Junta Asesora en Materia Económico Financiera del Estado

Response of Uruguay to the

Questionnaire of the Committee of Experts

Of the Follow-Up Mechanism for the

Inter-American Convention Against Corruption

Second Round

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ABBREVIATIONS

Central Bank of Uruguay	BCU
Code of Criminal Procedure	CPP
Uruguayan Criminal Code	CPU
National General Accounting Office	CGN
State Advisory Board on Economic and Financial Matters	Advisory Board
Planning and Budget Office	OPP
National Civil Service Office	ONSC
Integrated Information System	SIIF
Coordinated Text of the State Accounting and Financial Management Law	TOCAF
Financial Analysis and Information Unit	UIAF

QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND

CHAPTER ONE

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

1. Government hiring systems

a)Are there laws and/or measures in your country establishing government hiring systems? If so, briefly describe the main systems, indicating their characteristics and principles, and list and attach a copy of the related provisions and documents.

Also describe how the above systems ensure openness, equity and efficiency in your country.

Up to December 31, 2005, there was a ban in Uruguay on hiring new government employees in the central government (Executive Branch), Electoral Board [*Corte Electoral]*, Court of Accounts (*Tribunal de Cuentas*), Court for Administrative Litigation [*Tribunal de Contencioso Administrativo*], autonomous entities, and decentralized services, which was initially scheduled to run until 2015 (Art. 1 of Law 16127 of August 7, 1990 and Art. 27 of Law 17556 of September 18, 2002, both of which were recently revoked by Art. 10 of Law 17930 of December 19, 2005). As of January 1, 2006, persons who are not already public servants may be appointed in the government to one of every two vacant posts that occur from December 31, 2005 onwards. At the same time, there are laws that provided for the abolishment of vacant posts that occur after the corresponding promotions or advancements have been made, if such is the case, and other vacancies that occur (Art. 11 of Law 16462 of January 11, 1994 and Art. A7 of Law 17930 of December 19, 2005), with the exception of a 4% credit for such vacancies, in order to comply with Art. 42 of Law 16095 of October 2, 1989, which requires a percentage of vacancies in the central government to be set aside for or preferably filled by persons with disabilities (Art. 9 of Law 17296 of February 21, 2001, Art. 27 of Law 17556 of September 18, 2002, and Art. 17 of Law 17930 of December 19, 2005).

We therefore have various situations within this legal framework:

I) *Government hiring for posts that must by law be filled by competition.* If the law requires hiring by competition, these posts are usually exempt from the system for abolishment of vacancies (teachers, professors, musicians, etc.). When such vacancies occur and the government decides to fill them, it must extend an open invitation to candidates to compete based on certain terms and conditions, which are established in each case on the basis of the specialty involved; candidates must demonstrate their qualifications to perform the job at the time they apply. The different steps required in each case are then determined, including presentation of qualifications, competitive examination, personal interview and/or possible psychological tests, and finally appointment.

II) *Government hiring for units or agencies of the Executive Branch, Electoral Board, Court of Accounts, Court for Administrative Litigation, Autonomous Entities, Decentralized Services, and Departmental Governments.* As stated, there was a general prohibition in effect until 2015--but now that prohibition has been revoked--with the exception of any vacancies that may occur, with 4% of the abolished posts reserved to allow for the hiring of persons with disabilities. The derogation now in force will give the aforesaid entities and organizations the freedom, in the event there is no staff to redistribute from other offices, to appoint persons who are not public servants to one of every two vacancies that occur subsequent to December 31, 2005, and, in the case of autonomous entities and decentralized services, there are no limits imposed on vacancies. In these cases, government hiring of persons to professional, technical, administrative, and specialized posts is subject to public competition or to competition and an aptitude test (Art. 11 of Law 17930 of December 19, 2005 and Art. 5 of Law 16127 of August 7, 1990), after submitting a project for revision of organizational structures. The departmental governments have autonomy in hiring, within the framework of the

general criteria and competencies stipulated in the Constitution of the Republic itself. As for hiring requirements, there is no standard system, and the situation varies among the 19 departmental governments, as it does throughout the Government in general; the departments generally have broad discretionary powers, and requirements are limited to public competition for certain categories of work where, with a few exceptions, this mechanism is the general rule.

III) *Hiring of persons with disabilities*. This has been done over the years as described, with the requirement to set aside one or several vacancies; requests must be submitted to the Register of Persons with Disabilities, established by Art. 768 of Law 16736 of January 5, 1996 and administered by the National Honorary Commission of Persons with Disabilities, to obtain information on the persons registered and the degree of their disability. The requesting office may establish a selection procedure, such as a competitive or qualifying examination, or a drawing of lots, based on the nature of the post to be filled and the prior decision of the National Civil Service Office (hereinafter ONSC), for the persons listed in the Register who could perform the functions of the post created. The qualifications for each job will be set forth in the terms and conditions included in the invitation to the competition or drawing of lots, following approval by the ONSC. Every organization must publish the terms and conditions or procedural requirements for filling the vacancies in question in two nationally circulated newspapers for three days, at least thirty days prior to the selection procedure, following approval by the ONSC (Decree 431/99 of December 22, 1999).

IV) *Hiring for other government offices (Legislative Branch, Judicial Branch).* In these cases, there are no hiring prohibitions and no hiring system specified by the law. Thus, every entity establishes what it deems to be appropriate procedures (direct hiring, a selection process--such as a public competition or qualifying examination--applicable to applicants on a closed list of candidates, or to applicants on an open list resulting from a public announcement, etc., or a drawing of lots among applicants on a closed or open list).

V) *Hiring of persons to perform contract work in the government.* There are no legal requirements here either for a uniform system to be applied across the board. There are various types of links in the area of public service contracts: a) *Contracts for permanent jobs*: authority to issue such contracts was suspended until 2015, but now, as of January 1, 2006, they may again be offered. In this case, the rules to be applied are the same as required for appointments to budgeted posts, referred to under I), namely, competition and/or qualifying examinations for professional, technical, administrative, and specialized positions (Arts. 11 of Law 17930 of December 19, 2005 and 5 of Law 16127 of August 7, 1990), in accordance with procedures established for each case; b) *Seasonal contracts*: for personnel needed temporarily for a specific period of time, such as beach attendants, lifeguards, or workers for public works projects, in which case the income will depend on the terms and conditions specified in the posting of the vacancies to be filled; c) *Internships and traineeships:* this system is regulated by Arts. 620 to 627 of Law 17296 of February 21, 2001, which require the prior express authorization of the Executive Branch to extend a public invitation among students, whose status must be certified by the institute where they are enrolled. Among them, preference will be given to university students and to students of the Technical and Occupational Education Council [*Consejo de Educación Técnico Profesional*] of the National Public Education Administration and to those in the Training and Production Center (CECAP). The duration of the contract may be for no more than twelve months, and may be extended for another twelve months, after which time such persons will be disqualified from receiving contracts under this system from other government offices. The law specifies that persons working under such contracts will not have the status of public servants; d*) "Cachet" contracts:* only for the Ministry of Education and Culture, as temporary contracts for artists, teachers, radio and television technicians, entertainers, journalists, juries and managers of cultural projects, regulated by Arts. 319 of Law 17296 of February 21, 2001 and 234 of Law 17930 of December 19, 2005. There is no established selection system in this case either, but contracts are awarded primarily on the basis of the candidate's personal qualifications, as they are *intuitu personae* contracts for musicians, painters, teachers, and the like. Here again the law stipulates that persons under these contracts will not have the status of civil servants. e*) Highly specialized jobs:* regulated by Arts. 714 to 718 of Law 16736 of January 5, 1996 and Decree 303/96 of July 31, 1996, which provide for an evaluation mechanism to be applied "using objective procedures applicable to all citizens of the Republic," taking into account previous government work, under the responsibility of a

special committee of the Executive Branch, made up of a representative of the Planning and Budget Office (hereinafter OPP), a representative of the ONSC, and a representative of the National General Accounting Office (hereinafter CGN). Consideration will be given to academic background, technical and management specialization, and the personal and behavioral aptitude and qualifications required to perform the functions, in addition to the results of proficiency tests. Contracts will be for the term during which good performance is maintained. f*) High priority jobs:* regulated by Art. 7 of Law 16320 of November 1, 1992, limited to technicians who have demonstrated their qualifications for the job to the Executive Branch committee referred to in the previous clause. Contracts will be for one year and renewable up to the end of the administration in power; g*) Short-term contracts ??:* regulated by Arts. 29 to 43 of Law 17556 of September 18, 2002. In this case, the law requires that they be filled by open public notice, and that the selection be made by competition, and published by adequate electronic means. The contracts will be awarded for a term of no more than twelve months, and may be renewed as many times as deemed advisable, although the person under contact will not acquire the status of civil servant. In the event that the term exceeds 24 months, the party under contract will be entitled, by annulment or nonrenewal of the contract, to receive unemployment benefits and severance pay.

As regards the way in which these systems ensure openness, equity, and efficiency, as we have seen, many of the procedures used for government hiring do not ensure openness, equity, or efficiency. In cases in which the authority offering the post deems it necessary, the terms and conditions for determining the selection procedure are established, and in other cases where the law requires competition or the government office offering the post so establishes, the procedure will be the one imposed according to the terms and conditions contained in the notice, thereby ensuring an open procedure, equity in the selection process, and efficiency in the results of the selection.

With regard to the foregoing, please note the following points, among others:

i.- Governing or administrating authorities of the systems and control mechanisms

The authority that exercises control over hiring is the ONSC, together with the CGN and OPP, by providing lists of personnel for reassignment, registering all contracts and their various types, and reporting on possible obstacles to hiring, and by monitoring all stages and procedures of hiring systems based on public competition for posts. It also plays an important role in the case of job notices for posts to be filled by handicapped persons.

ii.- Access to the public service through a merit-based system.

There is no general assurance of access to public service through a merit-based system, with the exceptions mentioned earlier. This is only possible in those instances when the determining authority so provides or in those cases where the law stipulates that posts must be filled by competition.

iii.- Advertisement for the selection of public servants, indicating the qualifications for selection.

As stated, advertisement for selection of public servants is not assured in all cases, except when circumstances so require because the authority in charge of the selection so stipulated or the law imposes a competitive system. In these cases, the terms and conditions for the selection are published so as to ensure that the largest number of interested parties possible apply, and the qualifications are the ones specified in the terms and conditions, which will vary depending on the post in question and the specialization sought.

iv.- Ways to challenge a decision made in the selection system.

