



**Conference of the States Parties
to the United Nations
Convention against Corruption**

Distr.: General
8 October 2014
English
Original: Spanish

Implementation Review Group

Sixth session

Vienna, 1-5 June 2015

Agenda item 2

**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

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II. Executive summary

Uruguay

1. Introduction: Overview of the legal and institutional framework of Uruguay in the context of implementation of the United Nations Convention against Corruption

The Uruguayan legal system is based on the civil law tradition. According to article 168 of the Constitution, the Executive branch of government may conclude and sign treaties, although it requires the approval of the Legislature to ratify them through a national law. Implementation of the United Nations Convention against Corruption is governed by Act No. 18.056, which was adopted by the Senate and the Chamber of Representatives on 14 November 2006, enacted on 20 November 2006 and published on 1 December 2006 in Official Gazette No. 27.131. Act No. 18.056 adopts the Convention in a single article; through this Act the Convention became an integral part of Uruguay's domestic legal system. The instrument of ratification was deposited with the United Nations Secretary-General on 10 January 2007. The National Constitution is the supreme law of the State, followed in priority order by laws, international treaties ratified by law, and codes.

Similarly, with regard to anti-corruption matters, Act No. 18.056 is complemented by Act No. 17.060 of 23 December 1998 (on the abuse of public power (corruption)), as well as the relevant articles of the Criminal Code and the Civil Code, Act No. 15.032 (Code of Criminal Procedure), Act No. 18.914 (money-laundering), Act No. 18.315 (police procedure) and Acts Nos. 15.322 and 17.948 (bank secrecy), inter alia.

The main institutions involved in preventing and combating corruption are the Transparency and Public Ethics Board, the National Anti-money-laundering Secretariat, the Prosecution Office dealing with organized crime, the Directorate-General for Combating Organized Crime and INTERPOL, the Financial Information and Analysis Unit, the Judiciary and the Central Authority for International Cooperation under the Ministry of Education. At the parliamentary level, Uruguay has a special money-laundering commission for legislative purposes.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

The Eastern Republic of Uruguay criminalizes the bribery of public officials through articles 159 (bribery), 157 (simple bribery) and 158 (aggravated bribery) of the Criminal Code. Under the offence of bribery (art. 159), inducing a public official to commit simple bribery by carrying out acts within their duties (art. 157) or acts contrary to the same (art. 158) is a punishable act. Further, a public official who accepts a promise or undue remuneration in return for carrying out an act within the scope of their duties is penalized for simple bribery (art. 157). Where the undue remuneration was a result of the public official delaying, failing to fulfil or acting contrary to their duties, the said official is penalized for aggravated bribery.

Article 175 of the Criminal Code defines the concept of public official more broadly as appointed officials and de facto officials.

Article 29 of Act No. 17.060 (transnational bribery) covers in part the promise, offering or giving of an undue advantage under the terms and requirements of article 16(1) of the Convention. Regarding paragraph 2 of the same optional article, Uruguay does not criminalize passive bribery of foreign public officials or officials of public international organizations.

Article 158 bis of the Criminal Code penalizes the solicitation or acceptance of trading in influence by a public official (art.18(b) of the Convention), this provision being applicable to both public officials and private individuals and to anyone accepting the promise of an undue advantage. Anyone offering, giving or promising an undue advantage through trading in influence (art. 18(a)) may be punished as co-perpetrator pursuant to the rules on participation provided for in article 61(4) of the Criminal Code. It is noted that economic and intangible advantage are not expressly characterized for this offence.

Uruguay does not have legislation on bribery in the private sector in accordance with article 21 of the Convention. At present, other conduct is used tangentially that might possibly cover some elements of this offence, such as fraud (art. 347 of the Criminal Code), misappropriation (art. 351 of the Criminal Code), disclosure of professional documents or secrets (arts. 301 and 302 respectively of the Criminal Code) and malfeasance (arts. 194 and 196 of the Criminal Code).

