

National Integrity Systems

Country Study Report

Argentina 2001

Report Authors

CIPPEC (Center for the Implementation of Public Policies promoting Equity and Growth)

CIPPEC is an independent, non-profit organization that promotes the analysis and implementation of public policies fostering equity and growth in Argentina and Latin America. CIPPEC's aim is to make significant contributions to policy-making in few, yet fundamental, areas of public policy. Therefore, we focus our work in fields that are, at present, most relevant to state and local governments in Argentina and Latin America: -

- Education Policy
- Health Care Policy
- Fiscal Policy
- Public Sector Reform

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Argentina

Executive Summary

The report undertakes an assessment of the legal and institutional framework regarding the control mechanisms currently in force in the sphere of the Argentine State. In first place, it presents the scope, mechanisms of appointment and removal of authorities, jurisdictional capacities, functions and duties of the controlling agencies and the characteristics of laws regarding public procurement, public service Regulating Entities, financing of political parties, public officers' conduct, access to public information, control of decisions issued by the Executive Branch, systems to guarantee judicial impartiality, media, national budgeting and popular legislative initiatives. Furthermore, it presents in chronological order the most relevant innovations created in the struggle against corruption during the last decade.

In second place, based on information obtained from the Anti-corruption Office, it identifies and presents an analysis of the types of irregularities occurred most frequently in the scope of the national public administration. Likewise, based on a series of interviews undertaken to twelve professionals linked to corruption issues, it identifies the trends, plans of action and current impediments in the struggle against corruption. Finally, it presents recommendations in order to strengthen the mechanisms of control in hands of the State and civil society.

The conclusion of the report indicates the existence of deficiencies regarding the legal framework, control mechanisms, information, penalisation, organisation and use of human resources that constitute obstacles to achieve an efficient and transparent public administration. Moreover, it stresses how the lack of effective controls and discretion in the hands of officials and public agencies generates opportunities for the improper exercise of political pressures. Accordingly, it underscores the need to generate political will to implement integral institutional reforms, which treat the struggle against corruption as a priority, in lieu of implementing isolated and disconnected measures.

The Argentine State: General Characteristics

Form of Government

The National Constitution (NC) of the Argentine Republic establishes the rights and guarantees granted to all the inhabitants of the country, defines the creation of the powers of the State and its characteristics. Accordingly, the form of government is:

Representative: individuals entitled to take state decisions are elected by free and universal elections. However, certain decisions may be taken directly by the people by means of referendums.

Republican: government members are elected periodically, and their functions are defined and limited by law.

Federal: the power of the State is distributed between a federal government and different provincial governments. Each government keeps its autonomy, as guaranteed by the NC (provinces can not be eliminated, modified or divided without their consent) has a locally elected government, creates its own Constitution and issues its own laws.

Governmental Powers

The Executive Branch is in charge of the administration and law enforcement, conveyance of foreign relationships and other related powers. It is headed by the National President, who rules over Ministers, Secretaries of State, and public servants.

The Legislative Branch creates and enacts the laws that rule the people's conduct. It is also in charge of the approval of international treaties, declaration of federal intervention, state of siege, agreements for the designation of judges, etc. It has a bicameral structure:

The Lower Chamber: Its members represent the people and are directly elected by them, their number depending on the quantity of inhabitants. For electoral purposes the country is divided into districts,

each of them being entitled to elect their candidates on a proportional basis. They are elected for a 4 year period and are renewed by half every two years. They can be re-elected. The Lower Chamber consists of 257 representatives and possesses 45 permanent committees.

The Upper Chamber: Senators represent the provinces, and this chamber consists of 72 senators, three per district approximately. Since 2001, senators are elected directly by the people of each district, corresponding two senators to the majority party and the third senator to the party that follows in the quantity of votes. It has 47 permanent committees, plus other bicameral and exceptional committees.

The formation of the committees follows the existing partidary proportion of each Chamber, so as to keep an equilibrium. Committees function permanently, even during the parliamentary recession. The internal labour of each committee is the preliminary phase of the discussion and final decision of several parliamentary initiatives that will constitute the "committee's decision".

The Judicial Branch is in charge of the judgement of the conflicts between individuals, and individuals and the State, enforcing the laws and other legal rules. It must guarantee the primacy of the Constitution, and it is entitled to declare the unconstitutionality of the laws enacted by Parliament and the actions of the Executive. It consists of a National Supreme Court, federal judges in all the country, and Judges of the Federal Capital City.

Political Parties

In the last presidential election of October, 1999, the National Federal Judiciary authorised 35 political parties and 8 electoral alliances. Consequently, there were ten presidential candidates for the following parties: Acción por la República (Domingo Cavallo); Alianza Social Cristiana (Juan Ricardo Mussa); Alianza UCR-Frepaso (Fernando De la Rúa); Frente de la Resistencia (Jorge Reyna); Izquierda Unida (Patricia Walsh); Movimiento Socialista de los Trabajadores; Partido Humanista (Lía Victoria Mendez); Partido Justicialista (Eduardo Duhalde); Partido Obrero (Jorge Altamira); Partido Socialista Auténtico (Domingo Quarracino). In the 1995 presidential election there were 14 parties, in 1989 there were 9, and in 1983, there were 12. The Argentineans entitled to vote are 23.590.605, 2.553.872 from which live in the Capital City, and 8.994.200 live in the Province of Buenos Aires.

Argentine Federal Police

It is a civil institution depending on the Executive through the Home Office, with the duty to provide police security and justice emerging from the responsibilities of the Central Federal Government Police Power.

Media

There are five (5) TV channels in the Capital City, twenty-eight (28) TV channels in the provinces, and fifty-five (55) cable channels in the entire national territory. There are about sixty-seven (67) newspapers, including national, provincial, and local papers.