Whenever an open, public selection system is established, the entire system of government resources provided for in the Constitution of the Republic will be applied, so that any government acts carried out in relation to the selection may be challenged, if the challenging parties believe that by such acts, the government is not following the terms and conditions of the selection process or is not

ensuring due equality among candidates, or is not ensuring impartiality in the test results. Any such government action may be challenged directly to the contracting authority and, jointly and subsidiary, to a higher authority, which has the power to correct the act in question, if such an authority exists. Once administrative procedures have been exhausted, it is possible to appeal to the Court of Administrative Litigation to obtain annulment of the acts deemed illicit. Obviously, the appeals system is not effective when selection systems are not public or do not comply with the terms and conditions or laws governing them.

v.- Relevant exceptions to the above.

As described, the exception is provided by the existence of public, regulated selection systems, since the opposite is the rule. Most appointments are not preceded by adequate or minimum advertising, and do not follow rules of any kind, so it is impossible to control them and they are not accessible to the majority of citizens. Only those selection processes for which the law has provided for competition or public notice and requires public competition and proficiency tests ensure control of varying effectiveness of the results.

a)In relation to question a), state the objective results obtained, including any available statistical data.

b)If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain, and strengthen government hiring systems, in accordance with Article III(5) of the Convention.

As we have stated, almost twenty years ago the government decided to prohibit hiring of personnel and to encourage the departure or resignation of public servants in various ways. The results have shown that the intended number of employees did not leave, and the hiring of new public servants by other methods than by appointment to budgeted posts could not be prevented. In recent years, we have seen that the government has imposed stricter conditions and controls, by requiring competition for posts, aptitude tests, requests for prior authorization from the Executive Branch, adequate advertising, or ONSC controls, or by restricting the stay in government of those appointed, especially when they are hired according to nontraditional procedures (scholarships, internships, cachet, short-term contracts, etc.). The recent derogation of the suspension in force for hiring of public servants, to the extent that the requirement of aptitude tests or public competition have been maintained, leads one to believe that measures to strengthen the systems for hiring public servants are probably increasing.

2. Government systems for procurement of goods and services

a) Are there laws and/or measures in your country establishing government systems for procurement of goods and services? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.
Also describe how the above systems ensure openness, equity and efficiency in your country.

In relation to the above, refer, among others, to the following aspects:

i. Procurement systems with a public tender and without a public tender.

Virtually the entire government procurement system is regulated by the so-called Coordinated Text of the State Accounting and Financial Management Law (hereinafter TOCAF), which groups together all the rules and regulations pertaining to both government procurement and government accounting and financial management.

The system referred to covers all the agencies involved in management of government finance and assets: the Executive, Legislative, and Judicial Branches of government, the Court of Accounts,

the Electoral Board, and the Court for Administrative Litigation (entities created under the Constitution that operate with technical and functional autonomy from the branches of government), departmental governments, autonomous entities and decentralized services, public education institutions, and in general, all government organizations, services, or entities (Art. 2 of TOCAF). It establishes that all contracts extended by the State will be by the procedure of public tender, whenever such contracts entail operating costs or investment or outlays of government monies, and by auction or public tender, whenever such contracts engender income or resources (Art. 33 of TOCAF)

Notwithstanding the principle that all purchases or contracts are to be concluded by public tender or auction, that same article provides for the possibility of using an abbreviated bidding procedure when the amount of the operation does not exceed a certain limit or, by direct procurement, when the operation does not exceed a certain lesser amount, or in any of the following special circumstances:

a) when the contract is concluded between government organizations or offices or nonstate public persons;

b) when the public or abbreviated tender or auction receives no bids or no valid or admissible bids are submitted or bids that are clearly inappropriate, in which case the contracting must be done on the basis of identical specifications and terms and conditions as the failed procedure, with an invitation to the original bidders, among others;

c) when the tender is for the procurement of goods or services that are exclusively manufactured or supplied by those that have a concession to do so, or that are only in the possession of persons or entities with exclusivity for their sale;

d) to acquire, execute, or restore works of art, or scientific or historical works, whenever a competitive process is not possible or the contracts must be awarded to specialized persons or firms of proven competence;

e) procurement of goods that are not produced or available in the country and so it is appropriate to arrange such procurement through international organizations to which the country belongs;

f) repairs of machinery, equipment, or engines which would be difficulty to disassemble, transfer, or test in advance if they were subject to public tender;

g) when contracts must necessarily be concluded in foreign countries;

h) when circumstance require that the transaction be conducted in secrecy;

i) when proven unforeseen reasons for urgency come into play and public tender or auction is not possible or would seriously affect the service in question;

j) when there is an obvious scarcity of the goods or services to be contracted;

k) procurement of goods by public auction, in which case the maximum amount to be paid is the one based on a previously performed appraisal;

l) purchase of livestock by selection, in the case of specimens with special characteristics;

m) sale of products for economic development or to meet health needs, provided that the sale is made directly to users or consumers;

n) procurement of teaching or bibliographic material abroad whenever it is acquired from publishers or companies specializing in the subject;

o) procurement of fresh provisions from markets or fairs, or directly from producers;

p) procurement abroad of crude oil and its derivatives, basic oils, additives for lubricants, and the corresponding freight charges;

q) procurement under intergovernmental agreements or from foreign government agencies that involve countertrade with national exports.

It is further established that the Executive Branch, following a qualified opinion from the Court of Accounts, may authorize special contracting procedures and systems, based on the principles of openness and equality among bidders, whenever the characteristics of the market or the goods or services would so advise the government to do so. The authorizations in questions must be reported to the General Assembly (meetings of both legislative chambers, representatives and senators) and published in the Official Gazette and in another nationally circulated publication, authorizing autonomous entities, decentralized services, and departmental governments to use such procedures (Art.34 of TOCAF).

The laws in question require the Executive Branch, with the approval of the Court of Accounts, to formulate regulations or single general terms and conditions or specifications in the case of

contracts for nonpersonal services and supplies, public works, and personal services, compulsory for public and abbreviated tenders in excess of certain amounts. Such contracts must contain as a minimum: a) the conditions for admissibility of the bids, the effects of noncompliance with the contract, and, in particular, the penalties for delay, the grounds for avoidance, and the action to be taken with regard to guarantees and damages of noncompliance; b) the special and economic-administrative conditions of the contract and its execution; c) the rights and guarantees available to bidders; and, d) any other conditions or specifications deemed necessary or advisable to ensure equality among bidders and the maximum number of bidders in such tenders (Art. 44 of TOCAF).

These general bidding terms and conditions must be supplemented by specific terms and conditions for each tender, formulated by the requesting organization, and must contain the following: a description of the purpose of the tender; the special or technical conditions; the principal factors to be taken into account in evaluating the bids, in addition to the price; the currency in which they are to be quoted; the procedure for converting into a single currency, for comparison of bids; the time for conversion; the type and amount of the contract compliance guarantee; the method of supply, the place, date, and time for submitting and opening bids; and, if applicable, the deadline for shipment and any other specification that would help ensure the necessary clarity for possible bidders (Art. 45 of TOCAF).

Invitations to public tenders and auctions must be published in the Official Gazette and in another nationally circulated publication at least fifteen or thirty days prior to the opening of the bidding, depending on whether the tenders are for bidders in the country or if they are open to foreign bidders, without prejudice to other measures deemed advisable to ensure advertisement of the event, in addition to dissemination by means of foreign diplomatic agencies accredited in the country, if such is needed to encourage presentation of bids from foreign agents. The same must contain, as a minimum, the organization or office and authority issuing the invitation, the purpose of the invitation to bid, and summarized specifications that would enable possible bidders to interpret it easily, the budget or basic estimated price in cases in which bids are to be made on that basis, the office, place, days, and business hours to pick up the terms and conditions, and other specifications pertaining to the tender and conditions for the opening of the bids (Art.47 of TOCAF).

For abbreviated tenders, at least six companies operating in the relevant field of the tender will be invited to bid, and the invitation must be received at least three days prior to the opening of the bidding, notwithstanding any advertising deemed advisable. Any bids submitted by firms not invited must be accepted (Art.48 of TOCAF).

In all public and abbreviated tenders over and above a specific amount, and prior to awarding a contract, the report of an advisory committee on award of bids appointed by a higher authority of the entity is required. This committee is responsible for issuing a report or opinion on the bid that is best advised in the interests of the State and the service needs in question. The committee will propose the winning bidder on the basis of a well-founded decision that is not binding for the ordering authority (Art. 57 of TOCAF). Whenever the amount of the public tender is four times the amount required for abbreviated tenders, the government must open the bidders' papers for inspection, and make them public, once it has received approval from the advisory committee, before it accepts or rejects the bids. (Art. 58 of TOCAF).

As for publication of procedures for public or abbreviated tender or direct procurement, besides publication of the invitation to bid in the Official Gazette and in another nationally circulated newspaper in the case of public tenders and an invitation to no less than six companies in the relevant field of the tender in the case of abbreviated tenders, an additional requirement is imposed to publish electronically the document awarding the contract in the case of public and abbreviated tenders, contracts under exceptional systems, and extensions and amendments of contracts, and acts of reiteration of expenditures in the opinion of the Court of Accounts (Art.163 of Law 17556 of September 19, 2002).

All implementing agencies of the central government must communicate to the website www.comprasestatales.gub.uy, solely for information purposes, the specific terms and conditions of every public or abbreviated tender held, at the same time as the publication or invitation to bid, in addition to decisions providing for the awarding of the contract or the rejection of all bids submitted, or declaring that the tender was without bidders, within a maximum of ten days from the date of notification of the decision (Decree 66/002 of February 26, 2002). In the case of direct procurement

procedures--both by amount and by exception--communication of the invitation must be entered on the website and published there for at least 48 hours prior to the close of the bidding process, and the decisions on awarding of contract together with a list of the bidders must be published within ten days of the date of notification. Executing units that have not certified these communications may not commit operating or investment expenditures (Decree 232/002 of June 9, 2003).

ii. Governing or administrating authorities of the systems and control mechanisms.