Money-laundering, concealment (arts. 23 and 24)

Through Decree-Law No. 14294 (1974) and Act No. 17016 (1998), Uruguay criminalizes the concealment, disguise, transformation and “self-laundering” of property when perpetrated in the knowledge that such property is the proceeds of crime. The offences established under the Convention are predicate offences to the laundering of the proceeds of crime. Uruguay complies with most of the requirements of article 23 of the Convention. However, Uruguay has yet to furnish its legislation officially, as required in article 23(2)(d). Uruguay does not criminalize the concealment or retention of property resulting from corruption offences.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Article 153 (embezzlement) of the Criminal Code punishes any public official who appropriates money or movable property belonging to the State or to private individuals, of which property they were in possession by virtue of their position. Articles 160 and 161 penalize fraud and the conjoining of personal and public interest, respectively, as forms of diversion of property. The disclosure of secrets and the misuse of privileged information are punished through articles 163 and 163 bis of the Criminal Code, covering the appropriation or diversion of immovable property. The embezzlement of property is not specifically criminalized.

Article 162 of the Criminal Code, introduced through article 8 of Act No. 17.060, penalizes in part the abuse of functions without including the case of abuse by failure to perform an act as required by article 19 of the Convention.

Uruguay considered the possibility of criminalizing illicit enrichment as a separate offence during the parliamentary debate on Act No. 17.060, but the proposal was not adopted. An alternative draft law has been tabled seeking once again to criminalize illicit enrichment, demonstrating the Uruguayan Government's compliance with article 20 of the Convention, which is optional.

Regarding the embezzlement of property in the private sector (art. 22 of the Convention), Uruguay partially establishes this as a criminal offence, penalizing bankruptcy fraud (art. 248 of Act No. 18.387) and fraudulent company insolvency (art. 5 of Act No. 14.095).

Obstruction of justice (art. 25)

Uruguay penalizes as procedural obstructionism acts of violence or intimidation directed at reporting persons, parties or accused persons, lawyers, experts or witnesses, including the criminal offences established under the Convention (art. 10 of Law No. 18.494). Interfering with the exercise of official duties by public officials, including justice and law enforcement officials, is punished under the offence of assault (art. 171 of the Criminal Code).

Liability of legal persons (art. 26)

In the legal system of Uruguay, only natural persons are subject to criminal liability, while legal persons are subject to civil and administrative liability.

Participation and attempt (art. 27)

The Criminal Code establishes participation (arts. 59, 61, 62, 64 and 65) and attempt (art. 5) as forms of criminal liability. Preparatory acts, conspiracy and invitation to participate (proposición) are punishable (art. 7 of the Criminal Code), but do not apply to the offences established under the Convention as they are not specifically mentioned in the law.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Act No. 17.060 increased the maximum penalties for offences established under the Convention to an average of six years, except for money-laundering where the penalty is ten years. Given the local legal context, these sentences are considered harsh. These sentences may be increased in certain cases and sanctions such as fines, disqualification from public office and confiscation of the proceeds of crime are also provided for.

The Constitution of Uruguay provides mechanisms for dismissal (art. 93) and suspension of duties (arts. 112, 114 and 296) for senior state officials for serious crimes. Article 26 of the Constitution guarantees the social reintegration of convicted persons.

Article 6 of Act No. 18.494 allows for the reduction of or exemption from prison sentences for those who assist substantially with the prosecution of only those criminal offences established under the Convention that are under the jurisdiction of courts specializing in organized crime.

Protection of witnesses and reporting persons (arts. 32 and 33)

Uruguay has various rules and regulations at its disposal concerning the protection of witnesses, victims and reporting persons. In this regard, Decree No. 209/2000 provides a general protection framework and was issued in implementation of article 36 of Act No. 16.707 on citizen safety. Article 8 of Act No. 18.494 on money-laundering provides for witness protection in cases of offences against public administration that occur within the territorial jurisdiction of a specialized court or that involve an amount greater than 20,000 USD. Uruguay has indicated that, in cases outside the jurisdiction of the specialized courts, protection should be ordered by the ordinary courts. Similarly, Act No. 18.315 regulates police protection for witnesses and victims in cases of confidential information, while Decree No. 30/2003 regulates protection for reporting persons where such persons are public officials and have reported offences including those established under the Convention. To strengthen the regulatory framework, a preliminary draft law has been prepared that seeks to guarantee administrative and employment protection for persons reporting acts of corruption. It is noted that witness and victim protection is limited in practice to specialized courts with limited territorial jurisdiction and that the country has also identified technical assistance needs in this area.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Freezing, seizing and confiscation are regulated by Act No. 18.494 (art. 2). Confiscation also applies to the instrumentalities used for, intermingled with or destined for offences established under the Convention. Property may be confiscated where owners fail to provide proof of the legitimate origin of the property in the case of money-laundering (art. 6 of Act No. 17.835). The rights of bona fide third parties are guaranteed (art. 5 of Act No. 17.016).

