

## **ORIGINAL RESPONSE**

### **OF THE ORIENTAL REPUBLIC OF URUGUAY**

#### **OF ON PROVISIONS SELECTED BY THE COMMITTEE OF EXPERTS FOR REVIEW WITHIN THE FRAMEWORK OF THE FIRST ROUND**

##### **I. BRIEF DESCRIPTION OF THE INSTITUTIONAL LEGAL SYSTEM**

The institutional system in effect in Uruguay is based on the 1830 Constitution, which has been amended several times through universal suffrage. Respect for the Constitution is a constant in the life of the country and the entire institutional political system revolves around it. Uruguay is a democratic republic (Article 82 of the Constitution), and thus the representative bodies derive directly from the exercise of popular sovereignty in the election of the President and Vice President of the Republic, national and municipal legislators and municipal mayors, and indirectly for the three branches (Executive, Legislative and Judicial) under the principle of separation, without detriment to the powers of bodies in the constitutional hierarchy that exercise specific functions with respect to external oversight of expenditures and payments (Accounts Court), jurisdictional oversight of the legality of administrative actions (Administrative Court) and electoral justice (Electoral Court).

The voting system for the election of the President and Vice President of the Republic includes a run-off when an absolute majority is not exceeded in the first round. The President of the Republic is both Chief of State and Head of Government. The President, acting with one or more Ministers or with the Cabinet Council, exercises executive power. Ministerial appointments must be confirmed by a majority of the legislature and ministers may be censured by the legislature. The term of government is five years for both the national government and municipal governments, although elections for municipal mayor and departmental council members do not coincide with the election of national authorities.

The members of the Supreme Court of Justice, the Electoral Court, the Administrative Court and the Accounts Court are appointed by a decision of the General Assembly (joint session of the Senate and House of Representatives) with special majorities. Both the Judicial Branch and each of these bodies in the constitutional hierarchy, in their sphere, are independent in the exercise of their respective functions. The national budget is a five-year budget with annual reporting, at which time the legislature considers approval of the accounts and may introduce any changes it considers essential in the budgetary rules.

The legislature is made up of three bodies: the Senate, the House of Representatives and the General Assembly. The Vice President of the Republic is the President of the Senate, which has thirty-one members. The House of Representatives has ninety-nine representatives. The electoral system establishes comprehensive proportional representation, with some exceptions.

Each of the nineteen departments into which the territory of the Republic is divided is governed and administered by a Departmental Board and a Superintendent elected by popular vote, with the exception of the security services. The Departmental Board is made up of thirty-one members—called council members—and exercises legislative and oversight functions in municipal matters within the territory of the Department. The Superintendent has municipal executive and administrative functions in that territory. The Departmental Board approves its own budget of salaries and expenditures and that of the Superintendency, as projected by the latter. Both budgets are five-year budgets and changes may be made each year at the time of annual reporting.

The public spending process is subject to internal oversight by the bodies that issue each budget and to external oversight by the Accounts Court. In the central government—which includes all Executive Branch agencies—the Internal Audit Office provides internal oversight and the General Accounting Office audits the spending process. In the area of oversight of public investments, the competent body is the Office of Planning and Budget of the Office of the President of the Republic, with the Accounts Court being responsible for oversight with respect to legality. A mandatory Executive Branch initiative is required to approve taxes, create government positions, and establish retirement benefits and monetary compensation (Article 86 of the Constitution).

The government's industrial and commercial activity is carried out by entities with a degree of decentralization as determined by law. There are also autonomous entities that carry out public educational activities at the university level and in primary, secondary and technical education.

The text of the Constitution now in effect can be found at [www.presidencia.gub.uy](http://www.presidencia.gub.uy).

## II. QUESTIONNAIRE CONTENT

### CHAPTER ONE

#### MEASURES AND MECHANISMS REGARDING STANDARDS OF CONDUCT FOR THE CORRECT, HONORABLE AND PROPER FULFILLMENT OF PUBLIC FUNCTIONS (ARTICLE III, 1 AND 2 OF THE CONVENTION)

##### 1. General standards of conduct and mechanisms.

- a) **Are there standards of conduct in your country for the correct, honorable and adequate fulfillment of public functions? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

Various constitutional, legal and regulatory provisions govern integrity in the performance of public functions. Concern for integrity in governmental functions is the responsibility of each government agency in the context of its own system of powers.

- i) Integrity in the Civil Service Statute.

The principle of integrity in civil service is embodied in the Constitution (Article 59), which stipulates that the law shall establish a Civil Service Statute with “the fundamental basis that the civil servant exists for the office and not the office for the civil servant.”

- ii) Legal provisions governing conflicts of public and private interests.

Some legal provisions prohibit those who have specific public responsibilities from engaging in private activity. However, the legislature wanted to expand on this principle of integrity in public office by entrusting to an Honorary Commission (Article 25 of Law 17.060) the submission of more exhaustive regulations governing this type of conflict of interest between public and private activity. That commission issued a bill that was submitted to the consideration of the Executive Branch.

The criminal penalty for violating this principle of public action has been covered in the offense of the conjunction of public and private interests, which has gone from a simply penalty of disqualification for

the exercise of public office to a complex penalty consisting of imprisonment, special disqualification and a fine (Article 161 of the Penal Code as per the text appearing in Article 8 of Law 17.060).

iii) The duty of probity in public office.

Probity in the performance of public office is every civil servant's legal obligation. This involves not only administrative morality but also a legal duty of the civil servant defined as "honest functional conduct in the performance of his or her position with the public interest taking precedence over any other interest" (Article 20 of Law 17.060). The law stipulates that refusing to provide information or documentation requested in accordance with the law, taking advantage of one's position to influence someone so as to obtain a direct or indirect benefit for oneself or a third party, borrowing the money or assets of the institution, intervening in decisions bearing on matters in which one has participated as an expert, or using for one's own benefit or that of a third party confidential or privileged information one may learn about in the exercise of one's duties are stipulated as constituting conduct contrary to probity (Article 22 of Law 17.060).

iv) Principles of conduct of civil servants.

It is the duty of public officials to observe the principles of respect, impartiality, rectitude and competence, to avoid any conduct that involves abuse, excess or diversion of power and the improper use of their position or involvement in matters that may benefit them financially or benefit persons directly related to them. Violation of these principles shall lead to administrative, civil or criminal liability (Articles 20 and 21 of Law 17.060). In this respect, the civil responsibility established in Article 119 of the Amended Text of the Law on Government Accounting and Financial Administration [*Texto Ordenado de Contabilidad and Administración Financiera del Estado* – known by the acronym TOCAF] (a compendium of legal provisions and attached as Annex 2) for those who violate government accounting regulations should also be taken into account.

v) Guarantees of irremovability of public officials and due process in their disciplinary system.

A guarantee of integrity in civil service to protect public officials from political pressures is contained in the constitutional language on the principle of the irremovability of budgeted officials of the central government (Article 60 (2) of the Constitution), whereby the disciplinary procedures that culminate in removal from office require the consent of the Senate (Article 168 (10) of the Constitution). Another guarantee embodied in the Constitution and properly governed through the system of summary proceedings and appeals against administrative actions is the guarantee of due process, whereby no investigation of an official shall be considered concluded as long as he or she has not had the opportunity to present a response and articulate a defense (Article 66 of the Constitution).

vi) Measures to train public officials, auditors and students in general.

Government agencies are required to have training programs for personnel entering civil service, which shall be repeated every three years. Training courses must deal with aspects of administrative morality, incompatibilities, prohibitions and conflicts of interest (Article 28 of Law 17.060). The preparation of teaching materials for these courses as well as the proper dissemination of directives from public agencies on the rights and duties of civil servants vis-à-vis the administration represent preventive measures required by law.

- b) Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

At the time of the response to this questionnaire, the country has an Amended Text of the Law on Civil Servants (*Texto Ordenado sobre Funcionarios Públicos* --TOFUP, attached as Annex 3) authorized by Executive Branch Decree of June 18, 1997, which compiles the constitutional, legal and regulatory provisions applicable to civil servants in the central government, with the exception of the military, police, diplomats and government attorneys. It is a true Civil Service Law that refers to the statutory provisions regarding the life of civil servants in the central government. Also applicable here are the regulations on government accounting and financial administration, which consist of a compilation of legal provisions relating to this subject and brought together in Decree 194/997 of June 10, 1997 called the Amended Text of the Law on Accounting and Financial Administration (*Texto Ordenado de Contabilidad y Administración Financiera* -- TOCAF), which has been changed in some respects by Law 17.213 of September 24, 1999 and by Articles 478 to 482 of Law 17.296 of February 21, 2001.