The Integrated Financial Information System (hereinafter SIIF) was established by Art. 42 of Law 16736 of February 5, 1995, subsequently amended by Art. 7 of Law 17213 of September 24, 1999, and reflected in Art. 81 of TOCAF. It is an excellent tool for implementing expenditures by computer, and for control by the competent agencies. Its effectiveness is based on the fact that the computer system does not authorize continuation of the expenditure process under public contracts if the computer does not have a legal appropriation available. In this case, the computer cannot issue the payment order in question.

At the start of the fiscal year, the CGN earmarks the appropriations for every entity authorized by the National Budget Law, through the computerized subsystem called SEG (Expenditure Execution System), regulated by Decree 395/98 of December 30, 1998. The executing unit cannot commit operating or investment expenditures, unless there is a legal exception, if it does not have the available credit (Arts. 15-17 of TOCAF) and it has not submitted proof of having published and advertised the bidding invitations (Decree 525/003 of December 18, 2003). As we stated earlier, the CGN requires certification that organizations have complied with the requirement to advertise and publish on the website before authorizing them to continue with the expenditure process.

The central accounting offices in each agency or entity must receive a prior report in the documents that generate commitments, that indicates the availability of an appropriation for the expenditure item and its amount, without which record it is not valid, and verifies compliance with the rules in force for commitments, settlement, and payments (Art. 90 of TOCAF), and the CGN, through designated officials, must be advised of the amounts assigned to the central accounting offices or the branch units acting for them (Art. 89 of TOCAF, as revised y Art. 15 of Law 17213 of September 2, 1999). The accounting offices of the Office of President of the Republic, the Chamber of Representatives and Senators, the Judiciary, the Electoral Court, the Audit Office, the Court for Administrative Litigation, and any entity or service for which the CGN engages in prior intervention and settlement of expenditures, have the same powers as the ministerial accounting offices (Art. 137 of TOCAF). Moreover, the Court of Accounts must intervene preventively in the case of expenditures and payments to be made by government entities for the sole purpose of certifying their legality, and making any appropriate comments, if necessary (Art. 211 of the Constitution). Administrative documents and purchase orders that award contracts for goods or services must be accompanied by a voucher issued by the State Integrated Financial Information System that certifies the existence of sufficient funds to cover the resulting outlay (Art. 27 of Law 17243 of June 29, 2000). Finally, units may not list the payment obligation with the Integrated Financial Information System without prior publication of the corresponding contract award decision, in addition to a list of the bidders, on the web site, and any extensions or renewals of contracts (Decrees 526/003 of December 18, 2003 and 175/004 of May 26, 2004); failure to comply with this requirement is regarded as a serious offense, which must be reported to the Executive Committee for Government Reform (CEPRE), so that the appropriate sanctions can be applied. Payment of obligations directly to the beneficiary is done by the National Treasury in the event they are listed in the General Register of Government Suppliers (Art. 22 of TOCAF and Decree 342/99 of October 26, 1999).

iii- Register of Contractors

As indicated, the National Treasury keeps the General Register of Government Suppliers in the Executive Branch, through the List of Beneficiaries of the Integrated Financial Information System. The Register contains: a) data identifying the suppliers and the persons representing them, along with any other information that the National Treasury deems relevant; b) sanctions imposed on suppliers for noncompliance with government contracts; and c) background information on transactions and

operations of the suppliers (confidential in nature). The registration is compulsory for all parties interested in contracting with the government.

iv- Electronic methods and information systems for government procurement.

This was already covered under item ii (Governing or administrating authorities of the systems and control mechanisms).

v- Public works contracts.

As we have stated, there are General Specifications for Public Works, that are supplemented by specific terms and conditions for each project, which generally take into account its scope, and include an initial prequalifying stage for bids, based on the past performance or record of the bidders or any other type of requirements established in the specifications. Those who qualify in the first stage then proceed onto the second stage, which involves the final award of the contract. Over and above these specificities, there are no differences between these and the other general procurement systems already described.

vi- Identification of the selection criteria for contractors (e.g., price, quality, and expertise).

The principle of equality among bidders requires that no distinction be made among them, except in the case of public works contracts in which the specific terms and conditions stipulate a prequalification process, which could require that the contractor have a certain competence or infrastructure, in which case the company would be permitted to submit a bid, among others. The contract must be awarded on the basis of the factors listed in the specifications to be taken into account in accepting a bid, or if other criteria have not been indicated, on the basis of what is considered in the best interest of the government. The contract does not necessarily have to be awarded to the lowest bidder, unless other circumstances and quality are identical. In this situation, when bids are similar, any bidders that have a history of noncompliance with the government may of course be ruled out. For this purpose, the OPP, through the Unit for General Coordination of the Government Reform Project, in coordination with the CGN, is responsible for designing, development, and implementing a compulsory Government Procurement Information System to contain all information regarding government contracts concluded (Decree 342/99 of October 26, 1999).

vii- Ways to challenge a selection

The Uruguayan Constitution provides for a single system for challenges whenever a government decision is believed to be illegitimate or to adversely affect the legitimate personal interests of the party in question.

Express or tacit government acts may be challenged by an appeal for reversal filed with the same entity as the one responsible for the acts, within ten continuous days following the date of personal notification, if applicable, or publication in the Official Gazette. When the government document was issued by a lower-ranking organ, it may also by jointly and subsidiarily challenged by appeal to the highest administrative authority over that entity, or by appeal based on procedural violations of the lower entity [*recurso de nulidad*] filed with the Executive Branch, if the document was issued by an organ subject to administrative oversight (Art. 317 of the Constitution). All government authorities are required to decide and settle any petition or appeal filed against their decisions within certain periods of time. If the period lapses before a decision is issued, the petition or appeal will be considered as denied and the time period applicable to the higher body will automatically begin to lapse, if subsidiary appeals were filed (Art. 318 of the Constitution), in which case they must be automatically exempted, and the challenged act considered tacitly confirmed. If the appellant is personally notified of the specific decision issued in the case of the single or last appeal filed or if it is published in the Official Gazette, whichever is applicable, before the period of time stipulated in each case has lapsed, administrative remedies will be exhausted as of the date of notification or publication (Art. 7 of Law 15869 of June 22, 1987).

Petitioners and persons whose rights or interests are considered to have been directly harmed by the challenged administrative act are eligible to file administrative appeals (Art.152 of Decree 500/91 of September 27, 1991).

Once administrative remedies have been exhausted, challenging parties may file a petition to declare the contract null and void (*accion de nulidad*) with the Court for Administrative Litigation.

Government acts in contracting procedures may be challenged by filing the appropriate appeals according to the terms and conditions stipulated in the Constitution and laws regulating the subject, and they will always have suspensive effect, unless the acting government entity, by well-founded decision, declares that said suspension would adversely affect urgent service needs or cause serious harm. Once the appeal is decided, the responsibilities of the responsible public servants and organs and of the appellant itself will be evaluated. If the appellant is found to have acted in bad faith or in a clearly unfounded way, the sanction of suspension or elimination from the Register of Government Contractors and Suppliers will be imposed, without prejudice to judicial action that may be appropriate for reparations or compensation for damages caused the government (Art. 62 del TOCAF).

b) In relation to question a), state the objective results obtained, including any available statistical data (e.g., percentage of contracts awarded through public tender; sanctions imposed on contractors).

c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government systems for procurement of goods and services, in accordance with Article III (5) of the Convention.

There is no response to this question, since the laws established to maintain the system for procurement of goods and services are in place and, as we have indicated, measures to prevent any deviation from the law are gradually being strengthened, so that further improvements or modification to the procedures described above are not ruled out.

CHAPTER TWO

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

a) Are there laws and/or measures in your country establishing systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities? If so, briefly describe them and list and attach a copy of the related provisions and documents.

In relation to the above, refer, among others, to the following aspects:

i. <u>Mechanisms for reporting (e.g., anonymous reporting, protection of identity reporting)</u>

Under the Uruguayan law of criminal procedure, the general system for reporting criminal acts is governed by Article 105 and subsequent articles of the Code of Criminal Procedure (hereinafter CPP). This law establishes that any person who has knowledge by any means of the commission of a crime subject to prosecution by the state may report it to the judicial or police authorities. The report may be oral or in writing, and may be presented personally or by proxy, which mean that an anonymous complaint presented directly to judicial or police authorities is implicitly ruled out from consideration as a formal complaint.

A police report is processed by a preliminary investigation subject to judicial notification, and is then handed over to the judge for the judicial investigation. In this case, or when the report is presented directly to the Judiciary, the investigation begins with a stage known as "*presumaria,"* when the judge, with the assistance of the Office of the Attorney General, determines if there are grounds to initiate criminal proceedings against a person. This preliminary investigation is governed by Articles 112 to 124 of the CPP. The accused party is not restricted from knowledge of this judicial investigation, unless the judge, based on a well-founded decision, should so decide (Law 17773, which amends Article 113 of the CPP). The reasons for decreeing the confidentiality of an investigation have to do with the possibility that efforts to gather evidence will be thwarted or witnesses intimidated, or even to ensure that the person being investigated is not aware of it, so that investigative measures can be adopted that would necessarily require the subject of the investigation to be unaware of it (for instance, tapping of telephone lines (Article 212 of the CPP), or incitement to commit a crime (Article 8 of the Criminal Code).

The possibility of making the preliminary judicial investigation confidential prevents access by the accused to production of evidence and consequently to the identity of the witnesses. This provision for confidentiality may not last for more than one year, and further ceases in the event that the accused is indicted. At that time the accused may know the identity of the witnesses against him.

Consequently, Uruguayan law on criminal procedure does not include the mechanism of anonymous reporting. In this case, a distinction must be drawn between the report made to a judicial or police authority and the use of anonymous informants by the police authority. Although this is not recognized by any law, it is customary practice that the police and not the judicial authority receive anonymous reports described as "confidential." These reports or complaints lack formal probative value, but are used for the purpose of compiling useful information to produce valid evidence in a criminal proceeding. This practice has not been questioned by the Judiciary.

There is a rule of exception that applies to employees of companies regulated by the Central Bank of Uruguay. Since public banks are subject to this control, it is applicable to reports of government corruption committed in these institutions. This rule is contained in Article 3 of Law 17613, which requires reporting to the Central Bank of Uruguay (hereinafter BCU) of any violations of laws and decrees governing these operations, or of general laws and specific instructions issued by the BCU that

are discovered by the reporting parties in the performance of their functions. In this case, the report and the identity of the reporting party are covered by the secrecy obligation established in Articles 22 and 23 of Law 16696.

