



for equality and justice



### *Article 13. Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to such restrictions as shall only be such as are provided for

## **CIVIL SOCIETY REPORT**

on the Implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

## **UNITED NATIONS CONVENTION AGAINST CORRUPTION**

## **IN ARGENTINA**

by Asociación Civil por la Igualdad y la Justicia

## ACKNOWLEDGMENTS

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Every effort has been made to verify the accuracy of the information contained in this report. All information is believed to be correct as of 07/15/2021.

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**Asociación Civil por la Igualdad y la Justicia (ACIJ)** is a non-partisan, non-profit organization dedicated to the defense of the rights of the most disadvantaged groups of society and the strengthening of democracy in Argentina. Founded in 2002, ACIJ aims to defend the effective enforcement of the National Constitution and the principles of the rule of law, promote compliance with laws that protect disadvantaged groups and the eradication of all discriminatory practices, as well as to contribute to the development of participatory and deliberative practices of democracy.

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## ABBREVIATIONS

While the abbreviations are provided in both Spanish and English in the following table, they are used in their original Spanish version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

Abbr.	Spanish	English
<b>AAIP</b>	Agencia de Acceso a la Información Pública	Access to Public Information Agency
<b>ACIJ</b>	Asociación Civil por la Igualdad y la Justicia	
<b>AFIP</b>	Administración Federal de Ingresos Públicos	Federal Administration of Public Revenues
<b>AGN</b>	Auditoría General de la Nación	General Audit Office of the Nation
<b>BCRA</b>	Banco Central de la República Argentina	Central Bank of Argentina
<b>CAC</b>	Cámara Argentina de la Construcción	Argentine Chamber of Construction
<b>CIPCE</b>	Centro de Investigación y Prevención de la Criminalidad Económica	Center for the Investigation and Prevention of Economic Crime
<b>CIPPEC</b>	Centro para la Implementación de Políticas Públicas para la Equidad y el Crecimiento	Center for the Implementation of Public Policies for Equity and Growth
<b>CN</b>	Constitución Nacional	National Constitution
<b>CNE</b>	Cámara Nacional Electoral	National Electoral Chamber
<b>CNV</b>	Comisión Nacional de Valores	National Securities Commission
<b>CSO</b>	Civil society organizations	
<b>CTR</b>	Informe sobre transacciones en efectivo	Cash Transaction Report
<b>DGRADB</b>	Dirección General de Recuperación de Activos y Decomiso de Bienes del Ministerio Público Fiscal	General Directorate for Asset Recovery and Forfeiture of Assets of the Public Prosecutor's Office
<b>DINE</b>	Dirección Nacional Electoral	National Electoral Directorate
<b>DNU</b>	Decreto de Necesidad y Urgencia	Decree of Necessity and Urgency
<b>DPN</b>	Defensoría del Pueblo de la Nación	National Ombudsman's Office
<b>FATF</b>	Financial Action Task Force	
<b>IGJ</b>	Inspección General de Justicia	General Inspectorate of Justice
<b>INAP</b>	Instituto Nacional de la Administración Pública	National Institute of Public Administration
<b>MESICIC</b>	Mecanismo de Seguimiento de la Convención Interamericana contra la Corrupción	Follow-up Mechanism of the Inter-American Convention against Corruption
<b>NFBP</b>	Negocios y profesiones no financieras	Business and non-financial professions
<b>OA</b>	Oficina Anticorrupción	Anti-Corruption Office

<b>OECD</b>	Organization for Economic Cooperation and Development	
<b>OGP</b>	Open Government Partnership	
<b>ONC</b>	Oficina Nacional de Contrataciones	National Procurement Office
<b>PEP</b>	Personas expuestas políticamente	Politically exposed persons
<b>PROCELAC</b>	Procuraduría de Criminalidad Económica y Lavado de Activos	Economic Crime and Money Laundering Prosecutor's Office
<b>RNBSD</b>	Registro Nacional de Bienes Secuestrados y Decomisados durante el Proceso Penal	National Registry of Goods Seized and Confiscated during Criminal Proceedings
<b>ROS</b>	Reportes de operaciones sospechosas	Suspicious transaction reports
<b>SIGEN</b>	Sindicatura General de la Nación	Office of the Inspector General of the Nation
<b>UIF</b>	Unidad de Información Financiera	Financial Information Unit
<b>UNCAC</b>	United Nations Convention against Corruption	
<b>UNODC</b>	United Nations Office on Drugs and Crime	

## I. INTRODUCTION

Argentina signed the United Nations Convention against Corruption (UNCAC) on December 10, 2003 and ratified it on August 28, 2006.<sup>1</sup>

This report examines Argentina's implementation of selected articles of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the UNCAC. The report is intended as a contribution to the ongoing UNCAC implementation review process covering these two chapters. Argentina was selected by the UNCAC Implementation Review Group through a drawing of lots for review in the third year of the second cycle. The country is currently in the self-assessment stage.<sup>2</sup>

**Scope.** The UNCAC articles and topics that receive special attention in this report are as follows:

- Chapter II (Preventive Measures): preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12), political financing (Article 7.3), public procurement (Article 9.1), access to information (Article 10), participation of society (Article 13.1), and measures to prevent money laundering (Article 14).<sup>3</sup>
- Chapter V (Asset Recovery): anti-money laundering (Articles 52 and 58), measures for direct recovery of property and the return and disposal of confiscated property (Art. 54.1.c, 57.1).

**Structure.** The report begins with an executive summary, which includes the findings, conclusions and recommendations on the review process, the availability of information, as well as the implementation of and compliance with selected articles of the Convention. The next part covers the findings of the review process in Argentina, as well as aspects on access to information required to prepare this report. This is followed by a review of the implementation of the Convention, and a review of recent developments and, finally, recommendations for priority actions to improve the implementation of the UNCAC.

**Methodology.** The report was prepared by Asociación Civil por la Igualdad y la Justicia (ACIJ) with funding from the UNCAC Coalition. ACIJ endeavored to obtain information from government offices and to engage in dialogue with relevant officials. A draft of this report was shared with Argentina's Anti-Corruption Office on June 18, 2021.<sup>4</sup>

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<sup>1</sup> United Nations, Treaty Collection, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-14&chapter=18#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18#EndDec), 9/4/2021.

<sup>2</sup> UNODC (2020), List of Reviewing Countries for the Second Round of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, [https://www.unodc.org/documents/treaties/UNCAC/Review-Mechanism/CountryPairingSchedule/Country\\_pairings\\_for\\_the\\_second\\_review\\_cycle\\_30\\_June\\_2020.pdf](https://www.unodc.org/documents/treaties/UNCAC/Review-Mechanism/CountryPairingSchedule/Country_pairings_for_the_second_review_cycle_30_June_2020.pdf), 9/4/2021.

<sup>3</sup> Article 14 on prevention of money laundering was analyzed in conjunction with articles 52 and 58 of Chapter V.

<sup>4</sup> On June 30, 2021, representatives of the Anticorruption Office participated in a virtual conversation with representatives of ACIJ in which they made a series of comments on the report. Their comments on the report were limited exclusively to the areas of competence of said agency.

The report was prepared using guidelines and a reporting template designed by the UNCAC Coalition and Transparency International for use by civil society organizations (CSOs). These tools reflected the United Nations Office on Drugs and Crime (UNODC) checklist in a simplified form and required relatively short assessments compared to the official self-assessment checklist. The report template included several questions on the review process and, in the section on implementation, asked for examples of good practices and areas for improvement regarding the articles of chapters II and V of the UNCAC.

In preparing this report, the author took into account the latest review reports on Argentina by the follow-up Mechanism of the Inter-American Convention against Corruption (MESICIC), as well as the Integrity Report of the Organization for Economic Cooperation and Development (OECD) and the assessment reports of the Financial Action Task Force (FATF).

## **II. EXECUTIVE SUMMARY**

The following is a summary of the highlights of the report, including those related to the development of the review process, access to official information, the degree of implementation of the Convention at both the regulatory level and its enforcement in practice, and the main recommendations.

### **A. DESCRIPTION OF THE PROCESS**

The body in charge of coordinating the review process of the United Nations Convention against Corruption in Argentina is the Anti-Corruption Office (OA). The country is currently in the self-assessment stage.

Prior to initiating the review process, the Argentine government had signed the Transparency Pledge<sup>5</sup> promoted by the UNCAC Coalition in 2017. However, at the time of preparation of this report, the country has not complied with Principles 1 and 2 of the Pledge, as the OA has not published information on the timetable for the country review or the contact details of the focal point on its website. Nor were civil society organizations or other non-state actors invited to contribute to the self-assessment process.

The next chapter of this report will provide more information on government transparency and participation of civil society organizations in the UNCAC review process in Argentina.

### **B. AVAILABILITY OF INFORMATION**

The availability of information on the review process is very scarce in Argentina. Neither the Anti-Corruption Office nor any other national agency publishes specific, complete and updated information on the level of progress in compliance with the obligations that the country has assumed in the Convention. Consequently, for the preparation of this report it was necessary to consult legal documents and reports of public agencies scattered on different institutional sites, as well as publications of international organizations and civil society organizations. For the chapter on money laundering and asset recovery, formal requests for public information were sent to various agencies. Some of the requests were rejected on the basis of exceptions to disclosure provided by the Law on Access to Public Information<sup>6</sup> or other regulations. The rest of the requests were answered, but the information provided in many cases was incomplete, partial, or not sufficiently disaggregated.

Following a request for access to information in the framework of the procedure provided by Law 27,275, ACIJ was able to access the self-assessment checklist completed by the Anti-Corruption Office, which was one of the inputs used for the preparation of this report.

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<sup>5</sup> UNCAC Coalition, Transparency Pledge, [https://uncaccoalition.org/wp-content/uploads/Transparency-Pledge\\_English.pdf](https://uncaccoalition.org/wp-content/uploads/Transparency-Pledge_English.pdf), 9/4/2021.

<sup>6</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/265949/texact.htm>, 9/4/2021.



## C. APPLICATION OF UNCAC

Below is a summary of the main findings regarding the application of the UNCAC articles analyzed in this report, both in relation to the adaptation of the legal and regulatory framework, as well as in relation to their compliance in practice.

### CHAPTER II (PREVENTIVE MEASURES)

- **Art. 6 - Corruption prevention bodies.** The report analyzes three of the main control bodies: the Anti-Corruption Office (OA), the Office of the Inspector General of the Nation (SIGEN) and the Office of the Auditor General of the Nation (AGN). The main deficiency in compliance with Article 6 of the Convention is related to the lack of autonomy and independence of the corruption prevention bodies. The OA is still not endowed with functional autonomy or financial autonomy, and both the appointment and removal of its head is a discretionary power of the Presidency of the Nation. In turn, the Directorates of Investigations and Planning of Transparency Policies are in charge of persons whose appointment and removal ultimately depend on the Minister of Justice. On the other hand, the composition of the AGN, the external control body, continues to be regulated by a law prior to the constitutional reform, which contradicts the principle of independence. Additionally, there are no effective institutional mechanisms to ensure that the findings and recommendations of audit reports have an effective impact on government accountability and corruption prevention.
- **Art. 7.1 - Public sector employment.** While the legal framework provides for a hiring system governed by the principles of efficiency, transparency, and equity in access, in practice there is an abuse of exceptional regimes, based on discretion and arbitrariness. Admission to public employment through open and competitive examinations is not common and the administrative profession is devoid of adequate promotion mechanisms and incentives for training. By the beginning of 2019, barely 5% of senior public management positions had been hired through an open competition. Also in the Judicial Branch, discretionary and opaque mechanisms for admission prevail, the holding of competitions is an exception, and Law 26.861<sup>7</sup> on "Democratic and Equal Admission of Personnel to the National Judicial Branch and the National Public Ministry" of 2013 is widely not implemented, except in the case of the Public Prosecutor's and Defense Prosecutor's Offices.
- **Art. 7.3 - Political financing.** In practice, the financing of candidacies for elective public office in Argentina has consistently lacked transparency, with a weak control system and ineffective prevention measures and sanctions. The legal regime was recently modified by Law No. 27,504<sup>8</sup> of 2019, which allowed for corporate contributions to political campaigns and established the obligation to document all donations as a measure to make financing transparent and to facilitate controls. However, there are indications that some of the concealment practices remain in force. There is also no adequate regulation to

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<sup>7</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/215000-219999/215799/norma.htm>, 9/4/2021.

<sup>8</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/320000-324999/323729/norma.htm>, 9/4/2021.

prevent conflicts of interest and undue influence from business contributions. In turn, the oversight system's capacity is limited, and sanctions are ineffective. Using state resources for electoral purposes by political parties in charge of the government is an established practice in Argentina.

- **Art. 7, 8 and 12 - Codes of conduct, conflicts of interest and asset declarations.** The application of the Convention is deficient at both the regulatory and implementation levels. The Public Ethics Law<sup>9</sup>, passed in 1999, has proven to be ineffective. The main deficiency is related to weak oversight system of compliance, in that there are no independent bodies to oversee the law, which the OA currently is in charge of in the case of the National Executive Branch. The 2013 reform (Law 26,857)<sup>10</sup>, relating only to a part of the Public Ethics Law, provided for the obligation to publish sworn asset declarations of public officials online but reduced the content and detail of the declared goods and assets, and concealed the statements of the spouses and minor children of the declaring persons. The latter was declared unconstitutional by the judiciary, but the order has not yet been complied with. There are several legal reform projects presented in the National Congress, but they have not been discussed any further.
- **Art. 9.1 - Public procurement.** The procurement of goods, services and public works in Argentina is characterized by a limited availability of quality information accessible to citizens, and by the lack of mechanisms for citizen participation in all phases of the procurement cycle. Meanwhile, the widespread use of exceptions makes the rules for publicity and competition more flexible, increases arbitrary decisions and renders procurement more vulnerable to corruption. Argentine legislation has very vague limits in many cases of direct contracting, which makes this area subject to abuse, and corruption, a daily practice. The creation of online portals such as "Compr.Ar" or "Contr.Ar" has made more information on contracting available, although the publication of data in open formats is still scarce. The weaknesses of the procurement system worsened in the context of the COVID-19 pandemic, as emergency contracting was enabled with limited safeguards to mitigate corruption risks.
- **Art. 10 - Access to information.** The adoption of a law on access to information in 2016 has been a step in the right direction, but there are still significant challenges to its full implementation. Not all branches of government have functioning oversight bodies, with authorities appointed according to procedures that ensure their suitability and independence, and with guarantees against arbitrary removal. Of the four existing oversight bodies, only two of them have their own website and publish an annual accountability report and only one publishes some kind of information on the results of the audit of compliance with the obligations of active and passive transparency by the obligated subjects. Nevertheless, CSOs have on some occasions obtained judicial authorization to access corruption files as a form of citizen monitoring and based on the provisions of, among other norms, Article 13 of the UNCAC.

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<sup>9</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60847/norma.htm>, 9/4/2021.

<sup>10</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/215000-219999/215002/norma.htm>, 9/4/2021.

- **Art. 13.1 - Participation of society.** While the country has made significant progress in terms of access to information, institutional mechanisms for participation in the cycle of planning, execution and monitoring of public policies are scarce, weak and infrequently used. The mechanisms of semi-direct democracy enshrined in the National Constitution were regulated in an excessively restrictive manner at the legal level, such that their use has been exceptional in the more than 25 years they have been in force. There is also no general law on citizen participation, unlike in other countries in the region. The mechanisms regulated by Decree 1172/2003 of the Executive Branch are of exceptional use in practice and have not been updated in almost 20 years of existence. For its part, the Ombudsman's Office, the body in charge of communicating citizens' demands to the State, has not been operational since 2009 and, therefore, is unable to perform its main functions. With regard to the prevention and criminalization of corruption specifically, there are still few channels for participation.

## CHAPTER V (ASSET RECOVERY)

- **Art. 52 and 58 - Anti-money laundering and Art. 14 - Measures to prevent money laundering.** The main agency for the prevention of money laundering, the Financial Information Unit (UIF), does not have adequate guarantees of independence to carry out its function impartially and effectively. The presidency and vice-presidency of the UIF are appointed by the President of the Nation, after a non-binding mechanism of transparency and citizen participation. Likewise, the President of the Nation holds the power of removal of the authorities of the UIF. The calling into question of the suitability or independence of the persons appointed to head the UIF has been a constant in the institutional life of the agency. This was also the case in the last three appointment processes, but objections were dismissed by the Executive Branch in all cases. Another relevant deficiency is weak regulation of the obligation of public officials to disclose their assets, which hinders the prevention and investigation of the laundering of the proceeds of corruption. Argentina also does not have an adequate legal regime on beneficial ownership that would allow for the identification of the beneficial owners of companies or legal persons in all cases. Similarly, it is necessary to strengthen the sanctioning mechanism and to update the law to incorporate new subjects to the obligation to report to the UIF.
- **Art. 54.1.c, 57.1 - Non-conviction-based forfeiture, and restitution and disposal of assets.** The way in which confiscation, non-conviction-based forfeiture, restitution and disposal of assets is regulated in Argentina presents numerous challenges that make it far from being an effective system for the fight against corruption and organized crime. In addition to overlapping regulations, a lack of transparency and the weakness of existing mechanisms, there is also the discretion with which the use of such assets is currently handled during the period in which they are in the hands of the judiciary. The Decree of Necessity and Urgency (DNU) 62/2019<sup>11</sup> that establishes the Procedural Regime of the civil action for the forfeiture of assets has vices in its form of approval that weaken its application and that reinforce the need for a discussion in Congress of a law on the subject.

<sup>11</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/319068/norma.htm>, 9/4/2021.

This would also make it possible to discuss some of the regulatory problems of the norm, which are also at odds with constitutional guarantees. On the other hand, there are only very few successful cases of recovery of assets derived from corruption in Argentina. The total amounts recovered represent a significantly low percentage compared to the amounts seized each year during criminal proceedings.

**Table 1: Implementation and compliance summary**

UNCAC Articles	Status of implementation in law	Status of implementation and enforcement in practice
<b>CHAPTER II (Preventive Measures)</b>		
Art. 6 – Preventive anti-corruption body or bodies	Partially implemented	Poor
Art. 7.1 - Public sector employment	Partially implemented	Poor
Art. 7.3 - Political financing	Largely implemented	Poor
Art. 7, 8 and 12 - Codes of conduct, conflicts of Interest, and asset declarations	Partially implemented	Moderate
Art. 9.1 - Public procurement	Partially implemented	Moderate
Art. 10 - Access to information	Partially implemented	Good
Art. 13.1 - Participation of the society	Not implemented	Poor
Art. 14 - Measures to prevent money laundering	Largely implemented	Poor
<b>CHAPTER V (Asset Recovery)</b>		
Art. 52 and 58 - Fight against money laundering	Largely implemented	Poor

**Table 2: Performance of selected key Institutions**

Name of institution	Performance in relation to the responsibilities covered by the report	Key words explaining the performance
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<b>Anti-Corruption Office</b>	Poor	<ul style="list-style-type: none"> <li>• Lack of independence</li> <li>• Arbitrariness in corruption investigations</li> <li>• Deficiencies in the system of control of sworn asset declarations</li> <li>• Weaknesses in the system for preventing and controlling conflicts of interest</li> </ul>
<b>Office of the Inspector General of the Nation</b>	Poor	<ul style="list-style-type: none"> <li>• Lack of independence</li> <li>• Low level of transparency on audit results</li> <li>• Little impact on management improvement</li> </ul>
<b>General Audit Office of the Nation</b>	Moderate	<ul style="list-style-type: none"> <li>• Lack of independence</li> <li>• Low level of implementation of its recommendations</li> </ul>
<b>Secretariat of Public Management and Employment</b>	Poor	<ul style="list-style-type: none"> <li>• Non-compliance with public employment regulations</li> <li>• Discretionary hiring</li> <li>• Lack of transparent and competitive promotion mechanisms</li> </ul>
<b>National Electoral Chamber</b>	Moderate	<ul style="list-style-type: none"> <li>• Lack of resources</li> <li>• Deficient sanctioning system</li> <li>• Late control</li> </ul>
<b>Access to Public Information Agency</b>	Moderate	<ul style="list-style-type: none"> <li>• Efficiency in claims processing</li> <li>• Appropriate criteria for interpretation of the Law</li> <li>• Failure to enforce penalties for non-compliance</li> </ul>
<b>Financial Information Unit</b>	Poor	<ul style="list-style-type: none"> <li>• Lack of independence</li> <li>• Political use of confidential information</li> <li>• Poor results in corruption investigation and asset recovery</li> </ul>

#### **D. RECOMMENDATIONS FOR PRIORITY ACTIONS**

The following is a selection of the main recommendations arising from the report. For a more exhaustive list of recommendations, see chapter VI.

##### *1. On the review process and access to information*

- Post information about the country review process, including the updated schedule and contact information for the focal point, on the Anti-Corruption Bureau's website.
- Disseminate the self-assessment document on the Anticorruption Office website.

- Organize briefings for civil society on the review process and on the status of progress in complying with the UNCAC.

## 2. *On the application of the provisions of the UNCAC*

- Provide the control bodies (OA, SIGEN, AGN, UIF, AAIP) with sufficient guarantees of autonomy and establish mechanisms for the appointment and removal of their heads to ensure their independence and aptitude.
- Strengthen external and internal control systems, adapting legislation to international standards for the prevention and criminalization of corruption.
- Strengthen the public employment system, implementing a system of entry and promotion through open and competitive examinations.
- Improve the political party financing system to prevent conflicts of interest arising from business contributions, and increase the capacity of the monitoring system to prevent and investigate violations of the law.
- Enact a new Public Ethics Law that guarantees an adequate integrity regime in the public sector, including the presentation, publicity and control of sworn asset declarations and the management of conflicts of interest.
- Update the legal regime for procurement and contracting of goods, services and public works, so as to ensure transparency, fair competition, efficiency and citizen control of all state procurement.
- Create and operationalize the oversight bodies for access to public information in all branches of government, as required by the Access to Information Law.
- Establish effective institutional mechanisms for citizen participation in the public policy cycle in general, and in particular in the prevention, detection and punishment of corruption.
- Strengthen the FIU's legal sanctioning framework, improve regulation on the accreditation of the identification of the beneficial owners of companies or legal entities that are clients of financial entities, and update the list of obligated reporting parties.