Bank secrecy may be lifted by court decision in criminal matters (art. 25 of Decree-Law No. 15.332), which also includes offences established in accordance with the Convention. Bank secrecy may also be lifted in the event of a foreign request (art. 36 of Act No. 17.060). Act No. 18.930 established a register of bearer shares.

Statute of limitations; criminal record (arts. 29 and 41)

The limitation period for criminal offences established in accordance with the Convention is ten years and is governed by the general rule of article 117 of the Criminal Code. Uruguay signed agreements on the sharing of criminal records with certain countries in the region, enabling its competent courts to seek and provide information on criminal records.

Jurisdiction (art. 42)

Uruguay adequately implements the vast majority of the jurisdictional requirements in accordance with article 42 of the Convention, except with regard to the requirement to exercise jurisdiction over offences committed abroad in matters of money-laundering (art. 42(2)(c)).

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Administrative acts arising from an act of corruption may be annulled or invalidated by the administrative dispute tribunal, which is also competent to rule on compensation for damages (arts. 24-25 of the Constitution and arts. 22-24 of Decree-Law No. 15.524). In criminal matters, compensation may be granted to victims of corruption offences (arts. 25-26, 81-83 and 159 of the Code of Criminal Procedure). The Civil Code regulates civil liability for wrongful act by fraud, fault or negligence (art. 1319). Uruguay has provided examples of implementation on this matter.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The authorities specializing in anti-corruption matters and responsible for upholding the law are the courts, prosecutor's offices, police and the Financial Analysis Unit of the Central Bank. Internal control of the administration of public funds is exercised through the Accounts and Internal Audit Units of the Ministry of Economy and Finance; external control is exercised by the Court of Auditors. The Legislature has a special commission on money-laundering and organized crime and commissions of inquiry in the case of officials subject to impeachment. Public officials have a general obligation to report offences, including offences established in accordance with the Convention (art. 177 of the Criminal Code). Public entities are obliged to provide information and to cooperate with the specialized courts as required (arts. 2 and 3 of Act No. 18.914). Natural or legal persons subject to the control of the country's Central Bank are required to report transactions proven to be legally unjustified.

2.2. Successes and good practices

The following points are regarded as successes and good practices in the implementation of Chapter III of the Convention:

- Uruguay has at its disposal good statistical information that is easily accessible to institutions and that allows specific searches for offences established in accordance with the Convention.
- Where a reduction in sentence has been granted for cooperation, disqualification from holding public office is nevertheless maintained.
- Regarding article 20 of the Convention (illicit enrichment), while the State has shown that it has considered adopting legislative measures, the anti-corruption authorities continue to explore alternative legislative developments aimed at preventing impunity for a significant and unjustified increase in the assets of a public official.
- Bank secrecy may also be lifted in the event of a request from the competent authority of a foreign jurisdiction.
- Uruguay has demonstrated, through information it has provided on various judgements, that it has taken legal action to punish offences established in accordance with articles 15 and 17 of the Convention committed by officials at various levels of public service.

2.3. Challenges in implementation

The following recommended steps could serve to strengthen anti-corruption measures still further:

- Consider a reform that expressly includes the wording of articles 15, 16, 17 and 18(b) of the Convention. In relation to article 16, it is also recommended that non-monetary advantage be taken into account and that officials of public international organizations be expressly included as perpetrators or recipients of the offence of bribery, as required by the Convention.
- In relation to article 18 of the Convention, consider criminalizing economic advantage or advantage of an intangible nature as part of undue advantage. Owing to the lack of court cases in this regard, it is recommended that this article be monitored to ensure effective implementation.
- Consider the possibility of expressly including in law the failure to perform an act as conduct penalized under abuse of functions (art. 19).
- In accordance with the Convention, consider the possibility of criminalizing bribery in the private sector (art. 21) and of adopting comprehensive legislation on the embezzlement of property in the private sector (art. 22).
- Officially furnish copies of its regulations on money-laundering in accordance with article 23(2)(d) of the Convention.
- Monitor the effective implementation of article 27(2) of the Convention, given the lack of case law relating to voluntary withdrawal.
- Consider adopting legislation to punish acts preparatory to the offences established in accordance with the Convention.
- Consider clarifying the concept of serious crimes referred to in article 97 of the Constitution in order to ensure the effective implementation of article 30 of the Convention.
- Consider reviewing the reassignment of judicial officers and other public officials in order to ensure effective compliance with articles 33, 38 and 39 and the purposes of the Convention (art. 1).
- Extend the regulations on cooperation and witness protection in a practical and effective way to all national courts and not only for cases falling within the jurisdiction of specialized courts with limited territorial jurisdiction. Also consider assessing the operational effectiveness of its protection mechanisms for witnesses, experts and victims.