Nor is testimony with protection of identity established by law. If this is understood in the sense of preventing the accused from knowing the actual identity of the witness, and not in the sense of changing the identity of the witness, this is possible only during the specific time of the investigation. As the aforesaid Law 17773 allows the judge to decree the secrecy of an investigation for a maximum period of one year, it would mean that the person under investigation would not know the identity of the witness or the content of his testimony for that period of time alone. Once this time lapses or criminal proceedings are initiated and the person is indicted, the accused has the right to interrogate the witnesses and know their identity.

Therefore, since the law does not expressly permit anonymous reporting or testimony with protection of identity, they are not regarded as evidentiary methods that are compatible with the Uruguayan legal system of criminal procedure. According to the CPP, the accused is entitled to interrogate the reporting party and witnesses (Art. 113 of the CPP). Furthermore, Art. 8 of the American Convention of Human Rights, approved in Uruguay by Law 15737, also prohibits concealing the identity of witnesses from parties, as that provision establishes the right of the accused to examine "witnesses present [in the court]." The term witness also includes the reporting party.

However, testimony provided by audiovisual means is admissible; in this way, the accuser or the witness can give their statement away from the pressure of the accused. Even if not specifically provided for by law, this method is admissible because it preserves the principle of knowing the identity of the witness and the possibility of presenting objections or challenges during the examination. This method is used whenever needed to preserve the accuser or witness from possible intimidation or coercion as a result of the physical presence of the accused. It also guarantees that the court not only perceives visually the statement of the witness, but also his gestures, a factor which is relevant to overall assessment of the testimony.

The laws and regulations cited also rule out the possibility of accepting "anonymous witnesses" under Uruguayan law governing criminal procedure.

Nonetheless, these laws are mitigated by a lower ranking law, National Executive Decree 25 of July 25, 2000, regulating Art. 36 of Law 16707, which instructs the Executive Branch to implement a program for protection of witnesses and informants of allegedly criminal acts.

This Decree establishes mechanisms for protection of witnesses or informants of allegedly criminal acts (Art. 1). Articles 3 and 4 provide for mechanisms to preserve the identity of the witness or reporting party. Subparagraph a) of Art. 4 specifically establishes that "the proceedings shall not include the name, domicile, place of work, or profession, or any other data that could be used to identify the same; a number or any other symbol can be used in their place to keep this information confidential."

There may be a contradiction between this provision and criminal procedural law, since it would limit the right of the accused to fully know the evidence for the charges and to examine the witnesses and reporting parties. The Decree establishes that this measure must be determined by the judge in the case of an ongoing criminal proceeding. Consequently, an anonymous witness or reporting party are not means of proof, but means of information that cannot be used as evidence in a criminal proceeding.

As regards other mechanisms for reporting, they must be cited in the various reporting obligations. Under Uruguayan criminal law, Art. 177 of the Uruguayan Criminal Code (hereinafter CPU) establishes a reporting obligation for public servants. This law establishes that the following are

considered as committing a crime: *a) competent judges who fail to intervene in a crime or delay intervention; b) judges who are not competent in criminal matters who fail to report or delay reporting a crime they have knowledge of; c) police officers who fail to report, or delay in reporting, any crime they have knowledge of by reason of their duties; and, d) any other public servants who fail to report or delay in reporting crimes committed in the section in which they are working or which affect that section.* The offense is aggravated whenever the omission or delay in reporting involves a crime against the government. The punishment is three to eighteen months in prison.

Under Uruguayan administrative law, the obligation of public servants to report is also established in the "Rules of Conduct in the Civil Service," Decree 30/003 of January 23, 2003 (hereinafter "the Rules of Conduct"). Art. 40 of the Rules of Conduct states that all public servants are required to report irregularities or corrupt practices[1] they have knowledge of by virtue of their functions and that they learn of in the circumstances stipulated in aforesaid CPU Article 177. The report must be made to the superior authority, and if the act is capable of causing economic damages, also to the Court of Accounts. Art. 41 establishes the duty of the superior to report crimes that arise in any internal investigation under the obligation established in CPU Article 177. Art. 4 (3) of Law 17060 and Art. 42 of the Rules of Conduct stipulate that reports against public servants required to present a sworn statement of assets or income[2] that involve crimes against the public administration must be lodged with the Judiciary, the Office of the Attorney General, the police, or another agency with police functions. The Judiciary and the Office of the Attorney General are authorized to request the assistance of the State's Advisory Board on Economic and Financial Matters, with a view to having the Board obtain and systematize the documentary evidence required for the investigation.

Also under Uruguayan administrative law, Executive Decree 500/91 states in its Art. 175 that all public servants are required to report irregularities of which they have knowledge by virtue of their functions, which are committed in their section, or which particularly affect their section. In addition, they must receive and process such reports. In both cases, the superior officers must be advised. The report may be oral or in writing: in the case of an oral report, a document signed by the reporting party will be drawn up; and in the case of a written report, the name of the reporting party must be included (Arts. 119 and 178 of the aforesaid Decree).

Failure by a public servant to report, in addition to being subject to criminal punishment (CPU Art. 177), may at the same time be subject to administrative sanctions, that may go as far as dismissal of the public servant (Art. 39 of the Rules of Conduct).

Uruguayan law also stipulates that private citizens are required to report operations suspected of involving laundering of assets derived from crimes of corruption. In accordance with Law 17835 of September 23, 2004 (Arts. 1 and 2), these persons are subjects under the control of the Central Bank of Uruguay[3], casinos, companies that provide fund transfer or remittance services, real estate firms, natural or legal persons engaged in buying and selling antiques, works of art, and precious metals, and natural or legal persons who perform financial transactions on behalf of and for the account of third parties or who customarily manage commercial firms. The operation must be reported to the Financial Analysis Information Unit (hereinafter UIAF), which belongs to the BCU, and the communication will be confidential, so that the person required to report will not tip off the persons participating in the operation, in keeping with the instructions of the UIAF (Art. 5 of Law 17835). The UIAF will conduct an internal investigation, and if it believes that there is the appearance of a crime, it must file the report in accordance with the general rules stipulated in the CPP.

[1] Article 3 of Law No. 17060 defines corruption as the undue use of power or public office to obtain economic advantage, for oneself or for another, with or without damage to the State.

[2] The list of these public servants is given in Article 11 of Law No. 17060.

[3] Banks, financial institutions, exchange houses, savings and loan brokerage cooperatives, securities market agents and brokers, investment management companies.

Persons who are obligated to report suspicious operations possibly involving laundering of assets derived from acts of corruption or other crimes, and do so in good faith, will be exempt from criminal, civil, or administrative liability and their report will not be construed as a violation of professional or commercial confidentiality. (Art. 4 of Law 17835).

The failure of persons who are required to comply with the reporting obligation to do so may be punished with fines (Arts. 1 and 2 of Law 17835). In the event that the omission is intentional and is construed as a form of participation in the crime of money laundering, they will be punished criminally as partners in the crime.

With regard to reporting mechanisms used to advise the Judiciary of acts of corruption, it is relevant to note that Law 16707 established as a general mitigating factor for any crime, hence also for crimes linked to public corruption, *effective cooperation with judicial authorities in clarifying a crime* (Art. 46 (12) of the CPU). This is a general attenuating circumstance, of the same value as confession of the act, which cannot give rise to special benefits, such as impunity or reduced sentence below the minimum stipulated for the crime in question. In order to be considered as an attenuating circumstance, the cooperation must be *effective,* and by effective it is meant that the cooperation leads to the discovery of other criminal offenses and their perpetrators or partners, or to the localization of property or assets derived from the crime under investigation. The importance and effectiveness of the cooperation may on occasions be considered as an exceptional mitigating factor and bring down the sentence to the minimum, as permitted under CPU Article 86, but the law does not authorize the judge or public prosecutor to initiate criminal proceedings against persons who cooperated effectively in shedding light on a crime.

i. **Mechanisms for reporting threats or reprisals**

Under Uruguayan law, there are mechanisms for curbing threats or reprisals that could be considered as cases of procedural obstructionism directed against both private parties and public servants responsible for enforcing the law.

The use of physical force, threats, or intimidation to hinder compliance with the official functions of a justice officer or law enforcement services is punished as a crime of abuse of authority and *desacato*. The first, contained in Art. 171 of the CPU, punishes persons who use violence or threats for the purpose of obstructing the free exercise of public functions. The crime is aggravated when it is directed against a judicial or police officer. Punishment ranges from three months in prison to three years in penitentiary. The second case, provided for in Art. 173 of the CPU, punishes open disobedience of the mandate of public servants. The punishment is three to eighteen months in prison.

Threats or retaliation against private citizens (reporting parties or witnesses) are included in other definitions of crimes in the CPU. Art. 290 sanctions the crime of threats and Art. 288 the crime of private violence. The latter is punished by a sentence from three months in prison up to three years in penitentiary for persons who use violence or threats to force someone to do, refrain from doing, or tolerate something. The broad description of the crime makes it possible to cover conduct designed to intimidate witnesses or reporting parties, to prevent them from testifying, or any activity designed to conceal acts of corruption.

If the reprisals involve physical violence, the general norms of the CPU governing crimes against life or physical integrity apply. Reports of acts of this type are filed with police or judicial authorities and are governed by common criminal procedure applicable to any type of crime.

ii. Witness protection mechanisms

Neither the Code of Criminal Procedure nor special anti-corruption legislation establishes a witness protection program.

The only law related to this aspect is contained in Article 36 of Citizen Security Law No. 16707 referred to under i), which charges the Executive Branch with implementation of a program for protection of witnesses and parties reporting allegedly criminal acts. Although this legal provision is part of legislation designed to combat conventional crime, because of its general nature, nothing prevents this witness protection program from being extended to cover organized crime, and specifically investigations and proceedings on corruption. In this context, Article 43 of the Standards of Conduct establishes that any private party or public servant who in good faith reports a crime of corruption will be covered by the witness protection program stipulated in Law 16707.

This law was regulated by Executive Decree 209 of July 25, 2000 (referred to in i)).

Both the law and Decree 209/000, in its Art. 1, limit its personal scope to "witnesses and reporting parties," including imputed collaborators, and the applicable legal regime was described in i). We are of the opinion that the term "witness" in this case could be interpreted in a broad sense to include in the program imputed effective collaborators.