### III. ASSESSMENT OF ARGENTINA'S REVIEW PROCESS

This section evaluates the transparency of Argentina's review process, the participation of civil society organizations, and the necessary access to the information for the preparation of this report.

#### A. REPORT ON THE REVIEW PROCESS

The body in charge of coordinating the review process of the United Nations Convention against Corruption in Argentina is the Anti-Corruption Office (OA).

The review process comprises the preparation, self-assessment, peer review, report writing and follow-up phases. The country is currently in the peer review stage.

Prior to initiating the review process, the Argentine government had signed the Transparency Commitment<sup>12</sup> promoted by the UNCAC Coalition in 2017, whereby it committed to follow six principles to ensure transparency and citizen participation in the 2nd cycle of the UNCAC review process.<sup>13</sup> The principles are as follows:

1. Publish updated schedules for the country review.
2. Share information on the agency in charge of the country review or its coordinator (focal point).
3. Announce when the country review is completed and indicate how to access the report.
4. Rapidly disseminate the self-assessment and the full country review report online in an official UN language along with its executive summary in local languages.
5. Organize briefings for civil society, as well as public debates on the results derived from the report.
6. Publicly support the participation of civil society observer members in UNCAC subsidiary bodies.

However, at the time of preparation of this report, the country has not yet complied with Principles 1 and 2 of the Pledge or reported plans for the others. Indeed, the OA has not published information on the timetable for the country review or the contact details of the focal point on its website. Argentina has completed the self-assessment checklist, which was made available to ACIJ following a formal request for access to public information.

Regarding the self-assessment process, according to the 2015-2019 management report, the OA convened working meetings with a total of thirteen public agencies from the three branches of government in order to exchange information and involve them in the evaluation process.<sup>14</sup> However, there is no evidence that representatives of civil society organizations or other non-state actors have been invited to contribute to the process.

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<sup>12</sup> UNCAC Coalition, Transparency Pledge, [https://uncaccoalition.org/wp-content/uploads/Transparency-Pledge\\_English.pdf](https://uncaccoalition.org/wp-content/uploads/Transparency-Pledge_English.pdf), 9/4/2021.

<sup>13</sup> Note sent by the Anticorruption Office to the UNCAC Coalition (see Annex).

<sup>14</sup> Anti-Corruption Office (2019), Management Report 2015-2019, [https://www.argentina.gob.ar/sites/default/files/informe\\_de\\_gestion\\_oa\\_2015-2019\\_1.pdf](https://www.argentina.gob.ar/sites/default/files/informe_de_gestion_oa_2015-2019_1.pdf), p. 87, 9/4/2021.

**Table 3: Transparency of the government and CSO Participation in the UNCAC review process**

Has the government disclosed information about the country focal point?	Partially	The country focal point is the Anticorruption Office. However, no information on the focal point or its contact details has been published.
Was the review schedule published somewhere?	No	The Anti-Corruption Office did not publish information on the review process for the second cycle, nor the schedule of the review.
Was civil society consulted in the preparation of the self-assessment checklist?	No	There is no evidence that the Anticorruption Office consulted civil society representatives in the self-assessment process.
Was the self-assessment checklist published online or made available to civil society?	Yes	ACIJ accessed the self-assessment following a request for access to public information. The document was not published on the website of the Anticorruption Office.
Did the government agree to a visit to the country?	Yes	
Was a country visit undertaken?	Not yet	
Was civil society invited to provide input to the official reviewers?	Not yet	
Was the private sector invited to provide input to official examiners?	Not yet	
Has the government committed to publishing the full country report?	Yes	Argentina signed the Transparency Pledge promoted by the UNCAC Coalition, through which it committed to publish the complete country report once it is available.

## **B. ACCESS TO INFORMATION**

In Argentina, there is no particular mechanism aimed at facilitating access to information regarding the implementation of the UNCAC. Neither the Anti-Corruption Office nor any other national agency publishes specific, complete and updated information on the level of progress in complying with the obligations that the country has assumed in the Convention. The latest information available on the OA website in relation to the Convention is the self-assessment



checklist and the country's final report corresponding to the first evaluation cycle. Consequently, in order to find out the degree of implementation of the UNCAC, it is necessary to consult legal documents and reports from public agencies scattered on different institutional websites, as well as publications from international organizations and civil society organizations.

Information on the domestic legal framework, including laws and lower-level regulations, is relatively easy to access in Argentina. The Official State Gazette<sup>15</sup> is available online and there are complete and updated official search engines for regulations. Furthermore, the active transparency sections created within public agencies' institutional websites pursuant to the obligations established in Law 27,275 on access to public information facilitate the search for relevant regulations related to each of the topics covered by the Convention, yet some information is incomplete and not up-to-date.

On the other hand, less information is available on public policies, programs in force and measures adopted by the agencies to comply with the provisions of the UNCAC in each of the relevant areas. In many cases, the information is difficult to access, fragmented, incomplete or unavailable. For the preparation of this report, institutional websites of the responsible public agencies, official documents and management reports were consulted, where available. Reports from civil society organizations, academic institutions and international organizations were also consulted, such as, for example, the reports of the Follow-up Mechanism of the Inter-American Convention against Corruption (MESICIC)<sup>16</sup>, the OECD Report on Integrity in Argentina<sup>17</sup> and the FATF evaluation reports<sup>18</sup>, among others.

Finally, for the chapter on asset laundering and recovery, formal requests for public information were sent to the following agencies: Financial Information Unit (UIF), Economic Crime and Money Laundering Prosecutor's Office (PROCELAC), General Directorate of Asset Recovery and Asset Forfeiture of the Public Prosecutor's Office (DGRADB), National Registry of Assets Seized and Confiscated during Criminal Proceedings of the National Ministry of Justice, National Council of the Judiciary and National Supreme Court. Of the requests for information made, two were denied because the requested subjects considered that the requested information was covered by exceptions to disclosure provided by the Law on Access to Public Information or other regulations. Such was the case of the UIF and the Supreme Court. The rest of the requests were answered, but the information provided in many cases was incomplete, partial or not sufficiently disaggregated.

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<sup>15</sup> Official Gazette of the Argentine Republic, <https://www.boletinoficial.gob.ar/>, 9/4/2021.

<sup>16</sup> OAS, MESICIC, Reports on Argentina, <http://www.oas.org/es/sla/dlc/mesicic/paises-pais.html?c=Argentina>, 9/4/2021.

<sup>17</sup> OECD (2019), OECD Integrity Survey in Argentina: Achieving systemic and sustained change, [https://www.argentina.gob.ar/sites/default/files/ocde\\_argentina\\_estudio\\_de\\_integridad\\_2018.pdf](https://www.argentina.gob.ar/sites/default/files/ocde_argentina_estudio_de_integridad_2018.pdf), 9/4/2021; OECD (2021) Follow-up Report on the OECD Integrity Survey in Argentina, <https://www.argentina.gob.ar/noticias/presentacion-del-informe-de-seguimiento-del-estudio-de-la-ocde-sobre-integridad-en>, 8/7/2021.

<sup>18</sup> FATF, Argentina Evaluation Reports, <http://www.fatf-gafi.org/countries/#Argentina>, 9/4/2021.

## IV. EVALUATION OF THE IMPLEMENTATION OF UNCAC PROVISIONS

This section evaluates Argentina's compliance with the articles of the Convention selected for this shadow report, of both Chapter II (Preventive Measures) and Chapter V (Asset Recovery). In relation to each article, the applicable domestic legal framework is described, as well as the progress and deficiencies in its implementation in the country.

### A. CHAPTER II (PREVENTIVE MEASURES)

The following selected articles from Chapter II are then discussed: preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12), political financing (Article 7.3), public procurement (Article 9.1), access to information (Article 10), and participation of society (Article 13.1). The article referring to measures to prevent money-laundering (Article 14) is addressed in the section corresponding to Chapter V (Asset Recovery).

#### **Art. 6 - Corruption prevention bodies**

##### **Regulation**

In Argentina, there are several bodies directly or indirectly in charge of preventing corruption. In this section, we will refer to three of them: the Anticorruption Office, the General Audit Commission of the Nation and the Office of the Inspector General of the Nation.

The Anti-Corruption Office (OA) was created in 1999 through an amendment to the Law of Ministries (Law 25.233),<sup>19</sup> which provided in its Article 13 that the new agency would be responsible for the development and coordination of programs to fight corruption in the national public sector and that concurrently with the Office of the Prosecutor for Administrative Investigations (now the Office of the Attorney General for Administrative Investigations), it would enjoy the powers and attributions established in Articles 26, 45 and 50 of Law 24.946<sup>20</sup> (Law of the Public Prosecutor's Office). The OA was created within the Ministry of Justice and Human Rights, a decision that was partially modified in 2019 by Decree 54/2019<sup>21</sup>, which transformed it into a decentralized agency of the Presidency of the Nation. Decree 102/99<sup>22</sup> establishes its scope, competence, structure and functions.

The Anti-Corruption Office prepared a "National Anti-Corruption Plan", which lists 260 initiatives, and which was approved by Decree 258/2019. In turn, it formed a Civil Society Advisory Council to follow up on its compliance. The plan was drafted during the last year of President Mauricio Macri's term of office and foresaw a four-year compliance schedule (2019-2023). After the change of government at the national level, and consequently of the Head of the OA, the composition of

<sup>19</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/61394/norma.htm>, 9/4/2021.

<sup>20</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/45000-49999/49874/texact.htm>, 9/4/2021.

<sup>21</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/333548/norma.htm>, 9/4/2021.

<sup>22</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/61724/norma.htm>, 9/4/2021.

the Advisory Council was renewed and the Plan underwent a review process<sup>23</sup>, the results of which were reflected in the "Working document on the design of the National Integrity Strategy"<sup>24</sup>.

The General Audit Commission of the Nation (AGN, for its acronym in Spanish) is the external control body of the national public sector. According to Article 85 of the National Constitution<sup>25</sup>, it technically assists the National Congress and is in charge of the control of legality, management and auditing of all activities of the centralized and decentralized public administration, whatever its mode of organization, and other functions granted by law, and intervenes in the process of approval or rejection of the accounts of collection and investment of public funds. Its organization and functions are regulated by Law 24,156<sup>26</sup> of Financial Administration.

Finally, the Office of the Inspector General of the Nation (SIGEN) is the governing body of the National Public Sector's internal control system. Its structure and functions are set forth in Law 24,156 on Financial Administration. Article 98 provides that the SIGEN is responsible for the internal control of the jurisdictions comprising the National Executive Branch and the decentralized agencies and state-owned companies and corporations that depend on it, their working methods and procedures, guidelines and organizational structure. In addition to the SIGEN, which is the regulatory, supervisory and coordinating body of the internal control system, Section 100 of said law provides that it is also made up of the internal audit units created in each jurisdiction and in the entities that depend on the National Executive Branch.

In addition to the bodies described above, there are other agencies with functions directly or indirectly linked to the policy of transparency and prevention of corruption, some of which will be addressed in subsequent sections of this report, such as the Agency for Access to Public Information (AAIP), the Federal Administration of Public Revenues (AFIP), the Financial Information Unit (UIF), the National Securities Commission (CNV), the Central Bank of Argentina (BCRA), the General Inspectorate of Justice (IGJ) or the National Ombudsman's Office (DPN), among others.

## **Deficiencies**

The main deficiency in compliance with Article 6 of the Convention is related to the lack of autonomy and independence of corruption prevention bodies.

The Anti-Corruption Office, the main body of the prevention system, was recently transformed into a decentralized agency of the Presidency of the Nation and continues without being endowed with functional or financial autonomy. Decree 54/2019 raised the rank and hierarchy of the head of the OA, making him/her equivalent to a Minister and established that he/she would functionally depend on the Presidency of the Nation. Consequently, and although the decision increases

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<sup>23</sup> Anticorruption Office (2021), Evaluation of the National Anticorruption Plan was carried out, <https://www.argentina.gob.ar/noticias/se-realizo-la-evaluacion-del-plan-nacional-anticorrupcion-0>, 9/4/2021.

<sup>24</sup> Anti-Corruption Office (2021), Working Paper on the Design of the National Integrity Strategy, [https://www.argentina.gob.ar/sites/default/files/documento\\_de\\_trabajo\\_-\\_hacia\\_una\\_estrategia\\_nacional\\_de\\_integridad.pdf](https://www.argentina.gob.ar/sites/default/files/documento_de_trabajo_-_hacia_una_estrategia_nacional_de_integridad.pdf), 9/4/2021.

<sup>25</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>, 9/4/2021.

<sup>26</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/554/texact.htm>, 9/4/2021.

some margins of autonomy of the agency, the appointment and removal of the head of the Office continues to be a discretionary power of the Presidency of the Nation and no other authority or participation or consultation procedure is foreseen to guarantee the suitability or independence of the appointed person.

Likewise, although the Decree established that the Head of the Office would enjoy technical independence and that he/she would perform his/her duties without receiving instructions from the Presidency of the Nation or any other higher authority of the Executive Branch, the position of Head of Office's administrative structure and budget was kept within the Ministry of Justice and Human Rights. As for the appointment of staff, the Head of the OA only has the power to propose the appointment of the members of the Office to the Minister of Justice. The Directorates of Investigations and Transparency Policy Planning are in charge of the persons appointed and ultimately removed by the Minister of Justice and Human Rights.

The lack of autonomy of the OA, and particularly the lack of political independence of its heads, has been one of the main reasons for public distrust towards the agency and the biggest obstacle to the fulfillment of its mission. Criticism for partiality in the treatment of conflict-of-interest cases or selectivity when acting as plaintiff in corruption cases has been a constant regardless of the political affiliation of the government in office<sup>27</sup>.

As for the General Audit Commission of the Nation, the National Constitution enshrined the principle of independence in its Article 85 in 1994, inherent to any control body, by granting the parliamentary opposition the presidency of the AGN. However, the integration of the agency is still regulated by a law prior to the constitutional reform, which contradicts such a principle of independence. In effect, Law 24,156 on Financial Administration maintains the College of Auditors as the decision-making body, integrated in proportion to the composition of both Chambers of the National Congress. Consequently, with few exceptions, the control of the AGN has been in the hands of representatives of the governing party, which has resulted in an obstacle for the independent control of its operations.

In addition to ensuring an institutional design that guarantees its independence, a new law on the organization and functioning of the AGN should aim to strengthen the external control system as a whole. Currently, there are no effective institutional mechanisms to ensure that the findings and recommendations of audit reports have an effective impact on government accountability,

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<sup>27</sup> See, for example, the following journalistic notes regarding the last two administrations of the OA: Infobae, Massoni, José, Garrido, Manuel (2019) La Oficina Anticorrupción, un organismo que puede (y debe) ser independiente y eficaz, <https://www.infobae.com/opinion/2019/11/28/la-oficina-anticorrupcion-un-organismo-que-puede-y-debe-ser-independiente-y-eficaz/>, 9/4/2021; Clarín, Carelli Lynch, Guido (2018), La Oficina Anticorrupción investiga a 27 funcionarios, pero hay pocos avances, [https://www.clarin.com/politica/oficina-anticorrupcion-investiga-27-funcionarios-pocos-avances\\_0\\_rJ6u650Nz.html](https://www.clarin.com/politica/oficina-anticorrupcion-investiga-27-funcionarios-pocos-avances_0_rJ6u650Nz.html), 9/4/2021; Infobae, Fitz Patrick, Mariel (2019), Interrogantes sobre la nueva Oficina Anticorrupción, <https://www.infobae.com/politica/2019/12/21/desperta-interrogantes-la-reforma-que-impulsa-el-gobierno-para-la-oficina-anticorrupcion/>, 9/4/2021; Clarín, Wiñazki, Nicolás (2020), La Oficina Anticorrupción deja de ser querellante en dos causas emblemáticas contra la familia Kirchner, [https://www.clarin.com/politica/oficina-anticorrupcion-dejara-querellante-causas-emblematicas-familia-kirchner\\_0\\_w\\_M-CkcUq.html](https://www.clarin.com/politica/oficina-anticorrupcion-dejara-querellante-causas-emblematicas-familia-kirchner_0_w_M-CkcUq.html), 9/4/2021.

modification of regulations and practices, or improvement of public policies. Audit reports have an impact only in the exceptional cases in which they achieve media coverage. The control circuit involving the Joint Parliamentary Audit Committee, as a link between the Auditor General's Office and the Congress, functions as a merely formal mechanism dissociated from the purposes for which it was established<sup>28</sup>. Additionally, the AGN only carries out an ex-post control of the administration's performance, which reduces the effectiveness of its intervention for the prevention or detection of acts of corruption in real time or in a timely manner.

The OA, the SIGEN and the AGN all prepare and publish management reports or memoirs in which they report on their activities. While the SIGEN<sup>29</sup> and the AGN<sup>30</sup> do so on an annual basis, the OA also prepares half-yearly reports<sup>31</sup>. On the other hand, while the AGN publishes its audit reports on its website<sup>32</sup>, the SIGEN only allows access to the list of the audits it carries out, but not to their content<sup>33</sup>.

Finally, there are no adequate institutional coordination mechanisms between the different corruption prevention bodies. On the contrary, there is often a lack of cooperation and difficulty in accessing relevant information held by other agencies<sup>34</sup>. As a result, there is no comprehensive, coherent and coordinated policy to prevent and fight corruption, but rather various partial and compartmentalized initiatives and programs<sup>35</sup>.

## Good practices

Regarding the lack of institutional coordination of public institutions involved in the prevention of corruption, the Cabinet of Ministers created the National Integrity and Transparency Roundtable<sup>36</sup>, made up of the main agencies of the Executive Branch involved in the fight against corruption: the Secretariat of Management and Public Employment, the Anticorruption Office, the Office of the Attorney General of the Nation, and the Agency for Access to Public Information.

Moreover, the Anticorruption Office, the General Attorney's Office of the Nation and the Secretariat of Management and Public Employment initiated a National Integrity Survey, *"in order to survey the degree of development and implementation of integrity and transparency policies"* to be carried out in public institutions under the Executive Branch and companies with state

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<sup>28</sup> Anti-Corruption Social Agreement (2019), <https://acuerdoanticorrupcion.org/wp-content/uploads/2019/10/ASA-Versi%C3%B3n-detailed-16-10.pdf>, 10/04/2021, p. 42.

<sup>29</sup> <https://www.argentina.gob.ar/sigen/institucional/publicaciones-sigen/memoria>, 9/4/2021.

<sup>30</sup> <https://www.agn.gob.ar/page/transparencia-2>, 9/04/2021.

<sup>31</sup> <https://www.argentina.gob.ar/oficina-anticorrupcion/informes-de-gestion>, 9/4/2021.

<sup>32</sup> <https://www.agn.gob.ar/#informes>, 9/4/2021.

<sup>33</sup> <https://www.sigen.gob.ar/archivoweb/Buscador.aspx>, 9/4/2021.

<sup>34</sup> See, for example, the conflict generated during 2019, from an audit carried out by the AGN on the OA in which the latter was accused of not delivering information; Télam (2019), Confirman un fallo que ordena a la Oficina Anticorrupción brindar información a la Auditoría General, <https://www.telam.com.ar/notas/2019/11/406827-confirman-fallo-que-ordeno-a-la-oficina-anticorrupcion-brindar-informacion-a-la-auditoria-general.html>, 25/04/2021.

<sup>35</sup> OECD (2019), OECD Study on Integrity in Argentina: Achieving systemic and sustained change, p. 31.

<sup>36</sup> Administrative Decision 592/2021 of the Office of the Chief of Cabinet of Ministers. Available at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/245685/20210616>, 08/07/2021.

participation<sup>37</sup>. In parallel, together with the National Integrity Strategy described above, the Executive Branch has made progress in the creation of Integrity Liaisons in 146 areas of the State<sup>38</sup> since 2019.

## **Art. 7.1 - Employment in the public sector**

### **Regulation**

The legal regime for public sector employment in Argentina is determined by Law 25,164<sup>39</sup> on the National Public Employment Regulation Framework<sup>40</sup> and its Regulatory Decree 1421/2002<sup>41</sup>.

The so-called Framework Law provides for different regimes according to the nature of the relationship and establishes the conditions for entry and permanence, as well as the rights and obligations of public employees. Article 7 provides that the personnel may be in the stability regime, in the hiring regime, or as cabinet personnel of the superior authorities.

The stability regime includes staff who enter through the selection mechanisms to be established, to positions belonging to the career regime, for which it provides for the "application of criteria that incorporate the principles of transparency, publicity and merit in the selection procedures to determine the suitability of the function to be filled, the promotion or advancement in the career based on the evaluation of efficiency, effectiveness, work performance and training requirements in accordance with the needs of the tasks or functions to be performed, as well as the provision of systems based on the merit and capacity of the agents, which motivate their promotion in the career"<sup>42</sup>.

Furthermore, the fixed-term staff hiring regime "exclusively comprises the rendering of temporary or seasonal services, not included in the functions of the career regime, and which cannot be covered by permanent staff. The personnel hired under this modality may in no case exceed the percentage established in the collective bargaining agreement"<sup>43</sup>. This percentage is currently 15%, although, as we will point out below, it is not being complied with.

The regime for the provision of services of the cabinet staff of the higher authorities, on the other hand, refers to positions of free appointment and removal and only includes advisory functions, or administrative assistance<sup>44</sup>.

The Office of the Chief of Cabinet of Ministers' Secretariat of Management and Public Employment is the body in charge of implementing the public employment regime. Both the Undersecretariat of Public Employment, which is in charge of designing and generating regulatory

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<sup>37</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/350000-354999/351024/norma.htm>, 08/7/2021.

<sup>38</sup> Management Report 2020, Anti-Corruption Office. Available at: <https://www.argentina.gob.ar/noticias/la-oficina-anticorrupcion-publico-su-informe-de-gestion-2020>, 8/7/2021. OECD Report (2021), p. 17-18.

