

Overall Score:

**79 - Moderate**

Legal Framework Score:

**95 - Very Strong**

Actual Implementation Score:

**64 - Weak**

Category I. Civil Society, Public Information and Media

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## I-1. <sup>79</sup>Civil Society Organizations

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### 1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

**YES** | NO

**Comments:**

The National Constitution (NC) guarantees the right of association to all inhabitants in its articles 14, 43 and 75 inc. 19 and 22. All human rights charters and treaties ratified and signed by the Republic of Argentina also guarantee the right of association. These include: American Declaration of Rights and Duties of Man, American Charter of Human Rights, Universal Declaration of Human Rights, International Agreement of Civil and Political Rights, Charter of Childhood Rights

Important reports highlight a tradition of complexity in the legal system (PNUD, BID, GADIS, Indice de Desarrollo de la Sociedad Civil de Argentina, [www.gadis.org.ar](http://www.gadis.org.ar))

The Argentine legislative framework recognizes four basic and constitutional principles in the normative body of CSOs:

- 1) Freedom of association
- 2) Freedom of speech
- 3) Right to legal recognition (personalidad jurídica), and
- 4) Equal opportunities

Citizens can legally create two different types of CSOs: foundation or civil association.

**References:**

[www.infoleg.gov.ar](http://www.infoleg.gov.ar)

National Constitution  
Law 340 – Civil Code (arts. 46, 30 to 45, 47 to 50)  
Law 19.836 (Foundations)  
Law 23.576 (Negotiable duties)  
Law 24.409 (Ratification of The Hague Charter on legal recognition of foreign associations and foundations)

Tax framework  
Law 16.656 (National tax exemption to civil organizations that specialize on public health, social assistance and education services)  
Law 20.628 (Profit tax)  
Law 23.349 (Value Added Tax)  
Law 25.063 (Tax to pre-arranged minimum profits)

PNUD/BID/Banco Mundial, Las Organizaciones de la Sociedad Civil en el ordenamiento legal argentino. Cuatro propuestas para el cambio, Buenos Aires, 1999.  
[www.gadis.org.ar](http://www.gadis.org.ar)

**YES:** A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

**Comments:**

The General Inspection of Justice regulates the activities of CSOs. Tax issues are regulated by AFIP (national tax agency).

There is neither express prohibition in any legislation nor other types of rules regulating CSO activities.

**References:**

[www.infoleg.gov.ar](http://www.infoleg.gov.ar)  
[www.infoleg.gov.ar](http://www.infoleg.gov.ar)  
National Constitution  
Law 340 – Civil Code (arts. 46, 30 to 45, 47 to 50)  
Law 19.836 (Foundations)  
Law 23.576 (Negotiable duties)  
Law 24.409 (Ratification of The Hague Charter on legal recognition of foreign associations and foundations)

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PNUD/BID/Banco Mundial, Las Organizaciones de la Sociedad Civil en el ordenamiento legal argentino. Cuatro propuestas para el cambio, Buenos Aires, 1999.  
[www.gadis.org.ar](http://www.gadis.org.ar)  
<http://www2.jus.gov.ar/minjus/ssjyal/IGJ/Inicial.htm> (Inspeccion General de Justicia)

Resolución General DGI 1.432/71 sobre Exención del impuesto a los réditos.  
Resolución General DGI 3.191/90 de Donaciones en efectivo.  
Resolución General DGI 3.419/91 sobre Facturación y registración.  
Ley 22.325 Orgánica de la Inspección General de Justicia.

Ley 23.238 y Ley 23.412 de Cooperación técnica.  
Resolución general de la Inspección General de Justicia 6/80 y Resoluciones complementarias.

[www.afip.gov.ar](http://www.afip.gov.ar)  
Decreto 618/97 de la Administración Federal de Ingresos Públicos.  
Ley 11.683 de Procedimiento tributario.  
Decreto 10.3426/37 y Decreto 67.519/40 del Registro de entidades de bien público.  
Decreto 23/99 de creación del Registro nacional de asociaciones y fundaciones.  
Decreto 422/99 de creación del Registro nacional obligatorio de Organizaciones No Gubernamentales.

**YES:** A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

**NO:** A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

**Comments:**

There is no prohibition in any of the legislation. The only requirement for CSOs is the annual presentation of the balance account in the Inspeccion General de Justicia, tax declaration and payment at the AFIP (national tax agency).

Many CSOs publicly promote donors and donations on their Web sites as best practices.  
See: [www.poderciudadano.org](http://www.poderciudadano.org), [www.cippec.org](http://www.cippec.org), [www.adc.org.ar](http://www.adc.org.ar), [www.cels.org.ar](http://www.cels.org.ar)

**References:**

[www2.jus.gov.ar/minjus/ssjyal/IGJ/Inicial.htm](http://www2.jus.gov.ar/minjus/ssjyal/IGJ/Inicial.htm) (Inspeccion General de Justicia)  
[www.afip.gov.ar](http://www.afip.gov.ar)

**YES:** A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

**NO:** A NO score is earned if no such public disclosure requirement exists.

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## 2. Are good governance/anti-corruption CSOs able to operate freely?

