See Response to the Questionnaire, pg. 133, *supra* note 7.

of the Advising Central Authority for International Legal Cooperation, and the JUTEP²³⁵ have the necessary resources to ensure adequate performance of its functions.

[313] Given that in section 1.2 of this Report, the issues of resources was reviewed in a more comprehensive manner with respect to JUTEP as an oversight body, the Committee considers it appropriate to reformulate recommendation 6.2 of section 6 of Chapter IV to this Report, as follows:

[314] Ensure that the International Criminal Legal Cooperation Section of the Advising Central Authority for International Legal Cooperation has the necessary resources to ensure adequate performance of its functions. (see sole recommendation of section 6 of Annex 1 to this Report)

7. GENERAL RECOMMENDATIONS

Recommendation 7.1 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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.

[315] With respect to the aforementioned measure, in its Response, the country under review presents information and new developments. In this regard, the Committee notes the following as steps that lead it to conclude said measure has been satisfactorily considered.²³⁶

[316] – The JUTEP has held courses in Montevideo and in the interior of the country for public officials of various government bodies, on public ethics and conduct. The Committee takes note of the training carried out by the JUTEP, as set out in its Response to measure c) of section 1.1 of Chapter IV of this Report.

[317] – The Supreme Court of Justice conducts post graduate courses for its personnel, especially for those aspiring to enter the Judiciary, in its Judicial Studies Center of Uruguay. Additionally, during the on-site visit, the representatives of the Court stated that ongoing training is provided to judges on a judicial code of ethics. Moreover, training on standards of conduct is undertaken once a judge enters the Judicial Branch.

[318] – The Court of Accounts has a Training School, whereby courses are offered to their personnel to prepare them in the performance of their duties. During the on-site visit, the representatives noted that there are courses on standards of conduct carried out in the Court and provided to the Judicial Branch. It looks at ethical aspects and international conventions, which is carried out as workshops involving practical cases and with post evaluations. There is a network of schools throughout the country, which assists in disseminating these standards of conduct.

[319] – The National Public Administration School centralizes all courses for public officials across government, and in them, the members of the JUTEP offer courses every year.

[320] The Committee takes note of the presentation made by the National Customs Directorate during the on-site visit, where the representatives stated that since 2011, all persons that enter the Directorate

²³⁵ Previously known as the Advisory Board on Economic Financial Matters of the State.

²³⁶ See Response to the Questionnaire, pgs. 134 – 135, *supra* note 7.

receive an induction course on ethics. Moreover, it has carried out 4 workshops during the years 2011 and 2012 on this topic, and jointly with the JUTEP, it is preparing for long distance courses.²³⁷

[321] The Committee takes note of the satisfactory consideration by the country under review of recommendation 7.1.

Recommendation 7.2 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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.

[322] With respect to the aforementioned recommendation, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in its implementation, the following:²³⁸

[323] The country under review reiterates the information provides in the Response to the Questionnaire with respect to recommendation 5.2 in Chapter IV of this Report. In this respect:

[324] – *“The JUTEP successfully completed the implementation of a new diagnosis on the state of corruption in the country, not only to support the development of standards in the field, but also to support the design of strategies for cooperation at the international and interstate level. This diagnosis, the “Diagnostic Study of Corruption in Uruguay,”²³⁹ was completed in 2010 and is a collaborative project between the Transparency and Public Ethics Board, the Political Science Institute of the University of the Republic and the Inter-American Development Bank, with support by the Ministry of Economy and Finance, through its Program for Strengthening Agencies of Control and Budget Management. The JUTEP promoted the project and is its recipient.”*

[325] *New local and international contexts require speeding up the pace and the promotion of innovations in this respect. In this framework, the JUTEP requested from the Inter-American Development Bank collaboration for the realization of a new specific investigation on corruption in Uruguay. Now JUTEP is set to obtain funding to install an Observatory on Corruption in Uruguay for which it has a range of options to pursue the project in collaboration with an institution of civil society.”*

[326] 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 the need for it to continue to give attention thereto, bearing in mind that it is still working to establish the Observatory on Corruption, which could help the country under review in selecting and developing procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in the Report of the First Round. (see recommendation 7.1 of section 7 of Annex 1 to this Report)

²³⁷ See Presentation by the National Customs Directorate, *supra* note 222.

²³⁸ See Response to the Questionnaire, pg. 136, *supra* note 7.