Normative Framework

Anti-corruption Office

Performance Scope: Centralised and decentralised National Public Administration, companies, corporations and any other public or private entity with State share, or having State contributions as its main resource.

Authority: Administrative Control Prosecutor

Appointment: by the President of the Nation, after nomination of the Minister of Justice and Human Rights.

Removal: by the President of the Nation in case of improper performance of its duties.

Jurisdiction and Functions: To control the performance of officials' duties and the proper use of state resources and to elaborate state policies against corruption in the national public sector.

Duties: To submit to the Ministry of Justice and Human Rights final reports of each of the investigations effected, and an annual report about its administration. These reports are public and can be consulted personally or through the Internet.

National Auditing Commission

Performance Scope: Depends on the President of the Nation.

Jurisdictions and Functions: It exercises the internal control of the jurisdictions, decentralised agencies, and companies and corporations of the State depending on the National Executive Branch, and it exercises control over the privatisations.

Appointment and Removal of Authorities: by the National Executive Branch.

Duties: It must inform to the President of the Nation and the National Auditor's Office about the administration of the entities under its supervision.

Internal Auditing Agencies

Performance Scope: Technically coordinated by the National Auditing Commission, and hierarchically subordinated to the superior authority of each agency.

Jurisdictions and Functions: It exercises the internal and subsequent supervision of the financial and administrative entities of the National Executive Branch.

Duties: Report on the content of the reports and the recommendations from each jurisdiction and entity to the direct responsible and, simultaneously, to the National Auditing Commission.

National Treasury Procurer

Performance Scope: It directly depends on the President of the Nation.

Jurisdictions and Functions: To coordinate the legal services of the Public Administration, to render legal advisory services to the Executive Branch and to act as agent of the National State in a trial if so disposed by the Executive Branch.

Federal Administration of Public Incomes

Performance Scope: Execution of the national tax policy – through the Internal Revenue Service- and the custom policy – through the National Custom Administration

Appointment and Removal of Authorities: by the National Executive Branch

Financial Information Agency

Performance Scope: Depends on the Ministry of Justice and Human Rights of the Nation, National Executive Branch.

Jurisdictions and Functions: To analyse, consider and provide information to prevent and impede the washing of assets arising from –among others – the crimes of “fraud against the public administration”, “subornation and influence peddling”, “embezzling of public funds”, “illegal exaction” and “unlawful enrichment of the public officials and employees” in the scope of the Public Administration organisms and decentralised entities that exercise functions of control on economic activities or legal matters, among others.

Argentine Federal Police

Performance Scope: Home Office, depending on the Executive Branch.

Appointment of Authorities: Prior training, or by admission, competition and subsequent adaptation, and obtainment of the aptitudes common to the police state.

Removal: by the Executive upon request of the Argentine Police Principal in the case of the superior personnel, and by the Argentine Police Principal in the case of subordinates and students.

General Attorney's Office

Performance Scope: This Office is independent, with functional autonomy, and financial self-sufficiency.

Appointment of Authorities: Both the General Attorney and the General Defender Attorney of the Argentine Republic of the Ministry of Defence (State Attorneys Office of Defence) are appointed by the Executive Branch with the approval of 2/3 of the members of the Upper House there present.

Removal: The General Attorney and the General Defender Attorney of the Nation may only be removed by the causes established in the Argentine National Constitution, and in accordance to the procedures established therein.

Jurisdictions and Functions: To promote the performance of the judiciary in defence of legality and the general interests of society, and to represent and defend the public interest in all causes and matters that are required in accordance to the law.

Duties: To submit a written annual report on its performance to the Bicameral Committee created by law.

National Prosecutor's Office of Administrative Investigations

Performance Scope: It belongs to the General Attorney's Office

Jurisdictions and Functions: To promote the investigation of the administrative behaviour of the agents belonging to the centralised and decentralised national administration, and of the companies, corporations or any other entity with State share.

Duties: To submit to the General Attorney an annual report on the performance of the National Prosecutor's Office of Administrative Investigations administration, under its charge.

National General Auditor's Office

Performance Scope: The National Auditor's Office is an entity with financial and functional independence. Its activities are controlled by the Mixed Parliamentary Committee Controller of Accounts of the National Legislative Branch.

Jurisdictions and Functions: It exerts the external subsequent control of the budgetary, economic, financial, estate and legal administration, it passes judgement about the financial statements of the central administration, decentralised entities, companies and corporations of the State, and public service Regulating Entities, Municipality of the City of Buenos Aires, and private entities that have been adjudicated privatisation process, in relation to the obligations emerging from the respective contracts, and it is in charge of the subsequent external control of the Congress.

Appointment of Authorities: The National Auditor's Office consists of seven members, each of them appointed as General Auditor. Six of the General Auditors are designated by resolution of both chambers of the National Congress, observing the composition of each chamber. The remaining General Auditor is appointed by joint resolution of the Presidents of the Lower and Upper Houses, and this auditor is the President of the Office.

Removal: The General Auditors may be removed in case of serious misconduct or evident non-fulfillment of their duties.

Duties: To submit to the Mixed Parliamentary Committee Controller of Accounts a report on its performance.

Ombudsman

Performance Scope: Created in the scope of the Legislative Branch. It acts with independence and autonomy, without receiving instructions from other institutions.

Appointment of Authorities: The Ombudsman is appointed by Congress for a period of five years and can be re-elected.

Jurisdictions and Functions: He must defend and protect human and other rights, guarantees and the interests protected by law and the Argentine National Constitution, in the presence of events, actions or omissions of the National Administration.

Duties: This office is obliged to submit to both chambers, an annual report on the performed tasks. In the same way, it must inform the outcome of its investigations to the implicated organism or official and to the National Auditor's Office.

Judiciary Board

Performance Scope: National Judicial Branch.