- i) (Officials covered). Article 2 of Law 17.060, Article 175 of the Penal Code as per the text provided in Article 8 of Law 17.060, and Article 2 of Decree 30/003 define as a public official anyone who carries out a position or performs a function, whether paid or unpaid, permanent or temporary, whether legislative, administrative or judicial in nature, in a municipality or in any state entity or non-state public person, i.e., anyone who performs functions in any entity governed by public law, regardless of its legal status.
- ii) (Scope of application). Article 1 of Law 17.060 and Article 3 of Decree 30/003 extend the requirement to apply the standards of conduct in public office to public officials belonging to the:
  - A) Legislative, executive and judicial branches.
  - B) Accounts Court.
  - C) Electoral Court.
  - D) Administrative Court.
  - E) Government departments.
  - F) Autonomous entities and decentralized services.

Generally, all government bodies, services or entities, as well as non-state public persons.

Without detriment to the application of special laws or laws establishing more stringent requirements than those contained in Law 17.060, Article 24 (2) of said law establishes that its standards shall also constitute interpretive criteria governing the actions of government agencies in their areas of jurisdiction.

- iii) (General standards and specific standards). The duties, prohibitions, impediments, recusals, recusations, responsibilities and incompatibilities in effect are applicable without exception to all covered public officials, without detriment to any specific provisions directed to a specific public official or group of public officials as established by the competent authority and consistent with the institutional system in effect. The standards of conduct in office are applicable in all cases, although they are no obstacle to the effect of such provisions as may prescribe special requirements or more stringent requirements than those stipulated in the regulations.

The issuance of service directives or orders with respect to the standards of conduct in each agency is the responsibility of the senior division within its jurisdictional sphere

- iv) (Responsibilities in the application of the standards of conduct in office). The respective heads in each unit or division of a government agency are responsible for overseeing the application of the standards of conduct in office. These heads have a duty to respond within a reasonable amount of time to any query presented by any civil servant subordinate to them with respect to the application of the standards of conduct in effect in the agency.

- v) (Principles of official conduct). Official conduct is governed by the following principles of behavior:
- I) (**Preeminence of public service**). Official conduct shall be fundamentally based on the principle that the civil servant exists for the position and not the position for the civil servant (Article 59 of the Constitution and Article 8 of Decree 30/003).
  - II) (**Public interest**). In the exercise of his or her duties, a public official must always act with consideration for the public interest (Article 9 of Decree 30/003), in accordance with the provisions issued by competent agencies, pursuant to the standards expressed in the Constitution (Article 82 (1) and (2) of the Constitution). Some ways in which the public interest is expressed are satisfaction of collective needs on a regular and ongoing basis, good faith in the exercise of power, impartiality in decisions made, performance of official powers and obligations, rectitude in office and proper management of public resources (Article 20 of Law 17.060 and Article 9 of Decree 30/003). The satisfaction of collective needs must be compatible with the protection of individual rights, the intrinsic rights of humans or those rights that derive from the republican form of government (Articles 7 and 72 of the Constitution and Article 9 of Decree 30/003).
  - III) (**Probity**). A public official's conduct must (Article 11 of Decree 30/003) be honest, fair and upright and he or she must reject any benefit or advantage of whatever kind obtained by him or herself or by an involved party, for him or herself or for third parties, in the performance of his or her duties, with the public interest having precedence over any other interest (Articles 20 and 21 of Law 17.060), and must avoid any action in the performance of public office that would give the appearance of violating the Standards of Conduct in Public Office.
  - IV) (**Actions contrary to probity**). Actions contrary to probity in public office (Article 22 of Law 17.060 and Article 12 of Decree 30/003) include: A) refusing to provide information or documentation that has been requested in accordance with the law. B) Using one's position to influence someone so as to obtain a direct or indirect benefit for oneself or a third party. C) Borrowing or taking in any other way money or assets of the institution, except as expressly authorized by law. D) Intervening in the decisions that bear on matters in which one has participated privately as an expert. E) Using for one's own benefit or that of third parties confidential or privileged information learned about in the exercise of one's duties.
  - V) (**Good faith and loyalty**). A public official must always act in good faith and with loyalty in the performance of his or her duties (Article 20 of Law 17.060 and Article 13 of Decree 30/003).
  - VI) (**Legality and obedience**). A public official must know and comply with the Constitution, laws, decrees and resolutions governing his or her conduct in office and must comply with orders given to him or her by hierarchical superiors in the area of their competence, within the limits of due obedience (Article 21 of Law 17.060 and Article 14 of Decree 30/003).
  - VII) (**Respect**). A public official must respect other officials and those with whom he or she must deal in the performance of his or her position and must avoid any type of disrespect (Article 21 of Law 17.060 and Article 15 of Decree 30/003).

- VIII) (**Impartiality**). A public official must exercise his or her powers impartially (Article 21 of Law 17.060 and Article 16 of Decree 30/003), which means providing equal treatment under equal circumstances to other representatives of the administration and to anyone to whom his or her official actions refer or are directed. Said impartiality includes the duty to avoid any preferential treatment, discrimination, or abuse of power or authority with respect to any person or group to whom his or her public actions relate (Article 8 of the Constitution and Article 24 of the American Convention on Human Rights, ratified by Article 15 of Law 15.737 of March 8, 1985). Public officials must recuse themselves or may be recused when there is any circumstance that could affect their impartiality, observing the decisions of his or her superior (Article 21 of Law 17.060, Article 2 (a) and Article 3 (1) of Decree 500/991 and Article 16 of Decree 30/003).
- IX) (**Impediments**). A public official must distinguish and strictly separate personal interests and public interests (Articles 21 and 22 (4) of Law 17.060 and Article 17 of Decree 30/003). By virtue of this, he or she must take all steps available to prevent or avoid conflicts of interests in the performance of his or her duties. If he or she feels that a conflict between the public interest and his or her own personal interest is at issue, a public official must so inform his or her superior so that the latter can make the appropriate decision (Article 22 (4) of Law 17.060 and Article 17 of Decree 30/003). For reasons of decorum or delicacy, a public official may ask his or her superior to excuse him or her from the case, observing what the superior decides (Article 17 of Decree 30/003).
- X) (**Transparency and publicity**). A public official must act transparently in the performance of his or her duties. Actions, documents and other items relating to public office may be freely divulged, except when their nature requires that they be kept confidential or secret or when they have been declared as such by law or well-founded decision, in all cases with the responsibility as may apply under the law (Article 7 of Law 17.060, Article 21 of Decree 354/999 and Article 80 of Decree 500/991). The foregoing provisions include the duty to guarantee to those interested parties who seek information arising from the use and application of computer and data transmission media in the activities of government and the exercise of its powers (Article 694 of Law 16.736 of January 5, 1996 and Article 14 of Decree 500/991). The content of this principle was reproduced in Article 18 of Decree 30/003.
- XI) (**Effectiveness and efficiency**). Public officials shall use suitable means to achieve the public interest purpose for which they are responsible, seeking to achieve maximum efficiency in their activities (Article 60 (1) of the Constitution and Article 19 of Decree 30/003).
- XII) (**Efficiency in contracting**). Public officials have the obligation (Article 659 (VI) of Law 16.170, Article 131 of the TOCAF and Article 2 of Decree 500/991) to strictly observe the contracting procedures applicable in each case and to adapt their behavior in this area to the following general principles:
- a) Flexibility.
  - b) Delegation
  - c) Absence of red tape
  - d) Substance over form
  - e) Assumption of truthfulness in the absence of proof to the contrary.

- f) Equality among bidders, competitiveness in all procedures for inviting and selecting bids and broad disclosure of goods purchased and contracted services (Articles 5 of Law 17.060, Article 11 (H) of Decree 354/999 and Article 20 of Decree 30/003).
  
- XIII) **(Justification for decisions)**. A public official must justify his or her administrative actions, explaining the *de facto* and *de jure* reasons on which they are based. General justification formulas are not admissible. Rather, the public official must make a direct and concrete presentation of the facts of the specific case, and also explain the reasons with respect to the specific case that justify the decision made. In the case of discretionary actions, there must be a clear identification of the motives underlying the choice based on the public interest (Article 2 (I), Article 123 of Decree 500/991 and Article 21 of Decree 30/003).
  