<sup>39</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60458/norma.htm>, 9/4/2021.

<sup>40</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60458/norma.htm>, 9/4/2021.

<sup>41</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/76700/norma.htm>, 9/4/2021.

<sup>42</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60458/norma.htm>, article 8.

<sup>43</sup> Idem, article 9.

<sup>44</sup> Idem, article 10.



frameworks that guarantee criteria of efficiency, efficacy, ethics and effectiveness, and the National Institute of Public Administration (INAP), in charge of promoting training and updating activities that promote the development of the professional career of public servants, operate under the Secretariat of Management and Public Employment.

In relation to the Justice System's public employees, Law 26,861<sup>45</sup> on Democratic and Equal Entry of Personnel to the National Judicial Branch and the National Public Prosecutor's Office was enacted in 2013. In its Article 1, it establishes that the purpose of the law is to regulate the admission to the organs of the Justice System through the procedure of public competition.

### **Good practices**

A measure to be highlighted is the presidential decree sanctioned in 2018 that aims to eliminate the practices of hiring relatives of those who occupy public office -known as "nepotism"- in the appointment of public employees. In particular, Decree 93/2018<sup>46</sup> established that "no appointments may be made of persons in the entire National Public Sector who have any kinship link both in a straight line and in a collateral line up to the second degree with the President and Vice President of the Nation, Chief of Cabinet of Ministers, Ministers and other officials with the rank and hierarchy of Minister". However, the prohibition of the appointment of relatives to public office, as well as the extension of the rule, has not been free of controversy, and some cases subsequent to the enactment of the Decree were the subject of public discussion<sup>47</sup>.

### **Deficiencies**

Although the Argentine legal system guarantees a hiring system for public employment that respects the principles of efficiency, transparency, suitability and equity in access, in practice there is an abuse of exceptional hiring regimes, based on discretion and arbitrariness. Admission to public employment through open and competitive examinations is not the norm and the administrative career is devoid of adequate promotion mechanisms and incentives for training.

The final report on Argentina of the Follow-up Mechanism for the Inter-American Convention against Corruption (MESICIC) dedicated to public employment (approved in 2017) found that the 15% cap on contracts in the modality of service location (transitory contracts, without competitive entry and without stability) established in Decree No. 2345/2008<sup>48</sup> was not being complied with<sup>49</sup>. On the contrary, out of a total of approximately 70,000 employees only in the Executive Branch's Central Administration, around 50,000 were linked on a transitory basis<sup>50</sup>.

In the same vein, a research project conducted by the Center for the Implementation of Public Policies for Equity and Growth (CIPPEC) found that the entry to senior public management (first

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<sup>45</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/215000-219999/215799/norma.htm>, 9/4/2021.

<sup>46</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/306423/norma.htm>, 9/4/2021.

<sup>47</sup> La Nación, Laborda, Fernando (2019), Relatives of civil servants: idoneity or nepotism?, <https://www.lanacion.com.ar/opinion/familiares-funcionarios-idoneidad-nepotismo-nid2319120/>, 9/4/2021.

<sup>48</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/145000-149999/149104/texact.htm>, 9/4/2021.

<sup>49</sup> MESICIC (2017), Argentina Evaluation Report, 5th Round, [http://www.oas.org/es/sla/dlc/mesicic/docs/Mesicic5\\_InformeARG\\_en.pdf](http://www.oas.org/es/sla/dlc/mesicic/docs/Mesicic5_InformeARG_en.pdf), 9/4/2021, para. 109.

<sup>50</sup> Idem, para. 43.

line positions within the public administration, which are among the political officials and the bureaucracy), does not respond to processes based on the evaluation of merit or professional competencies. According to the research report, only seven competitions were called to fill positions of national, general, simple and coordinating directorates between 2011-2015. Although the number of competitions increased to a total of 125 calls in the period 2016-April 2019, their impact was low, since the competitions represented only 5% of those positions<sup>51</sup> until the beginning of 2019.

The lack of competitive examinations for entry into public employment and the use of temporary and discretionary hiring mechanisms results, on the one hand, in an impairment of professional quality in public administration, and, on the other hand, gives rise to practices of patronage, nepotism and partisan manipulation of public employment<sup>52</sup>.

Regarding public employment in the Justice System, discretionary and non-transparent mechanisms for admission also prevail, and the holding of competitions is an exception. So far, only the Public Prosecutor's Offices have implemented competitions to comply with the Democratic Entry Law, while the Supreme Court of Justice of the Nation has yet to regulate the 2013 law for the Judiciary<sup>53</sup>.

## **Art. 7.3 - Political financing**

### **Regulation**

The financing regime for candidacies for elective public office is regulated by Law 26,215<sup>54</sup> on Financing of Political Parties, which was recently amended by Law 27,504<sup>55</sup> of 2019. Until then, a mixed financing system was in force, which provided for public and private contributions with a limitation with respect to the latter in relation to legal entities, which could contribute to the support of the institutional life of the parties, but not to electoral campaigns. The new law ended this prohibition (which had been incorporated in a 2009 reform) and enabled parties to receive funds from companies or legal entities to finance their campaigns. Another important modification of the new regime was an obligation to bank all contributions and the prohibition to receive funds in cash as a measure to make financing transparent and facilitate controls.

Public financing is destined both for institutional development activities of the parties through the contribution of the Permanent Party Fund, and for campaign activities, through contributions from the national budget in election years.

The Permanent Party Fund is composed of the amount established annually in the Budget Law, the money from applicable fines according to the electoral financing regime and other

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<sup>51</sup> CIPPEC (2019), GPS del Estado. Radiography and balance of the National Public Administration 2015-2019, <https://www.cippec.org/publicacion/gps-del-estado-radiografia-y-balance-de-la-administracion-publica-nacional-2015-2019/>, 9/4/2021.

<sup>52</sup> Anti-Corruption Social Agreement, p. 25.

<sup>53</sup> Idem, p. 9; see also <https://www.mpf.gob.ar/ingresodemocratico/Account/Login>, 9/4/2021, and <https://www.mpd.gov.ar/index.php/secretaria-de-concursos-n/reglamentacion-c>, 9/4/2021.

<sup>54</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/124231/texact.htm>, 9/4/2021.

<sup>55</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/320000-324999/323729/norma.htm>, 9/4/2021.



contributions<sup>56</sup>. The fund is distributed equally among all recognized parties with 20%, while the remaining 80% is distributed proportionally to the number of votes obtained by the party in the last election of National Deputies, provided that it has reached a minimum of 1% of the votes<sup>57</sup>. Moreover, the parties receive an additional amount as an extraordinary contribution for electoral campaigns, established by the Budget Law for the year in which national elections are to be held<sup>58</sup>. The distribution of campaign contributions is made equally among the lists presented and the rest is distributed proportionally to the number of votes obtained in the last election<sup>59</sup>. Additionally, the parties receive a contribution for the printing of party ballots<sup>60</sup>.

Furthermore, the law regulates the conditions, limitations and prohibitions applicable to private financing. Political parties may not receive anonymous donations or donations from state entities of any kind; from licensees, concessionaires or contractors of public services or works or suppliers of the State; from foreign governments or public entities; from foreign individuals or legal entities that do not have residence or domicile in the country; from persons who have been obliged to make the contribution by their superiors or employers; from trade union, employers' and professional associations; of persons who have been obliged to make the contribution by their hierarchical superiors or employers; of trade unions, employers' and professional associations; or of human or legal persons who are accused in a criminal proceeding in relation to the criminal tax law or sued before the Tax Court of the Nation<sup>61</sup>.

The law also establishes limits to the private financing that political parties may receive. On the one hand, it provides for a maximum ceiling for contributions coming from the same human or legal person each year for institutional development purposes. The amount is tied to the value of the electoral module and the number of voters per district and was AR\$9,071,235 (around US\$200,000 at an average exchange rate at that time) in 2019<sup>62</sup>. On the other hand, it establishes limits to private contributions for electoral campaigns. In effect, the private resources received by a political party added to the number of public contributions received for the campaign may not exceed the maximum ceiling of expenses allowed by the National Electoral Chamber according to the law<sup>63</sup>. At the same time, for each electoral campaign, political groups may not receive an amount higher than two percent (2%) of the expenses allowed for such campaign from the same person or legal entity. The limit of expenses destined to the electoral campaign of each position up for election by a political grouping is equivalent to the sum resulting from multiplying the

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<sup>56</sup> Law on Financing of Political Parties (2019), article 6.

<sup>57</sup> Idem, article 9.

<sup>58</sup> Idem, article 34.

<sup>59</sup> Idem, article 36.

<sup>60</sup> Idem, article 35.

<sup>61</sup> Idem, article 15.

<sup>62</sup> National Electoral Chamber (2019), Maximum amounts of private contributions for institutional unwinding per human or legal person for political parties, <https://www.electoral.gob.ar/nuevo/paginas/pdf/MONTOS%20MAXIMOS%20ANEXO%20I.pdf>, 9/4/2021.

<sup>63</sup> Law on Financing of Political Parties (2019), article 44 bis.

number of eligible voters by an electoral module. For the position of President in 2019, the spending limit was AR\$462,049,380 (about US\$11,000,000)<sup>64</sup>.

The law regulates in-kind contributions as well as cash contributions and establishes that the latter must be made only by bank transfer, bank deposit with proof of identity, electronic means, check, credit or debit card, or digital platforms and applications as long as they allow for the reliable identification of the donor and the traceability of the contribution<sup>65</sup>.

The law establishes sanctions for non-compliance with political financing regulations. These are mainly sanctions for political parties and consist of the loss of the right to receive public contributions for a certain period. Additionally, the persons who exercise a party's presidency and treasury and the persons responsible for the political and financial campaign may be sanctioned with the penalty of temporary disqualification to exercise their rights to elect and be elected in national elections and elections of party authorities and to hold public and party offices, in two cases: a) when they authorize or consent to the use of accounts other than those established by law, and b) when they cannot duly accredit the origin and/or destination of the funds received. On the other hand, candidates are not subject to sanctions.

The two main bodies in charge of the enforcement of the provisions on electoral financing are the National Electoral Directorate (DINE), under the National Ministry of the Interior, and the National Electoral Chamber (CNE). The DINE is the body responsible for the administration of party financing, while the CNE is in charge of the control of compliance with the law and the application of sanctions. The CNE is in charge of the Accounting Auditors Corps, whose purpose is to verify the parties' accounting status and their compliance with the applicable legal provisions.

## **Good Practices**

A noteworthy practice is the recent creation of the "Declaration of Contributions to Political Groups" platform of the National Electoral Chamber<sup>66</sup>, which promotes the availability of information on private financing. However, its use is not mandatory for all individuals or legal entities that make contributions.

## **Deficiencies**

Regardless of the legal regulation and the different types of regimes in force at different times (public/private/mixed), in practice, political financing in Argentina has not been very transparent, the control system is weak and the prevention and sanction measures are ineffective.

Traditionally, political parties and groups have dodged legal limitations and prohibitions, concealed illegal or problematic private contributions, under-declared contributions<sup>67</sup> or exceeded

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<sup>64</sup> National Electoral Chamber (2019), General Elections 2019 Campaign Expenditure Limits for Political Parties, Alliances and Confederations, <https://www.electoral.gob.ar/nuevo/paginas/pdf/MONTOS%20MAXIMOS%20ANEXO%20III%20Y%20IV.pdf>, 9/4/2021.

<sup>65</sup> Law on Financing of Political Parties (2019), article 16.

<sup>66</sup> National Electoral Chamber, Plataforma de Aportantes a Agrupaciones Políticas, <https://aportantes.electoral.gob.ar/>, 9/4/2021.

<sup>67</sup> OECD (2019), OECD Study on Integrity in Argentina: Achieving systemic and sustained change, p. 247.

limits on amounts, without these practices having relevant consequences for the party, its leaders or electoral candidates. The lack of transparency hinders citizen control and facilitates the undue influence of private interests in public decision-making and corruption<sup>68</sup>.

During the debate on the last amendment to the law on political financing, two different positions were evident regarding the authorization of contributions from legal entities. On the one hand, those who, like ACIJ, expressed their opposition to allowing corporate contributions, arguing that their inclusion undermined fairness in the electoral process and facilitated corruption and state capture<sup>69</sup>. The other position argued that legalizing corporate contributions to electoral campaigns would make financing more transparent and facilitate control<sup>70</sup>.

Although it is still premature to evaluate the impact of the modification of the political financing law, there are elements to suspect that some of the concealment practices remain in force. An analysis conducted by the organization CIPPEC found that in the last elections the parties declared contributions for amounts much lower than the ceilings allowed for this election, and that most of the reporting reports of the legislative campaigns did not report private contributions, which are indications that the groups are still under-declaring campaign income<sup>71</sup>. In the same sense, they found important inconsistencies in the cross-checking between the declarations of contributions made by the parties and the data appearing on the new web platform in which private contributors must declare the contributions made to parties.

While the new law established a maximum limit per contributor, it left the contribution of business groups unregulated and did not establish limitations by economic sector.

Additionally, beyond the few prohibitions established, there is no adequate regulation to prevent conflicts of interest and undue influence from the contributions of legal entities. There is no legislation on *lobbying* in Argentina either, but simply a regulation on the registry of interest management in the Executive Branch (Decree 1172/03)<sup>72</sup>, whose application in practice is insufficient.

Moreover, the capacity of the control system is limited. In the past, the National Electoral Chamber's Auditing and Accounting Corps' audit mechanism has shown delays in the publication of audits and a lack of detection of violations of the norm<sup>73</sup>. An OECD report found that the number

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<sup>68</sup> Anti-Corruption Social Agreement (2019), p. 25.

<sup>69</sup> ACIJ (2018), Communiqué of 4/12/18, <https://acij.org.ar/el-financiamiento-empresario-de-la-politica-dana-la-democracia-y-favorece-la-corrupcion/>, 9/4/2021; ACIJ (2019), Communiqué of 3/05/19, <https://acij.org.ar/legalizar-el-financiamiento-empresario-de-las-campanas-electorales-seria-un-retroceso-para-nuestra-democracia/>, 9/4/2021.

<sup>70</sup> Poder Ciudadano, Secchi, Pablo (2015), Los desafíos de la transparencia en el financiamiento político en Argentina, <https://www.poderciudadano.org/libros/InformeFinanciamiento-PoderCiudadano.pdf>, 9/4/2021; CIPPEC (2017), Transparentar el financiamiento de la política es posible, <https://www.cippec.org/publicacion/13-recomendaciones-para-mejorar-la-transparencia-de-la-politica/>, 9/4/2021.

<sup>71</sup> CIPPEC (2020), La reforma del régimen de financiamiento en perspectiva, <https://www.cippec.org/textual/la-reforma-del-regimen-de-financiamiento-en-perspectiva/>, 9/4/2021.

<sup>72</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/90763/norma.htm>, 9/4/2021.

<sup>73</sup> Anti-Corruption Social Agreement (2019), <https://acuerdoanticorruptcion.org/wp-content/uploads/2019/10/ASA-Versi%C3%B3n-detallada-16-10.pdf>, 9/4/2021, p. 26.

of reports to be audited far exceeded the capacity of the Corps and recommended an increase in staff<sup>74</sup>. At the same time, the control of political parties' income and expenditures is carried out after the electoral process and there is no real time accountability. Similarly, the sanctioning regime only covers political parties and their formal authorities, but not the candidates or political leaders, who can remain unpunished in the face of irregularities in their campaign financing.

Finally, there is a practice of use of state resources for electoral purposes by political parties in charge of the government in Argentina, ranging from the partisan use of official advertising to put pressure on public employees to participate in campaign activities and the use of public vehicles and buildings<sup>75</sup>. In addition to the deficient regulation that exists in the Law of Ethics in the Exercise of Public Office (Law 25.188)<sup>76</sup> and in the National Electoral Code, there is practically no oversight to prevent these practices and the lack of sanctions by the control bodies.

## **Art. 7, 8 and 12 - Codes of Conduct, Conflicts of Interest and Asset Declarations**

### **Regulation**

In 1999, Argentina passed Law 25,188 on Ethics in the Exercise of Public Office, which is applicable not only in the Executive Branch, but also in the Legislative Branch, the Judiciary and the Public Prosecutor's Office. In turn, the Executive Branch is governed by the Code of Ethics in the Public Service (Decree 41 of 1999).

In the first place, Law 25188 establishes a series of duties, prohibitions and incompatibilities applicable, without exception, to all persons working in the public service<sup>77</sup> and provides that their observance is a requirement for continuance in office<sup>78</sup>. Among others, it establishes the duty to perform their duties with observance and respect for the principles of honesty, probity, rectitude, good faith and republican austerity; to watch over the interests of the State, oriented to the satisfaction of the general welfare, giving priority to the public interest over the private interest; not to receive any undue personal benefit; to show the greatest transparency in the decisions adopted; to protect and preserve the property of the State and only use its assets for authorized purposes; and to refrain from using the facilities and services of the State for their private benefit or those close to them.

Chapters 3 and 4 establish a regime for the presentation and disclosure of sworn declarations of assets and interests. According to this, the persons subject to the obligation listed in Article 5 must file a sworn declaration at the beginning of their term of office containing a list of their own assets, as well as those of their spouse and minor children. Said declaration must be updated annually and at the time of leaving office. The declaration must contain details of the real estate owned and improvements that were made to it, registrable furniture and other personal property, detailing the date on which they were acquired and the origin of the funds; securities, participation in companies or businesses and other securities listed or not in the stock exchange; cash or

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<sup>74</sup> OECD (2019), OECD Study on Integrity in Argentina: Achieving systemic and sustained change, p. 248.

<sup>75</sup> Acuerdo Social Anticorrupción, pp. 23-24.

<sup>76</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60847/texact.htm>, 9/4/2021.

<sup>77</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60847/texact.htm>, 9/4/2021, article 2.

<sup>78</sup> Idem, article 3.

deposits in any currency held in any bank or financial institution; credits and debts of any kind; and the annual income and expenses for any activity exercised, such as income, pensions, retirements, indemnities, among others. They must also include the declarant's employment history, in order to facilitate better control over possible conflicts of interest that may arise. Officials who have been elected to public office are exempt from this last provision.

The law also established the access to such sworn asset declarations, at the request of any interested person. However, Decree 164/99 regulating the Law established that part of the information should be exempt from publicity, giving rise to the existence of a public and a reserved version of each sworn declaration. In 2013, Law 26,857 on Publicity of Sworn Statements established publicity through the Internet and expanded the scope of obliged subjects, by including persons who are candidates for national elective public office. The obligation to publish sworn asset declarations on institutional websites was reinforced by the provisions on active transparency of Article 32 of Law 27,275 on Access to Public Information of 2016. There, it is also required that the data be published in open format.

The Public Ethics Law also established a series of rules regarding incompatibilities and conflicts of interest. Article 13 of the Law established two cases of incompatibility with the exercise of public functions:

- "(a) directing, administering, representing, sponsoring, advising, or in any other way providing services to anyone who manages or holds a concession or is a supplier of the State, or performs activities regulated by the State, provided that the public office held has direct functional competence, with respect to the contracting, obtaining, management or control of such concessions, benefits or activities; and
- b) to be a supplier, either by themselves or by third parties, of any State agency where they performs their functions".

In the event that an official is subject to either of these two incompatibilities at the time of their appointment, Article 15 establishes that he or she must resign from such activities as a precondition for taking office and refrain from intervening, during his or her term of office, in matters particularly related to persons or matters to which he or she has been linked in the last three years or in which he or she has a corporate shareholding. At the same time, Article 14 establishes that those officials who have had decision-making intervention in the planning, development and execution of privatizations or concessions of public companies or services, will be prohibited from acting in the regulatory entities or commissions of such companies or services, for three years immediately following the last award in which they have participated. Finally, Article 17 provides that when the acts issued by the regulated entities are subject to the provisions of Articles 13, 14 and 15, they will be null and void.

Complementary to these provisions, two presidential decrees on conflicts of interest were adopted in 2017. Decree 201/17<sup>79</sup> established procedures to manage those cases in which the president, vice president, chief of cabinet, ministers or any authority of similar rank had a relationship with any of the parties involved in a lawsuit with the State. In turn, Decree 202/17 provided that, in

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<sup>79</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/272922/norma.htm>, 9/4/2021.

public procurement procedures, bidders must submit a declaration of interests stating whether they have ties with the president, vice president, chief of cabinet, ministers or heads of decentralized agencies, or with the public servant responsible for such procurement or authorization, in which case additional transparency measures must be adopted.

The Public Ethics Law also established a regime of gifts to public servants, according to which public servants may not receive gifts, presents or donations on the occasion of the performance of their duties. In the case of courtesy gifts or diplomatic customary gifts, the law provides that the regulation will regulate their registration and in which cases and how they should be incorporated to the State's patrimony. In connection with this provision, Decree 1179/2016<sup>80</sup> created the Registry of Gifts to Public Officials and the Registry of Travel Financed by Third Parties.

Finally, Article 42 of the law establishes a rule on the advertising of acts, programs, works, services and campaigns of public bodies, according to which they must be of an educational, informative or socially-oriented nature, and may not contain names, symbols or images that imply the personal promotion of the authorities or public servants.

As for the enforcement and control body, the law had provided for the creation of a single body with representatives of the three branches of government and citizens appointed by Congress, the National Commission on Public Ethics, but it was never created and was finally repealed by Law 26.857 in 2013. Consequently, each branch of government is responsible for designating an enforcement authority within its own sphere, something that was only done by the Executive Branch with the creation of the OA.

## **Deficiencies**

The application of the Convention in this area has shortcomings at both the regulatory and implementation levels. The Public Ethics Law represented a step forward at the time it was enacted in 1999, but after 20 years in force, it is necessary to update, correct and improve the legislation in light of the experience of these years.