Officials: It consists of twenty members from the Supreme Court, the Judicial Branch, the Congress, barristers of the Executive, a law professor, and a person of acknowledged trajectory and/or a scientist.

Jurisdictions and Functions: To call for public pre-qualifications to take the position of judge in all the jurisdictional levels other than the Superior Court, and to select the candidates, to promote the removal of judges of such jurisdictional levels before the Tribunal that tries a judge's malfeasance or misfeasance, to exercise disciplinary and regulatory power for the judicial organisation, and to manage the resources and execute the budget established for the National Judicial Branch.

Tribunal to try a Judge's Malfeasance or Misfeasance

Performing Scope: National Judicial Branch.

Officials: It consists of nine members, among them, judges, senators, representatives and barristers.

Jurisdictions and Functions: To resolve the removal of judges of original and appellate jurisdiction of the National Judicial Branch.

National Electoral Chamber

Performing Scope: National Judicial Branch.

Jurisdictions and Functions: To control the proper enforcement of the electoral laws in all the national territory.

Public Procurement

Openness of Calls for Public Bidding: Calls must be published in the Official Bulletin; simultaneously to the publication in the Official Bulletin, calls must be published in one of the most recognised newspapers of the country for two days; the bidding must be communicated to those associations that lead producers, manufacturers and traders of this area of business. Invitations can also be sent to those companies that usually supply such services or that, due to their importance, it is deemed convenient. These calls are also published in the Internet, both on governmental and private web sites.

Publication of Contracting Decisions: Contracts of more than \$75.000 (Seventy five thousand Argentine Pesos), must be published in the Official Bulletin for one day, once they have been formalised. All the contracts, with no exception, must be published in the Web Site of the National Contracting Office dependent of the Budget Under-secretary of the Secretary of the Ministry of Economy.

Reconsideration of Decisions: The adjudication may be objected within five days after the date of notification of the interested parties.

Regulating Entities

Jurisdiction and Functions: It is in charge of monitoring the performance of privatised public services in order to: safeguard the interests of the customers; promote competence; defend the market and the economic freedom of the individuals linked to the provision of public services, and promote fairness and reasonability of the prices.

Appointment and Removal of Authorities: by the Executive Branch. In practice, each regulating entity has its own procedure for the appointment and removal of authorities.

Political Parties' Financing

Political parties may receive public and private contributions.

Private Contributions: There are no limitations to the amount that they may receive as grants. However, a variety of donations are forbidden, such as those in which the donors are: anonymous individuals or entities, except in the case of public collections; autarchic or decentralised entities, national or provincial; licensees of public works or services of the Nation, provinces and municipalities; companies that deal with gambling games; foreign governments or entities; employer's associations

and unions, and persons administratively subordinated or employees having a permanent working relationship, in the case the grants were ordered by their superiors or employers.

Public Contributions: The state provides financing to the political parties to contribute to the fulfilment of their institutional purposes, through direct contributions and franchises, which are contemplated in the National Budget.

Disclosure of the sources and destination of the contributions: The Argentine National Constitution establishes that the political parties must inform the sources and destinations of the funds and estate. Likewise, the annual balance sheets of the political party organisations, both in the district and in all the Argentine territory, must be published in the Official Bulletin.

Organisms of external control of political parties:

- National Electoral Justice: Resolution of conflicts and financial supervision.
- National Electoral Chamber and District Courts: Registers information on political parties.
- Home Office: It is empowered to control the proper use of state contributions.

Political Reform Bill: presented by the Executive in October, 2000. Purposes: to reform the political party financing system, to establish limits to the expenses and duration of political campaigns, to carry out open primary elections to select a candidate for the Presidency of the Nation; to create a team of supervisors of elections in order to achieve political transparency, and to update electoral polls.

Laws Concerning the Behaviour of Public Servants

The following crimes are punished by the Argentine Law: Abuse or incompetence, Unlawful Administration, Subornation, Influence Peddling, Offering of Bribery, International Subornation, Acceptance of Bribery, Embezzlement of Public Monies, Negotiations which are not compatible to those related to the exercise of a public function, Illegal Exaction, Illegal Enrichment of Officials and Employees, Use of confidential information, Hiding, Intimidation, Conflicts of Interests, Nepotism, and Cronyism.

Registration of Courtesies: Public Officials are not allowed to receive gifts, courtesies, or donations of material things, services or assets, by virtue of their public functions. In case the gifts are due to diplomatic courtesy, they should be registered and incorporated into the State, and destined to health, social security, and education purposes, or for the historic-cultural patrimony. However, not every public agency in Argentina has registration books for the gifts obtained by their public officials.

Public officials must: submit an affidavit upon assuming and leaving their positions, and declare the public and private positions held during the year prior to their assumption date, and the subsequent ones. Likewise, throughout their positions and after one year of finishing their duties, they are not allowed to carry out administrative tasks, either for themselves or for others, related or unrelated to their positions, or enter into contracts with the National Public Administration when these have functional links to their present or past positions.

Access to Public Information

In Argentina, for the purposes of the correct functioning of public institutions, it is mandatory that their actions are made public, and accordingly published in the Official Bulletin, dependant of the Ministry of Justice and Human Rights. The Bulletin is daily published and contains all the legislation and official announcements, which once published, are deemed dully communicated and transmitted to the whole National territory. In this way, they are considered authentic and binding on every party.

There is no specific regulation concerning the access of citizens or the media to public documents. However, by virtue of the existence of a proceeding for the protection of constitutional rights, it should be possible to have access to certain information, to the extent that the proper requirements are met.

Information Access Bill: presented in July 2000 by a National Representative. Purposes: To regulate the right to access information, and the obligation of the central and decentralised administration of the State to disclose the information in its possession or under its control, or produced by or for such administration.

Control Systems on Decisions Taken by Executive Branch's Organisms.