- XIV) **(Qualification and training)**. Observance of appropriate conduct requires that a public official remain qualified to adequately perform the public duties for which he or she is responsible (Article 21 of Law 17.060). Public officials shall be required to train themselves to act with full knowledge of the matters submitted for their consideration and, in particular, they must attend refresher courses relating to administrative morality, incompatibilities, prohibitions and conflicts of interest in public office as determined by the provisions governing the service or as provided by the competent authorities (Article 28 of Law 17.060). Article 22 of Decree 30/003 includes similar language.
  
- XV) **(Good financial administration)**. All public officials with duties relating to the management of property belonging to the state or non-state public entities must act in accordance with the applicable standards of financial management, planned objectives and goals, and the principles of good administration with respect to the handling of public monies or assets and the safekeeping or management of the assets of government agencies. Violations constitute administrative failings even when they do not lead to economic damages (Articles 119 *et seq* of the TOCAF and Article 23 of Decree 30/003).
  
- XVI) **(Rotation of public officials in financial tasks)**. Public officials who carry out duties in divisions charged with the procurement of goods and services must rotate periodically (Article 23 of Law 17.060).
  
- vi) **(Prohibitions)**. The principal prohibitions on actions in public office are summarized below:
  - I) **(Prohibition on contracting)**. Public officials are prohibited from contracting with the agency to which they belong and from maintaining ties through management or employment with firms, companies or entities that submit bids to perform contracts with that agency. However, in this latter case, public officials who have no involvement in the contracting process in the government agency in which they serve are exempt from this prohibition, provided they inform their superior in writing and without hesitation (Article 43 (1) of the TOCAF and Article 301 of the TOFUP). If such a situation is present or could arise at the time a public official enters civil service, he or she must so report in writing and without hesitation (Article 22 (4) of Law 17.060).
  
  - II) **(Prohibition on intervention due to kinship)**. Public officials with spending powers are prohibited from intervening when they are related up to the fourth degree by blood and the third degree by kinship or marriage to a party contracting with the agency to which

they belong (Article 508 of Law 15.903, Article 653 of Law 16.170, Article 300 of the TOFUP).

- III) **(Prohibition on associations with controlled activity).** Public officials with senior management, inspection or advisory functions are prohibited from being employees, advisors, auditors, consultants, partners or directors of individuals or legal entities, whether public or private, that are subject to the control of the offices to which they belong. They are also prohibited from receiving payments, commissions or fees of any type from such persons (Article 152(1) and (2) of Law 13.420, Article 1 of Law 17.060 and Article 296 of the TOFUP). The prohibition established above extends to all service or works contracts performed at the request of the controlling administration by international organizations or through the performance of projects by third parties. Article 27 of Decree 30/003 contains similar provisions.
- IV) **(Prohibition on relations with associated activity).**- Public officials are prohibited from exercising their duties with respect to the private activities with which they are associated (Article 140(1) and (2) of Law 12.802 and Article 297 of the TOFUP). That prohibition extends to all service and works contracts performed at the request of all governmental, departmental or quasi-governmental agencies, by international agencies or through the performance of projects by third parties. Article 28 of Decree 30/003 contains a similar provision.
- V) **(Sworn statement of impediments).** Public officials who are involved in one of the prohibited activities established above must submit, within no more than seventy days of their involvement, a sworn statement in which they establish what type of connection or activities they have from among those provided in the aforementioned circumstances, individually identifying the persons or companies and the type of relationship or interest they have with them, awaiting the decision of the respective superior. Said sworn statement must be submitted openly to the head of the office where the public official serves. (Article 22 (4) of Law 17.060, Article 297 of the TOFUP, Article 140 of Law 12.802 and Article 29 of Decree 30/003).
- VI) **(Prohibition on receiving gifts and other benefits).** Public officials are prohibited from seeking or accepting money, donations, benefits, gifts, favors, promises or other advantages, directly or indirectly, for themselves or for third parties, so that they will execute, speed up, delay or omit an action in their job, or act contrary to their duties or for an action they have already taken.
- VII) **(Prohibition on telephone communications and use of cellular phones).** Public officials are prohibited from using telephones to make personal long distance calls. Cellular phones contracted by government offices are restricted to authorized superiors. Other cases allowed for reasons of service shall be limited to the use of a minimum cost monthly card (Decree Nos. 200/975 and 232/2000 and Article 33 of Decree 30/003).
- VIII) **(Prohibition on the improper use of funds).** Public officials are expressly forbidden to handle funds in a manner other than that legally authorized and are responsible for payment when they commit for any outlay without being authorized to do so. A public official is required to provide a documented and verifiable accounting of the transfer, utilization or management of funds received (Articles 460, 462 and 478 of Law 15.903, Articles 11 and 32 of the TOCAF and Article 298 of the TOFUP as well as Article 567 of Law 15.903 and Article 114 of the TOCAF).

- IX) **(Prohibition on serving in the same office because of kinship)**. A public official who is related to the head of a division or office to the second degree by blood or marriage or is his or her spouse is prohibited from serving in that same division or office. If a public official with such ties enters the office, the competent authority has a duty to arrange the necessary transfers, without prejudicing the grade level of any public official. Similarly, public officials who together present any of the impediments established in the first sentence herein are prohibited from remaining in the same office or section (Article 6 of Decree Law 10.338, Article 87 of Decree Law 9461 as per the text appearing in Law 9539, Article 303 of the TOFUP).
- X) **(Prohibition on improper use of public assets)**. Public officials must use movable and immovable assets belonging to their government agency or allocated to its use or consumption exclusively for the operation of the services for which they are responsible. Public officials are forbidden to use transport, fuel, replacement parts and repair services administered by any source of public funds, beyond what is strictly necessary for the performance of their duties. In no case may the performance of a public office entail the free availability of a vehicle belonging to any agency or allocated for its use beyond the requirements of the service *strictu sensu*, except as otherwise legally provided. Vehicles belonging to a government agency or allocated for its use must be driven by staff with qualifying licenses and may not be assigned for private uses, except in exceptional cases duly justified by the competent authority (Articles 528 and 529 of Law 15.903 of November 10, 1987, Article 153 of Law 16.170, Article 70 and Article 71(1) of the TOCAF, Article 31 of Law 16.170, Article 377 of Law 16.226).
- XI) **(Prohibition on proselytizing of any type)**.- Public officials serve the nation and not a political faction. Any activity not consistent with public office is prohibited at worksites and during work hours, and activity directed to proselytizing of any type is considered illegal. Public officials may not form groups for the purpose of proselytizing, using the names of government divisions and invoking the ties that connect those in public service (Article 58 of the Constitution).
- vii) (Application of standards of conduct).
- I) **(Disciplinary failures and sanctions)**. The national legal system, ratified by Article 38 (1) of Decree 30/003, establishes the principle that failure to fulfill the duties described as standards of conduct and the violation of the prohibitions summarized above constitute disciplinary failures. As such, they shall be subject to penalties in proportion to their seriousness, following substantiation in the respective disciplinary proceeding, in which the guarantee of a defense shall be assured (Article 66 of the Constitution). This is without prejudice to the administrative, civil or criminal responsibility provided by the Constitution and the law (Article 21 (2) of Law 17.060)
- II) **(Disciplinary power and criminal jurisdiction)**. A public official's submission to criminal justice is not an obstacle to the necessary exercise of the power of the respective agency, independently of the judicial branch, to conduct internal procedures and adopt the appropriate decisions regarding disciplinary failures that are substantiated through the administrative route in accordance with the law (Decree 500/991, Articles 168 to 231, Articles 1051 to 1127 of the TOFUP).