83

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

**Comments:**

There were no reported cases in the last year.

**References:**

[www.clarin.com](http://www.clarin.com)  
[www.lanacion.com](http://www.lanacion.com)

**100:** CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

**75:**

**50:** CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

**0:** Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | **50** | 25 | 0

**Comments:**

In the last year, government has not been receptive to proposals or recommendations made by these CSOs. Poder Ciudadano, the Argentine Chapter of Transparency International, have been criticised by the government after releasing an investigation on the national system of procurement and a report on the allocation of the Executive's official publicity.

**References:**

[www.lanacion.com.ar](http://www.lanacion.com.ar) (May 8th, 2006): "Denuncian que el Estado compra mal"  
[www.lanacion.com.ar](http://www.lanacion.com.ar) (June 29th, 2006): "El gobierno gasto en publicidad mas de lo presupuestado"  
[www.poderciadadano.org](http://www.poderciadadano.org)

**100:** Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

**75:**

**50:** Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

**25:**

**0:** Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

**Comments:**

There were no reported cases in the media. And no comments about any case among anticorruption CSOs.

**References:**

Interview with Pilar Arcidiacono (Program Officer, Poder Ciudadano)

**YES:** A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

**NO:** A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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### 3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

**References:**

Interview with Pilar Arcidiacono (Program Officer, Poder Ciudadano)

**YES:** A YES score is earned if there were no CSO activists imprisoned related to work covering corruption.

**NO:** A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the p

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

**References:**

Interview with Pilar Arcidiacono (Program Officer, Poder Ciudadano)

**YES:** A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work.

**NO:** A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

**References:**

Interview with Pilar Arcidiacono (Program Officer, Poder Ciudadano)

**YES:** A YES score is earned if there were no documented cases of CSO activists being killed related to a corruption case in the specific study period.

**NO:** A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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#### 4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

**References:**

[www.infoleg.gov.ar](http://www.infoleg.gov.ar)

National Constitution – Article 14

Law 25674 (Women quota)

**YES:** A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | **50** | 25 | 0

**Comments:**

In the last years, new trade unions appeared. The most important has been the emergence of the Central de Trabajadores Argentinos (CTA) – an alternative union to the traditional Confederacion General de Trabajo (CGT).

However, the government is in charge of granting legal status to new trade unions and may prevent the emergence of alternative organizations.

**References:**

[http://www.oit.org.ar/documentos/declaracion\\_1.pdf](http://www.oit.org.ar/documentos/declaracion_1.pdf)

**100:** Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

**75:**

**50:** Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

**25:**

**0:** Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

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## I-2. Media

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### 5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

**References:**

National Constitution

Article 14

[www.infoleg.gov.ar](http://www.infoleg.gov.ar)

**YES:** A YES score is earned if freedom of the press is guaranteed in law, including all political parties, religions, and ideologies.

**NO:** A NO score is earned if any specific publication relating to government is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

**References:**

National Constitution

Article 14

[www.infoleg.gov.ar](http://www.infoleg.gov.ar)

**YES:** A YES score is earned if freedom of individual speech is guaranteed in law, including all political parties, religions, and ideologies.

**NO:** A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

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## 6. Are citizens able to form media entities?

38

6a. In practice, the government does not create barriers to form a media entity.

**Comments:**

Law 22.285 and modifications regulate access to media licensing for radio and TV. They are granted by the executive branch through a public competition organized by COMFER (Comite Federal de Radiodifusion).

In the case of complementary services, COMFER grants licenses under a direct procedure. Licenses are granted for 15 years. On May 20, 2005, President Kirchner extended licenses to radio and TV (open and cable) through a presidential decree. It extended the licenses for 10 more years, in addition to the 15-year period granted by law. The decree benefited bug media companies that underwent a financial crisis after 2001. The renewed ten-year licensing period gave them the option to increase the value of their assets. It also put the government in the donor" position.

Note that treatment of old and new media entities is unequal: The decree favors new media entities, granting them a 35-year license.

Political interference can be a problem when an entity tries to acces a new license.

**References:**

[www.infoleg.gov.ar](http://www.infoleg.gov.ar)

[www.comfer.gov.ar](http://www.comfer.gov.ar)

[www.lanacion.com.ar](http://www.lanacion.com.ar) (May 21, 2005)

**100:** Media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system.

**75:**

**50:** Formation of media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

**25:**

**0:** Media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. Division of broadcast bandwidth is widely viewed to be used as a political tool.

6b. In law, where a media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

**Comments:**

According to Decree 286/81, those offering licenses may present impugnation before the selection process is finished.

**References:**

Decree 286/81

Law 22.285

**YES:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied media license. A YES score is also earned if no license is necessary.

**NO:** A NO score is earned if there is no appeal process for media licenses.

6c. In practice, where necessary, citizens can obtain a media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

**Comments:**

Having contacts within government agencies can influence the process. Asociacion por los Derechos Civiles and Open Society Institute published that licensing and fiscal policy are important components of a network of unaccountable powers of the government.