The above-mentioned Decree 209/000 establishes the following witness protection mechanisms: *a) preservation of identity (Article 4(a); b) use of mechanisms that prevent visual identification when the witness must appear at any evidentiary proceeding; c) that the witness be summoned on a confidential basis; d) that the witness be transported in an official vehicle; e) that a zone of exclusion be established to take his statement; f) that police protection be provided; g) that a restricted place for his exclusive use be provided for testifying.* Mechanisms are also established to prevent photographs from being taken or their image from being recorded by any means (Article 5), and they must be informed of the escape or imminent release of the accused or convicted person. They must be informed of the status of the proceedings and notified of the judgment against them, and they and their family and property must be granted protection.

However, the law does not authorize a change in identity under a protection program, since the name, as an attribute of the person, is governed by law pertaining to public order. Nor does it establish mechanisms for relocation of the reporting party, witness, collaborator, or their families.

b) In relation to question a), state the objective results obtained, including any available statistical data.

According to available information, application of the program for protection of witnesses and reporting parties is limited in Uruguay to guarding the witness and guaranteeing his personal security. There are no previous cases regarding judicial identity protection orders or any other type of application of the program stipulated in Decree 290 of July 25, 2000.

c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain, and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption, in accordance with Article III(8) of the Convention.

This does not apply, as explained earlier.

CHAPTER THREE

ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

1. Criminalization of acts of corruption provided for in Article VI(1) of the Convention

1 **a)Does your country criminalize the acts of corruption provided for in Article VI(1) of the Convention transcribed in this chapter of the questionnaire? If so, describe briefly the laws and/or measures regarding them, indicating to which of the particular aforesaid acts of corruption they refer, including sanctions, and attach a copy of them.**

<u>Acts of corruption provided for in Article VI(1) of the Convention:</u>

i. "The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise, or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions."

Solicitation by a government official is established as a crime in Article 156 of the CPU (extortion). This definition of the crime punishes solicitation of an undue benefit by a government official using compulsion or deception, and excludes private citizens from punishment, since this is essentially a crime of coercion in which the private citizens are acting under pressure. In this crime, the public official abuses his office by coercing or misleading a private citizen so that that person will unduly give or promise to him or to a third party money or another advantage of any kind. The undue benefit pursued by the officials is not only economic, but can also include favors of any type, such as travel, awards, or work for himself or another, for instance. The punishment ranges from twelve months in prison to six years in penitentiary, plus a fine between 50 and 10,000 adjustable units and disqualification from office for two to six years. It is important to note that in this and in all cases where there is a variety of sanctions provided for, they are imposed jointly, since they are all considered principal punishment.

Indirect solicitation may also be considered as covered by Article 158bis of the CPU (influence peddling); it punishes whomsoever solicits, receives, or accepts the promise of an economic advantage in order to decisively influence a government official to perform an act contrary to the duties of his

post or even an act consistent with his post. Although this crime may be committed by persons who are not public servants, the author may act in complicity with a government official, hence this is considered as indirect solicitation. In a case of this sort, the individual who is influence peddling is an intermediary of the government official who accepts such influence, and once that acceptance occurs, that government official is committing a criminal act pursuant to CPU Articles 158 (gross subornation) or 157 (simple subornation).

ii. "The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise, or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions."

The offering or granting of benefits to a government official is provided for in CPU Article 159 (bribery). It punishes persons who induce a government official, merely by incitement, to accept an undue benefit or its promise by performing an act that is either part of the duties of his post or contrary to them. If the public servant does not accept the benefit offered, only the private citizen is punished. However, if the public servant accepts, both the private citizen and the public servant are punished for the crime of simple subornation (CPU Art. 157) or gross subornation (CPU Art. 158). The punishment for this offense is two-thirds of the one stipulated for each type of subornation, depending on what the agent was incited to do.

When officials accept undue benefits or the promise of such benefits, the conduct of both the public official and the person making the offer are covered by Articles 157 and 158 of the CPU (simple and gross subornation). In cases of both simple and gross subornation, the public servant receives improper compensation or accepts the promise of such at the initiative of a private citizen. In both cases, the compensation or gift may be not only in the form of money, but may also include any other benefit, even if it is not monetary in nature. The main difference between simple and gross subornation is that in the first case, the official receives compensation or accepts a promise of such in exchange for performing a licit act, within his field of competence, whereas in the second case, the official receives or accepts compensation or the promise of such in exchange for performing the following illicit acts: a) delay in performing or omission of an act that is part of his functions; b) performing an act contrary to the functions of his post. Moreover, gross subornation is aggravated if the purpose of the act to be performed by the public official is granting of government employment, stipends, or honors, or favoring or impairing litigants in a civil or criminal proceeding. It is also aggravated if the purpose of the act is to conclude a contract involving the section in which the public official works or abusive use of legal procedures for procurement of goods and services. These aggravating factors would result in increasing the penalty from one-third to one-half. In all cases the improper benefit obtained by the public servant may be for himself or for a third party. Subornation crimes are bilateral, since they include both the public servant and the person offering the benefit. The punishment for simple subornation is from three months in prison to three years in penitentiary, a fine from 10 to 5,000 adjustable units, and special disqualification from office for two to four years. The punishment for gross subornation is from twelve months in prison to six years in penitentiary, a fine from 50 to 10,000 adjustable units, and special disqualification from public office from two to six years.

Article 29 of Law 17060 establishes the crimes of transnational bribery and subornation, to comply with Article VIII of the Convention. Under this crime definition, any person who, for the purpose of concluding or facilitating an Uruguayan foreign trade transaction, offers or grants, in the country or abroad, money or any other economic advantage to a government official of another State, on his own or through another person, is punished. This criminal offense provides for punishment of the private citizen who offers the bribe, and follows the same structure as that of the bribery offense already described. The offer may be made either in Uruguay or out of the country. If it is made outside the country, Article 10(5) of the CPU applies. It stipulates: a) the offering party must be Uruguayan; b) the crime exists in Uruguay and in the country where the offer is made; c) the author of

the criminal act [*sea habido:* meaning unclear] on Uruguayan territory; and d) there are no criminal proceedings against him in the State where the crime was committed. Unlike the criminal offense of subornation, the improper benefit is always money or another economic--i.e. monetary--benefit. The punishment is from three months in prison to three years in penitentiary.

iii. "Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party."

This conduct is not only included in the criminal offenses referred to under i) y ii), but it is also contemplated in other provisions of Uruguayan criminal law:

Appropriation of government money or property is punished under Article 153 of the Criminal Code (embezzlement). The punishment ranges from one year in prison to six months in penitentiary and special disqualification for two to six years.

Fraud by deception to the detriment of the State is punished under Article 160 of the Criminal Code (fraud). This criminal offense entails punishment for the damages to the government when government officials fraudulently engage in acts or contracts that are part of the functions of their posts for the purpose of obtaining a benefit for themselves or third parties. The punishment ranges from twelve months in prison to six years in penitentiary, special disqualification for two to six years, and a fine of 50 to 15,000 adjustable units.

Conflict of interests to the benefit of a government official is covered by Article 161 of the Criminal Code (conjunction of personal and public interests). This offense refers to action by government officials who, to obtain an undue advantage for themselves or third parties, participate in an act or contract that is part of their job functions. There is a second modality that consists in failure to report a circumstance that would link them with the private citizen participating in said act or contract. The punishment ranges from six months in prison to three years in penitentiary, special disqualification for two to four years, and a fine of 10 to 3,000 adjustable units.

There is a residual criminal offense in CPU Article 162, termed "unspecified abuse of office." This offense punishes public officials who, in abuse of their office, commit or order an arbitrary act that was not expressly stipulated in the CPU or in special laws, to the detriment of the government or private citizens. It is punishable by a sentence of three months in prison to three years in penitentiary, special disqualification from office for two to four years, and a fine from 10 to 3,000 adjustable units.

Also on the basis of Law 17060, the use of privileged or confidential information by public servants was established as a criminal offense in Article 163 bis of the Criminal Code. This provision punishes public servants who, for the purpose of obtaining an economic advantage for themselves or third parties, make improper use of confidential information that they know by virtue of or in conjunction with their work. Punishment ranges from three months in prison to four years in penitentiary, special disqualification from office for two to four years, and a fine from 10 to 10,000 adjustable units.

Law 17060 added Article 163 ter to the CPU, aggravating the offenses of embezzlement, extortion, simple subornation, gross subornation, influence peddling, fraud, conjunction of public and private interests, unspecified abuse of office, disclosure of secrets, and improper use of confidential information, whenever the author is one of the persons contemplated in Articles 1 and 11 of Law 17060, or whenever he has obtained assets as a result of said offenses.

The same law added Article 163 quater to the CPU. This provision, following international trends in drug trafficking and other types of organized crime, permits confiscation of goods and assets when they are the direct or indirect result of the crimes listed in Article 163 ter. This confiscation is a

necessary consequence of the offense, and pertains not only to assets derived directly from the offense, but also to assets or property acquired with the benefits of the crime.

iv. "The fraudulent use or concealment of property derived from any of the acts referred to in this article."

The fraudulent use or concealment of property derived from any of the acts described in i), ii) and iii) is punished under Uruguay law governing money laundering:

Laundering of money derived from offenses of government corruption is established as a separate criminal offense under Article 39 of Law 17060. It creates a different regime from that applicable to previous money laundering offenses that were regulated by Decree-Law 14294, according to the terms of Laws 17016 and 17343. Article 8 of Law 17835 of September 23, 2005 unified the regime for all crimes involved in asset laundering, and included among them those specified in Law 17060. Concealment of property derived from acts of corruption therefore comes under the laws on money laundering. As for fraudulent use of property derived from acts of corruption, it also in considered as a money laundering offense, since Article 55 of Decree Law 14294[4] punishes persons who acquire, possess, use, have in their power, or conduct any type of transaction involving such assets. It should also be noted that Uruguayan law also provides for the offense termed "self-laundering," hence perpetrators of corruption offenses who in turn engage in acts defined as money laundering must answer for both offenses. Punishment for these criminal offenses ranges from two to fifteen years in penitentiary.

Law 17835 represented an important advance in the system established by Article 39 of Law 17060. While that law was in force, there were questions as to whether the law was applicable when the criminal act of corruption from which the assets were derived was committed outside Uruguay. By including acts of corruption in the general system applicable to all offenses underlying money laundering, the laundering of money from acts of corruption is punishable in Uruguay, even when the offense from which the assets originated was committed out of the country, hence it is also a criminal offense under Uruguayan law (final paragraph of Art. 8 of Law 17835).

v. "Participation as a principal, co-principal, instigator, accomplice, or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article."