The main deficiency is related to the weakness of the compliance control system. The enforcement body provided for by the Law, which is the National Public Ethics Commission, was never put into operation, mainly due to the opposition of the Supreme Court of Justice of the Nation to integrate such body. In view of the lack of conformation of the control body and even more after its repeal provided by Law 26.857 of 2013, each branch of the State is in charge of the designation of its own enforcement authority. For the case of the Executive Branch, such competence fell from the beginning on the head of the Anticorruption Office, which - as we pointed out above, is not an autonomous body - while the other branches never created an enforcement body to supervise compliance with the law, but limited themselves, at best, to establishing a mechanism for the receipt and custody of sworn declarations. However, they did not assume any of the other functions that were originally entrusted to the Commission, such as controlling the effective compliance with the regime of sworn declarations of assets and conflicts of interest,

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<sup>80</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/267949/norma.htm>, 9/4/2021.



receiving complaints of violations of the law, advising and consulting, designing and promoting training programs and dissemination of the contents of the law, among others<sup>81</sup>.

The 2013 reform, which provided for the publication on the Internet of the sworn asset declarations, also ordered a change in the form of filing the forms, which resulted, on the one hand, in a reduction of the content and detail of the goods and assets declared, and on the other hand, in a restriction to the publication of the statements of the spouses and minor children of the declarants, which had been public for those who requested them since 1999 and which then became confidential. Similarly, information regarding previous employment, which is essential for detecting potential conflicts of interest in public office, was no longer available. The effect of these changes was a greater obstacle to citizen control and a setback in compliance with the Convention.

In September 2018, as a result of an amparo action filed in 2016 by the non-governmental organization Poder Ciudadano<sup>82</sup>, the Federal Administrative Chamber declared the unconstitutionality of Article 5 of Law 26.857 and of the decree and regulatory resolutions, which regulated the scope of the reserved annex of the sworn asset declarations, as they restricted access to the patrimonial information of spouses and children of public officials. This judgment, which was not appealed by the Anticorruption Office and is therefore final, ordered the State to adapt the regime and to publish the sworn declarations in a comprehensive manner. However, to date, the State has not complied with the court order and the assets of spouses and children of public officials continue to be confidential<sup>83</sup>.

Regarding the publication of sworn asset declarations on the Internet, the situation is disparate among the different branches of government. While the Executive and Legislative Branches publish the sworn declarations of the obligated subjects under their orbit on the website of the Anticorruption Office,<sup>84</sup> the Judicial Branch has not complied with the law enacted in 2013. Indeed, the sworn declarations of judicial authorities cannot be consulted through the Internet, but must be requested through a formal procedure to the Council of the Magistracy. In the case of the sworn declarations of the judges of the Supreme Court and other authorities of the highest court,

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<sup>81</sup> For the Judicial Branch, see Resolution 237/2014 of the National Judicial Council, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/230000-234999/231896/texact.htm>, and Acordada 9/2014 of the National Supreme Court of Justice, <https://www.csjn.gov.ar/documentos/download/?ID=87025>, 9/4/2021. For the Legislative Branch, see Administrative Provision 99/2017 of the Chamber of Deputies of the Nation, <https://www4.hcdn.gob.ar/gestion/dadministrativas/DSAD%202017/DSAD%2099-17.PDF>, and Resolution of the Administrative Secretariat RSA-24/2014, <https://www.senado.gob.ar/administrativo/resolucionesAdministrativas>, 9/4/2021.

<sup>82</sup> Poder Ciudadano (2016), We ask for the unconstitutionality of the current regime of patrimonial Sworn Statements of public officials, <https://poderciudadano.org/pedimos-la-inconstitucionalidad-del-regimen-de-declaraciones-juradas/>, 9/4/2021.

<sup>83</sup> Poder Ciudadano (2019), Se debe hacer pública la información patrimonial de los cónyuges e hijos/as de los/as candidatos/as", <https://poderciudadano.org/se-debe-hacer-publica-la-informacion-patrimonial-de-los-conyuges-e-hijos-as-de-los-as-candidatos-as/>, 9/4/2021.

<sup>84</sup> <https://www.argentina.gob.ar/consultar-declaraciones-juradas-de-funcionarios-publicos>, 9/4/2021.

the situation of non-compliance is even more worrisome, since the Court has repeatedly denied or obstructed their access in recent years<sup>85</sup>.

Other provisions of the law that have been poorly implemented and are of fundamental importance for the prevention and detection of corruption are those related to the regulation of conflicts of interest. The current law contemplates the factual assumptions under which a conflict of interest may be considered to exist in a very limited way, and does not incorporate relevant categories that allow covering all its forms (whether they are real, potential or apparent conflicts of interest). In addition, the OA, as the oversight body in charge of resolving cases related to conflicts of interest within the Executive Branch, has presented difficulties for an adequate implementation of the Law, especially in cases of high-ranking officials.

In order to effectively comply with the provisions of the Convention on public ethics, it is necessary to adapt the legislation in force in Argentina through the enactment of a new public ethics law. Such a law must guarantee a new regime for the presentation, publicity and control of sworn asset declarations, ensuring the availability and accessibility of complete, accurate and disaggregated information. Likewise, it must contemplate an adequate regulation for the management of conflicts of interest and effective control mechanisms in charge of independent bodies.

During 2018, the Anti-Corruption Office drafted a proposal to reform the Public Ethics Law, for which it launched a mechanism for public participation and consultation. The proposal served as the basis for a bill submitted by the National Executive Branch to Congress on March 6, 2019<sup>86</sup>. In relation to the bill, the Civil Association for Equality and Justice sent an analysis of its text to the Constitutional Affairs Committee of the National Chamber of Deputies, in which it highlighted positively that the proposal would regulate conflicts of interest in a more exhaustive way; that the information required by the sworn asset declarations would be expanded, and that the obligation of presentation would be extended to other subjects. On the contrary, the document noted among the deficiencies that the proposal did not solve the problem of the weakness of the regime of sanctions for non-compliance; that the institutional design foreseen for the control bodies as well as the mechanism for the selection and removal of their heads did not offer sufficient guarantees of autonomy and independence; that the proposal on the use of official advertising was a step backwards in relation to the already deficient regulation in force; that the definition of conflicts of interest as well as the mechanisms for their treatment should be improved; that the so-called cooling-off period prior and subsequent to the performance of public functions was not adequately regulated; and that the method of valuation of assets to be followed in the sworn asset declarations, necessary to ensure uniformity of criteria and to avoid under-declaration, was omitted; among others<sup>87</sup>.

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<sup>85</sup> ACIJ (2019), El Acceso a las Declaraciones Juradas Patrimoniales de las/os Justices/os Justices/ces de la Corte Suprema of Justice of the Nation, <https://acij.org.ar/wp-content/uploads/2019/07/Análisis-y-recomendaciones-sobre-las-DD-JJ-de-la-CSJN.pdf>, 9/4/2021.

<sup>86</sup> Anti-Corruption Office (2019), Management Report 2015-2019, [https://www.argentina.gob.ar/sites/default/files/informe\\_de\\_gestion\\_oa\\_2015-2019\\_1.pdf](https://www.argentina.gob.ar/sites/default/files/informe_de_gestion_oa_2015-2019_1.pdf), 9/4/2021, p. 54.

<sup>87</sup> ACIJ (2019), Comments on the Public Ethics Bill, <https://acij.org.ar/wp-content/uploads/2019/08/Comentarios-al-proyecto-de-Ley-de-%C3%89tica-P%C3%BAblica.pdf>, 9/4/2021.



So far, neither this nor any of the reform projects submitted to Congress have made any progress in their legislative treatment, nor have the new national authorities sent a new proposal for reform.

## **Art. 9.1 - Public procurement**

### **Regulation**

The public procurement system in Argentina is regulated by Law 13,064<sup>88</sup> of 1947 regarding public works and by Decree 1023/2001<sup>89</sup> regarding the acquisition of goods and services.

Regarding the regulation of public works, Law 13,064 determines the prerequisites when providing for public bidding or direct contracting (Article 4). It also establishes that national public works must be awarded only by public bidding, contemplating a series of exceptions (Article 9). Similarly, the public bidding must be published in the Official Gazette of the Nation and in the Official Gazette of the corresponding province or territory (Article 10).

Regarding the regulation of the procurement of goods and services, Decree 1023/2001 establishes the general principles that must govern the management of procurement (Article 3). Among others, it provides for transparency in the procedures, publicity and dissemination of the proceedings, and equal treatment for interested parties and bidders. In turn, the decree states that the public procurement procedure must be developed in a context of transparency, based on publicity, the use of technological tools and the participation and control of the community (Article 9). The decree also determines the rejection without further ado of any offer or delivery of money or gifts with the purpose of influencing the conduct of public officials (Article 10). This conduct has consequences even in the degree of attempt. The Decree establishes the price, quality and suitability of the bidder as factors to be considered awarding the contract (Article 15).

The National Procurement Office (ONC) is the body in charge of establishing the procurement rules and procedures of the National Public Administration. This body operates within the Office of the Chief of Cabinet of Ministers' Secretariat of Public Innovation. While the ONC establishes the procurement rules and procedures, the National Public Administration Agencies are in charge of procurement management. Those companies that intend to contract works with the National Government must be previously registered in the National Registry of Builders and Public Works Consulting Firms.

The National Government has two transparency portals on the execution of public procurement: on the one hand, the Electronic Public Procurement Portal "Compr.Ar"<sup>90</sup>, and, on the other hand, the electronic portal for the procurement of National Public Works "Contrat.Ar"<sup>91</sup>. The Compr.ar Portal was created by the Executive Branch through Decree 1030/2016<sup>92</sup>. The procedures to be carried out through the portal are the following: purchase and sale, supplies, services, leases, consulting, leases with option to purchase, exchanges, concessions for the use of public and

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<sup>88</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/35000-39999/38542/texact.htm>, 9/4/2021.

<sup>89</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/65000-69999/68396/texact.htm>, 9/4/2021.

<sup>90</sup> <https://comprar.gob.ar/>, 9/4/2021.

<sup>91</sup> <https://contratar.gob.ar/>, 9/4/2021.

<sup>92</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/265506/texact.htm>, 9/4/2021.

private property of the National State, entered into by the jurisdictions and entities included in its scope of application and all those contracts not expressly excluded. The Contrat.Ar portal, on the other hand, was created through Decree 1336/2016<sup>93</sup>, and is used by government entities to publish their public works contracting processes, and by builders to make proposals. In Contrat.Ar electronic contracting can be carried out through public bidding, private bidding and direct contracting.

In 2020, the Ministry of Public Works ordered the creation of the "Public Works Observatory", an initiative that seeks to become a *"space for participation, aimed at contributing to the evaluation and continuous improvement of the regulatory framework, planning practices, tools and procedures, as well as the contracting, physical and financial execution of public works"*<sup>94</sup>. For its first phase, it was formed with national universities (public and private), business chambers, civil society organizations and trade unions<sup>95</sup>.

In 2020, as a result of the health emergency caused by COVID 19, the Executive Power issued the Necessity and Urgency Decree 260/2020<sup>96</sup>. This decree empowered certain jurisdictions, agencies and entities of the National Public Sector to make direct procurements of goods and services that were necessary to address the emergency. In addition, it established that all procurements must be published on the ONC's website and in the Official Gazette. Decree 260/2020 also authorized the Chief of Cabinet of Ministers to regulate the procedure for the procurement of goods and services during the health emergency. This was done through Administrative Decision 812/2020<sup>97</sup>, which established the new National Agreements procedure, and created the Acord.Ar platform<sup>98</sup>. This new contracting system gathers all the offers made by suppliers from all over the country and allows for the different jurisdictions to have the same offers.

In addition, at the beginning of 2021, ONC developed a new form to disseminate the procedures for procurement and contracting during the health emergency<sup>99</sup>. Some of the objectives were to increase transparency, encourage the publication of data in open formats and facilitate citizen control.

## Good Practices

An outstanding practice among the most recent advances in this area is the creation of the Compr.Ar portal, mentioned above, which resulted in more information available on the procurement of goods and services and, according to a report by the Inter-American Development

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<sup>93</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/270015/norma.htm>, 9/4/2021.

<sup>94</sup> Ministry of Public Works (2020), Resolution 31/2020, <https://www.boletinoficial.gob.ar/detalleAviso/primera/228782/20200507>, 04/25/2021.

<sup>95</sup> <https://www.argentina.gob.ar/obras-publicas/Observatorio>, 04/25/2021.

<sup>96</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335423/texact.htm>, 9/4/2021.

<sup>97</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/337612/norma.htm>, 9/4/2021.

<sup>98</sup> <https://acordar.argentina.gob.ar/#/acuerdos-nacionales>, 9/4/2021.

<sup>99</sup> <https://www.argentina.gob.ar/noticias/nuevo-formulario-para-la-difusion-de-las-compras-y-contrataciones-en-emergencia>, 9/4/2021.

Bank, achieved improvements in terms of efficiency by increasing the speed of procedures and reducing costs<sup>100</sup>.

## Deficiencies

The public procurement system in Argentina is fragmented into two subsystems, with different regulations for public works, on the one hand, and for the acquisition of goods and services, on the other, despite the fact that numerous international organizations recommend the unification of regulations in this area. In addition, the law regulating public works contracting dates back to 1947 and, consequently, does not reflect the changes that have taken place over the last 70 years in the construction industry, market dynamics, technology, public administration and, as far as this report is concerned, citizens' demands for greater transparency and accountability in the use of public resources.

In general, the contracting regime in Argentina is characterized by limited availability of quality information accessible to citizens and by the absolute absence of mechanisms for citizen participation in all phases of the procurement cycle (planning, contracting, execution and control). At the same time, there is a widespread use of exceptions, which make the rules of publicity and competition more flexible, increase arbitrariness and are more vulnerable to corruption<sup>101</sup>. Argentine legislation has very vague limits in many cases of direct contracting, which makes crossing them a daily practice and subject to abuse.

Despite the progress made with the creation of Compr.Ar, the portal has several shortcomings. The main one is that not all information related to public procurement of goods and services is published on Compr.Ar, since it is not mandatory for all branches, agencies and public companies under the orbit of the Executive Branch. On the other hand, operations such as purchases by the Revolving Funds and Petty Cash Regime, contracts with foreign States or multilateral credit institutions, those financed with resources from those agencies, among others, are excluded, as indicated in Article 3 of Decree 1030/2016. As a consequence, there are contracting processes outside the system, which makes citizen control more difficult.

In addition, according to an evaluation carried out by ACIJ<sup>102</sup>, the level of openness of Compr.Ar data is low, since the information published in open formats only includes calls for tenders and awards. Also, the level of detail in open databases is limited, and the information on the amounts of purchases and awardees cannot be exported. The only way to access this information is to enter each contract individually. This has a negative impact on the possibility of citizen control of public procurement. The aforementioned report also notes the low level of structuring and

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<sup>100</sup> Inter-American Development Bank, De Michele, Roberto, and Pierri, Gastón (2020), Transparency and Digital Government, The Impact of COMPR.AR in Argentina, <https://publications.iadb.org/publications/english/document/Transparency-and-Digital-Government-The-Impact-of-COMPR.AR-in-Argentina.pdf>, 9/4/2021.

<sup>101</sup> Anti-Corruption Social Agreement, p. 18.

<sup>102</sup> ACIJ, Transparencia en las Contrataciones Públicas del Sistema Nacional, <https://acij.org.ar/wp-content/uploads/2018/12/transparencia-en-las-contrataciones-publicas-nacional.pdf>, p. 10, 9/4/2021.

classification of the published data, and the lack of information related to the planning and execution stage.

Moreover, the existing dissociation between the budget information system and the procurement system should be pointed out. Although both systems are part of the same process of allocation and use of public resources, the Compr.Ar platform does not publish information on the procurement budget in many cases, and in those cases where it is published, it is not always in the same place. Worse still is the lack of information on the execution of contracts once they have been awarded, which makes it impossible to monitor the suppliers' compliance with their obligations.

As for the Contrat.Ar portal dedicated to public works contracting, despite the fact that its use has been determined to be mandatory since December 20, 2018, this has not yet been implemented, so the platform offers very limited information. This deficit is of particular concern given the high risk of corruption in the public works procurement sector. The problem has gained special public attention in recent years due to a series of court cases investigating alleged corruption in the awarding of works. A paradigmatic case was the conviction in 2019 of the former Secretary of Public Works José López, who was found trying to hide bags with 9 million dollars in cash in a convent<sup>103</sup>. Another relevant case under investigation involves the former President and current Vice President of the Nation, and other senior officials of her government, following the appearance of notebooks with records of alleged bribes related to public works<sup>104</sup>. The case was elevated to oral proceedings in 2019, but there is still no date stipulated for the beginning of the hearings. This case investigates whether there was a system of illegal fundraising in which several businesspeople paid bribes to obtain the irregular awarding of public works. The former President of the Argentine Chamber of Construction (CAC) himself confessed that he collaborated in the creation of this irregular system in which public works were not subject to the bidding processes provided for by the current regime, but rather the businesspeople themselves decided who would be awarded the contracts<sup>105</sup>.

The lack of transparency and suspicions of irregular allocations of public works are a constant of the different administrations that have not yet recorded substantial progress for their solution. As in the previous administration, the administration of President Mauricio Macri (2015-2019), was not exempt from complaints in this regard. One case is that of the public work carried out in the City of Buenos Aires with contributions from the national State, the so-called "Paseo del Bajo", in which the awarding of part of the contract to the President's cousin's company was denounced

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<sup>103</sup> Infobae (2019), José López was sentenced to 6 years in prison for the case of the bags with USD 9 million, <https://www.infobae.com/sociedad/policiales/2019/06/12/jose-lopez-fue-condenado-a-6-anos-de-prision-por-el-caso-de-los-bolsos-con-dolares/>, 9/4/2021.

<sup>104</sup> La Nación, Ini, Candela (2020), Cristina Kirchner was dismissed in a detachment of the notebooks case, but accumulates nine indictments, <https://www.lanacion.com.ar/politica/como-es-situacion-judicial-cristina-kirchner-nid2520566/>, 9/4/2021.

<sup>105</sup> Infobae (2018), Carlos Wagner, arrepentido: contó cómo funcionaba "El Club de la Obra Pública" y confesó que pagó coimas, <https://www.infobae.com/politica/2018/08/10/carlos-wagner-arrepentido-conto-como-funcionaban-el-club-de-la-obra-publica-y-el-pago-de-las-coimas/>, 9/4/2021.

(among others, by the Office of the Attorney General for Administrative Investigations of the MPF). The case is still pending resolution in court<sup>106</sup>.

The deficits in the procurement and contracting system worsened in the context of the COVID-19 pandemic. As of the national emergency declared by the Argentine Government on March 12, 2020, a new exceptional procurement and contracting system was put in place. Article 15 ter of Decree 260/2020<sup>107</sup>, as amended by Decree 287/2020<sup>108</sup>, establishes that during the period of the sanitary emergency, direct contracting of goods and services may be carried out without being subject to the contracting regime of the National Public Administration or its specific contracting regimes. In parallel, the Anticorruption Office prepared and published the "Recommendations to Strengthen Integrity and Transparency in Public Procurement Concluded in the Framework of the Emergency by COVID-19" in May 2020, with a series of instructions for agencies to avoid the use of emergency procedures and ensure the transparency of their procurement in this context<sup>109</sup>.

The system of direct contracting in the emergency context presents several risks, as was recently analyzed in a report by the non-governmental organization Poder Ciudadano<sup>110</sup>. For example, in the purchase request stage, it is the agencies themselves who define which operations are emergency purchases. Since there are no clear criteria to define which purchases fall into this category, agencies have wide margins of discretion. At the same time, not all stages of the procurement and contracting process are published on the Compr.Ar platform, which makes control difficult. In the call for tenders stage, the fact that it is not mandatory to publish all procurements is questionable, since those conducted with funds from international credits are exempted. Likewise, the regulations grant wide margins of discretion in the call for bids stage of contracting processes carried out outside the Compr.Ar system. Another deficiency of this stage of the contracting process is that the regulations do not establish requirements for the dissemination and publicity of the call for bids. In the bid analysis and awarding stage, the main defect is the absence of a formal opening and evaluation act. Since the Bid Evaluation Committee does not intervene, no evaluation report is issued. In turn, since the unsuccessful bidders did not receive an evaluation report, they have no possibility to challenge the decision. All this contributes to the agency's discretion in selecting bidders and undermines control over the procedure.

According to Poder Ciudadano's COVID-19 Procurement Observatory<sup>111</sup>, 700 procurements were made from the Compr.Ar platform, and 422 outside the platform from the beginning of the health

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<sup>106</sup> El DiarioAr (2021), Paseo del Bajo: Comodoro Py define si investigará a Rodríguez Larreta por presunta corrupción, [https://www.eldiarioar.com/politica/paseo-comodoro-py-define-si-investigara-rodriguez-larreta-presunta-corrupcion\\_1\\_7307240.html](https://www.eldiarioar.com/politica/paseo-comodoro-py-define-si-investigara-rodriguez-larreta-presunta-corrupcion_1_7307240.html), 25/04/2021.

<sup>107</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335423/texact.htm>, 9/4/2021.

<sup>108</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335613/norma.htm>, 9/4/2021.

<sup>109</sup> <https://www.argentina.gob.ar/anticorrupcion/prevencion/recomendaciones-compras-covid19>, 8/7/2021.

<sup>110</sup> Poder Ciudadano (2021), Transparency in Quarantine, Recommendations for Improving Integrity in Emergency Procurement and Contracting, <https://poderciudadano.org/wp-content/uploads/2021/03/Policy-brief-11-de-marzo-FINAL-.pdf>, 9/4/2021.

<sup>111</sup> Poder Ciudadano, Monitoring of Hiring by COVID-19, <https://comprascovid19.poderciudadano.org/>, 22/3/2021.

emergency situation until April 11, 2021. In turn, 60% of the procurements were made under the new emergency procedure, and 23% were direct procurements under the existing regime.

## **Art. 10 - Access to information**

### **Regulation**

The National Congress sanctioned Law 27,275<sup>112</sup> on the Right of Access to Public Information in 2016, which entered into force one year later. The law aims to guarantee the effective exercise of the right of access to public information, encourage citizen participation and promote transparency in public management (art. 1). At the same time, it recognizes the principles of presumption of publicity, transparency and maximum disclosure, informalism, maximum access, openness, non-discrimination, maximum promptness, and free of charge, among others (art. 1).