- III) **(Report of irregularities or corrupt practices)**. All public officials are required to report irregularities they become aware of in the course of their duties, irregularities committed in their division or whose effects are felt by their division in particular (Article 175 of Decree 500/991). If they fail in their obligation to report offenses, they commit the crime of failing to proceed with the reporting of offenses (Article 177 of the Penal Code as per the text appearing in Article 8 of Law 17.060). In addition, they must receive and process reports made to them in this regard. In either case, they shall make them known to their hierarchical superiors (Article 175 of Decree 500/991). In the case of irregularities that could cause economic damages, a public official is required to communicate them in writing to his or her hierarchical superior and to the Accounts Court (Articles 103 of the TOCAF and Article 278 of the TOFUP).
- IV) **(Reporting of offenses)**. The division head who is responsible for ruling on internal investigations that could result in a finding of an offense has the duty to arrange for the immediate police report or judicial order (Article 177 of the Penal Code as per the text appearing in Article 8 of Law 17.060).
- V) **(Reports against specific public officials)**. Reports for offenses against government administration must be submitted to the competent judicial body, the Office of the Attorney General, the National Police or other authorities with police functions, as applicable according to the procedural system at the time of their formulation (Article 4 (3) of Law 17.060, Article 14 of Decree 354/999).
- VI) **(System of protection for witnesses and accusers)**. Anyone or any public official who in good faith reports an act of public corruption is also covered by the witness protection benefit established by current regulations (Article 36 of Law 16.707 of July 12, 1995, Decree 209/2000 of July 25, 2000, Article III (8) of the Inter-American Convention against Corruption).
- VII) **(Oversight Body)**. Article 334 of Law 17.296 of February 21, 2001 designates the Government Advisory Board on Economic and Financial Issues as the oversight body under the terms established by Article III (9) of the Inter-American Convention against Corruption.
- VIII) **(Dissemination and presumption of knowledge)**. Article 6 of Law 17.060 entrusts to the Executive Branch, as proposed by the Government Advisory Board on Economic and Financial Issues, the dissemination of the standards of conduct in office. Article 45 of Decree 30/003 mentioned above assigns to that oversight body the duty to disseminate the “Standards of Conduct in Public Office,” the criminal provisions contained in Law 17.060 and other provisions that define offenses whose active subject is a public official, as well as the legal and regulatory provisions relating to sworn statements of assets and income. In this respect, twenty thousand copies of those provisions were released for distribution. The obligation of each public official to know these Standards of Conduct in Public Office and their amendments, assuming their knowledge thereof (Article 7 of Decree 30/003) is established. The dissemination of that compendium of provisions seeks to ensure that public officials know, with as much certainty as possible, the scope of proper conduct, how to identify and resolve conflicts of public and private interests, as well as corrupt practices they must avoid, all of which becomes more important in the case of the public officials listed in Articles 10 and 11 of Law 17.060.

In the criminal arena, [in] Title IV (Offenses against the Administration) of the Penal Code (Law 9.155 of December 4, 1933 with effect as of August 1, 1934) corruption was not defined as a separate offense, even when it constituted bribery or extortion. The new definitions, aggravating circumstances and increased penalties based on the approval of the aforementioned Law 17.060 should be kept in mind. The concept of corruption is defined, *inter alia*, as the improper use of public power or public office to obtain an economic benefit for oneself or for another whether or not damage to the State has resulted (Article 3 of Law 17.060 and Article 10 of Decree 30/003).

**c) Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

There are no systematic measurements as to whether the country's existing standards and mechanisms to combat corruption have had any effect on changing the indicators of corruption levels. Nonetheless, we report: 1) a measurement based on an opinion survey conducted in the cities of Montevideo and Canelones by the Citizen Safety Program of the Ministry of the Interior and financed by the Inter-American Development Bank in December 2001, which contains some general measurements regarding the evolution of corruption in the Uruguay's public sector.

**d) If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct for the correct, honorable and proper fulfillment of public functions, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.**

Not applicable based on responses given above.

**2. Conflicts of interest.**

**a) Are there standards in your country regarding the prevention of conflicts of interest in the performance of public functions? If yes, briefly describe them, indicating aspects such as to whom they apply and the concept on which they are based, and list and attach a copy of the related provisions and documents.**

- i) Senators and Representatives, after joining their respective houses, may not receive paid employment from the branches of government, from departmental governments, autonomous entities, decentralized services or any other government agency nor may they provide services paid for by such entities in any way without the consent of the house to which they belong, and in all cases must have been out of office for one year when they receive employment or provide service (Article 122 of the Constitution), unless they have the express authorization of the respective house of Congress (Article 125 of the Constitution). In addition, during their term of office they may not:
- 1) Participate as directors, administrators or employees in companies that contract for works or services with the government, departmental governments, autonomous entities, decentralized services or any other government agency; or
  - 2) Negotiate or direct third party matters with the central government, departmental governments, autonomous entities and decentralized services. Failure to observe the provisions of this article shall lead to the immediate loss of their position in the legislature (Article 124 of the Constitution).
- ii) Ministers shall be covered by the same incompatibilities and prohibitions as the senators and representatives to the extent applicable (Article 178 of the Constitution). Members of the Accounts

Court are also covered by the same system of incompatibilities and prohibitions as senators and representatives (Article 208 of the Constitution).

- iii) Members of the Boards of Directors or General Directors of autonomous agencies or decentralized services may not be appointed to positions or even honorary positions that directly or indirectly answer to the institute of which they are a part, except for advisors or directors of teaching services, who may be reappointed as department heads or professors and assigned to serve as dean or hold honorary teaching positions. The restriction shall continue for one year after termination of the position that caused the restriction, regardless of the reason for termination, and extends to any mission, professional or otherwise, even though it may not be permanent in nature or involve fixed compensation. In addition, members of the Boards of Directors or General Directors of autonomous entities or decentralized services may not at the same time engage in professions or activities that, directly or indirectly, are related to the institutions to which they belong. The provisions of the preceding two paragraphs do not extend to teaching functions (Article 200 of the Constitution). Article 26 of Law 17.060 establishes that the Directors or General Directors of autonomous entities and decentralized services may not participate as directors, administrators or employees of companies that contract for works or supplies with the autonomous entity or decentralized service where they serve on the board or in general management.
- iv) The position of Municipal Mayor is incompatible with any other public position or employment, with the exception of teaching, and is incompatible with any personal situation that entails receiving a salary or compensation for services from companies that contract with the municipality. A mayor may not contract with the departmental government (Article 289 of the Constitution). The employees of departmental governments or those who receive a salary or compensation for services from private companies that contract with the departmental government may not be part of departmental boards and local boards (Article 290). In addition, during their term of office, mayors, members of departmental boards and local boards may not:
  - 1) Participate as directors or administrators in companies that contract for works or supplies with the departmental government, or with any other public agency that has a relationship with it;
  - 2) Negotiate or direct their own or third party matters with the departmental government (Article 291 of the Constitution). Failure to observe the provisions of the preceding articles shall lead to the immediate loss of ones position (Article 292 of the Constitution).
- v) Positions with the Judiciary are incompatible with any other paid government office, except for teaching positions in higher public education in the area of law, and incompatible with any other permanent honorary government office, except those especially connected to judicial office (Article 251 of the Constitution). Judges and all other employees in the internal offices of the Supreme Court, Tribunals and Courts are prohibited, under penalty of immediate removal from office, from directing, defending, or handling judicial matters or intervening in such matters in any way, outside of their official obligations, even though jurisdiction may be voluntary. The prohibition ceases only in the case of a public official's personal matters or those of his or her spouse, children and forebears (Article 252 of the Constitution).

Article 27 of Decree Law No 15.365 of December 30, 1982 establishes a prohibition on the positions of prosecutors and professional experts with the Office of the Attorney General and the Prosecutor's Office. That prohibition covers the exercise, paid or not, of the professions of attorney, clerk of the court, accountant or prosecutor, in conjunction with the performance of any other paid public office, except for teaching positions in higher public education in the area of law.

vi) (Prohibitions). The prohibitions appearing in section vi) Prohibitions in response to question b) above should be considered repeated here.

**b) Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

The offense of the intersection of public and private interests is committed by a public official who, with or without deception, directly or through an intermediary, takes an interest in any action or contract in which he or she must intervene by reason of his or her position for the purpose of obtaining an improper benefit for him or herself or for a third party, or fails to report any circumstance that connects him or her personally to the person interested in that action or contract. This offense shall be punished by a prison term of six months to three years, special disqualification for two to four years and a fine of 10 to 10,000 readjustable units. It is considered a special aggravating circumstance when the offense is committed to obtain a financial benefit for oneself or for a third party (Article 161 of the Penal Code as per the text appearing in Article 8 of Law 17.060). The seriousness of the commission of such an offense is grounds for removal from office (Article 168 (10) and Article 275 (5) of the Constitution). It is also considered an aggravating circumstance when the active subject has been enriched (Article 163 ter of the Penal Code as per the text appearing in the same article and related laws).

The requirement regarding sworn statements of impediments mentioned in section vi) Prohibitions from question b) above, constitutes a mechanism to enforce standards of conduct in terms of identifying a presumed conflict of interests. This is also true of the mechanism provided in Article 22 (4) of Law 17.060, which establishes the requirement that public officials must make their hierarchical superiors aware of their involvement in decisions bearing on matters in which they have participated as experts.