Individuals are empowered to ask for the reconsideration of the decisions taken by the Executive Branch, through the use of mechanisms tending to obtain, from the organ that issued the decision, its

hierarchical superior or controlling entity, the annulment, amendment or compensation of the objected decision. Decisions issued by the Executive must be subject to a subsequent and sufficient judicial control, in other words, decisions issued by the Executive Branch must be reviewed by the Judicial Branch.

Systems to Guarantee Judicial Impartiality

In order to assure the independence of the judges, and avoid their decisions to be influenced by political matters:

- Judges of the Supreme Court and other Courts of the Nation shall not be removed provided their good conduct persists.
- Their salaries, established by law, shall not be reduced during their judicial position.
- The Supreme Court issues its own rules and appoints its employees.
- The Judiciary Board shall be in charge of the selection of magistrates and the administration of the Judicial Branch.
- The Judges of the Supreme Court are appointed by the President of the Nation with the consent of 2/3 (two thirds) of the Upper Chamber there present with quorum, and can be removed by impeachment with the consent of two thirds of the Upper Chamber.
- The President of the Nation will never be entitled to perform judicial functions.

Media

Press: Argentine citizens are entitled to the right to publish their ideas with no previous censure. Congress is not entitled to enact laws that could restrict the freedom of the press or establish federal jurisdiction on such freedom. However, there are no specific regulations for the functioning of the press, and there are no specific courts to resolve matters related to the freedom of press.

Granting of Licenses: Licenses to render radio broadcasting services for individuals are granted by the Executive, through the public concourse modality, abridged by the Radio Broadcasting Federal Committee. In the same way, this Committee may, by means of direct awarding, grant licenses in the case of radio broadcasting complementary services.

Media Property: There are no laws that rule the ownership of the media.

National Budgeting

The Executive Branch must present the Bill for the General Budget before the Lower Chamber, before the 15th of September of each year, together with the proposed targets and the explanations of the methodology used for the estimation of the resources and expenses, as well as any other necessary information.

Popular Legislative Initiative

There are legal mechanisms for citizens to present bills before the Lower Chamber, for their subsequent consideration in a period of up to twelve months. However, the exercise of lobby is not regulated by Argentine Law. The Ministry of Justice is working on a draft bill on "Lobby" with the purpose of: creating a unique Lobbyist record, and regulating the activities of private entities that attempt to exert their influence on the State.

Anti-Corruption Trends

This section presents in chronological order the most relevant innovations that were effected during the last decade in the public sphere, in order to obtain greater control and transparency in the functioning of the public administration.

1992

National Treasury Procurer: National Treasury Procurer Law 24.667

National General Auditor's Office: Financial Administration and Control Systems' Law 24.156

National Auditing Commission: Financial Administration and Control Systems' Law 24.156

Internal Auditing Department: Financial Administration and Control Systems' Law 24.156

1993

Ombudsman: Ombudsman Law 24.284

1997

Inter-American Convention Against Corruption: Ratified by the Double Imposition / Tax Evasion Law 24.759

To promote and strengthen the development of mechanisms necessary to prevent, detect, punish and eradicate corruption.

To promote, facilitate, and regulate cooperation efforts between the different States that took part of the Convention, in order to assure the efficacy of the measures and the actions in order to prevent, detect, punish and eradicate corruption within the public administration, and the corruption activities related thereto.

1998

Judiciary Board: Judiciary Board Law 24.937

Tribunal to Try a Judge's malfeasance and misfeasance: Judiciary Board Law 24.937

1999

Law of Ethics in the Practise of Public Office 25.188

To establish the duties, impediments and incompatibilities which are applicable to the persons rendering services within the public administration.

To oblige public officials to submit an integral affidavit and to keep it updated.

Public Employment Law 25.164

To incorporate the principles of transparency, publicity, and merit to the selection and promotion processes in the public administration.

Anticorruption Office: Created by Decree 102/1999

2001

Money Laundering Decree 169/2001

To prevent and face the crime of money laundering from a realistic perspective.

Financial Information Agency: Regulated by the Law of Laundering of Assets of Criminal Origin 25.246 of year 2000. Regulated by Decree 169/2001 of February 2001.

Analysis of Irregularities in the Public Administration

On the basis of an exploratory research carried out by the Anti-corruption Office on irregularities in the public administration, the following deficiencies have been recurrently detected in the functioning of the recruitment and control systems, and in the utilization of human resources:

Normative Deficiency

Formal Compliance

The normative in force is respected only in formal terms, and not in functional terms. Informal codes are combined with formal codes, thus creating a framework where personal or political criteria govern (i.e. direct grants without meeting formal requirements and use of formal calls to legitimate the appointment of personnel previously selected by personal or political reasons).

Contracting

Elaboration of bidding forms

There are no sample forms, detailed rules or procedure manuals for the elaboration of bidding forms. This situation grants excessive discretion to public officials, thus giving place to abuses.

Lack of rules for control

There are rules that limit the auditing of certain areas such as decentralised organisations, private entities that sign international cooperation agreements, and organisms that are subject to international financing.

Incentives

There are legal mechanisms that permit the avoidance of the procedures determined for the bidding process, thus creating opportunities to obtain political or personal ends. Creation of supplier cartels that monopolise the trade of certain goods, limit the admission of other competitors, thus affecting the final purchase price.

Human Resources

Lack of laws that restrict recruitment

The recruited personnel is used to render services in other areas and for political purposes.

Deficiency of evaluation indicators

Notwithstanding the occasional existence of mechanisms to evaluate the performance of employees, informal and artificial systems are generally used to evaluate their performance. This situation leads to the persistence of low quality performance (i.e. a rotative system is used through which the maximum score is granted to a sample of good employees one year, and to another sample, the following year).