The law has a broad scope of application, since it reaches the Executive, Legislative and Judicial branches, the Public Prosecutor's Office (Public Prosecutor and Defense), state-owned companies, public service concessionaires, and private entities to which public funds have been granted, among other obligated parties (art. 7).

According to the norm, the right of access to public information includes the possibility to freely search, access, request, receive, copy, analyze, reprocess, reuse and redistribute the information under the custody of the obligated entities (art. 2). The request for information must be made by proving the identity of the applicant and clearly describing the information requested (art. 9). The parties obliged to provide information may only refuse to do so if the situation falls within any of the exceptions provided by law (art. 8). The denial of access to information, either explicitly or due to a prolonged silence on the part of the obligated subject, enables the applicant to file a claim (arts. 13 and 14).

In addition to the obligation to provide information upon request, the subjects covered by the regulation must facilitate the search for and access to public information on their official websites (art. 32). This is part of the obligations of active transparency, which also require that the information be published in open formats, in a clear, structured and understandable manner, and that it be updated (art. 32).

The law provides that officials or agents who arbitrarily obstruct access to requested information, or who provide incomplete information or hinder compliance with the law, are guilty of serious misconduct (art. 18).

Finally, autonomous control bodies in the different government serve to ensure effective compliance with the law. On the one hand, the law created the Agency for Access to Public Information (AAIP), as an autonomous entity with functional autonomy within the National Executive Branch (art. 19), and on the other hand, the Legislative Branch, the Judicial Branch, the Council of the Judiciary and the Public Prosecutor's Offices were ordered to create similar bodies with identical functions for the enforcement of the law in their own spheres (art. 28).

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<sup>112</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/265949/norma.htm>, 9/4/2021.



## Good practices

A noteworthy practice is the momentum of the National Data Openness Plan adopted in 2016, through Decree No. 117/2016<sup>113</sup>. The Argentine State publishes data in open formats on the website <https://datos.gob.ar/>, which as of June 6, 2021 had 1023 datasets, and 33 organizations with data.

Another good practice is the publication in the Registry of Non-Compliant Parties of the names of those agencies that do not comply with the AAIP's warnings under the terms of Article 17 paragraph b) of Law No. 27,275. This Register is available on the website of the National Executive Branch<sup>114</sup>.

There has also been progress in terms of remote requests for access to information. Since 2019, more agencies have incorporated the option of making the request on the web platform of Trámites a Distancia (TAD)<sup>115</sup>.

## Deficiencies

The enactment of a law on access to information has meant progress in guaranteeing this right in the country. However, there are still important challenges to achieve its full implementation.

One of the main deficiencies has to do with the lack of creation or integration of control bodies in all branches of government and, in some cases, with failures in their regulation and operation.

Currently, only the Executive Branch of the Nation, the Council of the Judiciary and the Public Prosecutor's and Defense Prosecutor's Offices have created and are operating oversight bodies. On the contrary, the Supreme Court of Justice decided not to create a control body under its orbit, disregarding the explicit mandate of the law, while the Legislative Branch complied with its creation, but has not yet appointed its head, which is why it is not yet operational. Furthermore, not all the mechanisms foreseen for the appointment of the oversight bodies' authorities to fully ensure compliance with the requirements of suitability and independence. Only the procedures foreseen by the Public Defender's Office and the Council of the Judiciary provide for an open call to fill the position, but only the former incorporates an instance of objective background check. In all cases, there is an instance for citizens to submit comments on the candidacies and/or the holding of a public hearing, which does not offer sufficient guarantees that such contributions will be duly considered at the time of making a decision. Moreover, with the exception of the Executive Branch, whose Agency is directly regulated by law, most of the other branches did not provide for safeguards against the arbitrary removal of the head of their own oversight body (the Public Prosecutor's Office is an exception).

In terms of their operation, of the four oversight bodies - out of a total of six that should exist - only three of them have their own website and publish an annual accountability report (the PEN, CMN and MPD agencies) and only one publishes some kind of information on the results of the audit

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<sup>113</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257755/norma.htm>, 9/4/2021.

<sup>114</sup> Access to Public Information Agency, Which agencies do not comply with the Access to Public Information Act, <https://www.argentina.gob.ar/aaip/accesoalainformacion/incumplimiento>, 9/4/2021.

<sup>115</sup> Remote procedures, <https://tramitesadistancia.gob.ar/tramitesadistancia/tad-publico>, 9/4/2021.

of compliance with active and passive transparency obligations by the obligated entities (the AAIP)<sup>116</sup>.

In order to assess compliance with the law by the obligated entities -and no longer by the control bodies-, a distinction must be made between the obligation to provide information upon request (passive transparency) and the obligation to proactively publish information on two institutional websites of each agency (active transparency).

Regarding passive transparency, it should be noted that most of the regulated entities of the different branches have made electronic means available to citizens to make requests for public information, either web forms or an e-mail address. However, with the exception of the AAIP of the Executive Branch, which has the "Trámites a Distancia" ("Distance Procedures") platform<sup>117</sup>, none of the other branches of government allows applicants to track the status of their request. Even so, according to a recent evaluation carried out by ACIJ<sup>118</sup>, the response rate to requests for information from the different branches of government is over 90%. This data only reflects whether the requested agency responded to a request, but not whether the requested information was actually delivered or whether it was delivered in a complete and timely manner and in the appropriate formats. The same study shows that the subjects frequently respond to requests for access to information beyond the 15 working days established by law. In many cases, they do so within 15 to 30 working days, coinciding with the extension period provided by law, even without notifying the requester that such an extension will be used.

Furthermore, the oversight bodies do not record relevant information that would allow for the evaluation of the quality of the responses or the format. From its creation until April 2021, the Executive Branch Agency received a total of 1005 complaints, 66% of which ended in an intimation to the non-compliant body or were declared abstract<sup>119</sup>, which generally happens when the requested subject responds to the request after the notification that the complaint was initiated before the oversight body and before it issues a resolution. Additionally, there are cases in which the regulated entities refuse to provide information even after the AAIP has been notified. While the AAIP publishes the list of non-compliant agencies<sup>120</sup>, there is no information that allows for the conclusion that sanctions have been applied to the officials responsible for the violations to the law. The rest of the agencies have received fewer complaints than the AAIP. Since its creation, the Magistrates Council Agency received 8 complaints, the MPD Agency received 1 and the MPF Agency received none.

Moreover, since none of the oversight agencies have imposed sanctions for non-compliance with the law, none of them have made use of the legal power to initiate legal actions to ensure the delivery of information to the public. The exercise of these powers is closely related to the autonomy that the oversight bodies must have in relation to the institutions they must supervise.

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<sup>116</sup> ACIJ (2021), Lucarella, Clara Inés, Caprarulo, Joaquín, Giullitti, Marcelo (In edition), Hacia la efectiva implementación de la Ley de Acceso a la Información Pública.

<sup>117</sup> <https://www.argentina.gob.ar/jefatura/innovacion-publica/administrativa/tramites-a-distancia>, 9/4/21.

<sup>118</sup> ACIJ (2021), Lucarella, Clara Inés, Caprarulo, Joaquín, Giullitti, Marcelo (In edition).

<sup>119</sup> <https://www.argentina.gob.ar/aaip/accesoalainformacion/reclamos-en-numeros>, 9/4/2021.

<sup>120</sup> <https://www.argentina.gob.ar/aaip/accesoalainformacion/incumplimiento>, 9/4/2021.



An important part of the information requested by citizens through access requests corresponds to that which the agencies should proactively publish on their website, which also shows failures in compliance with the obligations of active transparency or a limited effort to properly disclose the ways to access this information. ACIJ's evaluation<sup>121</sup> shows that no obligated subject of any of the branches of government fully complies with the obligation to publish all the categories of information listed in Article 32 on its website in a complete, updated and open format.

In general, the lowest level of publication among different regulated entities is regarding information on mechanisms for filing complaints and claims before the agencies, audit reports and transfers of funds. In relation to the transfer of public funds, information on which persons or entities are the beneficiaries of such transfers is usually omitted. At the same time, no regulated entity complies with the obligation to proactively publish its officials' sworn asset declarations in a complete manner, in open format and for direct downloading. Moreover, although no agency publishes budgetary information with the scope required by law, the level of information available is higher than that of other categories of information and in many cases in open data format, but it is either not always disaggregated at the highest level at which it is processed or the budgetary modifications that occurred during the fiscal year are not reported.

In relation to public procurement and contracting, an area of particular relevance for the prevention of corruption, no agency complies with the obligation to publish all the information required by law. Finally, although there have been advances in the publication of data in open format, especially with the creation of open data portals, much of the information required by Article 32 of the law continues to be published in closed formats as, for example, in some cases in which staff payrolls, salaries and information on procurement and contracting is published in documents that are difficult to use. This represents a major obstacle to the use of such data by citizens and corruption prevention and investigation bodies.

### **Art. 13.1 - Participation of Society**

#### **Regulation**

The National Constitution (CN) establishes the representative form of government (art. 1), guarantees the right to petition the authorities (art. 14) and, since the 1994 reform, gives constitutional or supra-legal priority to international treaties that recognize the right to participate in public affairs. Similarly, this reform incorporated two mechanisms of semi-direct democracy, which are the popular initiative and the popular consultation.

The popular initiative is contemplated in Article 39 of the National Constitution, and allows any person to submit bills before the Nation's Congress, except for those referring to a constitutional reform, international treaties, taxes, budget and criminal matters. The Constitution established that a regulatory law should be enacted to regulate the popular initiative, and for this reason Law 24,747 was enacted<sup>122</sup> in November 1996. The law provides that the popular initiative requires the signature of a number of persons not less than one and a half percent (1.5%) of the electoral

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<sup>121</sup> ACIJ (2021), Lucarella, Clara Inés, Caprarulo, Joaquín, Giullitti, Marcelo (In edition).

<sup>122</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/41025/norma.htm>, 9/4/2021.

roll used for the last election of national deputies and must represent at least six electoral districts (art. 4). In the event that the bill is admitted, Congress must deal with it within twelve months (Art. 11).

The popular consultation, on the other hand, is provided for in Article 40 of the Constitution. The binding popular consultation allows the Congress, at the initiative of the Chamber of Deputies, to submit a bill to a public consultation. In the event that the bill receives the affirmative vote of the citizens, it then becomes law and is automatically enacted. Moreover, the non-binding popular consultation may be carried out at the initiative of the Congress or the President. Law 25,432<sup>123</sup> regulated the mechanism and determined that any bill may be submitted to a binding or non-binding popular consultation, except those whose approval procedure is specially regulated by the National Constitution (art. 1).

The 1994 reform also raised the legal concept of the Ombudsman constitutional rank (art. 86 CN). The Ombudsman is fundamental for channeling citizens' demand for participation through institutional channels, inasmuch as it plays the role of intermediary between the citizenry and public institutions. Its mission is to defend and protect the rights of individuals in the face of facts, acts or omissions of the public administration, and to control the exercise of public administrative functions, the latter being linked to the prevention of corruption. The appointment of the Ombudsman requires the vote of two thirds of both chambers of the National Congress.

At the legal level, the Law on Access to Public Information (which we analyze in another section of this report) facilitates citizen participation in public affairs. However, Argentina does not have a general law on citizen participation that enshrines the right and establishes institutional channels for citizens to participate directly in the decision-making process, as is the case in other countries in the region.

On the contrary, there are some mechanisms applicable to specific situations and regulated at an infra-legal level. Decree 1172/2003<sup>124</sup> regulated the following mechanisms for citizen participation and control: public hearings, publicity of hearings for the management of interests, participatory drafting of standards, open meetings of the boards of directors of public utility regulators and access to public information (later regulated by law).

Annex V of the Decree approved the General Regulations for the Participatory Drafting of Regulations, a mechanism that enables interested persons to give their opinion and make proposals on draft administrative regulations of the Executive Branch and on bills to be submitted to Congress (art. 3). The participatory drafting of regulations may be called for by the authority in charge of drafting the regulation, or it may be requested by any human or legal person, in which case the authority must decide whether it accepts or rejects the request. Once the period for receiving opinions and proposals has expired, the responsible authority must record the submissions received and which of them it considers relevant to incorporate into the rule to be

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<sup>123</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/65000-69999/67518/texact.htm>, 9/4/2021.

<sup>124</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/90763/norma.htm>, 9/4/2021.

enacted (art. 19). Similarly, it must state the modifications made to the text as a result of the participation procedure in the grounds of the regulation (art. 20).

For their part, public hearings in the sphere of the Executive Branch are regulated by Annex I of the aforementioned decree. According to Article 3, they are an instance of participation in the decision-making process, in which any person who may be affected or have an interest in the matter, express their opinion. The convening of a public hearing is optional for the body that must make the decision in question. Any interested person may request the corresponding area to hold a hearing prior to the adoption of an administrative act, but the decision to accept or reject the request corresponds to the authority in charge. In the event that a hearing is held, the convening authority must issue a well-founded final resolution, explaining how it has taken into account the opinions of the participating citizens and, if applicable, the reasons for rejecting them. The legal concept of public hearings also exists in the National Congress, both for committee meetings of the Chamber of Deputies<sup>125</sup> and the Chamber of Senators<sup>126</sup>, and in the Supreme Court of Justice<sup>127</sup>.

Another participation mechanism in force is the citizen consultation procedure prior to the appointment of judicial authorities or control bodies. Such is the case of Decree 222/2003<sup>128</sup>, which introduced a self-limitation to the power of the President to propose judges for the national Supreme Court of Justice. According to the regulation, information on the background of the candidate to fill the position must be published prior to sending a nomination proposal to the Senate of the Nation, and a channel must be opened so that citizens, non-governmental organizations, professional associations, academic and human rights entities may submit positions, observations and circumstances that they consider of interest in writing, after which the Executive Branch will decide whether or not to elevate the proposal. In turn, Decree 588/2003<sup>129</sup> established that the same procedure would be applicable for the appointment of the Attorney General of the Nation and the General Defender of the Nation and provided for a similar participation mechanism for the appointment of judges of the lower federal courts and prosecutors and national defenders. Furthermore, the Law on Access to Public Information (27,275) established a consultation mechanism that includes the holding of a public hearing prior to the appointment of the Director of the Agency for Access to Public Information of the Executive Branch and of the enforcement authorities created within the other branches of government.

Another instance of participation at the national level takes place within the framework of Argentina's adherence to the Open Government Partnership (OGP), a global platform that promotes more transparent, participatory and accountable governments. Since joining in 2012,

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<sup>125</sup> Rules of Procedure of the Chamber of Deputies of the Nation, <https://www.hcdn.gob.ar/institucional/reglamento/index.html>, 9/4/2021, Article 114 bis.

<sup>126</sup> Internal Regulations of the Senate of the Nation, <https://www.senado.gob.ar/reglamento>, 9/4/2021, article 99.

<sup>127</sup> Agreement No. 30/2007, [https://www.cpacf.org.ar/files/acordadas/ac\\_csjn\\_3007.pdf](https://www.cpacf.org.ar/files/acordadas/ac_csjn_3007.pdf), 9/4/2021.

<sup>128</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/86247/norma.htm>, 9/4/2021.

<sup>129</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/87634/norma.htm>, 9/4/2021.

the country has adopted four action plans<sup>130</sup>, developed in conjunction with civil society organizations and submitted to public consultation. According to the guidelines established by the OGP, Resolution 132/18<sup>131</sup> of the then Secretary of Government of Modernization regulated the operation of the National Open Government Roundtable, which has representation of public offices and non-governmental organizations in 2018, with the aim of serving as an instance of coordination of the work between government and civil society for the development of Action Plans and the promotion of open government public policies.

Moreover, the Office of the Auditor General of the Nation, a relevant control body for the prevention and detection of corruption, has a participatory planning mechanism through which civil society organizations can request the AGN to include what they consider to be of special relevance to the audit in the Annual Audit Plan programs and agencies<sup>132</sup>.

Finally, in the Judicial Branch, in addition to the public hearings before the Supreme Court mentioned above, there are two other legal concepts that aim to promote citizen participation in cases of public interest: jury trials and *amicus curiae*. Jury trials were established in the National Constitution for certain criminal trials (arts. 24, 75 inc. 12 and 118). This legal concept would be of special importance to allow citizen participation in the punishment of corruption, one of the objectives promoted by the UNCAC in its art. 13. However, jury trials have only been implemented in some provinces and not at the federal level. On the other hand, the Supreme Court's Acordada 7/2013<sup>133</sup> enabled the presentation of *amicus curiae* ("friends of the court") in cases before the Supreme Court, a mechanism that allows for the participation in cases of collective importance or general interest of persons or entities that are not part of the process.

## Good practices

A noteworthy practice is the creation of the Public Consultation Platform<sup>134</sup> in 2016, with the aim of promoting interaction between the government and the community, encouraging citizen participation and strengthening democracy. On the Platform, information on consultations is available, one can participate in the consultation axes, and opinions and comments on them can be shared. The platform is based on DemocracyOS technology, which is open source and designed to inform, debate and vote on public proposals. As of June 18, 2021, 34 consultations, 292 axes, 783 participants and 1707 comments were registered on the Platform, 1374 of which were responded to<sup>135</sup>.

The creation of a Civil Society Advisory Council for the follow-up of the National Anticorruption Plan (now National Integrity Strategy) in 2019 and its implementation and expansion in 2020, institutionalized an area of participation of civil society (organizations, academia and private

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<sup>130</sup> Open Government, <https://www.argentina.gob.ar/ Jefatura/innovacion-publica/gobiernoabierto>, 9/4/2021.

<sup>131</sup> <https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-132-2018-318401/texto>, 9/4/2021.

<sup>132</sup> Auditor General's Office, Citizen Participation, <https://www.agn.gob.ar/participacion-ciudadana>, 9/4/2021.

<sup>133</sup> <https://www.argentina.gob.ar/normativa/nacional/acordada-7-2013-212209/texto>, 10/4/2021.

<sup>134</sup> <https://consultapublica.argentina.gob.ar/>, 6/18/2021.

<sup>135</sup> <https://consultapublica.argentina.gob.ar/ayuda/estadisticas>, 6/18/2021.

sector) in the Anticorruption Office for the first time, allowing for greater inclusion and more active involvement of citizens in the design and implementation of public policies to prevent corruption.

## Deficiencies

The deficiencies in Argentina's compliance with Article 13 of the Convention are both regulatory and implementation-related. On the one hand, there is no general legal framework that guarantees citizen participation in the public decision-making process. While the country has made significant progress in terms of access to information, institutional mechanisms for participation in the cycle of planning, execution and control of public policies are scarce, weak and infrequently used. Specifically with regard to the prevention and punishment of corruption, participation channels are practically non-existent.

The mechanisms of semi-direct democracy enshrined in the National Constitution and detailed above were regulated in an excessively restrictive manner at the legal level, such that their use has been exceptional in its years of validity. More than 25 years after the constitutional reform of 1994, only two cases of popular initiative managed to become law, after meeting the demanding requirements for the project to be dealt with by Congress. Both cases were the result of public campaigns promoted by civil society organizations and journalists in 2002 and 2003, known as "*Jubilemos los privilegios*" (*Let's retire privileges*) and "*El hambre más urgente*" (*The most urgent hunger*). The first campaign was aimed at eliminating the so-called privilege pensions (those granted to certain government officials at the end of their term of office), while the second campaign sought to guarantee the right to food for children in the midst of the economic and social crisis the country was going through at the time<sup>136</sup>. In accordance with a commitment made in the third Open Government Action Plan (2017-2019), the Ministry of the Interior's Secretariat of Political Affairs, in consultation with civil society organizations, prepared a preliminary draft reform of the Popular Initiative Law with the aim of facilitating the use of the tool, reducing the number of signatures and constituencies required. However, the proposal was not sent to the Congress of the Nation for its treatment<sup>137</sup>. As for the popular consultation, not one has been registered at the national level since its constitutional recognition, which is a reflection of a political culture that conceives citizen participation as limited to the election of representatives and far from public decision making.

The National Ombudsman's Office, the body in charge of channeling citizens' demands to the State, has been in a state of institutional weakness and scarce activity since 2009, given the failure of Congress to appoint its head, despite repeated judicial summons, including that of the Supreme Court of Justice and international organizations such as the Inter-American Commission on Human Rights and the United Nations Human Rights Committee<sup>138</sup>.

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<sup>136</sup> Poder Ciudadano (2005), Tools for citizen participation, [https://www.poderciudadano.org/libros/HerramientasParaLaParticipacionCiudadana\\_PoderCiudadano.pdf](https://www.poderciudadano.org/libros/HerramientasParaLaParticipacionCiudadana_PoderCiudadano.pdf), 09/4/2021, pp. 74,75.

<sup>137</sup> <https://www.opengovpartnership.org/es/members/argentina/commitments/AR0055/>, 9/4/2021.

<sup>138</sup> ACIJ (2016), 55 organizations ask Congress for the appointment of the Ombudsman, <https://acij.org.ar/55-organizaciones-piden-al-congreso-por-la-designacion-del-defensor-del-pueblo/>; El Auditor.info (2021), Eleven years without Ombudsman, [https://elauditor.info/actualidad/once-anos-sin-defensor-del-pueblo\\_a5ff8ad83a1101103ee789bff](https://elauditor.info/actualidad/once-anos-sin-defensor-del-pueblo_a5ff8ad83a1101103ee789bff), 9/4/2021.

As for the participation mechanisms regulated by Decree 1172/2003, although their incorporation implied an advance at the normative level with respect to what existed until then, they have not been able to substantially increase citizen participation in the decision-making process. Their use is exceptional and the regulation has not been updated in almost 20 years of validity of the decree. Both the tool of participatory rule making and public hearings are voluntary for public agencies, which means that their implementation depends on the discretion of decision makers and not on citizen demand for participation. Dissemination of the call to participate is usually limited, through formal channels and with language that is not very accessible to a non-specialized public. In turn, accountability on the part of the convening agencies regarding the way in which citizen contributions were considered is generally scarce or even non-existent. This distorts the objective of the participation process which, instead of being an instance to listen to the voice of those potentially affected and improve the content of a measure, ends up becoming a formality prior to the materialization of a decision already taken by the authority. As a consequence, citizen participation in this type of procedure is strongly discouraged.