²³⁹ Diagnostic Study of Corruption in Uruguay, 2010 (Estudio Diagnóstico sobre Corrupción en Uruguay, 2010), www.jutep.gub.uy/documents/10157/18334/713?version=1.1

[327] The Committee looks forward to information on the progress made with respect to this Observatory.

Recommendation 7.3 suggested by the Committee that requires additional attention within the Framework of the Second and Third Rounds:

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.

[328] With respect to the aforementioned recommendation, in its Response, the country under review presents information and new developments. In this regard, the Committee notes, as steps that contribute to progress in its implementation, the following.²⁴⁰

[329] – The JUTEF is responsible for the international relations of corruption issues. In this respect, it advises the Government, through the Ministry of Education and Culture and Ministry of Foreign Affairs. In turn, the law JUTEF is responsible for proposing to the Executive changes in the legislative framework it deems appropriate, for example, proposing standards of conduct in the public service, Decree 30/003, sanctions for those who do not file their sworn declaration, through Law 18046, the competence to the JUTEF to determine those that are required to submit a sworn declaration, Decree 338/010, and the draft law to strengthen transparency, which is being studied by the Senate Committee on Constitution and Codes.

[330] 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 the need for it to continue to give attention thereto, bearing in mind that procedures designed to analyze the mechanisms mentioned in the Report of the First Round, as well as the recommendations contained therein, encompass various areas that do not fall under the competence of the JUTEF, though relevant for its work, such as access to information, or the work of the International Criminal Legal Cooperation Section. In addition, this would also require coordination among all the important government bodies to combat corruption, something that is not occurring currently in a formal manner in the country under review. (see recommendation 7.2 of section 7 of Annex 1 to this Report)

²⁴⁰ See Response to the Questionnaire, pgs. 136 – 137, *supra* note 7.

ANNEX I

OUTSTANDING AND REFORMULATED RECOMMENDATIONS REGARDING THE TOPICS REVIEWED IN THE FIRST ROUND

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

1.1. Standards of conduct to prevent conflicts of interest and mechanisms to enforce them

Recommendation:

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

Suggested Measures:

- 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.
- 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.

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

Recommendation:

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

Suggested Measure:

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

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

Recommendation:

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

Suggested Measures:

- a) Evaluate the relevance of making regulatory changes needed to ensure protection for public servants making reports in cases where their hierarchical superiors are involved.
- b) Facilitate reporting mechanisms on acts of corruption by using the communication media.
- c) Carry out a comprehensive review of the existing witness protection program system in order to ensure, as regards specific cases related to public servants that report acts of corruption in the public service, that effective remedies exist vis-à-vis potential threats or retaliation that may be directed toward them as a consequence of complying with this obligation. Establish programs that encourage people to come forward as complainants and/or witnesses.

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

Recommendation:

Improve the use of sworn declarations of net worth.

Suggested Measures:

- a) Envisage the possibility of extending the regime of offences and sanctions to include other offences other than those already covered, such as the omission of information.
- b) 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.
- c) Implement a system to receive sworn declarations in electronic form.

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

Recommendation:

Strengthen the mechanisms for cooperation and coordination among oversight bodies.

4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)

4.1. General participation mechanisms

The Committee did not offer any recommendations in this section.

4.2 Mechanisms for access to information

The recommendation on this section was satisfactorily considered and, therefore, does not require additional attention.

4.3. Mechanisms for consultation

Recommendation:

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

Suggested Measures:

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

4.4. Mechanisms to encourage participation in public administration

Recommendation:

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

Suggested Measures:

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

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

Recommendation:

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

Suggested Measures:

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

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

Recommendation:

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.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation:

Ensure that the International Criminal Legal Cooperation Section of the Advising Central Authority for International Legal Cooperation has the necessary resources to ensure adequate performance of its functions.

7. GENERAL RECOMMENDATIONS

Recommendations:

7.1 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 7.2 below.

7.2 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.