Participation and collaboration in acts of corruption are sufficiently covered by Uruguayan law in various provisions of the CPU.

CPU Articles 60, 61, and 62 generally define principals, co-principals, and accomplices, and these provisions are applicable to acts of corruption. Instigation is a type of collaboration expressly stipulated in CPU Article 61. In addition, unlike other criminal codes, Article 60 of the CPU specifically provides for intermediary criminal participation [*autoria mediata*] in the event that direct executors exempt from punishment are used. This makes it possible under Uruguayan law to bring charges against the "person behind the scenes" or the "brain behind the crime," when faced with criminal organizations dedicated to acts of corruptions or other crimes. As for punishment, the same punishment is applicable to co-principals as to principals, while accomplices receive one-third of the sentence of the principal.

In addition, under CPU Article 64, a participant in an act of corruption committed by a public servant may be punished even if the partner in crime is not a public servant. Consequently, there is a mechanism of communicability of the status of public servant to partners in crime who are not public servants.

[4] As stated in Law No. 17.016.

Aiding and abetting after the fact or concealment, which is not considered a form of participation or partnership in crime under Uruguayan law, is criminalized in CPU Article 197, with punishment ranging from three months in prison to ten years in penitentiary. The offense of concealment is construed as a type of granting of personal favor. Granting of personal favors is also punished, as is assistance, help, and advice given to persons who commit the offense of laundering of assets derived from acts of corruption, in addition to other offenses described (Arts. 56 and 57 of Decree-Law 14294, as revised by Law 17016).

Article 150 of the CPU establishes the offense of partnership or association to commit a crime, when the purpose of the association is to commit one or more crimes, and the law punishes association for the purpose of committing acts of corruption even if those acts are not committed. This offense is committed by the mere act of associating for the purpose of committing one or more offenses. The punishment for this offense ranges from six months in prison to five years in penitentiary.

With regard to conspiracy, it is not established as such in our law, but in many cases it is covered by the crime of association for the purpose of committing a crime (CPU Article 150). In comparable legislation,[5] in order for conspiracy to exist, it is enough that: *a) two persons agree to commit a single criminal act; b) there is merely a plot or a plan among several persons to commit a criminal act.* Since the mere agreement to commit a single crime is enough, conspiracy could be covered by CPU Article 150, since that provision punishes persons who associate with each other for the purpose of committing one[6] or more criminal acts.

b) Briefly state the objective results that have been obtained in enforcing the above provisions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

The available information provided by the Supreme Court of Justice covers 2002 to 2005, and does not include a breakdown by criminal proceedings initiated with the bringing of formal charges and proceedings which end in conviction. Based on this information, the following crimes have been effectively enforced: fraud (CPU Article 160); peculation or embezzlement (CPU Article 153); bribery (cup Article 162); and extortion (cup Article 156).

Also based on this information, there are no proceedings on record for influence peddling (CPU Article 158 bis). Although the information was not included in the records, there was at least one case of improper use of confidential information (CPU Article 163 bis) related to a representative of the Office of the Attorney General [*Ministerio Público*]. There have also been proceedings for conjunction of public and private interests (CPU Article 161), that are not reflected in the statistics.

The official information available reports the following proceedings undertaken:

Gross subornation

1 2002: 10 proceedings
2 2003: 8 proceedings
3 2004: 9 proceedings
4 2005: 14 proceedings

Total: 41 proceedings

Extortion

5 2002: 26 proceedings
6 2003: 15 proceedings
7 2004: 5 proceedings
8 2005: 9 proceedings

[5] See Article 29 bis of Argentine Law No. 23737 on drug trafficking.

[6] Emphasis added.

Total: 55 proceedings

Peculation or embezzlement
9 2002: 32 proceedings
10 2003: 49 proceedings
11 2004: 22 proceedings
12 2005: 33 proceedings
Total: 136 proceedings.

Bribery
13 2002: 4 proceedings
14 2003: 7 proceedings
15 2004: 5 proceedings
16 2005: 2 proceedings
Total: 18 proceedings.

Fraud
17 2002: 31 proceedings
18 2003: 24 proceedings
19 2004: 12 proceedings
20 2005: 16 proceedings
Total: 83 proceedings.

Unspecified abuse of office
21 2002: 17 proceedings
22 2003: 7 proceedings
23 2004: 11 proceedings
24 2005: 10 proceedings
Total: 45 proceedings.

c) If the aforementioned acts of corruption are not criminalized, what steps is your country taking to criminalize these acts.

The abovementioned acts of corruption are criminalized under Uruguayan law.

2. Application of the Convention to acts of corruption not described therein, in accordance with Article VI(2)

1 **a) Has your State entered into any agreements with other States Parties to apply the Convention to any act of corruption not described therein, in accordance with Article VI(2)? If so, briefly describe the respective agreements or conventions and attach a copy of the related documents.**

Uruguay has not concluded agreements with other States Parties under Article VI(2) of the Convention. However, its activities in the area of international criminal cooperation are channeled through various multilateral or bilateral mutual assistance treaties in criminal matters. Within MERCOSUR, the Protocol of Mutual Legal Assistance in Criminal Matters (San Luis Protocol), adopted in Uruguay by Law 17145, has been applied. Other agreements for international judicial cooperation have also been approved, and requests for mutual assistance in the area of corruption are channeled through them. Treaties of this sort have been signed with the following countries: Mexico (adopted by Law 17821); Venezuela (adopted by Law 17345); Canada (adopted by Law 17336); Cuba (adopted by Law 17034); Spain (adopted by Law 17020); and the United States of America (adopted by Law 16341). As for multilateral agreements to which Uruguay is a party, it approved the United

Nations Convention Against Transnational Organized Crime (Palermo Convention) by Law 17861, and Article 8 of that law established guidelines for the criminalization of acts of corruption.

b) If the above answer was in the affirmative, briefly state the objective results that have been obtained in the application of the respective agreements or conventions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

Although there are no available statistics specifically pertaining to cooperation among states in the area of corruption, Uruguay has cooperated in requests involving this type of criminal acts, particularly in the area of lifting banking secrecy.

SECTION II

INFORMATION ON PROGESS IN IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST REVIEW ROUND

I.- STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (Art. III, Paragraphs 1 and 2 of the Convention)

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

RECOMMENDATION

1.1. "Further strengthen implementation of laws and regulatory systems pertaining to conflicts of interests"

A) With a view to proceeding with legal implementation of various recommendations formulated during the First Review Round, the content of which were shared by this body, and other suggestions that emerged as a result of the experience gained in performing the functions assigned to it, the State Advisory Board on Economic and Financial Matters (hereinafter Advisory Board), in exercising the powers granted to it under Art. 4.D(5) of Law 17060, prepared a preliminary draft law on "Adjustments to Law 17060" (the text of which is attached, and was referred to in the progress report presented to the Sixth Meeting of the Committee of Experts, held in Washington D.C. July 26 to 30, 2004).

This preliminary draft law, dated July 12, 2004, was submitted by note 123/004 to the Executive Branch for its consideration, through the Ministry of Education and Culture. Since it was not passed on to Parliament for its consideration, it was again submitted to said Ministry by note 379/005 of October 4, 2005.

In view of the fact that new members were appointed to the State Advisory Board on Economic and Financial Matters on March 1, 2006, the Ministry of Education and Culture sent the preliminary draft law back to the Advisory Board for consideration.

Although the Board shares in principle the spirit and content of most of the provisions in the preliminary draft, it decided that it should proceed with a careful re-examination of the proposed law, in view of the short time since the members had taken up their posts, and to conduct consultations on it with various social and political institutions, so that it could improve it as much as possible and obtain sufficient backing to ensure its viability.

In fact some of its articles, and specifically those that pertain to recommendations made in the Review Round, which will be referred to later on in this report, were recently submitted to the Ministry of Education and Culture, to be included in the proposed budget adjustment, which will take effect on January 1, 2007.

Thus the current members of the Advisory Board share the concern with amending the anti-corruption laws in effect, taking into account both inputs from MESICIC and the results of experience acquired to date and suggestions made by various stakeholders involved in these matters.

However, it is also aware of the fact that this is a delicate matter that arouses sensitivities, and that consequently it is important to move forward with the widest possible backing. The Advisory Board intends to have a new preliminary draft law prepared, discussed, and submitted in the course of this year, notwithstanding the fact that, as it has indicated, it may continue at the same time to adopt norms on the subject through other laws or regulations.

B) The difficulties in implementing the recommendation under review stem from political obstacles encountered in attempts to pass the preliminary law drafted earlier by the previous Advisory Board, as we explained in the previous section.

It is important to note that during processing of that preliminary law, there was a national election (October 1994) and a corresponding change in government (March 2005), with the additional factor of a rotation in the political party at the head of the Executive Branch. These relevant political circumstances, compounded by the delayed renewal of the Advisory Board itself, certainly contributed decisively--over and above the content of the preliminary law--to the lack of support it received at the time.

Finally, we would add that the issue of government ethics, transparency in government management, and the fight against all types of corruption are still on the political agenda, and especially the agenda of the national government. Consequently, there is every reason to believe that, regardless of the different positions that may be taken on the specific measures being proposed, the climate is favorable for initiating parliamentary discussion on the subject.

C) With regard to the specific measures suggested in this recommendation, please note that the recommendation to "supplement the restrictions established in the law for persons who leave public office" was included in the preliminary draft law referred to above.

It should also be noted that in recent years, aspects of government ethics and, more specifically the standards of conduct contained in Decree 30/003 have been included in training programs for public servants at different levels. At the present time, an agreement with the Dr. Aquiles Lanza School of Government Officials is being implemented. Under it, the Advisory Board will provide technical support for a course on "Government Ethics and Transparency" to be included in all the training programs offered by that School.

In addition, following the initial circulation of the aforesaid "Standards of Conduct in the Civil Service," with publication of 20,000 copies of the decree and its regulatory annexes, and with the promotional event held at the Edificio Libertad in August 2003, in which almost 300 civil servants participated, various

other types of presentations have been made by members of the Advisory Board in different government forums.

Moreover, in compliance with Art. 44 of Decree 30/003, the Advisory Board regularly issues opinions in response to inquiries regarding application of the standards of conduct in specific cases that it receives from different government agencies.