Rigidity of laws regarding personnel

The normative framework is perceived as an obstacle and not as a management tool for the effective use of the personnel.

Defective Information

Contracting

Defective bidding form description

The specifications detailed in the forms are incomplete, insufficient and ambiguous. This affects the evaluation of the proposals.

Lack of database

Due to the lack of technology, there are no records of State suppliers, or of previous biddings, which contain information on unfulfillment, breaches or irregularities. This situation leads to an automatic renewal of the qualifications of suppliers without previous verification.

Human Resources

Lack of information about the personnel

There are no personal records, lists of the personnel or documentation to undertake basic controls. This leads to an excess of personnel.

Defective Control

Political Interference

Both the organisms of control and the mechanisms of control are subject to political pressures (i.e. dismissals, threats and robbery of information from computers), and to trade union pressures (i.e. trade unions can negotiate the designation of positions, salary level, and imposition of sanctions with the political authorities).

Deficiency of the Organisms of Control

Lack of crossed controls, reflected both in the Internal Auditing Agencies and in the National Auditing Commission, which reveal the lack of independence and the existing complicity between the control

systems and the political power, which affect both their effectiveness and efficiency. The Internal Auditing Agencies have insufficient personnel to audit effectively the necessary areas, and are subject to political pressures; there are areas that have not been audited for years. The National Auditing Commission is considered to be formalist and separated from reality.

Lack of Control Mechanisms

There are no mechanisms to evaluate the performance of personnel or the fulfilment of contracts. The same officer that hires an employee is entitled to determine its salary level, term of the employment, its performance and fulfilment of the contract.

Formalism

There are no impact, cost, or efficiency evaluations once the projects are finished. There are only formal evaluations.

Defective Penalisation

Low penalisation level

The low number of imposition of sanctions give rise to a low risk environment, operating as an incentive for the commission of irregularities.

Defective Use Of Human Resources

Lack of Training

The personnel entitled to confer adjudications possesses only formal knowledge, without sufficient information to evaluate the opportunity and convenience of the offers.

Political Patronage

The criteria used for the hiring of personnel include, mostly, parentage, friendship and politics. Salary levels are established with no consideration for the compensation range of the hired personnel.

Organisational Deficiencies

Lack of Coordination

Public agencies function as blocked divisions. Such separation between technical-administrative officials and political officials creates opportunities for the occurrence of irregularities.

Defective Planning

Technical studies to determine the quantity and quality of the required goods are not used.

Interviews

In order to analyse the performance of the institutions and organisms of control, and to compare their adjustment to the normative framework currently in force, twelve professionals related to corruption matters were interviewed. The objective was to identify -through the knowledge of these experts-successful organisms, trends and impediments in the struggle against corruption. The interviews were carried out under confidential terms. This section presents a brief Curriculum Vitae of each interviewed person and the analysis of the interviews:

Curriculum Vitae

Dr. Carlos Acuña: Director of the Project of Master in Administration and Public Policies, Universidad de San Andrés, Argentina; Professor, Universidad de San Andrés, Argentina.

Dr. Domingo Cavallo: Argentine Economy Ministry (appointed March 20, 2001); Former Economy Minister of the Argentine Republic, 1991 – 1996.

Franco Caviglia: National Representative, Acción por la República

Martín Dinatale: Accredited Journalist in the National Congress, La Nación Newspaper; Teacher.

Carlos Manuel Garrido: Director of Investigations, Anticorruption Office; Clerk of Original Jurisdictions of Court I, of the Federal Appeal Court of Criminal and Correctional Jurisdiction of the Federal Capital, 1993-1999.

Marcelo Leiras: Lecturer, Universidad de San Andrés, Argentina; Ph.D. Candidate in Latin-American Compared Politics and Formal Politic Theory, Notre Dame University, United States of America.

Carlos March: Executive Manager, Fundación Poder Ciudadano; Responsible of www.infocívica.org.

José Massoni: Administrative Control Attorney, Anticorruption Office, Ministry of Justice and Human Rights; Barrister, Universidad Nacional de Buenos, Argentina.

Eduardo Mondino: Ombudsman; Professor, Colegio Universitario de Periodismo de Córdoba (Journalism University College of Cordoba), Argentina.

Leila Mooney Sirotinsky: Program Manager, Asociación Conciencia; Advisor, Social Sector Forum.

Tomás Ojea Quintana: Cabinet Advisor, Under-secretary of Human Resources.

Axel Radics: Coordinator, Transparency Program of the Undersecretary of Public Administration.

Analysis Of Interviews

Which are the most effective public organisations in the struggle against corruption

- Four of the interviewed experts stated that there is not an outstanding or effective organism in the struggle against corruption. It was mentioned that cases are investigated, but not the systematic corruption, and that there are no governmental attempts to encourage investigations, and that with the exception of the Internal Revenue Service, there is no other entity that presented evidence so as to punish corruption facts.
- Two of the interviewed persons mentioned the existence of high level reports in the General Auditing Office. However, two problems were identified: in the first place, the lack of publicity of their content, and in second place, their lack of impact, due to political interference.
- Two of the interviewed persons pointed out that the most successful entity in the fight against corruption is the Anticorruption Office, given its compromise and capacity to consider these matters specifically. It was mentioned that it was recently created and accordingly, it provides expectations for change. Regarding its limitations, it was said that its control is limited to the scope of the Executive, without consideration for the Legislative or Judicial Branches or the provinces.
- Two of the experts mentioned that, even though the Ombudsman does not specialise in corruption matters, it does perform a very important function by assessing current affairs through the detection of cases.
- According to two of the interviewed persons, the National Auditing Office was considered the most efficient organism, due to its good performance and the elaboration of substantiated reports filled with technical details. On the other side, one of the interviewed considered the National Auditing Office as an entity with poor presence and that has been questioned, in occasions, by the Executive Branch.
- One of the interviewed pointed out that the most successful entity was the Internal Revenue Service, because it detected some false billing operations and banking transfers, that allowed to discover cases of corruption with evidence.
- One of the interviewed manifested that the National Congress does not play the role it should, since it lacks technically qualified teams and thus, its efficiency level to exercise control is poor. Likewise, it was mentioned that although it has the necessary resources it has no incentives, as only 18% of the parliamentarians are re-elected for a second period, lacking incentives to effect structural reforms in the medium or long term.
- One of the interviewed persons manifested that the Judicial Branch portrays a weakened independence, responds to hegemonic guidelines imposed by the Government, and reduces the investigation efforts by hiding information regarding cases of corruption.
- The performance of the Internal Auditing Agencies was also mentioned.