ANNEX II

**AGENDA OF THE ON-SITE VISIT TO THE
ORIENTAL REPUBLIC OF URUGUAY**

<u>Sunday, April 7, 2013</u>	
18:00 hrs. – 19:00 hrs. <i>Hotel Four Points Sheraton</i>	Coordination meeting between the representatives of the member states of the subgroup and the Technical Secretariat
19:00 hrs. – 19:30 hrs. <i>Hotel Four Points Sheraton</i>	Coordination meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat
<u>Monday, April 8, 2013</u>	
08:30 hrs. – 11:30 hrs. <i>Offices of the Transparency and Public Ethics Board</i>	Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers
	<u>First Session:</u> Oversight Bodies and Follow-Up of the Recommendations of the First Round Topics: <ul style="list-style-type: none">• Cooperation between civil society, the private sector and oversight bodies in the fight against corruption• Challenges in the fight against corruption in Uruguay• Conflicts of Interest• Standards that ensure the proper conservation and use of government resources• Reporting acts of corruption• Sworn declarations of net worth• Access to information

	<p><u>Participants:</u></p> <p><i>Center for Archives and Access to Public Information</i> Dr. Edison Lanza, President Dr. Tania Da Rosa, Program Manager</p> <p><i>ICD – Institute of Communication and Development</i> Mr. Fernando Barreiro, Executive Director</p> <p><i>Custom Brokers Association of Uruguay</i> Mr. Pedro Victor Castro Garino, President Dr. Enrique Martinez, General Manager</p> <p><i>Association of Magistrates of Uruguay</i> Dr. Rolando Vomero, Chairman of the Board of Directors Dr. Cristina Cabrera, Member</p> <p><i>Association of Prosecutors of Uruguay</i> Dr. Carlos Negro, President Dr. Juan Gomez, Prosecutor Specializing in Organized Crime Dr. Monica Ferrero, Prosecutor Specializing in Organized Crime Dr. Mariela Muniz, Appointed Prosecutor</p> <p><i>Transparent Uruguay</i> Dr. Pedro Cribari (President) Prof. Manuel Flores Silva (Executive Director) Dr. Hebe Martínez Burlé (Executive Director) Esc. Verónica García Leites (Advisor)</p>
<p>11:30 hrs. – 12:30 hrs. <i>Offices of the Transparency and Public Ethics Board</i></p>	<p>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional organizations, academics or researchers. (continuation)</p>

	<p><u>Second Session:</u></p> <p>Topic:</p> <ul style="list-style-type: none"> • Outcome of the Diagnostic Study on Corruption in Uruguay
	<p><u>Participants:</u></p> <p><i>University of the Republic – Faculty of Social Sciences</i></p> <p>Mr. Daniel Buquet, Researcher and Professor</p> <p>Mr. Gerardo Caetano, Researcher and Professor</p> <p>Mr. Rafael Piñeiro, Researcher and Professor</p>
<p>12:30 hrs. – 14:00 hrs.</p>	<p>Lunch</p>
<p>14:00 hrs. – 18:30 hrs.</p> <p><i>Offices of the Transparency and Public Ethics Board</i></p>	<p>Transparency and Public Ethics Board</p> <p>The Members of the Board, Dr. Luiz Yarzabal, President, Dr. Jose Pedro Montero, Vice-President, and Carlos Soares de Lima, Member, will be present during the visit to this body.</p>
<p>14:00 hrs. – 15:30 hrs.</p>	<p>Panel 1:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Institutional affiliation and independence • Determination of budget and human resources • Existence of manuals
	<p><u>Participants:</u></p> <p>Dr. Jose Pedro Montero, Vice-President</p> <p>Ms. Marta Gonzalez, Advisor on Financial-Accounting Matters</p> <p>Dr. Ivan Toledo, Secretary General</p>
<p>15:30 hrs. – 16:30 hrs.</p>	<p>Panel 2:</p> <ul style="list-style-type: none"> • Sworn declarations of net worth
	<p><u>Participants:</u></p> <p>Mr. Juan Mancebo, Manager for System of Sworn Declarations</p> <p>Ms. Rosario Cibils, Manager for Filing of Sworn Declarations</p> <p>Dr. Carlos Soares de Lima, Member</p>