2.4. Technical assistance needs identified to improve implementation of the Convention

Uruguay has identified the following technical assistance needs:

- Legislative assistance and comparable legal practices for the full implementation of articles 20, 21, 22 and 26 of the Convention.
- Model legislation, training programmes and management of protection programmes for witnesses, experts, victims and reporting persons.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

*Extradition; transfer of sentenced persons; transfer of criminal proceedings
(arts. 44, 45 and 47)*

Uruguay may consider the Convention as the legal basis for extradition, together with its 15 bilateral treaties and three regional treaties. Uruguay also cooperates in extradition matters where there is no treaty, provided the principle of dual criminality is met. In domestic legislation, extradition is regulated by the Criminal Code (arts. 13 and 14), the Code of Criminal Procedure (art. 32), Act No. 17.060 (in particular arts. 31 and 32) and Act No. 18.494 (in particular art. 11). Articles 31 and 32 of Act No. 17.060 form the legal basis for cooperation with a request for extradition.

The dual criminality requirement is strictly applied, whether or not a treaty exists with the relevant country (art. 13(2) of the Criminal Code); compliance with the principle of reciprocity is not a legal requirement. However, Uruguay has shown that the offences provided for in the Convention are established in its domestic law. In the absence of express rules to the contrary, the rules applicable to passive extradition are also applicable to active extradition.

Uruguay has indicated that its extradition rules adhere also to the doctrine of specialty, which is regarded as a guarantee for the extradited person, for whom extradition is granted only for the applicable crimes; as extraditions have been granted on an ad hoc basis, there is no case law to furnish. Uruguay has adequate legislation to prevent the offences established in accordance with the Convention from being considered of a political nature (in particular art. 33 of Act No. 17.060).

Under domestic law, Uruguay requires a minimum sentence of two years' imprisonment before it will authorize extradition. Furthermore, article 13 of the Criminal Code mentions two grounds for refusing extradition (political offences and lack of dual criminality), while article 34 of Act No. 17.060 states that a request for cooperation in international criminal legal matters may be rejected where it may seriously affect domestic public policy. Uruguay has stated that, in the absence of a prohibition on extradition, it allows its nationals to be extradited and provides practical examples of this.

In order to expedite extradition procedures and simplify evidentiary requirements, the extradition procedure shall be conducted pursuant to the aforementioned rules of the Criminal Code and the Code of Criminal Procedure, which shall be applied by way of supplement to the extradition process, in the absence of a specific regulation thereon. Further, the provisions of art. 11 of the Inter-American Convention on Extradition shall be applied with regard to the required documentation.

In Uruguay, detention is permitted prior to extradition and several practical cases are furnished by way of example. The Red Notice system of the International Criminal Police Organization (INTERPOL) is also operational in Uruguay, so, on that basis, a person wanted by another State may be detained and brought before the competent criminal court.

Due process, including the enjoyment of all rights and guarantees by the person sought, is guaranteed by article 31 of Act No. 17.060, which expressly states that, in

the absence of a treaty, the standards of the Code of Criminal Procedure, that is, articles 10, 12, 15, 16, 18 and 20 to 23 of the Constitution relating to procedural guarantees, shall apply to the extradition process.

Under domestic law (art. 32 of the Code of Criminal Procedure), Uruguay may not refuse a request for extradition on the sole ground that the offence is also considered to involve tax issues where the facts attributed to that offence go beyond such issues or the sentence handed down is for offences other than fiscal offences. This is consistent with the requirements of article 44(16) of the Convention.

Uruguay is a member of IberRed, which allows the requesting State to follow the judicial process more accurately and to provide additional information in a timely manner where required for the granting of the extradition request.

As a signatory to the Inter-American Convention on Serving Criminal Sentences Abroad, Uruguay has at its disposal an adequate legal framework in this matter.

Uruguayan legislation does not provide for the transfer of criminal proceedings. It may, however, refer directly to the Convention in this regard.