Effectiveness of the plan of the Argentine Government in the struggle against Corruption

Eleven of the twelve persons that were asked this question answered that the Argentine Government has no plan to eradicate corruption. Likewise, they stated:

- Even though Government has no specific plan, there are other organisms that have plans to defeat corruption.
- Economic growth is considered a priority, and it is conceived as separate of the anticorruption strategy.
- Anticorruption strategies are deemed complicated for the purposes of governability to set effective and efficient agreements with the opposition.
- Government measures are isolated and disconnected among themselves, and answer to mediatic demands, requirements of the media and international pressures, attempting to pretend that Government is fighting corruption.
- There is no criminological policy or a study strategy. Responses are focused on specific symptoms and facts and not on the causes that generated the symptoms.
- There is no strategy to detect whether organisms are effective or not.
- It was stated that, notwithstanding the possibility to make claims before the Anticorruption Office, it is necessary to take preventive measures and to promote moral values.
- On the other hand, it was recognised that the Anticorruption Office constitutes the main institution to fight corruption, which within a framework of strong restrictions, is doing its best.

How to assure more transparency in the performance of the Argentine State and what are the main impediments

- Four of the interviewed persons considered that more emphasis should be directed to the processes of hiring and bidding with the State. They stated that the instruments for public procurement should be limited and simplified, so as to help the state to act quicker and in a more effective way, thus obtaining better payment terms and saving money. It was mentioned that due to the delay inherent in the mechanisms of public procurement, the risk of non payment by the State is present, and consequently, this leads to an extra charge of the services hired by the State. In addition, the bidding systems were referred to as non transparent.
- Three of the interviewed experts mentioned the need to create tools of preventive transparency to guarantee the access to public information, participation and monitoring by civil society.
- Two of the interviewed persons expressed the need to reform and re-organise public institutions in order to: enforce the law, and give priority to the struggle against corruption over other matters.
- One of the persons underscored the need to have an autonomous and effective Judicial Branch with the capacity to enforce the law and to impose sanctions in case of unfulfillment.
- The need to achieve changes in the administrative and political practices of the country was also mentioned, in order to end with corporative powers, improve political representation and the legal framework, implement decentralisation policies, change people's mentality, gain political compromise, and create the Public Ethics Commission, enacted by law two years ago, to control the behaviour of the public officials.
- The impediments mentioned were: bureaucracy and both, lack of political and private will (political interests and pressure by economic groups).

Tendency of the Argentine Governments to fight corruption during the last decade

- Seven of the persons interviewed expressed that the political-business relationship had not been modified during the last decade. Thus, it was pointed out that to make businesses in Argentina continues implying, despite privatisations, a very close link with the State.
- Among them, two of the interviewed persons expressed that there is a tendency in the Government to place obstacles to clarify cases of corruption, this fact being reflected in the

cooptation of the Judicial Branch to the Executive Branch's interest, and in the creation, support, accumulation, and manipulation of power under the protection of the political power.

- It was also said that the attempts to eradicate corruption have only been isolated tendencies without a State policy, which were only perceived in electoral terms, and that the political processes have been poor.
- Three of the persons interviewed expressed that the current government tendency is to strengthen the struggle against corruption. Likewise, the celebration of the Inter-American Convention against Corruption Treaty during the last government was highlighted.
- One person interviewed stated that there is greater awareness of the impact of corruption on the markets. However, it was stated that problems of collective action subsist, as there are no incentives to modify attitudes.
- One person interviewed expressed that the Anticorruption Office is a first step in fighting corruption, clarifying that, in order to be more effective, there must be changes in all public institutions.
- One of the experts affirmed that from 1991 to 1996 there was a decrease in corruption, due to institutional reforms that generated more transparency in public companies. However, as from 1996 the deregulation process was interrupted, thus batching the fight against corruption.

Independence and effectiveness of the Judicial Branch

- None of the persons interviewed responded that the Judicial Branch was independent.
- The following reasons were identified: lack of transparency in the selection of judges, and dependence of the Judicial Branch on the Executive Branch.
- Most of the persons interviewed expressed that the Judicial Branch is not effective in the persecution of cases of corruption. It was stated that it is ineffective even when it has the necessary evidence. Additionally, it was said to be effective only when it is ordered to persecute a specific person, becoming inactive when the accused party is protected by political power.
- It was mentioned that there are judges with real intentions to investigate, and that political and economic pressures have a significant negative impact obstructing the investigations.

Reforms implemented in the Judicial Branch during the last decade

- All of the interviewed persons agreed that the reforms effected in the Judicial Branch during the last decade led to a more transparent judicial system.
- However, it was mentioned that the contribution was less than expected, that progress is timid, and even though there is currently more transparency, this it is not enough.
- On the other hand, the risk of giving political use to these innovations to the extent of jeopardizing their success was highlighted.