**c) Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

Most of the aforementioned standards of conduct that are designed to prevent conflicts of interest have a long tradition in this country. Article 221 of Decree 500/991 establishes the requirement to communicate resolutions bearing on administrative inquests to the General Registry of Administrative Inquests that is administered by the National Civil Service Office of the Office of the President of the Republic.

In the 10-year period between 1991 and 2001, there were 10 prosecutions for the offense of the intersection of public and private interests, on which no final decision was reached (see attached information from the Forensic Technical Institute in Annex 19).

**d) If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct intended to prevent conflicts of interest, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.**

Response not applicable.

**3. Conservation and proper use of resources entrusted to public officials in the performance of their functions.**

- a) **Are there standards of conduct in your country that govern the conservation and proper use of resources entrusted to public officials in the performance of their functions? If yes, briefly describe them, indicating aspects such as to whom they apply and to what resources they refer, and list and attach a copy of the related provisions and documents.**
- i) Public officials must use movable and immovable assets belonging to the government agency in which they serve or those allocated to its use or consumption exclusively for the operation of the services for which they are responsible. Public officials are forbidden to use transport, fuel, replacement parts and repair services administered by any source of public funds, beyond what is strictly necessary for the performance of their duties. In no case may the exercise of public office entail the free availability of a vehicle belonging to any agency or allocated for its use beyond the requirements of the service *strictu sensu*, except as otherwise legally provided. Vehicles belonging to a government agency or allocated for its use must be driven by staff with qualifying licenses and may not be assigned for private uses, except in exceptional cases duly justified by the competent authority (Articles 528 and 529 of Law 15.903 of November 10, 1987, Article 153 of Law 16.170, Articles 70 and 71 (e) of the TOCAF, Article 31 of Law 16.170 and Article 377 of Law 16.226).
  - ii) Public officials with tasks or functions associated with the management of government assets are administratively responsible in accounting and financial matters. That responsibility also extends to superiors and employees of entities or non-state public persons that improperly use public funds, or improperly manage the government's assets. The inexcusable deviation from the principles and procedures of good management with respect to the handling of public monies or assets and the safekeeping of government assets constitutes an administrative failure even when it does not cause economic damages to the government (Articles 119 and 120 of the TOCAF and Article 308 of the TOFUP).
- b) **Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

The legal powers summarized above in the area of government accounting and the use of government assets makes it possible to identify those situations that are irregular in this regard. Currently the country's Internal Audit Office is publishing audits conducted during the year that make evident the improper use of public assets.

The web site of the Office of the President of the Republic has an area for reporting cases of improper use of government vehicles, with identification of the vehicles' license plates.

- c) **Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

There is no statistical information in this regard.

- d) **If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct intended to ensure the proper conservation and use of resources entrusted to public officials in the performance of their functions, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.**

Not applicable.

**4. Measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.**

a) **Are there standards of conduct in your country that establish measures and systems governing the requirement that public officials report to appropriate authorities acts of corruption in public office of which they are aware? If yes, briefly describe them, indicating aspects such as to whom they apply and if there are any exceptions, and list and attach copy of the related provisions and documents.**

i) (Reports of irregularities or corrupt practices). In this case we repeat what was stated in section vii) above (implementation of standards of conduct) and the provisions of Articles 1057 to 1061 of the TOFUP.

b) **Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

i) Legislative oversight acts as a system in which the mechanism is put into operation at the initiative of a legislator.

a) Articles 118 to 121 of the Constitution establish the legislators' prerogative to act to provide oversight of the administration.

b) The request for reports enables a legislator to seek data and reports from administrative hierarchies, except those relating to jurisdictional matters (Article 118 of the Constitution).

c) Calling a session (Article 119 of the Constitution) to ask for and receive reports from the Ministers is a prerogative of each house of the legislature.

d) Finally, the legislature can appoint legislative committees to investigate or provide data for legislative purposes (Article 120 of the Constitution). Law 16.698 of April 25, 1995 regulated the operation of the investigating committees, which are defined as multi-person bodies with the mission of advising the legislative body that appointed them in their exercise of its legal powers (Article 1). The appointment of investigating committees (Article 2 (S)) by the legislative body is only admissible "when in the situations or matters to be investigated there have been well-founded reports of the existence of irregularities or illegal activities." (Article 6). It is expressly stated that these committees have neither legislative nor adjudicatory powers (Article 8). The investigations that these committees conduct may encompass criminal actions, in which case Article 66 of the Constitution prohibits them from concluding their investigations until the accused public official has had the opportunity to present his or her answer and articulate his or her defense. The scope of the decisions resulting from these legislative committees (Article 121 of the Constitution) is solely to exercise legal powers of administrative oversight or to enforce the responsibility of public officials who are subject to impeachment (Article 13 of Law 16.698). If the investigation results in a presumption of crimes, the committee shall advise that the files be handed over to the criminal courts for appropriate action (Article 28). Investigations relating to matters that are within the area of competence of the Ministries of Foreign Relations, National Defense, the Interior, or Economics and Finance may be declared as confidential in that these Ministries belong to the Executive Branch (Article 15 (2)). With respect to secrecy involving the actions of legislative committees, Law 16.758 of June 26, 1996 amended Article 31 of Law 16.698 to the effect that such committees may declare some of their actions, testimony or documents received to be secret when there is sufficient merit for such secrecy. When adopting a resolution, the legislative body shall rule on the total or

partial disclosure of what has been done. Witnesses who provide testimony are guaranteed that their identity shall remain secret. Violation of secrecy is criminally penalized. A criminal penalty is also imposed on an expert who testifies falsely, denies what is true or maliciously conceals all or part of the truth (Article 33).

- ii) Powers of the Accounts Court. Any external oversight body has the inherent power to report to the appropriate person or body any irregularities in the handling of public funds and violations of budgeting and accounting laws. In this respect, this power is conferred upon the Accounts Court in its capacity as an external oversight body pursuant to Article 211 (E) of the Constitution of the Republic and Article 123 of the TOCAF. In addition, the Accounts Court may mark as needing urgent consideration and communicate to the national or departmental legislatures as applicable resolutions relating to objections raised regarding expenditures lacking available funds or legal authorization when the amount thereof significantly exceeds the respective budget heading or bill, or actions and contracts performed in clear violation of legal provisions, repetition of expenditures questioned, on a continuous or permanent basis, not handled by the organizations to which they are directed or repetition of expenditures and payments questioned or continuation of procedures when the administrative action was not duly justified (Article 476 Law No. 17.296). The Accounts Court also has the power to issue a ruling on reporting and fiscal years of all agencies of the state, departmental governments, autonomous entities and decentralized services and the corresponding actions in the case of responsibility or reports of irregularities in the handling of public funds and violations of budget and accounting laws of such agencies based on the provisions of Article 211 (C) and (E) of the Constitution of the Republic.
  - iii) In terms of oversight in the central government, the Internal Audit Office, the central comptrollers and the Accounts Court are responsible for conducting investigations or checks in financial and accounting matters (Articles 99 and 102 of the TOCAF). In the departmental governments, this oversight falls to the Office of the General Municipal Comptroller (Article 91 of the TOCAF) or the Accounts Court, as applicable.
  - iv) Any person or public official who in good faith reports one of the public corruption offenses is also covered by the witness protection benefit established by legal provisions in effect (Article 36 of Law 16.707 of July 12, 1995, Decree 209/2000 of July 25, 2000 and Article III (8) of the Inter-American Convention against Corruption of March 29, 1996).
- c) **Briefly states the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

There is no available statistical information on the implementation of the above standards and mechanisms. Nonetheless, as a result of the public dissemination of several of these mechanisms, topics relating to official corruption were taken up in articles in the press. A survey of data held by the Congressional Library between January 1993 and December 2001 indicated that there were 4,963 articles on corruption and a spectacular increase in such publications in 1995 and 1996. Annex 19 shows the data relating to prosecutions and sentences handed down in the area of crimes involving corruption.

- d) **If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and**

**strengthen the standards of conduct that establish measures and systems governing the requirement that public officials report to appropriate authorities acts of corruption in public office of which they are aware, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.**

Not applicable.