Mutual legal assistance (art. 46)

Uruguay has concluded 12 bilateral conventions and five multilateral treaties on international judicial cooperation. In the absence of a treaty, article 34 of Act No. 17.060 authorizes first- and second-level judicial cooperation, which refers respectively to preparatory acts and procedural, evidentiary and investigative measures, and to acts that cause an irreparable burden, including interim measures, lifting of bank secrecy and embargoes. Third-level cooperation, namely cooperative action likely to cause an irreparable burden on the rights and freedoms of those affected, including provisional measures and the freezing, confiscation or transfer of assets, requires the application of the dual criminality principle. It should be noted that mutual legal assistance has been denied on the ground of lack of dual criminality in cases of confiscation, asset recovery, lifting of confidentiality and extradition.

The measures provided for in article 34 of Act No. 17.060 also apply to legal persons, without prejudice to the requirement of dual criminality, given the fact that in Uruguay criminal liability does not exist for legal persons.

Uruguay may, without prior request, transmit information where it believes that such information may be useful for international cooperation, an approach which is consistent with article 46(4) of the Convention. In this case, the information is furnished by the central authority by means of an official communication.

Articles 34 and 36 of Act No. 17.060 establish the measures for requesting the lifting of bank secrecy in matters of international cooperation.

There is no domestic legislation allowing the transfer of individuals to testify; however, in the absence of a treaty, nothing in Uruguay's domestic law prevents such cooperation where the requested individual gives their consent; agreements concluded under this framework envisage the provision of laissez-passer. Videoconferencing is also permitted for purposes of identification, testimony or other assistance.

Uruguay's central authority is the international criminal legal cooperation section within the corresponding advisory section of the Directorate for International Legal Cooperation and Justice of the Ministry of Education and Culture. At present there are no domestic regulations governing the procedure for requests for assistance, except as provided for in treaties. However, Uruguay reported that procedures specified by the requesting State are taken into consideration, provided such procedures do not affect Uruguayan public policy.

Uruguayan law does not include provisions regarding the costs of executing a request for mutual legal assistance; however, this matter is regulated by bilateral agreements.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Uruguay cooperates in law enforcement matters through the Ibero-American Network for International Legal Cooperation and has a memorandum of understanding with INTERPOL, the European Judicial Network and CEDDET. For example, the informal sharing of information through liaison officers at the Public Prosecution Service and the Judiciary helps to expedite the cooperation process. It is noted that there have been no recent cases of information sharing on corruption.

Uruguay has not concluded agreements on cooperation in law enforcement matters (except those mentioned regarding mutual legal assistance), but much work is being done on the basis of reciprocity and on the basis of the Convention.

Uruguay is a party to the framework cooperation agreement between the States parties of MERCOSUR and associated States for the establishment of joint investigation teams. The preamble to the agreement expressly mentions the provisions of the Convention. Uruguay also cooperates on a case-by-case basis where no framework agreement exists. Article 8 of Decree No. 398/99 establishes a domestic legal framework for such joint investigations.

Controlled delivery, electronic surveillance and the use of undercover agents, practices that are applicable to crimes covered by the Convention, are governed by Act No. 18.494; the same regulation provides for the use of such techniques in the context of international cooperation. However, no specific agreements have been concluded in this regard, and there are no practical examples to furnish with regard to corruption.

3.2. Successes and good practices

The following points are regarded as successes and good practices in the implementation of Chapter IV of the Convention:

- It is noted that a draft Code of Criminal Procedure has been tabled before Parliament providing rules on passive cooperation in the provision of mutual legal assistance.
- It is further noted that Uruguay is implementing agreements on the sharing of information on tax matters, including on criminal tax matters, and a Commission within the Presidency of the Republic is looking into the incorporation of the offence of tax fraud as a predicate offence to money-laundering.

3.3. Challenges in implementation

The following steps could serve to strengthen anti-corruption measures still further:

- It is recommended that Uruguay strengthen its statistical information on cases of extradition and mutual legal assistance in matters of corruption, including the establishment of a register of civil and administrative sanctions for legal entities.
 - Uruguay is urged to render operational and adequately resource the central authority's criminal legal cooperation section in order to strengthen the provision of mutual legal assistance. It is also recommended that Uruguay establish an internal structure and procedures regulating the handling of requests for mutual legal assistance where no treaty exists.
 - It is noted that there are no practical cases to show whether existing domestic law is sufficient to guarantee the implementation of subparagraphs (j) and (k) of article 46, paragraph 3 of the Convention.
 - Uruguay is encouraged to ratify treaties on joint investigations and special investigative techniques.
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