Credibility of the mechanisms in hands of civil society to guarantee the representativeness and impartiality of the members of the National Legislative Branch

- Most of the interviewed persons answered that in practice, there are no mechanisms to evaluate the consistency of parliamentarians with their political platform.
- Most of the interviewed persons affirmed that in practice, notwithstanding elections, there are no mechanisms to evaluate the independence of parliamentarians.
- The existence of "Lobby" practices towards parliamentarians was pointed out.
- It was said that the Law of Public Ethics offers mechanisms to control the conduct of parliamentarians, but these were not put into practice.
- It was suggested the need to reduce the number of legislative committees so that legislators can perform their tasks effectively, as well as the need to give publicity to the affidavits of public officials.

Competence for political power

- Regarding the alternation in power, most of the interviewed stated the existence of real political competence, both at national and provincial level. Accordingly, it was said that the greater competitiveness occurs in the Legislative Branch, since it operates as a bridge for subsequent political positions.
- It was also affirmed that as from 1880, the Argentine political system has been bipartidist, as a consequence, it is very difficult to change this political structure. Majority parties have no need to propose sound political reforms, or to publicize their political platform to access, or keep their power.
- One of the interviewed persons expressed the existence of unfair competition between the parties, as the governing party uses its power to finance its political campaigns and to create political patronage. In this sense, new parties have disadvantages, due to the high costs of the political campaigns in Argentina.
- Finally, the existence of agreements between parties, and the fact that ruling parties have a limited margin to implement policies was underscored.

Responsibility to monitor the financing of political campaigns

- Four of the interviewed persons affirmed that the State should control the financing of political parties, either through the electoral Justice, the Legislative Branch, or a tripartite committee constituted by the three powers.
- Two of the interviewed persons considered the convenience of having external control in the hands of NGOs in order to offer greater trust and credibility before society. However, the risk of cooption or capture of the NGOs to political pressures was mentioned.
- One of the persons affirmed that control of the financing of political parties would be effective only if the obligation to publish and inform was mandatory.
- One of the interviewed persons mentioned the need to provide control to civil society, and to political parties themselves.
- Finally, one of the interviewed persons mentioned the significant delay that affects the legislation of political parties and electoral campaigns, and the imminent need for a legislative reform.

Existence of information systems about political party financing

- Most of the interviewed persons agreed that there are no mechanisms to inform society on how political parties are financed.
- It was stated that its publishing through the Internet is insufficient, given that not everybody has access to the Internet.

Media impact on political decisions

- The majority of the interviewed persons agreed that the media has a high impact on political decisions.
- The majority of the interviewed persons expressed that the media contributes in the setting of topics in the public agenda, as politicians arrange their agenda according to the impact of information in the media.
- It was also manifested that as a consequence of the dependence of the Judicial Branch on the Executive Branch, society tends to rely more on the media rather on the Judicial Branch regarding the filing of claims.
- However, it was stressed that the impact of the media is merely formal, without having a real effect in the content of policies.
- It was said that the media gets involved in politics through the support of policies which benefit their interests.
- The lack of mechanisms to control the quality of information provided by the media was highlighted.

How to improve access to public information

- Three of the interviewed persons expressed that Internet is the best mean to improve access to public information. However, it was highlighted that this would only be effective if: all public entities were obliged to provide information by the Internet, and if everybody had access to the Internet.
- Two of the interviewed supported the need of issuing rules to grant access to public information, in which: sanctions were imposed to those not complying with the obligation to inform and tools were given to society to monitor the enforcement of the law.
- The scope of the means utilized by the State to provide information was considered defective: the Official Bulletin does not reach all of the National territory, and the Congressional Session's Dairy is not released periodically.
- Impediments to access public information were identified as: bureaucratisation and lack of will of public entities to grant participation to the society.

How to give more transparency to the public servant recruitment process

- The majority of the interviewed persons agreed that the existing mechanisms for the selection and promotion of public servants are not being implemented. This situation contributes to the lack of capacity of the recruited employees.
- Some interviewed persons mentioned the lack of mechanisms to evaluate performance, and the consequent lack of incentives for public officials towards efficiency.
- More publicity should be given both to the conduct of public officials, and to the application of sanctions in case of misconduct.
- It was mentioned that society is not aware of the mechanisms used for the selection of personnel, and the resulting need to strengthen its capacity to monitor.

Existing complaint mechanisms in the hands of citizens to obtain improvements in public services

- The majority of the interviewed persons mentioned the need to grant civil society greater access to the Regulating Entities.
- It was expressed that Regulating Entities depend on the Executive Branch in relation to the selection and removal of personnel.
- It was said that the entities are permeable to corporative interests and cases of corruption.
- The interviewed persons mentioned the weak control that government exerts on private companies that render public services.
- They mentioned the need to grant civil society greater information on the companies that render services, and to improve the existing regulation dealing with consumer rights.

Performance of the Anti-corruption office

- Replacement of the Public Ethics National Office (ONEP) with the Anti-corruption Office: The Anticorruption Office involves greater jurisdictions than the ONEP, among them, it files claims, carries out programs for the prevention of corruption, presents proposals of institutional and legislative reform, and has the capacity to accuse. The objectives of the ONEP were the elaboration of a Code of Ethics for Public Functions and the recompilation of affidavits from public officials.
- Claims received by the Anticorruption Office: Most of the claims are related to the contracting of services, nepotism in the election of suppliers, licensees, and in the hiring of services by the State, under-rendering of services, irregular delivery of public goods, restitution periods, and overcharge.
- Revision of the affidavits of public officials: Revision of affidavits is random, except for those belonging to high rank officials, which are thoroughly examined. After the informatization of affidavits carried out by the Anticorruption Office, their revision shall be easier.

Performance of the Ombudsman

- There are no functional impediments or interference of the Executive in relation to the functioning of the Ombudsman. The main impediment for its due functioning is the lack of knowledge of most public agencies regarding the objectives and procedures of the Ombudsman, which complicates its administration.