## **CHAPTER TWO**

### **SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, 4)**

- a) **Are there regulations in your country establishing methods for registering the income, assets and liabilities of those who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public? If yes, briefly describe them, indicating aspects such as to whom they apply and when the declaration must be presented, the content of the declaration, the evaluation criteria and how the information given is verified, accessed, and used. List and attach copy of the related provisions and documents.**

Law 17.060 of December 23, 1998 gives the Government Advisory Board on Economic and Financial Issues the task specified in Article 4 (5) (B) thereof of receiving the sworn statements of assets and income of any type belonging to the public officials mentioned in Articles 10 and 11 of the law. These articles provide a list of positions and public offices based on their importance by hierarchy, function or subject agency. The list currently includes 3,959 positions that are identified at the web site [www.jasesora.gub.uy](http://www.jasesora.gub.uy).

This led to the implementation of a Registry of Sworn Statements for the purpose of organizing, receiving, filing, safeguarding, and administering such sworn statements and issuing the certificates confirming that this legal requirement has been met.

A covered public official must submit a sworn statement containing an accurate and well-documented list of the assets that comprise his or her assets, the obligations that comprise his or her liabilities, as well as any income received from rents, wages, salaries or benefits of any type. He or she must also declare the assets, liabilities and income of his or her spouse; their assets, liabilities and income as a couple; and the assets, liabilities and income of persons subject to his or her parental authority, guardianship or curatorship (Article 12 of Law 17.060 and Article 28 of Decree 354/999). The breakdown of assets, liabilities and income must cover those held in the country as well as overseas. He or she must submit the initial sworn statement to the Advisory Board in a sealed envelope within thirty days of completing seventy days of uninterrupted service in the position or function. Updates shall be made every two years from the date of assuming office. Whenever a public official leaves office, he or she must submit a final statement within thirty days thereof. The Advisory Board shall keep the envelopes for a period of five years from the time the official leaves office. The only exception to the general rule on keeping the envelope is the exception relating to the sworn statements of the President and Vice President of the Republic, whose envelopes are opened by the Advisory Board, with the content thereof published in the Official Gazette.

The law considers the failure to submit the sworn statement to be serious administrative noncompliance with the inherent duties of public office and orders that the names of those not in compliance be published in the Official Gazette and in another nationally circulated daily newspaper. The Advisory Board is responsible for the safekeeping of the sworn statements received in sealed envelopes and shall only proceed to open them under the circumstances provided in Article 15 of Law 17.060, i.e., at the request of

the interested party him or herself, under a well-founded decision of the criminal courts, or under a well-founded resolution of the Advisory Board.

- b) Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.**

On August 22, 2002, the Advisory Board had 17,398 sworn statements in sealed envelopes corresponding to 13,996 government positions and posts for which the law requires the submission of such a statement. Of these statements, 10,560 were from officials in the national government, public companies and quasi-governmental agencies and 3,436 were from public officials in the departmental governments. More than 30 envelopes have been opened by order of the criminal courts and about 10 have been opened at the request of interested parties.

- c) If no such regulations exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the regulations that establish methods for registering the income, assets and liabilities of those who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public, in accordance with Article III (4) of the Convention.**

Not applicable.

### CHAPTER THREE

#### OVERSIGHT BODIES

- a) Are there oversight bodies charged with the responsibility of ensuring compliance with the provisions stated in Article III (1), (2), (4) and (11) of the Convention? If yes, list and briefly describe their functions and characteristics, and attach a copy of the related provisions and documents.**

- i) The system for external oversight of the economic and financial actions and management of all government agencies, including autonomous entities, decentralized services and departmental governments, is the responsibility of the Accounts Court (Section XIII, Articles 208 *et seq.* of the Constitution of the Republic, Articles 473 *et seq.* of Law 17.296 of February 21, 2001. The internal oversight system in the central government, responsibility for which lies with the Internal Audit Office and the internal audit units of the government entities mentioned in Articles 220 and 221 of the Constitution (Articles 92, 93, and Article 94 (6) of the TOCAF).
- ii) The Government Advisory Board on Economic and Financial Issues is a public agency created by Article 4 of Law 17.060 of December 23, 1998, with technical independence in the exercise of its functions. Article 334 of National Budget Law 17.296 gives it an institutional location, for budgetary purposes, as an executing unit in paragraph 11 under the Ministry of Education and Culture, retaining its technical independence and establishes that the Government Advisory Board on Economic and Financial Issues is the oversight body indicated in Article III (9) of the Inter-American Convention against Corruption dated March 29, 1996 in Caracas and ratified by Law 17.008 of September 25, 1998.
- iii) With respect to this question, the answer should be that the duties relating to compliance with Article III (1), (2), (4) and (11) of the Convention were assigned to the Government Advisory Board on Economic and Financial Issues. Article 11 (E) of Decree 354/999 dated November

12, 1999 refers to the provisions regarding matters established in Article III (1) and (2) of the Convention. With respect to fulfillment of Article III (4) of the Convention, Articles 10 to 19 of Law 17.060 of December 23, 1998 and Articles 24 to 36 of Decree 354/999 of November 12, 1999 establish the Advisory Board's power to administer the systems for the reporting of income, assets and liabilities by persons performing public functions.

iv) Finally, with respect to Article III (11) of the Convention, the Advisory Board is competent as an oversight body (Article 334 of Law 17.296) and Article 12 of Decree 354/999 cited above authorizes the Advisory Board to join with nongovernmental organizations to eradicate conduct contrary to public probity.

**b) Briefly state the results that said oversight bodies have obtained in complying with the previous functions and characteristics, and attach a copy of the pertinent statistical information, if available.**

It has already been informed previously

## CHAPTER FOUR

### PARTICIPATION BY CIVIL SOCIETY (ARTICLE III, NUMBER 11)

#### 1. General questions on the mechanisms for participation

**a) Are there in your country a legal framework and mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

i) The Constitution provides for a body called the National Economic Council, whose members represent the country's economic and professional interests. The Council is consultative and honorary and the Constitution gives the legislature the power to create this body (Article 206).

ii) Article 31 of the Constitution empowers any inhabitant of the Republic, and not just citizens, to exercise the right to petition any and all authorities of the Republic. Articles 117 to 119 of Decree 500/991 establish the mechanisms for executing said right of petition.

iii) In the case of questions regarding defense of the environment, cultural or historical values and generally values belonging to an indeterminate group of persons, the Office of the Attorney General, any interested party and institutions or associations of social interest that by law or in the judgment of the Court guarantee an adequate defense of the compromised interest shall be given legal standing without distinction to initiate the relevant process (Article 42 of the General Procedure Code, whose legal name is "Representation in the case of diffuse interests").

iv) Anyone has the right to make an arrest in the case of flagrant offenses (Articles 120 and 121 of the Code of Criminal Procedure, Decree Law 15.032 of July 7, 1980).

v) Anyone who learns by any means of the commission of an officially prosecutable offense can report it to the judicial or police authority (Articles 105 to 110 Code of Criminal Procedure).

vi) Under the chapter on "Social oversight," the anticorruption law (Law 17.060) establishes some mechanisms to facilitate citizen oversight. First, the Executive Branch is required, at the suggestion of the Government Advisory Board on Economic and Financial Issues, to conduct

periodic dissemination campaigns in the area of government transparency, the responsibility of public officials, and citizen oversight mechanisms (Article 6). Second, with respect to the procurement of goods and contracting of services, the requirement that government agencies publicize them widely is established (Article 5), and this was regulated by Article 11 (H) of Decree 354/999 as cited above, which empowers the Advisory Board to verify compliance with that public disclosure obligation. The mechanism used to publicize government procurements is the web site of the Office of the President of the Republic ([www.presidencia.gub.uy](http://www.presidencia.gub.uy)).

Finally, in order to facilitate citizen oversight, the public disclosure of acts, documents and other items regarding public service is guaranteed, except when their nature requires that they remain confidential or secret or they have been declared as such by law or well-founded resolution (Article 7 of Law 17.060).