Similarly, public hearings to evaluate the suitability and independence of persons proposed to occupy positions of relevance in the Judiciary or in control bodies suffer from deficiencies, both in their regulation and in their implementation, which hinder effective citizen participation. In general, the requirements for holding the position are described in a vague manner, the grounds for the nomination are not usually made explicit, access to the information necessary for substantive participation is limited, and the final appointment decision after the participatory process does not take into account how the observations made by the citizenry were considered<sup>139</sup>.

Furthermore, mechanisms for participation in the prevention of corruption are almost nonexistent, particularly in high-risk areas such as public budget management or the contracting of goods, services and public works. According to the results of the latest edition of the Open Budget Survey prepared by the International Budget Partnership, Argentina obtained only 15 points out of 100 in the Public Participation category, which evaluates formal opportunities for citizens to participate meaningfully in the different stages of the budget process. When the score is broken down into the different stages of the budget cycle, it becomes apparent that the stages in charge of the Executive Branch (formulation and execution) obtained a score of 0/100, while the approval stage in Congress obtained 22/100 and the oversight stage in charge of the General Audit Office of the Nation obtained the highest score (67/100)<sup>140</sup>.

In the case of public procurement and contracting, the situation is even worse. Although measures have been adopted to make information more public - as analyzed in the corresponding chapter of this report - there is no provision, either in law or in practice, for citizen participation or monitoring in any of the phases of the decision-making process, which includes planning, bidding, contracting and execution of contracts. The only exception is the "Public Works Observatory",

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<sup>139</sup> See, for example, the analysis of the participatory process prior to the appointment of judges to the Supreme Court of Justice of the Nation conducted by ACIJ: ACIJ (2017), El proceso de designación de los jueces de la Corte Suprema de Justicia de la Nación, <https://acij.org.ar/el-proceso-de-designacion-de-los-jueces-de-la-corte-suprema/>, 9/4/2021.

<sup>140</sup> Open Budget Survey (2019), Open Budget Survey 2019: Argentina, <https://www.internationalbudget.org/es/open-budget-survey/country-results/2019/argentina>, 9/4/2021.



which was recently created, described in the chapter on "public procurement" (art. 9.1) of this report.

In relation to the investigation and punishment of corruption, citizen participation is usually limited to the possibility of filing complaints about the commission of crimes before control bodies such as the Anti-Corruption Office or agencies of the justice system. While in some cases there is the possibility of making anonymous complaints, there is no whistleblower protection law that offers the necessary guarantees for those willing to report. Moreover, access to information and accountability of the judiciary on corruption investigations is extremely restricted, especially in the so-called pre-trial stage, which is conducted in a written and secret manner for those who are not part of the process. Although civil society organizations have on some occasions obtained judicial authorization to access corruption files as a form of citizen monitoring and based on the provisions of, among other norms, Article 13 of the UNCAC, publicity continues to be exceptional<sup>141</sup>.

Just as access to information on corruption investigations is limited, there are no channels available for direct citizen participation in the investigation and punishment of corruption. Jury trials are a tool that could provide transparency, proximity and trust to the justice system and to the investigation of corruption crimes in particular. However, despite their constitutional enshrinement, they have not yet been implemented at the federal level. Another possible mechanism for citizen participation in corruption cases would be the so-called collective complaint, which would allow civil society organizations to intervene in the criminal process, providing information and requesting evidence, alongside the work of the prosecution. However, in Argentina this possibility is limited to the direct individual victims of the crimes - who, in corruption cases, are more difficult to identify than in other crimes (individual complaint) and to civil society organizations only in the case of crimes against humanity or serious human rights violations and crimes committed against indigenous peoples<sup>142</sup>.

## **B. CHAPTER V (ASSET RECOVERY)**

The following is an analysis of Argentina's compliance with articles 52 and 58 of Chapter V and article 14 corresponding to Chapter II of the Convention, related to the prevention and fight against money laundering, and then articles 54.1.c, 57.1 referring to the provisions on non-conviction-based forfeiture, and on restitution and disposition of assets. First, the applicable domestic legal framework is described, as well as the progress and deficiencies in its implementation in the country. This is followed by statistics on the intelligence phase, the investigation phase and the judicial phase of money laundering and asset recovery. Finally, information on some of the most relevant asset recovery cases since the entry into force of the UNCAC in Argentina (2006) is provided.

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<sup>141</sup> Poder Ciudadano (2017), Corruption and Transparency: 2016-2017 report <https://poderciudadano.org/libros/Informe-Corrupcion-y-transparencia2016-2017.pdf>, 9/4/2021, p. 232.

<sup>142</sup> ACIJ (2018), Towards the recognition of class action litigation in corruption cases, <https://acij.org.ar/wp-content/uploads/2018/12/Hacia-el-reconocimiento-de-la-querella-colectiva-en-causas-de-corrupcion.pdf>, 9/4/2021.



## **Art. 52, 58 and 14 - Prevention of and fight against money laundering**

### **Regulation**

The legal regime for the prevention and fight against money laundering in Argentina is defined by Law 25246<sup>143</sup> of 2000, which introduced amendments to the Criminal Code, created the Financial Information Unit (UIF) and established the duty to report of certain obliged subjects. The scope of the law is regulated by Decree 290/2007.

The UIF is the main body of the national anti-money laundering system. It has functional autonomy and financial autonomy within the Ministry of Economic Affairs<sup>144</sup>. Its function is the analysis, processing and transmission of information for the purpose of preventing and deterring the laundering of proceeds from the commission of various complex crimes, including those related to the phenomenon of corruption contained in the Convention.

The appointment of the president and vice-president of the UIF is attributed to the Executive Branch, after a public consultation procedure for the evaluation of the background of the candidates proposed by the Ministry of Economic Affairs<sup>145</sup>. In turn, the Executive Power may remove them from their position when they incur in bad performance of their duties or in serious negligence, when they are convicted for the commission of fraudulent crimes or for physical or moral inability after their appointment<sup>146</sup>.

The UIF is competent to receive and analyze suspicious transaction reports from the regulated entities and complaints or reports from any other source and, in case there are indications of the commission of the crime of money laundering, to make them available to the Public Prosecutor's Office or the Judiciary. For this purpose, the law grants it a series of powers, among which are the following: to request information from any public body and from natural or legal persons (who are obliged to provide it and are unable to oppose banking, tax, stock exchange or professional secrecy, or legal or contractual confidentiality commitments); to receive voluntary statements; to judicially request the suspension of the execution of any suspicious operation; to judicially request the search of public or private places, the personal search and the seizure of documentation or elements useful for the investigation; to apply the sanctions of the administrative criminal regime provided by law; and to issue directives and instructions for the obliged subjects.

Chapter III of Law 25246 regulates the duty to report, to which a list of financial institutions, legal entities and human beings are subject. The obliged entities, according to Article 20 are: commercial banks, financial companies, exchange agencies, stockbrokers, public registries of commerce, property registries, insurance companies, money transfer service providers, public

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<sup>143</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/62977/texact.htm>, 9/4/2021.

<sup>144</sup> In 2016, through Law 27,260 (<http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/263691/norma.htm>), the UIF was transferred from the jurisdiction of the Ministry of Justice and Human Rights to the Ministry of Finance (currently Ministry of Economic Affairs).

<sup>145</sup> Idem, article 9.

<sup>146</sup> Idem, article 9 bis.

agencies with regulatory functions, legal entities that receive donations, notaries and public accountants, among others.

As part of their duty to inform, such parties are obliged to make available to the UIF the documentation collected from their clients and bring to its knowledge the conducts through which the existence of a suspicious transaction of money laundering could be inferred. For such purpose, the regulated entities must request documents from their clients that reliably prove their identity in order to carry out any type of activity. Article 21 bis specifies that the identification task includes the identification of the client, the purpose, character or nature of the relationship established with the regulated entity, the risk of money laundering and its operations. The obligation includes adopting reasonable measures from a risk-based approach to identify the owners, beneficial owners and those who exercise actual control of the legal person.

The law also establishes that in all cases the risk of the client and of the transaction must be determined, suitable measures for their mitigation must be implemented, and continuous monitoring and control rules must be established that are proportional to them, taking into consideration a risk-based approach. The regulated entities must determine the origin and legality of the funds in their clients' transactions. Additionally, they are obliged to keep the information collected for a minimum term of five years, which must be available to the UIF when required.

In the case of Politically Exposed Persons (PEPs), the obliged entities must adopt enhanced due diligence measures, aimed at establishing alerts that allow taking timely actions to detect possible deviations in the customer's profile, in order to mitigate the risk of money laundering. Through Resolution 134/2018 and its amendments, the UIF put together a list of PEPs both foreign, as well as national and subnational agencies<sup>147</sup>. It also incorporated a list of "other Politically Exposed Persons", which includes PEPs linked to political parties and trade union and business organizations, among others<sup>148</sup>. The regulation includes the category of PEPs by proximity or affinity, which are persons who have personal or legal ties with those expressly listed. This includes the spouse or partner, relatives in ascending, descending and collateral line up to the second degree of consanguinity or affinity, related or close persons, and any other relationship that, based on a risk-based analysis, may be relevant. At the beginning of a contractual relationship, the regulated entities' customers must sign an affidavit stating whether or not they are PEPs.

In relation to PEPs, the UIF requires regulated entities to determine the level of risk at the time of initiating or continuing the contractual relationship and to take due diligence measures based on the associated risk and the transaction or transactions involved.

In terms of inter-institutional coordination, Decree 360/2016<sup>149</sup> created the National Coordination Program to Combat Money Laundering and the Financing of Terrorism within the scope of the Ministry of Justice. Its mission is to reorganize, coordinate and strengthen the national anti-money laundering and anti-terrorist financing system, in response to the specific risks that may have an

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<sup>147</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/316668/norma.htm>, 9/4/2021, articles 1-3.

<sup>148</sup> Idem, article 4.

<sup>149</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/258670/texact.htm>, 9/4/2021.

impact on the national territory and to the global demands for greater effectiveness in complying with the international obligations and recommendations established by the United Nations Conventions and FATF standards. Said Program replaced the one that had been created by Decree 1642/11,<sup>150</sup> which - according to the recitals of the new regulation - was outdated in relation to what was recommended by the new 2012 FATF Global Standards to Combat Money Laundering and Terrorist Financing.

## **Deficiencies**

As is the case with other control bodies analyzed above (see article 6), the main money laundering prevention agency does not have adequate guarantees of independence to carry out its function in an impartial and effective manner. As a consequence, the UIF has been subject to the political ups and downs of changes in administration and has been criticized for lack of impartiality in its different compositions over the years.

One of the main deficiencies at regulatory level in relation to the UIF's independence is the mechanism for the appointment of its authorities. Indeed, according to Article 9 of Law 25246, the president and vice-president of the UIF are appointed by the Presidency of the Nation. Neither the National Congress nor any other entity that functions as a counterweight to the decision of the Executive Branch intervenes in the decision. The law only provides for a mechanism to publicize the background of the persons proposed to occupy such positions, which includes the possibility for citizens, non-governmental organizations, professional associations and academic entities to submit observations regarding the candidates. The procedure also contemplates the holding of a public hearing to evaluate such observations. However, the decision on the appointment remains in the hands of the Executive Branch.

In the same sense, the mechanism provided by law for the removal of the UIF's authorities is also problematic. Article 9 bis provides that the Executive Power may remove its President and Vice President from office when they incur in bad performance of their duties or in serious negligence, when they are convicted for the commission of fraudulent crimes or for physical or moral inability after their appointment. Such a level of discretion represents a threat to the UIF's authorities' stability in office, which jeopardizes the agency's autonomy. On the contrary, the regulations should provide objective grounds for removal and a mechanism that includes the intervention of an authority independent from the Executive Branch.

The questioning of the suitability or independence of the persons appointed to head the UIF has been a constant in the institutional life of the agency. Such was the case of the last three heads, José Sbatella (2010-2015), Mariano Federici (2015-2019) and Carlos Cruz (since 2019) appointed by Presidents Cristina Fernández, Mauricio Macri and Alberto Fernández, respectively.

José Sbatella's administration was criticized for a lack of impartiality in investigations and inactivity in cases of suspected laundering of proceeds of corruption involving government officials. For this reason, his candidacy to renew his mandate was called into question in the framework of the participation process by leaders of the political opposition, non-governmental organizations and

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<sup>150</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/185000-189999/188217/norma.htm>, 9/4/2021.

bar associations. The contesting individuals and institutions alleged the candidate's lack of technical suitability, the deficient treatment he had given to investigations on money laundering during his administration, and the existence of criminal accusations against him. However, the Minister of Justice considered the explanations provided by the candidate to be sufficient, dismissed the concerns and proposed his candidacy to the President of the Nation, who confirmed him in the position<sup>151</sup>. During the last year of José Sbatella's administration, there was an incident with the U.S. anti-money laundering agency, which stopped cooperating with the UIF in Argentina, as a result of the leak of secret information that ended up being used in Argentina for political purposes to the media. The suspension of cooperation had already occurred previously in 2009 in relation to information about an opposition leader<sup>152</sup>. Years later, these episodes gave rise to an amendment to the Money Laundering Law to strengthen the duty of secrecy provided for in Article 22. Indeed, Article 87 of Law 27.260<sup>153</sup> of 2016 provided that the obligation includes the confidentiality of the identity of the reporting and reported subjects during the entire process of analysis in charge of the UIF and the prohibition to disclose the source of their information. It also extended the secrecy obligation to magistrates, judicial officers and the Federal Administration of Public Revenues (AFIP).

The appointment of those candidates proposed as president and vice president of the UIF by the government that began its mandate in December 2015, Mariano Federici and María Eugenia Talarico, were also called into question<sup>154</sup>. Among the challenging individuals and entities was the CIPCE, which argued that the proposed professionals were involved in a conflict of interest, as they had in the past served as defenders of individuals and companies investigated for money laundering<sup>155</sup>. As a result of the controversy, the area in charge of substantiating the procedure for the selection of UIF authorities requested the opinion of the Anticorruption Office, the authority in charge of applying the Public Ethics Law, which ended up ruling that the candidates Mariano Federici and María Eugenia Talarico were not disqualified by Law 25.188 to be appointed as president and vice-president of the UIF. However, it found that some of the labor or professional activities performed by them placed them in the hypothesis provided for in Section 15 of Law 25188, for which reason they had to resign from such activities as a prior condition to assume the positions and refrain from intervening in matters particularly related to persons and/or companies they had managed, administered, represented, sponsored, advised or, in any other way rendered

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<sup>151</sup> National Ministry of Justice and Human Rights (2014), Informe sobre el procedimiento de selección de los candidatos a ocupar los cargos de Presidente y Vicepresidente de la Unidad de Información Financiera (UIF), [http://www.jus.gob.ar/media/1234671/INFORME%20DESIGNACION%20S\\_BATTELLA%20Y%20SALLER%20UIF.pdf](http://www.jus.gob.ar/media/1234671/INFORME%20DESIGNACION%20S_BATTELLA%20Y%20SALLER%20UIF.pdf), 9/4/2021; Infobae (2014), Suma más impugnaciones la continuidad de Sbatella en la UIF, <https://www.infobae.com/2014/01/29/1540295-suma-mas-impugnaciones-la-continuidad-sbatella-la-uif/>, 9/4/2021.

<sup>152</sup> La Nación, Alconada Mon, Hugo (2016), Intelligence. U.S. interrupted the exchange of financial data over the Nisman case, <https://www.lanacion.com.ar/politica/eeuu-interrumpio-el-intercambio-de-datos-financieros-por-el-caso-nisman-nid1877203/>, 9/4/2021.

<sup>153</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/263691/norma.htm>, 9/4/2021.

<sup>154</sup> La Nación, Alconada Mon, Hugo (2016), UIF. Avanza el proceso de las postulaciones a la unidad antilavado, <https://www.lanacion.com.ar/politica/avanza-el-proceso-de-las-postulaciones-a-la-unidad-anti-lavado-nid1860707/?outputType=amp>, 9/4/2021.

<sup>155</sup> CIPCE (2016), Challenge to the nominations for president and vice president of the FIU, <http://www.cipce.org.ar/sites/default/files/2016/04/articulos2373.pdf>, 9/4/2021.

services in the last five years during their term of office<sup>156</sup>. Finally, the Minister of Justice resolved to submit the proposal to the President of the Nation, who appointed the proposed candidate to the position.

Similarly, the current heads of the UIF, Carlos Cruz and Mariana Quevedo, appointed in January 2020, were called into question prior to their appointment by opposition leaders. The challengers referred to the alleged lack of suitability of the candidates, political bias and conflict of interest, arguments that were dismissed by the government<sup>157</sup>.

Another relevant deficiency related to the prevention and investigation of money laundering resulting from corruption in Argentina is the weak regulation of the obligation of public officials to disclose their assets. Although there is a regime of sworn asset declarations, both the legal framework and the implementation mechanism need to be updated and strengthened. Currently, the information contained in the sworn asset declarations is insufficient and of low quality, and the oversight bodies do not have the institutional capacity or the autonomy necessary to carry out effective control<sup>158</sup>.

Moreover, Argentina does not have an adequate regulation on beneficial owners that allows identifying in all cases the beneficial owners of companies or legal entities. Resolution 30-E/2017 of the UIF establishes the different ways in which clients of financial entities can prove the identification of the beneficial owner: a sworn statement, a copy of the shareholders' records or any documentation or public information that identifies the control structure. However, by not distinguishing between the different instruments, the regulation ends up equating shareholders with beneficial owners, which is not always the case. At the same time, the resolution exempts listed companies from the obligation to identify beneficial owners, which makes it difficult for the different control bodies to have access to complete information. In addition, the Central Bank does not have a registry of beneficial owners of the financial institutions under its control, nor do these institutions have such information on their clients<sup>159</sup>.

In terms of international cooperation, Argentina has been a full member of the FATF since 2000 and has undergone the mutual evaluation process. The country's last round of evaluation took place in 2010 (third round), and the report found that of the 49 recommendations promoted by the organization, Argentina only complied with 2 of them<sup>160</sup>. For that reason, the country was placed on the so-called "gray list" and had to undergo the intensive follow-up mechanism, a status in which it remained for four years, until the Plenary decided to lift the measure after finding that

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<sup>156</sup> Opinion of the Anti-Corruption Office regarding nominations for president and vice president of the FIU (2016), <http://archivo.anticorruptcion.gob.ar/documentos/Resoluci%C3%B3n%20OA-DPPT%20N%C2%BA%20510-16.pdf>, 9/4/2021.

<sup>157</sup> La Nación, Iní, Candela (2020), Alberto Fernández's candidates for the UIF defended themselves against the challenges against them, <https://www.lanacion.com.ar/politica/los-candidatos-alberto-fernandez-uif-rechazaron-impugnaciones-nid2326389>, 9/4/2021.

<sup>158</sup> See analysis of articles 7, 8 and 12 in this report.

<sup>159</sup> Fundación SES (2019), Los registros públicos de beneficiarios finales en Argentina: avances y retrocesos de un proceso inconcluso, <http://www.conferenciabf.org/los-registros-publicos-de-beneficiarios-finales-en-argentina-avances-y-retrocesos-de-un-proceso-inconcluso/>, 9/4/2021, p. 16.

<sup>160</sup> FATF (2010), Evaluation Report 2010, <http://www.fatf-gafi.org/countries/a-c/argentina/documents/mutualevaluationofargentina.html>, 9/4/2021.

sufficient measures had been taken to comply with the recommendations in the 2014 follow-up report<sup>161</sup>. The fourth evaluation round will take place in 2021. During 2017 and 2018, Argentina held the FATF Presidency. The country has also been a member of the Egmont Group, dedicated to facilitating the exchange of financial intelligence information, since 2003. In July 2019, the head of Argentina's UIF, Mariano Federici, was appointed as president of the body. However, after the change of government and the replacement of the head of the UIF, Argentina ceased to hold the presidency of the group<sup>162</sup>.

Finally, as acknowledged in the UIF's own management report for the 2016-2020 period,<sup>163</sup> in addition to the necessary reforms to ensure the autonomy of the agency, it is necessary to update the legal framework on money laundering in Argentina to adapt it to international standards. Among other legal amendments, the report recommended incorporating FinTech and virtual asset service providers; political parties, electoral alliances, their structures for raising funds and their representatives and proxies; and lawyers to the list of regulated entities. Congress was also asked to update and strengthen the legal framework for sanctions in order to allow the FIU to apply effective sanctions.

### **Statistics and case information**

As can be seen from the following tables, there is a great lack of available information on basic indicators that would allow for an adequate evaluation of the functioning of the money laundering and asset recovery investigation and sanctioning system. In view of the lack of data on the prevention and sanction agencies' websites and official reports, requests for public information were submitted to different institutions. However, in some cases the information requested was not available or was incomplete, and in others, the request was denied.

Information/intelligence phase	Year: 2017	Year: 2018	Year: 2019
Number of suspicious transaction reports (STRs) filed by each category of obligated entities (Banks and financial institutions; non-financial businesses and professions; NFBP) <sup>164</sup>	17.985	23.364	21.577 -51% financial institutions -12% remittance companies -8% Registration of the real estate

<sup>161</sup> FATF (2014), Follow-up Report 2014, <http://www.fatf-gafi.org/countries/a-c/argentina/documents/follow-up-report-argentina-2014.html>, 9/4/2021.

<sup>162</sup> Egmont Group (2020), Mauritius Communiqué, [https://egmontgroup.org/sites/default/files/filedepot/Mauritius\\_2020/20200204%20%20Mauritius%20Working%20Group%20Meetings%20Communiqu%C3%A9.pdf](https://egmontgroup.org/sites/default/files/filedepot/Mauritius_2020/20200204%20%20Mauritius%20Working%20Group%20Meetings%20Communiqu%C3%A9.pdf), 9/4/2021.