Conclusions

Various impediments to reduce the opportunities of corruption were identified from the analysis of the normative framework, the information collected from the Anticorruption Office, and the interviews, all of which, foster incentives towards the discretion of public officials, as well as the lack of transparency in the management of public agencies. These obstacles may be characterised as:

- defective normative
- defective control
- defective information
- defective penalisation
- defective organisation of the public administration
- defective use of the human resources.

In the first place, the deficiency of the normative framework is reflected in the absence of systems of rewards and punishments, which incentive higher levels of performance and efficiency in public positions. Likewise, it allows a formal compliance with the law, satisfying, alternatively, personal or political ends. On the other hand, the delay of the existing normative framework regarding financing of political parties, access to public information, and “Lobby” procedures has been revealed. Finally, it is important to stress the lack of operativeness of the requirements contemplated in the legislation, as shown by the lack of records of gifts obtained by public officials or in the non-existence of the Public Ethics National Committee, both required by the Law of Ethics in the Exercise of Public Administration 25.188 issued in 1998.

In second place, the weakness of some of the control agencies (Anticorruption Office, National Auditing Commission) is revealed by their dependence – regarding the appointment and removal of authorities – on the authorities subject to their control. Accordingly, opportunities for the exercise of political pressure are created, thus restricting the capacity of carrying out rigorous controls, and publishing the outcomes of investigations. In the same manner, there is an absence of mechanisms to carry out substantive evaluations on public administration management, contract fulfilment or convenience, or the performance of public officials. At the same time, the poor performance of the Judicial system regarding the enforcement of the law and the application of sanctions, generated in the bureaucracy of the Judiciary and the dependence of some of its members on the Executive Branch, enhances the absence of controls.

In third place, the possibility of civil society to exert control is significantly hampered by the weakness of the control agencies –in charge of law enforcement and the application of sanctions– and the consequent low risk of being punished for the commission of irregularities which, added to the lack of mechanisms to produce and publicize information on the performance of public officials and the management of public agencies, operates as a system of protection for the commission of irregularities.

In fourth place, the lack of planning and coordination between public agencies, impedes the efficient use of information collected by other public entities, and limits the exercise of rational controls of human and financial resources. This situation is reflected in the lack of databases of suppliers of the State, and of the contracting of services and personnel.

Specifically, there are defects in the design of some of the control agencies. In this sense –and not withstanding its potential vulnerability regarding the appointment and removal of its authorities by the Executive- it is important to stress the limited scope of action granted to the Anticorruption Office, which can only monitor the functioning of the national public administration, excluding from its sphere of control the functioning of the judicial or legislative branches and provincial or municipal governments.

Conclusions from the interviews

Furthermore, the dimension of the bureaucracy present in the Argentine public administration and essentially, the lack of political will to undertake integral institutional reforms, and policies for the prevention and promotion of values, contributes to the persistence of informal codes that incentive inefficiency and irregularity. Thus, it is important to underscore the conclusions risen from the interviews, in which the majority of the interviewed expressed that:

- None of the control agencies outstands, or is effective in the fight against corruption – notwithstanding the mentions to the performance of the National Auditor's Office, Anticorruption Office, National Auditing Commission, Internal Revenue Service, and the Ombudsman;
- The Argentine Government has no plan to fight corruption;
- More emphasis should be placed on the processes of public bidding and contracting, access to public information, mechanisms of control in hands of society, re-organisation of the institutions in charge of law enforcement, and giving priority to the fight against corruption as a government strategy;
- There have not been any government trends to fight corruption during the last decade, except for isolated and mediatic measures;
- The Judicial Branch is not independent from other branches;
- There are no mechanisms to evaluate the consistency of parliamentarians with their political platform;
- The State should be in charge of monitoring the financing of political parties; there are no mechanisms for society to be aware of such financing;
- The media highly affects political decisions, and contributes to set matters in the public agenda;
- In order to improve civil society's access to public information, it is necessary to establish sanctions for those who do not comply with the duty to inform, and to provide tools to civil society in order to undertake such control;
- The existing mechanisms to select and remove public officials are not implemented, and there are no mechanisms for the evaluation of their performance; and
- It is necessary to grant more transparency and access to Public Service Regulating Entities.

However, most of the interviewed persons stressed that:

- The reforms implemented in the Judicial Branch during the last decade (Judiciary Board, and courts that try a Judge's malfeasance or misfeasance) constitute a timid progress towards greater transparency; and
- There exists real competence in the search of political power both, at national and provincial level.
- Likewise, the high technical value of the reports elaborated by the National Auditing Commission and the National Auditor's Office, the compromise and training of members of the Anticorruption Office and the detection of cases by the Ombudsman were highlighted.
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Measures to be Implemented

- Improve the normative framework and the administrative procedures: in order to reduce the discretion of the officials and the costs to operate with effectiveness
- Grant effectiveness to the laws: in order to put into practice the policies designed by the State, and avoid the content of laws to become mere texts
- Implement nimble and timely mechanisms for the detection and prevention of irregularities: so as to improve the system of control and supervision of the public administration, and to reduce the opportunities for the improper exercise of political, union or economic pressures

- Elaborate periodical diagnosis, reports and investigations: in order to evaluate the performance of public officials and public agencies, and thus, be able take the most adequate decisions in the public and private sectors
- Implement result driven management systems: in order to re-structure principal agent relations, introduce mechanisms of accountability and competence, and to modify the existing incentives
- Effect organisational changes: in order to plan and coordinate the functioning of the public administration, and take advantage of the information collected by each agency
- Increase and publish mechanisms that grant access to public information and facilitate the filing of claims: in order to strengthen the capacity of civil society to exert control.
- Make integral reforms on control agencies and evaluate the effectiveness of their implementation: in order to increase the impact of such reforms, avoid the implementation of disconnected or isolated measures, evaluate their success, and correct possible deficiencies.

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