- vii) The law in any case establishes the participation of civil society in government agencies. The National Civil Service Commission, which is given important functions, includes a representative of government workers (Article 6 of Law 15.757 of July 15, 1985 as per the text appearing in Article 51 of Law 16.226 of October 29, 1991). The Honorary Commission appointed in the context of the anticorruption law to draw up proposals for updating and legislative and administrative organization in the area of transparency in government contracting and with respect to conflicts of interest in public office, includes among its six members a member appointed by the most representative organization of public employees (Article 25 of Law 17.060).
- viii) For the purpose of eradicating conduct contrary to public probity, the Government Advisory Board on Economic and Financial Issues may, as established by Article 12 of Regulatory Decree 354/999, join with nongovernmental organizations for the purpose of rules regarding:
  - a) standards of conduct for public officials, transparency in government contracting, the occurrence of conflicts of interest in public office and mechanisms designed to prevent them;
  - b) periodic dissemination campaigns in the area of government transparency and the responsibility of public officials, offenses, failures and administrative penalties for violations against public administration, citizen oversight mechanisms provided in the country's institutional system;
  - c) changes in the rules on matters relating to the jurisdiction of the Advisory Board; and
  - d) verification of the public disclosure required of public agencies with respect to the procurement of goods and contracting of services.
- ix) In order for nongovernmental organizations and civil society organizations to organize and operate validly within national territory they must arrange to establish their legal status by qualifying with the Legal Entities Division of the Ministry of Education and Culture, which is the authority charged with processing legal status as required by Article 21 of the Civil Code.
- x) Special note should be made of the establishment and operation of the Commission to Combat Corruption "URUGUAY TRANSPARENTE," which has provided the following report for purposes of this questionnaire:

This commission, founded in July 1995, is the only non-governmental organization at the national level in our country. Its founding members were individuals representing a broad spectrum of Uruguayan society. It was widely covered in all the mass media, was trusted by the society and was known to and respected by government institutions.

After its founding, the commission was recognized as the national chapter of the “Transparency International Global,” a nongovernmental organization created in Germany in May 1993 with the same goals.

On July 24, 1996, Transparency International Latin America and the Caribbean (*Transparencia Internacional Latinoamericana y del Caribe*--TYLAC) was established in Lima, Peru, with Uruguay Transparente appearing as a founding agency. Its mission is similar to that of the global institution and it is governed by its institutional principles.

Uruguay Transparente is not subject to a hierarchy; it operates in a context of solidarity, but with an independent viewpoint. Its organization is multidisciplinary as its Executive Committee is made up of nine members who are members of civil society from different sectors of social activity. Its mission is to promote and develop educational campaigns in defense of the ethical values of society, to suggest measures to combat the causes that create and facilitate corruption, to inform public opinion when irregularities have been proven and all related proceedings have been exhausted but the competent authorities have not adopted the corresponding remedies, assuming responsibility for this attitude.

**b) Briefly state the results that have been obtained in implementing the above mechanisms, attaching the pertinent statistical information, if available.**

The country is in the initial phases of interacting with civil society organizations on the fight against corruption. However, there is highly productive cooperation with Uruguay Transparente and the media.

**c) If no such mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption, in accordance with Article III (11) of the Convention.**

This is not the case, given the preceding response.

**2. Mechanisms for access to information**

**a) Are there mechanisms in your country that regulate and facilitate the access of civil society and non-governmental organizations to information under the control of public institutions? If so, describe them briefly, and indicating, for example, before which entity or agency said mechanisms may be presented and under what criteria the petitions are evaluated. List and attach a copy of the related provisions and documents.**

Article 29 of the Constitution establishes that “in all areas the expression of thoughts in words, in private writings or in writing published in the press or any other method of dissemination is entirely free, with no need for prior censorship; the author and, as applicable, the printer or publisher, remains responsible for any abuses he or she commits, in accordance with the law.” This provision serves as a valuable protection allowing for the objective and responsible reporting of acts of corruption.

The principle of the unrestricted disclosure of all acts, documents and other items relating to official functions is embodied in Article 7 of Law 17.060. This principle allows of express exceptions only in the event such exceptions have been stipulated to through well-founded resolution under the legally applicable responsibility. Article 22 (1) of the same law establishes as official conduct contrary to probity in public office “the refusal to provide information or documentation that has been requested in accordance with the law.” In addition, Article 163 of the Penal Code as per the text appearing in Article 8 of Law 17.060 establishes the offense of revealing secrets: “A public official who, abusing his office, reveals facts, or

publishes or disseminates documents he or she knows about or possesses by reason of his or her current or former employment, which should remain secret, or facilitates knowledge thereof, shall be punished with six months to two years of suspension and a fine of 10 UR (ten readjustable units) to 3,000 UR (three thousand readjustable units).”

Article 694 of National Budget Law 16.736 is also consistent with this principle of unrestricted disclosure in that it guarantees to administrators “full access to information of interest to them” that results from “the use and application of computer and data transmission media to carry out the activities of public agencies and the exercise of their powers.” The embodiment of this guarantee in terms of access in principle to information from computer media also represents a suitable instrument allowing for the participation of civil society in the operations of public administration.

The right of access to information given to administrators is the counterpart of the obligation to publicize administrative decisions and documents. It is an individual right derived from the republican form of government, as recognized in Article 72 of the Constitution, and Article 332 of the Constitution requires that this right be implemented in that it constitutes a duty of public agencies, even in the absence of regulations. This right of access to information is a principle embodied in Article 19 of the Universal Declaration of Human Rights. The right to investigate and receive information is established in Article 14 of the Pact of San Jose, Costa Rica (ratified by National Law 15.737 of March 8, 1985, Article 15) with respect to rectifying inaccurate or offensive information disseminated to the public in general.

A mechanism for providing information to civil society is the web site of the Office of the President of the Republic ( [www.presidencia.gub.uy](http://www.presidencia.gub.uy)).

This site disseminates news of general interest to the country, such as geographical location, constitutional provisions, decrees and resolutions. With respect to information on the public sector, the site contains the number of civil servants with a breakdown for each of the different areas of government, their different compensation levels, information regarding the authorities in each agency with their respective addresses, the information required for Central government purchases pursuant to Decree 66/002, which requires publication of the basic terms and specific conditions for each request for proposals as well as decisions made in this regard, information relating to the abuse of official vehicles with an e-mail address for reports in this regard (Decree 192/002). The site centralizes links with various government agencies, highlighting aspects of official activity. Notable among these is the link to the web site of the Government Advisory Board on Economic and Financial Issues -- [www.jasesora.gub.uy](http://www.jasesora.gub.uy). This web site has been very important for the news media, encouraging public debate on these issues.

**b) Briefly state the results that have been obtained in implementing the above mechanisms, attaching the pertinent statistical information, if available.**

- i) We know of no objective and systematic statistics on this subject.
- ii) However, seminars, workshops and other working sessions that have been held in recent years represent a positive contribution to public debate regarding standards and mechanisms to combat corruption in the country since the law ratifying the Inter-American Convention against Corruption and since issuance of the Anticorruption Law.

**3. Mechanisms for consultation**

- a) **Are there mechanisms in your country for those who perform public functions to consult civil society and non-governmental organizations on matters within their sphere of competence, which can be used for the purpose of preventing, detecting, punishing and eradicating public**

**corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.**

Answered in point 2 above.

**b) Briefly state the results that have been obtained in implementing the above mechanisms, attaching the pertinent statistical information, if available.**

No information is available.

**4. Mechanisms to encourage active participation in public administration**

**a) Are there mechanisms in your country to facilitate, promote and obtain the active participation of civil society and non-governmental organizations in the process of public policy making and decision making, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them and list and attach the related provisions and documents.**

i) Various seminars, workshops and working sessions promoted by civil society organizations, particularly Uruguay Transparente, both alone and in conjunction with other non-governmental organizations such as the Uruguayan Accounting and Budget Association, (*Asociación Uruguaya de Contabilidad and Presupuesto – ASUCYP*) and the Association of Judicial Magistrates of Uruguay and in conjunction with government agencies (Court Prosecutor and General Prosecutor, Internal Audit Office), et al. have provided settings where it has been possible to discuss some aspects of policy on the subject of combating corruption.

With respect to this question, the Office of the President of Uruguay Transparente states the following. This has been the fundamental objective of Uruguay Transparente – achieved in ongoing radio and television presentations and in seminars. The starting point is always the enforcement of human rights, international pacts in the area of human rights, the OAS Charter, the Inter-American Convention against Corruption ratified by National Law 17.008, and the Pact of San Jose, Costa Rica or American Convention on Human Rights, ratified by National Law No 15.737 of March 8, 1985.

ii) A workshop on the subject of conflicts of interest in public administration with the participation of senior officials and organizations of university professionals as well as invitations issued to organizations representing civil society will provide an opportunity to define the implementation of public policies on the subject.

**b) Briefly state the results that have been obtained in implementing the above mechanisms, attaching the pertinent statistical information, if available.**

Not available

**5. Participation mechanisms for the follow-up of public administration**

**a) Are there mechanisms in your country to facilitate, promote and obtain the active participation of civil society and non-governmental organizations in the follow-up of public administration, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them, and list and attach a copy of the related provisions and documents.**

Not available

- b) **Briefly state the results that have been obtained in implementing the above mechanisms, attaching the pertinent statistical information, if available.**

There are none.