16:30 hrs. – 17:30 hrs.	Panel 3: <ul style="list-style-type: none">• Mechanisms for internal control• Accountability mechanisms• Coordination with other authorities
	<u>Participants:</u> Ms. Marta Gonzalez, Advisor on Financial-Accounting Matters Ms. Teresa Spinelli, Manager of the Administration and Finance Division Dr. Luiz Yarzabal, President
17:30 hrs. – 18:30 hrs.	Panel 4: <ul style="list-style-type: none">• Results
	<u>Participants:</u> Mr. Juan Mancebo, Manager for System of Sworn Declarations Dr. Luiz Yarzabal, President Dr. Rodolfo Becerra, Counsel
18:30 hrs. – 19:00 hrs.	Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.
<u>Tuesday, April 9, 2013</u>	
9:00 hrs. – 12:00 hrs. <i>Offices of the Transparency and Public Ethics Board</i>	Supreme Court of Justice
9:00 hrs. – 10:00 hrs.	Panel 5: <ul style="list-style-type: none">• Brief presentation on the institution’s objectives, functions and structure (10 minutes)• Institutional strengthening• Human resources

	<p><u>Participants:</u></p> <p>Dr. Fernando Tobagliari, Clerk of the Court, Supreme Court of Justice</p> <p>Dr. Elbio Mendez Areco, General Director, Supreme Court of Justice</p> <p>Dr. Raul Oxandabarat, Director of the Institutional Communication Division</p> <p>Dr. Pilar Beñaran, Legal Director, Supreme Court of Justice</p> <p>Dr. Adriana de los Santos, Judge, Organized Crime</p>
10:00 hrs. – 11:00 hrs.	<p>Panel 6:</p> <ul style="list-style-type: none"> • Information to citizens • Results
	<p><u>Participants:</u></p> <p>Dr. Fernando Tobagliari, Clerk of the Court, Supreme Court of Justice</p> <p>Dr. Elbio Mendez Areco, General Director, Supreme Court of Justice</p> <p>Dr. Raul Oxandabarat, Director of the Institutional Communication Division</p> <p>Dr. Pilar Beñaran, Legal Director, Supreme Court of Justice</p> <p>Dr. Adriana de los Santos, Judge, Organized Crime</p>
11:00 hrs. – 12:00 hrs.	<p>Panel 7:</p> <ul style="list-style-type: none"> • Follow-Up <p>- General Recommendations</p>
	<p><u>Participants:</u></p> <p>Dr. Fernando Tobagliari, Clerk of the Court, Supreme Court of Justice</p> <p>Dr. Elbio Mendez Areco, General Director, Supreme Court of Justice</p> <p>Dr. Raul Oxandabarat, Director of the Institutional Communication Division</p> <p>Dr. Pilar Beñaran, Legal Director, Supreme Court of Justice</p> <p>Dr. Adriana de los Santos, Judge, Organized Crime</p>
12:00 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 15:00 hrs.	Court of Accounts
<i>Offices of the Transparency and Public Ethics Board</i>	

	<p>Panel 8:</p> <ul style="list-style-type: none">• Brief presentation on the institution’s objectives, functions and structure (10 minutes)• Determination of budget and resources• Proposals for institutional strengthening <p><u>Participants:</u> Dr. Jorge Rodriguez Pereira, Deputy Director for the Department of the Legal Division Dr. Diego Lamas, Attorney, Legal Division Dr. Fermin Farinha, Attorney, Legal Division Dr. Pablo Zak, Attorney, Legal Division Dr. Olga Santinelli, Internal Auditor</p>
15:00 hrs. – 16:00 hrs.	<p>Panel 9:</p> <ul style="list-style-type: none">• Coordination with other agencies involved in the fight against corruption• Difficulties – lack of sanction powers and treatment of observations <p><u>Participants:</u> Dr. Jorge Rodriguez Pereira, Deputy Director for the Department of the Legal Division Dr. Diego Lamas, Attorney, Legal Division Dr. Fermin Farinha, Attorney, Legal Division Dr. Pablo Zak, Attorney, Legal Division Dr. Olga Santinelli, Internal Auditor</p>
16:00 hrs. – 17:00 hrs.	<p>Panel 10:</p> <ul style="list-style-type: none">• Follow-Up - General Recommendations• Best Practices