<sup>163</sup> UIF, Management Report 2016-2020, pp. 33-34.

<sup>164</sup> UIF, Management Report 2019, [https://back.argentina.gob.ar/sites/default/files/informe\\_de\\_gestion\\_2019.pdf](https://back.argentina.gob.ar/sites/default/files/informe_de_gestion_2019.pdf), 9/4/2021, p. 51.



			-29% other
Number of transaction freezing or deferral orders requested by the UIF <sup>165</sup>	No data (ND)	ND	ND
Number of money laundering investigations conducted independently by law enforcement agencies (without a prior STR) <sup>166</sup>	ND	ND	ND
Number of suspicious cash activities at the border reported to the UIF (including those based on declarations or smuggling) <sup>167</sup>	ND	ND	ND
Number of STRs sent to investigative and/or law enforcement agencies and investigated on <sup>168</sup>	790	818	876
Number of full-time staff (or full-time equivalent) dedicated to money laundering at the UIF <sup>169</sup>	ND	ND	ND

Research phase	Year: 2017	Year: 2018	Year: 2019
Number of cases initiated by investigative and/or law enforcement agencies on the basis of suspicious transaction reports (STRs) sent by the UIF <sup>170</sup>	ND	ND	ND

<sup>165</sup> Information requested from the UIF through a public information request, which was denied. See denial resolution in Annex.

<sup>166</sup> Idem.

<sup>167</sup> Idem.

<sup>168</sup> The UIF does not send STRs but Financial Intelligence Reports - based on STRs - to the Public Prosecutor's Office and the Judiciary. See Management Report 2016-2020, [https://back.argentina.gob.ar/sites/default/files/informe\\_4\\_anos\\_3.pdf](https://back.argentina.gob.ar/sites/default/files/informe_4_anos_3.pdf), 9/4/2021, p. 17.

<sup>169</sup> The information on UIF staff is not available on the agency's website, despite the obligation to publish it under Article 32 of Law 27,275 on Access to Public Information (active transparency). The information was also requested in the aforementioned request for information made to the UIF, which was denied.

<sup>170</sup> Information requested from PROCELAC, which informed ACIJ that it does not have such information. See PROCELAC's response in the Annex.



Number of officers engaged full-time (or full-time equivalent) in money laundering in law enforcement agencies <sup>171</sup>	ND	ND	ND
Number of cases investigated and brought to trial classified according to: originated by STRs, cash transaction report (CTR) <sup>172</sup>	6 (2016-2017)	14	10

Judicial phase	Year: 2017	Year: 2018	Year: 2019
Number of personnel dedicated full-time (or full-time equivalent) to the processing of cases related to money laundering, both in the Federal and National Courts <sup>173</sup>	ND	ND	ND
Number of natural or legal persons convicted of money laundering (broken down by instance in which they are found) <sup>174 175</sup>	13 (s/PROC ELAC)  19 (s/UIF)	23 (s/PROC ELAC)  6 (s/UIF)	44 (s/PROC ELAC)  57 (s/UIF)
Number of convictions for money laundering of proceeds of crimes committed abroad <sup>176</sup>	ND	ND	ND

<sup>171</sup> The information on justice system personnel is not available in a disaggregated way that would make it possible to identify personnel specifically dedicated to money laundering investigations.

<sup>172</sup> UIF, Management Report 2019, [https://back.argentina.gob.ar/sites/default/files/informe\\_de\\_gestion\\_2019\\_.pdf](https://back.argentina.gob.ar/sites/default/files/informe_de_gestion_2019_.pdf), 9/4/2021, p. 69. However, the figures could correspond to ongoing trials per year and not to new trials per year, since the Management Report 2016-2020 states that in the period 2016-2019 the UIF participated in a total of 14 oral trials ([https://back.argentina.gob.ar/sites/default/files/informe\\_4\\_anos\\_3.pdf](https://back.argentina.gob.ar/sites/default/files/informe_4_anos_3.pdf), p. 20). The origin of the investigations (STR, CTR or independent judicial investigation) is not differentiated.

<sup>173</sup> See note in the table above on the number of money laundering officers in law enforcement agencies.

<sup>174</sup> According to PROCELAC's response to a request for public information (see Annex). These are convictions of natural persons. The information was also requested to the Council of the Magistracy, but the search conducted by the Statistics Office in the information system did not find any cases of convictions recorded. However, the report notes that seven proceedings were accounted for whose docket status description includes the word "conviction", three of them in 2018, and four during 2019, all in the Federal Jurisdiction of Sint Maarten. See report of the Magistrates Council in Annex.

<sup>175</sup> UIF, Management Report 2019, [https://back.argentina.gob.ar/sites/default/files/informe\\_de\\_gestion\\_2019\\_.pdf](https://back.argentina.gob.ar/sites/default/files/informe_de_gestion_2019_.pdf), 9/4/2021, p. 26. There is no differentiation made between natural and legal persons. Law 27,401 on Criminal Liability of Legal Entities came into force in March 2018.

<sup>176</sup> Information requested from PROCELAC, which responded that it did not have such data.

Number of convictions for crimes other than money laundering arising from suspicious transaction reports (STR) <sup>177</sup>	ND	ND	ND
Number of convictions by type of money laundering crime <sup>178</sup>	6 (final)	4 (not final)	4 (not final)
Number of sentences of deprivation of liberty (current or suspended), both in cases in which money laundering was the principal and predicate offense <sup>179</sup>	ND	ND	ND

Regarding the intelligence phase, a request for information was sent to the UIF, which denied the request based on the Access to Information Law, whose article 8 paragraph "e" exempts the disclosure of information held by the UIF, and on article 22 of the Money Laundering Law, which imposes the duty to keep secret "the information received by reason of their position, as well as the intelligence tasks developed as a consequence" on FIU officers<sup>180</sup>. However, it is an unreasonable and disproportionate interpretation of the rule to consider that all information held by the UIF is secret and exempted from the duty of publicity. Indeed, the information requested is of a statistical nature and its disclosure not only does not constitute a risk for the agency's normal performance of its functions, but it is also essential for the accountability and performance evaluation of the UIF. By way of example, among the data requested was data related to the staff employed at the UIF, which is information that all public agencies must publish on their website by virtue of an active transparency obligation of the Access to Information Law, but which the UIF fails to comply with.

The information that could be accessed about this phase is what was available in the agency's management reports: the number of STRs forwarded each year to the UIF by the obligated entities, and the number of intelligence reports based on STRs forwarded by the UIF to the Public Prosecutor's Office and the Judiciary. According to the 2016-2020 management report, between

<sup>177</sup> The Statistics Office of the Magistrates Council reported that it conducted a search for judgments linked to files with registered intervenors containing the character string "financial information unit" and proceedings in which the description of the file status included the word "conviction". The search yielded a single result, with a sentence registered during 2018 in the Federal Jurisdiction of Salta, but the file has no linkage to intervenors with registered conviction. See report of the Magistrates Council in Annex.

<sup>178</sup> PROCELAC's response to a request for public information (see Annex). It does not specify the type of crime related to money laundering. A similar request was made to the Council of the Judiciary of the Nation, which provided information on the number of sentences on crimes provided for in the Criminal Code of the Nation, Book II Title XIII on "Crimes against the economic and financial order", although it did not discriminate the information by type of crime, so it is not possible to know how many of these cases correspond to money laundering. See Annex.

<sup>179</sup> The Statistics Office of the Judiciary Council reported that no records of "PRISON CONVICTION" and "PRISON CONVICTION ON SUSPENSION" were found among the files with registered sentence linked to Book II Title XIII on "Crimes against the economic and financial order" during the period from January 1, 2017 to June 30, 2019. See Annex.

<sup>180</sup> UIF's response to ACIJ's request for information (see Annex).

2016 and 2019 an average of 770 intelligence reports were communicated per year, which would represent "45% more than the average number of reports as of 2015"<sup>181</sup>. It also stated that response times to judges and prosecutors and other UIFs were shortened from an average of 80 days to 30 days<sup>182</sup>.

In order to obtain information on the investigation phase, a request for information was sent to PROCELAC, a specialized agency of the Public Prosecutor's Office. However, when asked about the number of cases initiated on the basis of STRs sent by the UIF, PROCELAC said that it does not receive STRs from the UIF but financial intelligence reports that may, eventually, contain information from one or more STRs, but that this is not detailed in the content of the reports, and for that reason they did not have such information. However, neither did it provide information on the number of cases initiated based on the financial intelligence reports actually received, nor on the cases brought to trial. The information on oral trials consigned in the table is taken from the FIU's 2019 Management Report, which does not detail the origin of the investigations (STRs, CTRs or independent judicial investigation). According to the FIU, from 2000 to 2015 there had been only one oral trial for money laundering while, between 2016 and 2019, the Unit participated in 14 oral trials. It also notes that during the same period there was a 135% increase in the number of complaints the UIF participated in, of which 33% were related to corruption offenses<sup>183</sup>.

Regarding the personnel working in the justice system and investigation agencies, the information is not available in a disaggregated form in such a way as to make it possible to identify the number of people dedicated to money laundering investigations. These investigations involve personnel from courts and prosecutors' offices that, in addition to money laundering, are competent to investigate other crimes. In the case of PROCELAC, it was possible to access the number of personnel it has (73), but it was impossible to determine the number of people specifically dedicated to the investigation of money laundering, since the agency also has jurisdiction over other crimes related to economic crime.

Regarding the judicial phase, the information provided by PROCELAC on persons convicted of money laundering offenses differs from that published by the UIF in its management report, as can be seen in the table. This may be due to the fact that there is no single database on money laundering crimes in the country, but rather that the information is fragmented in different records of the various agencies involved in the cases (UIF, Public Prosecutors' offices, courts). At the same time, neither PROCELAC nor the UIF are necessary parties in the processes in which the crime of money laundering is investigated, so they can only have access to information regarding part of the many ongoing cases (those in which they actually intervene). For this reason, an information request was also sent to the Council of the Judiciary of the Nation, whose Statistics Office has access to the information and file management systems of the Judiciary of the Nation. However, the Council reported that it conducted a search among the files related to crimes against the economic and financial order that had a sentence between the years requested and intervening parties with a recorded conviction, and that no records were found. The disparity in

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<sup>181</sup> The report does not specify from which date it is accounted for. FIU, Management Report 2016-2020 p. 17.

<sup>182</sup> *Idem*, p. 17.

<sup>183</sup> *Idem*, p. 19.

the response provided by the main actors of the judicial investigation system of money laundering (UIF, Public Prosecutor's Office and the Judiciary) points to a significant problem regarding the lack of availability, completeness and quality of the information related to investigation of this crime in the country.

Regarding the number of convictions for laundering the proceeds of crimes committed abroad, PROCELAC responded that it did not have such data. It was also not possible to find out the number of convictions for crimes other than money laundering originated by STRs. In this regard, the Statistics Office of the Magistrates Council informed ACIJ that it conducted a search in its information systems, but with negative results. Regarding the number of registered sentences, the data shown in the table was provided by PROCELAC. The Magistrates Council, for its part, provided data on sentences in relation to the crimes in Book II Title XIII of the Criminal Code, but did not disaggregate the information by type of crime, so it was not possible to detect how many of those cases corresponded to money laundering.

Finally, a table with data on the asset recovery phase is not included, since it was not possible to access the necessary information. Three different agencies were consulted<sup>184</sup>: the National Registry of Seized and Confiscated Assets during Criminal Proceedings (RNBSD), which operates within the Ministry of Justice and Human Rights of the Nation; the General Directorate of Asset Recovery and Confiscation of Assets of the Attorney General's Office; and the Supreme Court of Justice of the Nation, which has the "General Database of Seized and/or Confiscated Assets in Criminal Cases under the jurisdiction of the National Federal Justice". Nevertheless, it was not possible to access the requested data. The registry under the Ministry of Justice has an online database<sup>185</sup>, but for most of the assets reported there is no indication of the date on which they were seized, seized or confiscated, which makes it impossible to find out the amount of assets involved per year. For its part, the Public Prosecutor's Office informed ACIJ that it only had partial information - which it provided in its response - and that the "General Database of Seized and/or Confiscated Assets in Criminal Cases under the Jurisdiction of the National and Federal Justice" created by the Supreme Court of Justice of the Nation should be consulted<sup>186</sup>. However, the request for information that ACIJ addressed to the Supreme Court was rejected, based on the secret nature provided in the General Regulations of such database, approved by Acordada 33/2015<sup>187</sup>. It is worth noting that in Agreement 1/13 of February 5, 2013, which created the database, the Court ordered the Courts of Appeals throughout the country to submit "only to this Court" the information on seized and forfeited assets. Consequently, the only database that would

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<sup>184</sup> The information requested included: number of precautionary measures in the framework of criminal investigations; number of forfeiture proceedings; number of requests for seizure or forfeiture orders received from another country; value and quantity of assets subject to precautionary measures; number of requests for forfeiture orders received from another country; value of seized assets; quantities of assets and total values of assets actually seized; value and quantities of assets returned as a result of acquittals or other circumstances.

<sup>185</sup> Ministry of Justice and Human Rights, Property seized and forfeited during criminal proceedings, <http://datos.jus.gob.ar/dataset/bienes-secuestrados-y-decomisados-durante-el-proceso-penal/archivo/edc8b860-f0d5-482b-86dc-ce1e2e29bd03>, 9/4/2021.

<sup>186</sup> Response of the General Directorate for Asset Recovery and Forfeiture of Assets of the Attorney General's Office to ACIJ's request for information (see Annex).

<sup>187</sup> Supreme Court's response to ACIJ's request for information (see Annex).

be complete and updated is that of the Supreme Court, but it is confidential, while the one kept by the Ministry of Justice, which is available online, is not complete.

Regarding requests for seizure, restraint or forfeiture measures received from another country on assets in the framework of criminal investigations, this information was requested from the Public Prosecutor's Office through a public information request. The General Directorate of Regional and International Cooperation replied that there is no record of requests for international legal assistance through which the Argentine Republic has been requested to take measures of non-remand or confiscation of assets in the framework of criminal investigations. However, it clarified that, in most cases, the requests are received by the Ministry of Foreign Affairs, which generally forwards them directly to the corresponding Federal Court, so the Public Prosecutor's Office does not have complete information in this regard.

### **Art. 54.1.c, 57.1 - Non-conviction-based forfeiture, restitution and disposition of assets**

#### **Regulation**

The Criminal Code establishes the general rules that apply to the confiscation and destination of assets related to crimes of any kind. Thus, Article 23 determines that at the time of conviction, the assets used to commit a crime or which were the fruit of the crime shall be confiscated. It also indicates that they shall be destined for the national or provincial States, unless there are rights of "*restitution or compensation of the victim and third parties*". The same article establishes that with respect to their administration, the judicial authorities will be the ones to establish, from the beginning of the proceedings, the precautionary measures to ensure the confiscation.

In turn, Article 30 establishes that the obligation to compensate the damages for the crime is preferential before any other obligation, including those related to the costs of the trial, the confiscation of the property in favor of the State or the payment of the fine, if any.

With regard to legal entities, the Law on Criminal Liability of Private Legal Entities (no. 27,401), passed in 2017, extends the possibility of forfeiture also to this type of entities under the terms already provided for in the Criminal Code<sup>188</sup>.

In 2019, the Executive Branch approved the Decree of Necessity and Urgency 62/2019 establishing a civil action for forfeiture of assets obtained from the crimes of drug trafficking, terrorism and financing of terrorist activities, corruption of minors, trafficking in persons, child pornography, kidnapping, crimes against public administration (i.e., crimes of public corruption), concealment, administration and trafficking of assets of illegal origin, and illicit association to commit any of the crimes included in the decree<sup>189</sup>.

For the first time in Argentine legislation, the enactment of the decree incorporated the possibility of confiscation without conviction. Its signature was not free from criticism, since the matter and

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<sup>188</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/295000-299999/296846/norma.htm>, 04/25/2021.

<sup>189</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/319068/norma.htm>, 04/25/2021.

its circumstances did not meet the constitutional requirements for the approval of a Decree of Necessity and Urgency, especially when Congress was discussing legislation on the matter<sup>190</sup>. Although the decree ruling received a request for its rejection by the Permanent Bicameral Commission of Legislative Procedure, it remains in force since it has not yet been expressly rejected by both Chambers.

For the first time, the decree establishes a regime of asset forfeiture without the need for prior conviction. For this purpose, it provides for a civil action of forfeiture of assets that proceeds the imposition of precautionary measures on property or assets in the framework of criminal investigations related to the crimes contemplated in the scope of the new law. At the same time, it provided for the creation of a specialized prosecutor's office within the Public Prosecutor's Office (called Procuraduría de Extinción de Dominio a favor del Estado Nacional) which is in charge of the promotion of this type of actions.

Article 13 also provides that during the process of the forfeiture of ownership "the administration and maintenance of the real and personal property subject to precautionary measures of dispossession will be in charge of the Agency for the Administration of State Property, a decentralized agency within the scope of the Office of the Chief of Cabinet of Ministers". As a general principle, it indicates that the sentence that allows the forfeiture of ownership action shall give rise to the auction of the goods or assets, from which the expenses of the process shall be deducted and the surplus shall be paid into the fiscal coffers, unless another law establishes a different destination (as is the case of Law 27,508 on the Creation of the Public Trust Fund "Fund for Direct Assistance to Victims of Trafficking").

As regards the administration of seized assets, due to the absence of specific legislation on the matter (at least in the cases that are not covered by DNU 62/2019), Acordada 2/18 of the national Supreme Court of Justice applies. The rule establishes that the judicial authorities must maximize the measures so that the sale of the seized or confiscated effects takes place without delay. The proceeds of the sale must be deposited by the respective banking institutions to the accounts opened in the name of the Court, and the same applies to deposits of money, titles and securities.

Assigned assets may be provisionally assigned for the use of the National Judiciary and the security forces, exclusively in accordance with their functions and within the national territory. They may also be provisionally assigned as judicial depository to entities with public interest purposes, for the fulfillment of their specific objectives and use within the country. The institution to which the seized property is assigned will be responsible for the costs of transfer, maintenance, conservation and insurance of the assigned property. Finally, it also regulates the rules of restitution, if applicable.

Regarding the registration of assets subject to precautionary measures or confiscated, there are two overlapping regulations. On the one hand, Decree No. 826/2011 created the "National Registry of Seized and Forfeited Assets during Criminal Proceedings" within the scope of the

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<sup>190</sup> ACIJ (2019), Note from organizations to the President of the Nation questioning the sanction of a Forfeiture Regime through a Decree of Necessity and Urgency, <https://acij.org.ar/nota-de-organizaciones-al-presidente-de-la-nacion-cuestionando-la-sancion-de-un-regimen-de-extincion-de-dominio-a-traves-de-un-decreto-de-necesidad-y-urgencia/>, 25/04/2021.

Ministry of Justice and Human Rights of the National Government<sup>191</sup>. The decree establishes that the Registry is in charge of the identification, registration, valuation and location of the totality of the assets seized, confiscated or affected to a precautionary measure in the framework of a criminal proceeding. Despite this regulation, the Court established the creation of the "General Database of Seized and/or Confiscated Assets in Criminal Cases under the jurisdiction of the National Federal Justice" by means of Resolution No. 1/13, in which the complete information of all assets of any nature that are subject to a jurisdictional decision and may become resources of the National Judicial Power must be registered. The ruling also orders the different Chambers with criminal jurisdiction to send such information only to the Court.

## **Deficiencies**

The way in which confiscation, non-conviction-based forfeiture, restitution and disposal of assets is regulated in Argentina presents numerous problems that make it far from being an effective system for the fight against corruption and organized crime. In addition to the regulatory overlap, the lack of transparency and the weakness of the existing mechanisms, there is also the discretion with which the use of such assets is currently available during the period in which they are in the hands of the Judiciary.

The Decree of Necessity and Urgency 62/2019 that establishes the Procedural Regime of the civil action for forfeiture of assets has vices in its form of approval that weaken its application and that reinforce the need for a discussion in Congress of a law on the subject. This would also allow for discussion of some of the regulatory problems that the norm has, which are also at odds with constitutional guarantees.

Although the 2018 Supreme Court's Acordada constitutes an advance, insofar as it establishes rules for the use of assets, the lack of objective criteria for the allocation of seized assets leaves a wide margin for discretion, and they may be used for purposes incompatible with the object and purpose of the rule. This is aggravated by the absence of accountability mechanisms for the assigned assets and the lack of information available to enable social control.

The existence of two different registries on the matter, one of which has not been made public (the one administered by the Supreme Court of Justice) adds confusion to the system and makes it impossible to create a transparent and efficient asset management mechanism with the participation of civil society.

Although it is virtually impossible to know the amount of assets confiscated for corruption and organized crime offenses, the cases of public knowledge on the matter show a limited use of the tool, as detailed below.

## **Information on asset recovery cases**

There are few successful cases of asset recovery in Argentina. According to a journalistic investigation based on data provided by the Center for Research and Prevention of Economic Crime (CIPCE) and PROCELAC, the Argentine State recovered only US\$1,600,000 and about

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<sup>191</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/180000-184999/183500/norma.htm>, 04/25/2021.



AR\$85,000<sup>192</sup> between 1989 - when the crime of money laundering was criminalized - and 2016. These amounts represent an extremely low percentage compared to the amounts seized each year during the proceedings. In the same research, it was calculated that what was definitively recovered in a period of 27 years represented only 0.15% of what was seized only in the last 4 years of the covered period.

Similarly, according to the 2018 Management Report of the Financial Intelligence Unit (UIF), the overall number of precautionary measures in force was AR\$519,554,476,560 (equivalent to around US\$13 to US\$28 billion, depending on the exchange rate in force between the beginning and the end of 2018), while the total amount of seized assets did not exceed US\$2 million, plus some real estate and vehicles<sup>193</sup>.

The following is a list of some of the most relevant current and past cases of recovery of proceeds of corruption since the entry into force of the UNCAC in Argentina (2006).

- The case of the notebooks ("Fernández, Cristina Elisabet and others s/ racketeering").