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

RECOMMENDATIONS

1.2.1. Strengthen the standards on control and rendering of accounts by government officials, to ensure the conservation and proper use of government resources

A) In compliance with the measure recommended under this item, we have added to the preliminary draft law referred to in the previous item a specific article (3), that is related to the accountability of directors, members of boards of directors, and directing officers of private institutions, and of all other private citizens who administer public funds or manage government property.

Notwithstanding TOCAF rules and regulations governing management of private institutions, this Board intends to keep a specific reference on the persons responsible for this management, in view of the many government goods and services managed by private citizens and thus the need to strengthen mechanisms to enforce the accountability of such persons in caring for our national assets.

B) and C) Please refer to the previous item, and note that in control of management of private citizens in the use and development of government assets, civil society and its representative organizations play an important role, and consequently they too should implement mechanisms to encourage and process ways to participate in this area.

In this regard, an important initiative was taken on December 15, 2005, with the approval of Law 17935 regulating the establishment and operation of the National Economic Council, a consultative and honorary body provided for in the National Constitution, although its members have not yet been appointed.

This body will be made up of economic, social, professional, and cultural representatives in the country. It will be an important forum for the participation of civil society in designing and formulating public policies.

1.2.2. Take the steps deemed relevant to ensure compliance with laws governing public tenders and establish mechanisms to ensure that these processes are in keeping with legal provisions in force and that they guarantee the conservation and proper use of public resources.

A) In addition to the strict laws that regulate contracting by the entire government, condensed in the Coordinated Accounting and Financial Management Text (TOCAF) referred to specifically in the first part of the response to the Questionnaire, legal control is exercised by the Court of Accounts of the Republic [*Tribunal de Cuentas de la República],* and, by the National Internal Audit Office [*Auditoría Interna de la Nación*], the National General Accounting Office [*Contaduría General de la Nación*], and the National General Treasury [*Tesorería General de la Nación]*, each in its own field of competence. Therefore, as a rule, bidding procedures are subject to regular administrative and legal controls. Nonetheless, the Court for Administrative Litigation or the Judiciary itself could possibly intervene, at the request of a party.

As for procurement of goods and services, Art. 5 of Law 17060 establishes the obligation on the part of government agencies to ensure that these operations are widely publicized. This requirement is regulated by

Art. 11(H) of Decree 354/999, a provision which also makes the Advisory Board responsible for verifying compliance. The mechanism used to ensure wide circulation of government procurement is the website of the Office of the President of the Republic, referred to in Chapter I.

It is important to note that, in line with this recommendation, Art. 476 of Law 17296 provided for a system of rating the observations of the Court of Accounts, so that the ones described as "for urgent consideration" would be given priority treatment by the General Assembly.

B) As for the duty of the Advisory Board to verify that government agencies publicize the procurement of goods and services, institutional and logistic mechanisms are being implemented to ensure full compliance with this requirement. In fact, this law has not to date been duly regulated, nor have mechanisms been developed to allow the Advisory Board to effectively determine government procurement operations and check them against the operations published on the website. Therefore, such controls currently depend on what the Court of Accounts does through its obligatory intervention in all government expenditures (Art. 211 of the Constitution).

1.3 Standards of conduct and mechanisms related to 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

"Modify laws and mechanisms already in force in Uruguay to require government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware."

A) As stated in the previous report, Uruguay has laws that clearly and specifically establish the requirement that government officials report to appropriate authorities acts of corruption of which they are aware. In this regard, there is also specific reference to this in Chapter II of the reply to the Questionnaire.

Art. 175 of Decree 500/991, Art.177 of the Criminal Code, Art. 295 of the Coordinated Text of Laws on Public Servants (TOFUP) 2002 , and Art. 40 of Decree 30/003 establish the obligation that all public servants must report irregularities or corrupt practices of which they are aware in the performance of their functions, or which were committed in their section, or the effects of which are felt there, and TOFUP regulates the procedure to be followed in these cases.

In addition, Art. 43 of Decree 30/003 includes in the system for protection of witnesses and reporting parties (Art. 36 of Law 16707 and Decree 209/000 of July 25, 2000) those officials who acted in good faith in reporting possible criminal acts.

With regard to the recommendations formulated by the Committee of Experts on this point, progress has been made in incorporating this information on the laws and the reporting requirements of public servants into their training programs.

However, new laws and instruments to facilitate reporting in the case of irregularities have not been formulated, especially in situations involving a public servant's superiors, since in most of these cases, it is not easy to obtain evidence to responsibly substantiate such reports. The issue has been one of concern to the Advisory Board and it is sure to be included when the new preliminary draft law that updates and expands Law 17060 is considered.

Use of the press as a vehicle for reporting should be handled with a great deal of responsibility, since this instrument entails certain risks, because of the sensationalist approach taken to everything related to corruption and the frequently irreparable damages it can cause to innocent persons or instruments when accusations are not well-founded. In any event, the national press functions within a legal framework that

effectively guarantees freedom of expression, without prejudice to the liabilities it can legally incur as a result of abuses committed in exercising that freedom.

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

RECOMMENDATION

Improve use of sworn statements of assets

A) As indicated earlier, Uruguay has a series of laws and procedures in place for registration of the assets and liabilities of certain public officials. They are found in Articles 10 ff. of Law 17060 and in Decree 354/999.

The Advisory Board is precisely the entity in charge of managing this system of sworn statements, a task that it has been performing since its inception in 2000. Since then, it has been perfecting logistical mechanisms for implementation of the system, which has made it possible to achieve better results in disseminating, managing, and controlling compliance with this measure.

In comparison with the data managed at the time of the previous round (2003), the updated figures show the following results:

	Total statements received by the Board	Total posts covered	Percentage of compliance in assets
2003	22,423	14,171	97%
2006	38,461	14,882	98.92%

In the case of former public servants, as a penalty mechanism has not yet been implemented, the percentage of compliance is more reduced, at 92.80%, which brings the overall percentage, counting the share of each sector of the total, to 96.60%, which in any event is still a highly significant percentage.

In view of these results and the timely recommendations of MESICIC, the Advisory Board has added various articles to the preliminary draft law referred to earlier, with a view to enhancing the effectiveness of the mechanism of sworn statements.

Thus, Art. 4 of Law 17060, which replaces Art. 11 of the same, updates the titles and expands the posts whose occupants are required to present a sworn statement of assets and income; Art. 7 authorizes the Advisory Board to conduct audits in organizations responsible for submitting lists of promotions and demotions of public servants; Art. 9 establishes the obligation on the part of registering public servants to present on the cover of the statement a summary of their total assets, liabilities, capital, and income, information that is available to any interested parties upon their written request; and, Art. 14 authorizes the Advisory Board to open up to five sworn statements every month, to verify that the statements are correct, consistent, and true.

In the preliminary draft rendering of accounts, which is expected to enter into force on January 1, 2007, the Advisory Board proposed an Article according to which, in the case of present pubic servants or former public servants who failed to perform an obligation, 5% of any emoluments or pension paid by the government must be withheld until they comply with the obligation to present the sworn statement in

question. This is a significant measure, which will certainly, in the event it is approved by parliament, contribute to strengthening this requirement on the part of public servants.

In addition, a proposal to establish a data processing system for the formulation, receipt, safekeeping, and filing of sworn statements with digital signatures is under study. It would include due assurances of confidentiality required for a system of this kind.

B) As already indicated, the preliminary draft referred to is being reconsidered by the Advisory Board, which will then pass it on the Parliament, once it has studied it and conducted the necessary consultations.

C) All the initiatives of the Advisory Board to strengthen its work in support of government transparency have received the explicit support of the Office of the President of the Republic, the Ministry of Education and Culture, which is the government department within which the Board functions, and, more specifically, the Under-Secretariat of the Ministry and Department of Legal and Constitutional Affairs, which are the direct links with it.

III.- OVERSIGHT BODIES, IN RELATION TO SELECTED PROVISIONS (ARTICLE III (1, 2, 4, AND 11) OF THE CONVENTION)

RECOMMENDATION

"Strengthen coordination and cooperation mechanisms among oversight bodies and coordination between them, as appropriate"

A) As the Advisory Board has been strengthening its institutional and operational space, naturally the relationship with other administrative and jurisdictional regulatory agencies performing similar functions has also been enhanced, within the scope of their respective fields of competence.

However, this cooperation has functioned in an informal, uncoordinated way, according to the specific requirements of each party, and no new formal mechanisms have been established, although they will certainly be developed should the need for them arise.

IV.- MECHANISMS TO ENCOURAGE THE PARTICIPATION OF CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III (11))

4.1 General mechanisms for participation

(no recommendations)

4.2 Mechanisms for access to information

RECOMMENDATION

"Introduce laws that support access to public information"

Taking into account the recommendation formulated by the Committee of Experts, the Advisory Board included in Art. 19 of the preliminary draft law cited the obligation of all government authorities to issue a specific response within 45 working days whenever they receive a well-founded request.

This measure was intended to strengthen the exercise of the right of any inhabitant to request information of any public authority, as recognized in Arts. 30 and 318 of the Constitution, a right which is often impaired in practice because of failure to provide effective responses and the extended periods of time required to initiate legal action, and because of the fact that said recourse is not available to all persons, due to cultural or economic reasons.

There is no doubt that beyond the formal existence of a legal framework that would seem to guarantee relatively broad mechanisms for access to public information, in actual fact, such guarantees may be ineffective if specific measures such as the ones indicated are not implemented.

This concern has found an echo politically, as a bill was recently submitted to Parliament to establish the right of access to information and an *amparo* process related to that right, with the following justification given in the purposes article: "Access to information is simply a way of obtaining data in the possession of the State, of controlling and monitoring public authority, and of providing an instrument for citizen participation, or an input so that another right might be better exercised."

The institution of "information *amparo"* is regulated, and defined as a jurisdictional *amparo* in the event of denial of access to information, to be processed in a special summary proceeding stipulated by Law 16011. A National Institute for Public Information will be created, with the legal status of a public nonstate person, to ensure compliance with the law and development of a public policy to facilitate access to information and transparency in government management.

4.3 Consultation mechanisms

RECOMMENDATION

"That mechanisms be established and implemented to enable persons performing public functions to request and receive reactions from civil society and other nongovernmental organizations"

At national and department level, there are various spaces and institutions for joint public-private participation, with advisory, consultative, co-management, or control functions with regard to government management. They operate in very diverse areas, including economic, social, cultural, and environmental fields, among others.