	<p><u>Participants:</u></p> <p>Dr. Jorge Rodriguez Pereira, Deputy Director for the Department of the Legal Division</p> <p>Dr. Diego Lamas, Attorney, Legal Division</p> <p>Dr. Fermin Farinha, Attorney, Legal Division</p> <p>Dr. Pablo Zak, Attorney, Legal Division</p> <p>Dr. Olga Santinelli, Internal Auditor</p>
17:00 hrs. – 18:00 hrs.	<p>Panel 11:</p> <ul style="list-style-type: none"> • Results
	<p><u>Participants:</u></p> <p>Dr. Jorge Rodriguez Pereira, Deputy Director for the Department of the Legal Division</p> <p>Dr. Diego Lamas, Attorney, Legal Division</p> <p>Dr. Fermin Farinha, Attorney, Legal Division</p> <p>Dr. Pablo Zak, Attorney, Legal Division</p> <p>Dr. Olga Santinelli, Internal Auditor</p>
18:00 hrs. – 18:30 hrs.	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<p><u>Wednesday, April 10, 2013</u></p>	
08:30 hrs. – 12:30 hrs.	
<i>Offices of the Transparency and Public Ethics Board</i>	<p>Office of the Attorney General and Prosecutor</p>
08:30 hrs. – 10:00 hrs.	<p>Panel 12:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Adoption of decisions • Determination of budget and human resources

	<p><u>Participants:</u></p> <p>Dr. Ana Maria Davyt, Deputy Secretary of the Court and the Office of the Attorney General</p> <p>Dr. Caludia Aquino, Deputy Secretary of the Court and the Office of the Attorney General</p> <p>Dr. Adriana Digiovani, Deputy Prosecutor Specializing in Organized Crime</p>
10:00 hrs. – 11:30 hrs.	<p>Panel 13:</p> <ul style="list-style-type: none"> • Manuals of duties, and training • Implementation of modern technological systems • Coordination mechanisms
	<p><u>Participants:</u></p> <p>Dr. Ana Maria Davyt, Deputy Secretary of the Court and the Office of the Attorney General</p> <p>Dr. Caludia Aquino, Deputy Secretary of the Court and the Office of the Attorney General</p> <p>Dr. Adriana Digiovani, Deputy Prosecutor Specializing in Organized Crime</p>
11:30 hrs. – 12:30 hrs.	<p>Panel 14:</p> <ul style="list-style-type: none"> • Results
	<p><u>Participants:</u></p> <p>Dr. Ana Maria Davyt, Deputy Secretary of the Court and the Office of the Attorney General</p> <p>Dr. Caludia Aquino, Deputy Secretary of the Court and the Office of the Attorney General</p> <p>Dr. Adriana Digiovani, Deputy Prosecutor Specializing in Organized Crime</p>
12:30 hrs. – 14:00 hrs.	Lunch
14:00 hrs. – 16:00 hrs.	
<i>Offices of the Transparency and Public Ethics Board</i>	Legislative Branch
	<p>Panel 15: Follow-Up</p> <ul style="list-style-type: none"> • Draft Law on Strengthening Public Transparency

	<p><u>Participants:</u> Senator Rafael Michelini, Member of the Senate Committee on the Constitution and Legislation</p>
<p>16:00 hrs. – 18:00 hrs. <i>Offices of the Transparency and Public Ethics Board</i></p>	<p>National Directorate of Customs</p>
	<p>Panel 16:</p> <ul style="list-style-type: none"> • Brief presentation on the institution’s objectives, functions and structure (10 minutes) • Adoption of Decisions • Determination of human resources and budget • Manuals of duties, and training • Implementation of modern technological systems • Coordination mechanisms
	<p><u>Participants:</u> Mr. Enrique Canon, National Director for Customs Dr. Mariana Rodriguez, Attorney</p>
<p>18:00 – 18:30 hrs.</p>	<p>Informal meeting between the representatives of the member states of the subgroup and the Technical Secretariat.</p>
<p>18:30 hrs</p>	<p>Final meeting between the representatives of the country under review, the member states of the subgroup and the Technical Secretariat.</p>

**CONTACT AUTHORITY FROM THE COUNTRY UNDER REVIEW FOR
COORDINATION OF THE ON-SITE VISIT, AND REPRESENTATIVES OF THE
MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP AND THE
TECHNICAL SECRETARIAT OF THE MESICIC**

COUNTRY UNDER REVIEW:

ORIENTAL REPUBLIC OF URUGUAY

José Pedro Montero Traibel
Lead Expert to the Committee of Experts of the MESICIC
President
Transparency and Public Ethics Board

Danilo Iván Toledo Villanueva
Secretary General
Transparency and Public Ethics Board

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Deputy Director for Transparency Policy Planning
Anti-Corruption Office

TECHNICAL SECRETARIAT OF THE MESICIC

Rodrigo Silva
Legal Officer, Department of Legal Cooperation
Secretariat for Legal Affairs of the OAS