This case was initiated in 2018 as a result of the presentation to the courts of eight notebooks belonging to Oscar Centeno, driver of the former Ministry of Planning's Undersecretary of Coordination and Management Control, Roberto Barata, which allegedly contain notes on bribes related to public works. More than 100 people are under investigation in the case, including businessmen and public officials, including the former President and current Vice-President of the Nation, Cristina Fernández. In this case, Law 27,304 of 2016, known as "Ley del Arrepentido" (Repentance Law) was applied for the first time, the application of which was questioned by the defendants, a claim dismissed by the Federal Chamber of Criminal Cassation in December 2020. The case is in the oral trial stage, although there is still no date scheduled for the beginning of the hearings. According to the UIF's Management Report, who is the plaintiff in the case, the estimated global amount seized was AR\$184,030,000,000,000<sup>194</sup>. Within the framework of this case and other related cases, the non-conviction-based forfeiture of approximately 30 properties was ordered, which were placed at the disposal of the National Agency of State Assets (AABE) for auction, in accordance with the provisions of Decree 598/2019<sup>195</sup>.

- Tandanor ("Bofill, Alejandro Arturo and others s/inf. art. 174 inc. 5° in function of art. 173 inc. 7° of the Criminal Code")

In this corruption case, the largest seizure in the history of the Judiciary in Argentina was confirmed in 2020. The object of the investigation was the fraudulent sale of the state-owned company Talleres Navales Dársena Norte SAClyN (Tandanor S.A.). The facts took place between

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<sup>192</sup> La Nación (2016), El Estado sólo recuperó \$ 25 millones del lavado de dinero, <https://www.lanacion.com.ar/politica/el-estado-solo-recupero-25-millones-del-lavado-de-dinero-nid1921578/>, 9/4/2021.

<sup>193</sup> UIF, Management Report 2018, [https://www.argentina.gob.ar/sites/default/files/informe\\_de\\_gestion\\_2018\\_web\\_0.pdf](https://www.argentina.gob.ar/sites/default/files/informe_de_gestion_2018_web_0.pdf), 9/4/2021, pp. 63-69.

<sup>194</sup> UIF, Management Report 2018, p. 67.

<sup>195</sup> La Nación (2019), El Gobierno ordena la venta inmediata de los bienes de la corrupción y ya preparan la primera subasta, <https://www.lanacion.com.ar/politica/el-gobierno-ordena-venta-inmediata-bienes-corrupcion-nid2282979>, 9/4/2021.

1991 and 1999. However, it was only in 2018 that the oral court sentenced Eduardo Andrés Tesoriere, Alejandro Arturo Bofill and Andrés Juan Vlastó to prison sentences and ordered the confiscation of Plant 1, a property of more than eight hectares located in the Puerto Madero neighborhood of the City of Buenos Aires, valued at US\$ 800 million<sup>196</sup>. The ruling became final by decision of the Court of Cassation in 2020<sup>197</sup>.

- María Julia Alsogaray ("Alsogaray María Julia s/ illegal enrichment")

The case for illicit enrichment against María Julia Alsogaray, who had been Secretary of Human Resources and Sustainable Development during the government of Carlos Menem, resulted in the first forfeiture in a corruption case in the country. The former official was sentenced to three years imprisonment and ordered the forfeiture of US\$500,000 and AR\$622,000 by the Oral Court in 2004,<sup>198</sup> a sentence that became final by decision of the Supreme Court of Justice in 2008<sup>199</sup>. The forfeiture finally took place in 2009 through the auction of a property owned by her, for an amount of AR\$3,200,000. Within the framework of this case, the Center for Investigation and Prevention of Economic Crime (CIPCE) requested the Supreme Court to allocate the recovered funds to a children's hospital as a form of reparation for the social damage. However, the request was rejected by the Court in August 2013 and the funds were destined to finance the Judiciary. Subsequently, the Oral Court ordered the additional forfeiture of AR\$341,507 in interest<sup>200</sup>.

- Case IBM-Banco Nación ("Dadone, Aldo and other s/ defrauding of the public administration").

In this case, which began in 1994, the payment of bribes for approximately US\$21 million was investigated, as well as the existence of overpricing in the contract for the computerization of the branches of Banco Nación (state-owned bank). In 2009, the defendants admitted their guilt in the facts within the framework of an agreement with the prosecution (abbreviated trial), in which seven defendants were sentenced: Mario Jorge Dadone, Alejandro De Lellis, Hugo Gaggero, Juan Carlos Cattáneo, Alfredo Alberto Aldaco, Gerardo Contartese and Gustavo Soriani. The agreement also provided for the payment of AR\$764,000 by Mario Dadone and of AR\$350,000 by Hugo Gaggero, as well as the forfeiture of the money seized in the framework of the case, which amounted to US\$4,441,507. The Oral Court approved the agreement in 2010<sup>201</sup>, but three

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<sup>196</sup> Judicial Information Center (2018), Three defendants convicted in oral trial for the sale of Tandanor, <https://www.cij.gov.ar/nota-31847-Condennaron-a-tres-acusados-en-el-juicio-oral-por-la-venta-de-Tandanor.html>, 9/4/2021.

<sup>197</sup> La Nación (2020), Record forfeiture: convictions for the sale of Tandanor and the return of the Puerto Madero land to the State are confirmed, <https://www.lanacion.com.ar/politica/decomiso-record-confirman-condenas-venta-tandanor-terreno-nid2378570>, 9/4/2021.

<sup>198</sup> Oral Tribunal Resolution, available on the CIPCE website (2004), <http://cipce.org.ar/sites/default/files/2016/04/casos1997.pdf>, 9/4/2021.

<sup>199</sup> Judicial Information Center (2008), Confirman condena a prisión contra María Julia Alsogaray, <https://www.cij.gov.ar/nota-376-Confirman-condena-a-prisi-n-contra-Mar-a-Julia-Alsogaray.html>, 9/4/2021.

<sup>200</sup> Supreme Court Resolution, available on the CIPCE website (2013), [http://cipce.org.ar/sites/default/files/2016/04/casos1997\\_3.pdf](http://cipce.org.ar/sites/default/files/2016/04/casos1997_3.pdf), 9/4/2021.

<sup>201</sup> Resolution of the Oral Tribunal, available on the CIPCE website, [http://cipce.org.ar/sites/default/files/2016/01/casos166\\_4.pdf](http://cipce.org.ar/sites/default/files/2016/01/casos166_4.pdf), 9/4/2021.

of the convicted parties appealed it. The sentence became final in 2015 and the prosecution requested that the forfeiture measures be enforced<sup>202</sup>.

- Arms smuggling ("Sarlenga, Luis E. A. and others s/ smuggling of arms and military equipment").

This case investigated the illegal sale of arms by Argentina to Croatia and Ecuador. The investigation began in 1995 and in 2011 the Oral Court acquitted the defendants, including former President Carlos Menem and former Minister of Defense Oscar Camilión. However, in 2013 the Criminal Cassation Chamber overturned the acquittal and convicted the defendants for the crime of aggravated smuggling. Consequently, the first instance Court set the sentence at seven years' imprisonment for former President Carlos Menem and between four to five years for the other defendants, and ordered the forfeiture of a total of US\$1,272,016. In 2017, the Supreme Court overturned the judgment of the Cassation Chamber for violation of the double jeopardy guarantee and ordered the issuance of a new judgment, after which the defendants were acquitted for violation of the reasonable time guarantee after 23 years of proceedings. Finally, in June 2019, the Attorney General requested the Court to revoke such resolution, for which reason the case remains open<sup>203 204</sup>.

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<sup>202</sup> IBM-Banco Nación: request that the seized money be destined to Garrahan (2016), <https://www.fiscales.gob.ar/fiscalias/ibm-banco-nacion-solicitan-que-el-dinero-decomisado-sea-destinado-al-garrahan/>, 9/4/2021.

<sup>203</sup> CIPCE, Causas por corrupción. Case: Sarlenga, Luis E. A. y otros s/contrabando de armas y material bélico, <http://cipce.org.ar/basecausas/2204-sarlenga-luis-otros-scontrabando-armas-material-belico>, 9/4/2021.

<sup>204</sup> La Nación (2019), Contrabando de armas: la Procuración pidió reabrir la causa contra Menem, <https://www.lanacion.com.ar/politica/caso-armas-la-procuracion-pidio-reabrir-causa-nid2284106>, 9/4/2021.

## V. RECENT DEVELOPMENTS

The following are some recent developments, both regulatory and institutional, related to the implementation of the provisions of the chapters of the Convention analyzed in this report.

### A. CHAPTER II (PREVENTIVE MEASURES)

#### Art. 6 – Preventive anti-corruption body or bodies

- *Institutional location of the Anti-Corruption Office.* The new Government took office in December 2019, and the Executive Branch provided, through Decree 54/2019, that the OA would become a decentralized agency of the Presidency of the Nation and that the Head of the Office would have a rank and hierarchy equivalent to Minister. At the same time, it reestablished the requirement of being a lawyer to occupy such position, which had been eliminated during the previous government.
- *Change of authorities in the control bodies.* After the change of government in December 2019, new authorities were appointed in the two bodies that report to the Executive Branch (OA and SIGEN) and also in the external control body (AGN), whose presidency corresponds to the opposition party with the largest parliamentary representation.

#### Art. 7.1 - Public sector employment

- *Decree against nepotism in hiring.* In 2018, Decree 93/2018 was sanctioned with the aim of limiting nepotism in the appointment of public employees.

#### Art. 7.3 - Political financing

- *New political financing law.* In 2019, Law 27,504 was enacted, which modified the financing regime for candidacies for elective public office regulated by Law 26,215. The new law enabled the contribution of companies to electoral campaigns, and provided for the obligation to bank all donations as a measure to make financing transparent and facilitate controls, among other measures.

#### Art. 7, 8 and 12 - Codes of Conduct, Conflicts of Interest and Asset Declarations

- *Public Ethics Law Reform Project.* During 2018, the Anti-Corruption Office drafted a proposal to reform the Public Ethics Law, for which it implemented a participation and consultation mechanism. The proposal served as the basis for a bill submitted by the National Executive Branch to Congress on March 6, 2019. However, so far, the treatment of the project has not progressed and neither have the new national authorities sent a new reform proposal.
- *Amparo action for the lack of disclosure of sworn asset declarations of spouses and children of public officials.* In September 2019, the Federal Administrative Chamber declared the unconstitutionality of Article 5 of Law 26.857, which restricted access to asset information of spouses and children of public officials. However, to date, the State has not complied with the court order to adapt the disclosure regime.

- Publication by the OA of the Manual "Public Ethics and Conflict of Interest, Study for its prevention and adequate management", which gathers and systematizes the different interpretative criteria and standards applied so far by said agency in the implementation of the provisions of the Public Ethics Law No. 25,188.

#### **Art. 9.1 - Public procurement**

- *Creation of the Public Works Observatory.* Resolution SGA MOP No. 31/2020 of the Ministry of Public Works provided for the creation of an observatory made up of public and private universities, civil society organizations, business chambers, unions and other actors linked to the public works contracting and execution process, as a space for participation to improve the transparency, integrity and efficiency of these processes.
- *New system of exceptional purchases and contracting.* Decree No. 260/2020, as amended by Decree No. 287/2020, establishes that during the sanitary emergency due to COVID-19, direct contracting of goods and services may be carried out without being subject to the National Public Administration's contracting regime or its specific contracting regimes. This regime has several deficiencies, which were mentioned in the corresponding chapter.
- *New National Builders' Registration System.* As of ONC Provision No. 3/2021<sup>205</sup>, the new direct electronic registration system on the website <https://rnc.argentina.gob.ar> came into effect.

#### **Art. 10 - Access to information**

- *Proposal of new director of the Executive Branch's Agency for Access to Public Information (AAIP).* On February 17, 2021, the Chief of Cabinet proposed Gustavo Fuertes as the new director of the AAIP, replacing Eduardo Bertoni, who resigned from his position prior to the conclusion of his 5-year term. The proposal received numerous challenges from civil society organizations, which questioned the suitability of the proposed candidate for the position.
- *Publication of the first Active Transparency Index.* In February 2021, the Executive Branch's AAIP disseminated the first Active Transparency Index of the public agencies under its supervision.

#### **Art. 13.1 - Participation of Society**

- *Co-Chair of the Open Government Partnership (OGP).* During 2020, the Chief of Cabinet of Ministers, Santiago Cafiero, served as Co-Chair of the OGP<sup>206</sup>. The National Government also developed the co-creation of the Fourth Open Government Action Plan 2019-2022 and is in the process of drafting a National Open Government Plan.

<sup>205</sup> <https://www.boletinoficial.gob.ar/detalleAviso/primera/239778/20210113>, 9/4/2021.

<sup>206</sup> Jefatura de Gabinete de Ministros, Argentina at the OGP Steering Committee, <https://www.argentina.gob.ar/jefatura/innovacion-publica/argenogg>, 9/4/2021.

## B. CHAPTER V (ASSET RECOVERY)

### Art. 52 and 58 - Anti-money laundering and Art. 14 - Measures to prevent money-laundering

- *Expansion of the subjects obliged to report to the UIF.* In 2018, Law 27,440<sup>207</sup> on Productive Financing introduced an amendment to the Money Laundering Law to incorporate new actors operating registered or authorized by the National Securities Commission to the definition of obligated subject.
- *FATF and Egmont Group Chairmanship.* During 2017 and 2018, Argentina held the Presidency of the FATF<sup>208</sup>. Likewise, in July 2019, the head of the Argentine UIF, Mariano Federici, had been appointed as president of the Egmont Group, whose mandate ended when he resigned as head of the UIF after the change of government occurred at the end of that same year<sup>209</sup>.

### Art. 54.1.c, 57.1 - Non-conviction-based forfeiture, restitution and disposition of assets

- *The sanction of DNU 62/2019, which establishes the procedural regime of the civil action of forfeiture of ownership.* In 2019, the Executive Branch sanctioned the creation of a mechanism of forfeiture without conviction in civil venue by means of a decree of necessity and urgency, which covers crimes related to corruption and organized crime, among others.
- *Approval of Agreement 2/2018<sup>210</sup>.* In 2018, the Supreme Court of Justice sanctioned the Regulation of Seized Effects and Assets Confiscated in Criminal Cases. Therein, the criteria for administration, valuation and allocation of goods and assets seized by the Federal and National Justice were established.

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<sup>207</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/310084/norma.htm>, 9/4/2021.

<sup>208</sup> Financial Intelligence Unit (2017), FIU President Mariano Federici is appointed to chair the FATF heads of FIU forum, <https://www.argentina.gob.ar/noticias/presidente-de-la-uif-mariano-federici-es-designado-para-presidir-el-foro-de-jefes-de-uif>, 9/4/2021.

<sup>209</sup> Infobae, Fitz Patrick, Mariel (2020), <https://www.infobae.com/politica/2020/02/06/argentina-perdio-la-presidencia-de-la-red-internacional-de-las-unidades-antilavado-de-todo-el-mundo/>, 9/4/2021.

<sup>210</sup> <http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/306954/norma.htm>, 9/4/2021.

## **VI. RECOMMENDATIONS**

### **A. CHAPTER II (PREVENTIVE MEASURES)**

#### **Art. 6 - Corruption prevention bodies**

1. Provide the Anticorruption Office with full functional and financial autonomy.
2. Establish a mechanism for the appointment and removal of the head of the Anticorruption Office that guarantees the independence and suitability of the person appointed.
3. Create anti-corruption agencies in the Judiciary and the Legislative Branch and provide them with functional and financial autonomy.
4. Reform the Financial Administration Law to adapt the functioning of the external and internal control systems to international auditing and corruption prevention standards.
5. Modify the form of integration of the General National Audit Office in order to guarantee the principle of independence enshrined in the National Constitution and international auditing standards.
6. Provide the Office of the Auditor General of the Nation with the necessary tools to improve compliance with the recommendations of the audit reports.
7. Establish institutional coordination mechanisms among the different corruption prevention bodies.

#### **Art. 7.1 - Employment in the public sector**

8. Comply with the cap on the number of personnel hired under fixed-term contracts as a proportion of the total number of public employees (currently set at 15%).
9. Implement a system of entry to public employment through open and competitive examinations in all State branches and institutions.
10. Strengthen the administrative career by improving the training, performance evaluation and promotion system.
11. Effectively comply with the Democratic Entry Law sanctioned in 2013 in the Judicial Branch and the Justice System in general and strengthen the system of competitive examinations and promotions for the rest of the positions.

#### **Art. 7.3 - Political financing**

12. Establish a regulation to prevent conflicts of interest and undue influence of business contributions to political parties.



13. Increase the political finance control system's capacity to prevent and investigate violations of the law.
14. Strengthen the control of financing in times of electoral campaign to allow for accountability in real time, and not only after the elections.
15. Include candidates for elective office in the sanctions regime and not only political parties or formal authorities.
16. Improve existing legislation and controls on the government's use of state resources for electoral purposes, including the distribution of official advertising and the use of public assets for campaign activities.

#### **Art. 7, 8 and 12 - Codes of Conduct, Conflicts of Interest and Asset Declarations**

17. Enact a new Public Ethics Law that:
  - a. Contemplate a new regime of presentation, publicity and control of the sworn asset declarations, which ensures the availability of complete, accurate and disaggregated information.
  - b. Strengthen the conflicts of interest management system and establish effective control mechanisms by independent bodies.
  - c. Establish an effective regime of sanctions for non-compliance with the Public Ethics Law, applicable to officials and employees of the three branches of government.
18. Assign law enforcement powers to an independent body or bodies.

#### **Art. 9.1 - Public procurement**

19. Enact a single national procurement and contracting law for goods, services and public works.
20. Guarantee the autonomy of the agency in charge of managing supplier information.
21. Promote the exchange of information available in registries and databases on bidders and suppliers from different jurisdictions.
22. Implement the Open Procurement Data Standard (EDCA) for the publication of all information related to public procurement in open data format, and at all stages of the process.
23. Promote citizen participation in all stages of the public procurement process, especially in the planning and control stages.

#### **Art. 10 - Access to information**

24. Create those oversight bodies in the areas contemplated by Law No. 27,275 that have not yet been created or are not yet operational.
25. Endow the oversight bodies with the necessary functional autonomy and ensure the appointment of incumbents that meet the required requirements of suitability and independence.
26. Promote effective compliance with the obligations of active transparency according to the Law on Access to Public Information.
27. Adapt the production and management of information in such a way as to guarantee the quality of responses to requests for access to public information.

#### **Art. 13.1 - Participation of Society**

28. Update, strengthen and create new institutional mechanisms for citizen participation in the public decision-making process.
29. Create mechanisms for citizen participation in the prevention of corruption in high-risk areas, such as budget management and public procurement.
30. Facilitate citizen monitoring of judicial corruption cases, guaranteeing access to information on investigations and the participation of civil society organizations in the proceedings through collective complaints.
31. Implement jury trials at the federal level, particularly in cases involving corruption offenses.
32. Appoint the heads of the Ombudsman's Office and ensure its full operation.

### **B. CHAPTER V (ASSET RECOVERY)**

#### **Art. 52 and 58 - Combating money laundering and Art. 14 - Measures to prevent money-laundering**

33. Provide the Financial Information Unit (UIF) with adequate guarantees of independence to carry out its function in an impartial and effective manner.
34. Establish a mechanism for the appointment and removal of UIF authorities that guarantees the independence and suitability of the persons appointed.
35. Strengthen the regime of sworn asset declarations of public officials and other politically exposed persons.
36. Improve the regulation on the accreditation of the identification of the final beneficiaries of companies or legal entities that are clients of financial institutions.

37. Incorporate FinTech, virtual asset service providers, political parties and lawyers in the list of reporting parties.
38. Strengthen the legal framework for sanctions to enable the UIF to apply effective sanctions.

**Art. 54.1.c, 57.1 - Non-conviction-based forfeiture, restitution and disposition of assets**

39. Pass a law on forfeiture of assets that replaces DNU 62/2019 and solves the problems of the current regulations.
40. Create a centralized and specialized body for the administration of confiscated property and assets.
41. Establish a unified registration and information system for confiscated goods and assets.
42. Establish a system of controls over the administration and destination of confiscated goods and assets that guarantees citizen participation.
43. Incorporate clear provisions regarding the use of confiscated goods and assets into the regulations as a form of reparation for the social harm caused by the crimes that they originated from.

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## VIII. ANNEXES

**Annex I:** Note sent by the Anticorruption Office to the UNCAC Coalition adhering to the Transparency Pledge (see [here](#))

**Annex II:** Requests for public information

Agency	Information requested	Date of submission	Date of response	Reply	Copy of the submission	Copy of response
Anti-Corruption Office (OA)	Self-evaluation	03.02.2021	26.02.2021	Answered	<a href="#">See</a>	<a href="#">See</a>
Financial Information Unit (UIF)	Chap. V - Information/intelligence phase	27.10.2020	17.11.2020	Denied	<a href="#">See</a>	<a href="#">See</a>
Public Prosecutor's Office - Economic Crime and Money Laundering Prosecutor's Office (PROCELAC)	Chap. V - Investigation and judicial phase	27.10.2020	17.11.2020	Answered	<a href="#">See</a>	<a href="#">See</a>
Public Prosecutor's Office - General Directorate for Asset Recovery and Forfeiture of Assets (DGRADB)	Chapter V - Asset recovery	27.10.2020	17.11.2020	Answered	<a href="#">See</a>	<a href="#">See</a>
Council of the Judiciary of the Nation and Chambers of Appeals	Chapter V - Judicial Phase	29.10.2020	23.12.2020	Answered	<a href="#">See</a>	<a href="#">a- Response</a> <a href="#">b-Report</a>
Supreme Court of Justice of the Nation	Chapter V - Asset recovery	05.11.2020	26.11.2020	Denied	<a href="#">See</a>	<a href="#">See</a>
Ministry of Justice - National Registry of Assets Seized and Confiscated during Criminal Proceedings	V - Asset recovery	29.10.2020	30.10.2020	Partially answered	<a href="#">See</a>	- Response sent by e-mail with the following public link: <a href="#">link</a>