As indicated in item 1.2., it is important to note in this regard recent approval of Law 17935 of December 15, 2005, regulating the National Economic Council.

Mention should also be made of the institution of public hearings, established under Law 16466, as a procedure to be carried out by the Ministry of Housing, Land Management, and the Environment prior to considering projects or undertakings that are likely to have a significant environmental impact.

In addition, Law 17684 provided for the creation of the Parliamentary Committee for the Prison System, with the primary duty of advising the Legislature in its function of control of compliance with all national and international laws pertaining to persons deprived of freedom by virtue of judicial proceedings.

The modality known as "Participatory Budget," which is being carried out by several departmental governments, involves consultations with neighbors in each priority zone for development of public works and services in each budget. It is also an excellent instrument for citizen participation.

Also at departmental level, in the case of Montevideo and certain interior departments, approval was given to create "Defender of Neighbors," as an instrument to enhance transparency in municipal management and to protect the rights of citizens.

4.4 Mechanisms to encourage active participation in public administration

RECOMMENDATION

"Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in public administration"

In recent years, a wide variety of practices for cooperation between government institutions and social and nongovernmental organizations have been developed to carry out jointly social, cultural, productive, and environmental programs of different kinds, among other things. The important role of nongovernmental organizations in advising on, implementing, and evaluating social programs at both national and local government levels is noteworthy.

These cooperative arrangements have essentially been implemented through agreements between the parties, but there is no specific legal framework regulating this relationship, with the exception of Law 17885 of August 12, 2005, by which the "Volunteers in Public Institutions" system was approved, for the purpose of "*recognizing, defining, regulating, promoting, and facilitating joint participation by individuals in volunteer activities in public institutions, either directly or through private national or foreign nonprofit associations*."

In the Ministry of Labor and Social Security, a very open and extensive dialogue was developed in the past year with labor unions and management organizations, to define wage agreements and guidelines for labor relations.

The Advisory Board has included in the preliminary draft budget amendment law, to enter into force on January 1, 2007, an article in which it will undertake *"...to establish ties of cooperation with civil society organizations for the purpose of joining forces to strengthen society's participation in anti-corruption efforts,"* thereby formalizing, and emphasizing, a task that it has been performing and intends to further develop in future.

4.5 Participation mechanisms for the follow-up of public administration

RECOMMENDATION

"Strengthen and continue implementing mechanisms to encourage civil society and nongovernmental organizations to participate in follow-up of public administration"

In the preceding commentary, reference has been made to public programs and legal instruments that have been implemented to encourage and channel private participation in an advisory capacity, and as co-participant and evaluator of the different areas of public administration, which represents an important change in the type of relationship between government and society.

V. ASSISTANCE AND COOPERATION (ART. XIV)

RECOMMENDATIONS

5.1. Determine those specific areas in which Uruguay could request or could usefully receive mutual technical assistance to prevent, detect, investigate, and punish acts of corruption; and, on the basis of that analysis, design and implement an integral strategy that enables the country to approach other states parties and nonparties to the Convention and institutions or financial agencies involved in international cooperation to procure technical cooperation deemed to be necessary

5.2.Continue efforts to provide cooperation to other states parties in those areas in which the Republic of Uruguay is already doing so

A) The Advisory Board has received technical and financial assistance from the United Nations Development Program (UNDP) since its inception, and this assistance has been extended to other areas of the government that are directly or indirectly linked with transparency and efforts to fight corruption.

At the beginning of this new stage, the Board has been evaluating the status of corruption in the country, with a view to backing the introduction of new laws on the subject and also to supporting the design of strategies for cooperation with international and interstate organizations.

However, it is important to note that the Common Market of the South (MERCOSUR) and other international forums in which Uruguay participates have moved forward in developing agreements and cooperative arrangements in specific areas related to efforts to fight transnational crime and corruption.

5.3. Continue efforts to exchange technical cooperation with other states parties on the most effective ways and means to prevent, detect, investigate, and punish acts of corruption and to engage in an exchange of information as a means of international cooperation, since it facilitates implementation of measures to combat corruption.

5.4 Design and implement an integral dissemination and training program specifically directed to the competent authorities so as to ensure that they have knowledge of it and can apply it in specific cases they are aware of; in addition, on provisions regarding mutual legal assistance stipulated in the Inter-American Convention Against Corruption and in other treaties signed by the Republic of Uruguay in related areas.

5.5 Circulate the requirements to be met in preparing letters rogatory and the accompanying documents to the competent authorities in those countries with which Uruguay has close or continuous relations of mutual cooperation.

We have decided to refer to these recommendations together, not only because they are closely interrelated, but also because the principal measures to be adopted respond to several of them at the same time.

Thus, in response to the preceding recommendations, the Advisory Board, as the designated higher control body in this area (Art. 334 of Law 17296), submitted a project to the Planning and Budget Office to be implemented jointly, under its supervision. The Board reported on this in the progress report presented at the Sixth Meeting of the Committee of Experts.

The general objective of this project was to strengthen the mechanisms for international legal cooperation in criminal matters, with a view to making the relevant procedures more expeditious and effective, in order to wage a more decisive and stronger battle against transnational crime in general, and, more specifically, acts of corruption in the exercise of public service and related criminal offenses.

To achieve this objective, the Advisory Board proposed the following principal activities:

* design and implement a training and consciousness-raising program, directed primarily to operators in the Uruguayan criminal legal system;

* design a program to disseminate requirements and procedures to be considered in the mutual assistance process to be substantiated in Uruguayan courts, directed to those countries with which Uruguay has the most active mutual cooperation relationship.

The OPP shared the position of the Advisory Board that implementation of the aforesaid project represented an important advance in achieving the purpose referred to in Article II(2) of the CICC, i.e., to promote and facilitate interstate cooperation with a view to ensuring the effective investigation and punishment of acts of corruption. The OPP therefore, with the express support of the Office of the President of the Republic, approved the project, as part of the 2001-2004 Cooperation Support Project of the United Nations Development Program.

The first stage was devoted to an extensive and exhaustive compilation of instruments in force that govern legal cooperation between Uruguay and MERCOSUR states parties and associated states, Bolivia and Chile. Once this work was completed, Colombia, Ecuador, and Venezuela were included, with the latter negotiating full membership status, along with Canada, Spain, United States, and Mexico.

Legal or regulatory bodies can be searched by type of instrument, with a breakdown into categories on "transnational crime" and "international legal cooperation in criminal countries," or by country. At the same time, a website was opened on the official web page of the Advisory Board to provide information on the operation of the Uruguayan criminal procedural system and international legal cooperation proceedings. (http://www.jasesora.gub.uy/cooperación/default.html).

Together with efforts to disseminate this work, the Advisory Board is currently evaluating the continuation of the project and exploring possibilities to obtain financing to support it.

Along the same lines, mention should be made of the "Declaration of Montevideo," issued during the 24th Meeting of Ministers of Justice of MERCOSUR and Associated States, in which the above-mentioned positions were confirmed and the parties stated their firm intention to strengthen international legal cooperation, by ensuring that the instruments agreed in the various protocols and agreements for harmonization of regional laws, that have been approved at Meetings of Ministers of Justice held to date, will be widely disseminated among operators in the justice system in each country.

6. CENTRAL AUTHORITIES (ARTICLE XVIII)

RECOMMENDATIONS

"Report to the OAS Secretary General the designation of the central authorities, in accordance with formalities in place for this"

"Ensure that said central authorities have the necessary resources to adequately perform their functions"

In the first place, by Budget Law 17930, which entered into force on January 1, 2006, the Department of Constitutional, Legal, and Registry Affairs was created to operate together with the Department of Human Rights, under the Ministry of Education and Culture, with a view to organizing and improving coordination among the different offices linked to these areas. These offices include the parties responsible for international legal cooperation and the Advisory Board itself, which has technical autonomy, but is linked to the Executive Branch through that Ministry.

This organization or ranking thus showed a desire to strengthen the operation of those offices which, within existing budgetary limitations, have improved in the area of resource allocation.

As for communicating the change in authorities, that was done appropriately and in due time with regard to the Advisory Board.

7. GENERAL RECOMMENDATIONS

7.1 "Design and implement, if appropriate, training programs for public servants responsible for implementing the systems, laws, measures, and mechanisms considered in this report, with a view to ensuring adequate knowledge, management, and application of them"

Work on implementing this recommendation has been proceeding gradually over time. As we said earlier, issues related to corruption and ethics in performance of public functions have been incorporated gradually into training programs, especially in the Doctor Aquiles Lanza School of Public Servants, whose training programs include courses related to Law 17060, and especially in relation to the rights and duties of citizens vis-à-vis the government, and the responsibility and accountability of public officials and authorities, government ethics, incompatibilities, prohibitions, and conflicts of interest in the public service. These courses are given every year to over 1,000 public servants.

The training of public servants in these subjects represents a way, together with others, of helping to generate the cultural processes that need to be developed, expanded, and deepened gradually, in support of the values of democracy and freedom, that are part of the national doctrine and history, and which serve as a basis for transparent and efficient government management. These processes must be constantly cultivated, and the results are never definitive. Thus it is important to ensure institutional continuity in programs and implementation of instruments against corruption, which is only possible with genuine government policies in this area.

7.2 "Select and develop procedures and indicators, as appropriate, to verify follow-up of recommendations contained in this report, and report to the Committee, through the Technical Secretariat, on this. To this end, account may be taken of the list of the most widespread indicators used in the inter-American system, that were available for the indicated selection by the state under review, and that were published by the Committee's Technical Secretariat, on the OAS internet page, along with information based on review of the mechanisms developed in accordance with recommendation 7.3 below.

7.3 Develop, as appropriate and if they do not already exist, procedures to review the mechanisms referred to in this report, as well as the recommendations contained in it.

Through progress reports, we have been reporting on steps taken by the Advisory Board and other government agencies, in response to the recommendations formulated by the Committee of Experts.

However, it is important to note that systems of indicators to verify follow-up of the recommendations formulated by the Committee have not yet been developed. The Advisory Board will have to take up this task, in order to ensure effective compliance with commitments undertaken.

SECTION III

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please provide the following information:

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(b) The official to be consulted regarding responses to the questionnaire is:
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