## CHAPTER FIVE

### ASSISTANCE AND COOPERATION (ARTICLE XIV)

#### 1. Mutual Assistance

- a) **Briefly describe your country's legal framework, if any, that establishes mechanisms for mutual assistance in processing requests from foreign authorities that, in accordance with their internal law, have powers to investigate or prosecute acts of public corruption, for the purpose of obtaining evidence and carrying out other actions necessary to facilitate proceedings relating to the investigation or prosecution of acts of corruption. List and attach copy of the provisions that contain such mechanisms.**
- i) Articles 34 to 36 of the Anticorruption Law (Law 17.060 cited above) establish the legal framework and the procedure for requests for international legal cooperation from foreign authorities empowered to investigate or prosecute acts of corruption.

The procedure begins when requests are received by the "Central Advisory Authority for International Legal Cooperation," a division of the Directorate of International Legal Cooperation and Justice of the Ministry of Education and Culture. Requests are sent to the jurisdictional authorities or competent national administrative authorities for processing. With respect to requests for cooperation, judges are required to apply the laws of the Republic. In the case of simple processing and evidentiary steps, cooperation shall be provided without examining whether or not the conduct leading to the investigation or prosecution constitutes a crime under Uruguayan law. Requests relating to search, lifting of bank secrecy, seizure and delivery of any object shall be subject to the procedural and substantive law of the Republic.

Article 34 (5) expressly establishes that: "Requests may be rejected when they seriously affect the public order, as well as the security or other fundamental interests of the Republic." For this purpose, the country's Permanent Mission to the OAS appeared before the General Secretariat on August 7, 2001, and reported that, on the occasion of the legislative process to ratify the Convention, the Republic of Uruguay made "express reservation for the application of public order, when the cooperation sought substantively, seriously and obviously offends the standards and principles on which Uruguay bases its legal individuality."

- b) **Has your government presented or received requests for mutual assistance under the Convention? If so, indicate the number of requests that is has presented, explaining how many of them have not been answered and how many have been denied and for what reason; indicate the number of requests that it has received, explaining how many of them have not been answered and how many have been denied and for what reason; mention the average time it has taken your country to answer said requests and the average time in which other countries have responded, and indicate whether you consider these intervals reasonable.**

The government of Uruguay has participated in the exchange of requests for mutual assistance relating to the subject referred to by the question identified in number 1 of this fifth Chapter, and processed it accordingly.

- c) **If no such mechanisms exist, briefly indicate how your State has implemented the obligation, in accordance with Article XIV (1) of the Convention.**

Not applicable.

## **2. Mutual technical cooperation**

- a) **Does your country have mechanisms to permit the widest measure of mutual technical cooperation with other States Parties regarding the most effective ways and means of preventing, detecting, investigating and punishing acts of public corruption, including the exchange of experiences by way of agreements and meetings between competent bodies and institutions, and the sharing of knowledge on methods and procedures for citizen participation in the fight against corruption? If so, describe them briefly.**

On December 3, 2001 the Anticorruption Office of the Ministry of Justice and Human Rights of the Republic of Argentina and the Government Advisory Board on Economic and Financial Issues of the Ministry of Education and Culture of Uruguay signed a memorandum on mutual assistance in the fight against corruption, the text of which is attached.

In addition, on June 14, 2002 and subject to the approval of the Executive Branch, Uruguay's Government Advisory Board on Economic and Financial Issues joined the Anticorruption Office of the Ministry of Justice and Human Rights of the Republic of Argentina, the General Audit Council of the Republic of Chile, the Office of Government Ethics of the United States of America, the Office of the Ethics Counsellor of Canada and the Office of Government Ethics of Puerto Rico in signing the instrument establishing the Network of Government Institutions for Public Ethics in the Americas. The purpose of the network is to promote assistance and the exchange of technical information and experience in order to enhance programs on transparency, combating corruption and strengthening public ethics and probity in the respective countries. The relevant text is attached.

This implements the provisions of Article XIV (2) of the Convention.

- b) **Has your government made requests to other States Parties or received requests from them for mutual technical cooperation under the Convention? If so, briefly describe the results.**

The Advisory Board received a visit from the Anticorruption Office of the Republic of Argentina for purposes of demonstrating the operation of the mechanism for computerizing the sworn statements of assets and income. In addition, an invitation has been received from that Office and from the Office of Government Ethics of Puerto Rico to participate in a workshop on conflict of interests in public service.

- c) **If no such mechanisms exist, briefly indicate how your State has implemented the obligation, in accordance with Article XIV (2) of the Convention.**

Not applicable.

- d) **Has your country developed technical cooperation programs or projects on aspects that are referred to in the Convention, in conjunction with international agencies or organizations? If**

**so, briefly describe, including, for example, the subject matter of the program or project and the results obtained.**

Through the United Nations Development Program, a mission from the Spanish expert, Dr. Pablo García Mexía, was selected and supported. This expert produced a report evaluating the regulatory system and its implementation in the country with respect to combating corruption, including suggestions and comments after interviews with politicians, magistrates, journalists, public employees and senior officials. The report can be read at [www.jasesora.gub.uy](http://www.jasesora.gub.uy).

## CHAPTER SIX

### CENTRAL AUTHORITIES (ARTICLE XVIII)

#### 1. Designation of Central Authorities

- a) **Has your country designated a central authority for the purpose of channeling requests for mutual assistance as provided under the Convention?**

Article 35 of Law 17.060 creates the Section for International Legal Cooperation within the Central Advisory Authority for International Legal Cooperation, a division of the Directorate of International Legal Cooperation and Justice of the Ministry of Education and Culture. This is the Central Authority for purposes of Article XIV (1).

- b) **Has your country designated a central authority for the purpose of channeling requests for mutual technical cooperation as provided under the Convention?**

Although the Government Advisory Board on Economic and Financial Issues has not been designated as the central authority for purposes of channeling mutual technical cooperation as provided by Article XIV (2), it carries out these functions because it has been designated to act as the oversight body under Article 334 of Law 17.296. As a result, it should be understood that this government agency carries out the functions of a Central Authority as provided under Article XIV (2) of the Convention.

- c) **If your country has designated a central authority or central authorities, please provide the necessary contact data, including the names of the agency(ies) and the responsible official(s), the position that he or she occupies, telephone and fax numbers, and e-mail address(es).**

The Director of the Central Authority for International Legal Cooperation of Uruguay (Article XIV (1) of the Convention) is Dr. Eduardo Tellechea Bergman, telephone numbers (5982) 901 1633, 901 3990 and 901 7885, fax number 901 7885, and e-mail address [tellechea@mec.gub.uy](mailto:tellechea@mec.gub.uy). The person carrying out the functions of the Director of the Central Authority (Article XIV (2) of the Convention) is the President of the Government Advisory Board on Economic and Financial Issues, Jorge Sambarino Cármine, telephone and fax number (5982) 917 04 07, and e-mail address [secretaria@jasesora.gub.uy](mailto:secretaria@jasesora.gub.uy).

- d) **If no central authority or authorities have been designated, briefly indicate how your State will implement the obligation, in accordance with Article XVIII of the Convention.**

Not applicable

## **2. Operation of Central Authorities**

- a) **Do the central authorities have the necessary resources to make and receive requests for assistance and cooperation under the Convention? If yes, describe them briefly.**

The Central Authority for International Legal Cooperation of Uruguay has highly qualified personnel in that its Director and Consulting Attorneys are university professors in International Private Law and International Legal Cooperation with broad background on the subject.

- b) **Have the central authorities, since their designation, made or received requests for assistance and cooperation under the Convention? If so, indicate the results obtained, whether there were obstacles or difficulties in handling the requests, and how this problem could be resolved.**

The government of Uruguay has participated in the exchange of requests concerning mutual assistance on this subject, processing them appropriately. This information is now being surveyed through the Central Advisory Authority on International Legal Cooperation. Once this information is available, we will proceed to expand on the response to this question.

## **III. INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE**

Please provide the following information:

**State Party:** Republic of Uruguay.

**The official to be consulted regarding the responses to this questionnaire is:** Mr.: Jorge A. Sambarino Cármine.

**Title / position:** President of the Government Advisory Board on Economic and Financial Issues.

**Agency / office:** Government Advisory Board on Economic and Financial Issues

**Mailing address:** Rincón 528, Montevideo. Uruguay.

**Telephone number:** (598 2) 917.04.07

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