**References:**

See [www.adc.org.ar](http://www.adc.org.ar)

Una censura sutil. Abuso de publicidad oficial y otras restricciones a la libertad de expresion en Argentina (2005)

There is an English version published on the Open Society Institute website.

**100:** Licenses are not required or licenses can be obtained within two months.

**75:**

**50:** Licensing is required and takes more than two months. Some groups may be delayed up to six months.

**25:**

**0:** Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

**References:**

See [www.adc.org.ar](http://www.adc.org.ar)

Una censura sutil. Abuso de publicidad oficial y otras restricciones a la libertad de expresion en Argentina (2005)

There is an English version published on the Open Society Institute website.

**100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

## 7. Are the media able to report on corruption?

67

7a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

### References:

National Constitution  
Article 14  
Freedom of speech  
Freedom of press

**YES:** A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

**NO:** A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

7b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

### Comments:

There is no published information about self-censorship. However, relevant journalists point out that government officials make telephone calls any time a piece of news does not satisfy them.

At the end of 2005, the director of Radio Nacional (state-owned radio) underwent a censorship scandal when she informed journalist Pepe Eliashev that his radio show was not scheduled for 2006 on December 30th. Eliashev, who was on the air for twenty years and is acknowledged as one of the prominent independent journalists in Argentina, was not allowed to air his last show on December 31st to say goodbye to his audience. Apparently his critical views regarding Kirchner's administration were the reason for the sudden dismissal. Eliashev received support from his colleagues (Joaquin Morales Sola, Magdalena Ruiz Guinazu, Nelson Castro, among others), political leaders, the Inter-American Press Association and FOPEA (Foro de Periodismo Argentino).

### References:

[www.lanacion.com.ar](http://www.lanacion.com.ar) (January 2nd, 2006). Interview to Pepe Eliashev: El gobierno reclama sometimiento  
[www.clarin.com/diario/2006/01/03/sociedad/s-03301.htm](http://www.clarin.com/diario/2006/01/03/sociedad/s-03301.htm)  
[www.pepeeliashev.com.ar](http://www.pepeeliashev.com.ar)  
"El gobierno ordena el levantamiento de un programa en Radio Nacional"

Por Pepe Eliashev

A las 20.05 del viernes 30 de diciembre 2005, cuando apenas había terminado mi último programa del año con un mensaje a los oyentes y una promesa de reencuentro con ellos a partir del lunes 2 de enero de 2006, la Directora General de Radio Nacional, Adelina Olga Mona Moncalvillo, interrumpió sus vacaciones para informarme por teléfono que c est fini (expresión francesa que quiere decir se terminó): mi programa Esto Que Pasa había terminado y ya no retornaría al aire.

De ese modo, sin darme siquiera la oportunidad de una despedida con los oyentes, tras cinco años ininterrumpidos en Radio Nacional, el ciclo fue levantado de manera que no hubiese posibilidad de anunciar el hecho al público. La señora Moncalvillo me aseguró que ella no hacía otra cosa que responder, de ese modo, a explícitas órdenes del Gobierno, que ella no compartía, que le parecían equivocadas y, además, inútilmente crueles, pero ante las cuales no tenía opción, porque así se lo exigía el Gobierno. vos sabés como son estas cosas&, añadió, a forma de explicación.

Moncalvillo reporta directamente al secretario de Medios, el empresario mediático Enrique Pepe Albistur, que a su vez depende del Jefe de Gabinete de Ministros, Alberto Fernández.

Mi peculiar contrato sin remuneraciones vencía el 31 de diciembre, pero el mismo estipula claramente que la voluntad de no renovarlo debe ser anunciada por cualquiera de las partes siete días hábiles de la fecha de vencimiento. Mi programa, Esto Que Pasa, permaneció en el aire por Radio Nacional desde el 1º de enero de 2001 hasta el 30 de diciembre de 2005, durante la gestión de varios gobiernos. Solo el del Dr. Néstor Kirchner tomó la decisión de levantarlo del aire.

El pasado 1º de diciembre mi ciclo había cumplido dos décadas de existencia continua en la radiodifusión argentina. Comenzó el 3 de diciembre de 1985 y, luego de los primeros cinco años en Radio Splendid, permaneció en Radio del Plata de 1990 a 2000.

En la semana de festejos por los 20 años de mi programa, me llamaron y salieron al aire, para felicitar por el hecho, los ministros Carlos Tomada y Ginés González García y el secretario de Cultura de la Nación, José Nun, además del jefe de gobierno de la Ciudad de Buenos Aires, Aníbal Ibarra, y su secretario de Cultura, Gustavo López. También lo hizo el ex presidente Raúl Alfonsín, el ex Jefe de Gabinete, Rodolfo Terragno, y notables figuras de la cultura argentina, como Sergio Renán, Magdalena Ruiz Guiñazú, Alejandro Dolina, Adrián Paenza, Beatriz Sarlo, Daniel Rabinovich, Nelson Castro, Damián Szifrón y Jairo, entre otros.

Mi programa y mi trabajo de conducción del ciclo nunca fueron remunerados con dinero por Radio Nacional a lo largo de estos cinco años. El esquema de producción contemplaba, como única vía de contraprestación, la posibilidad, a puro riesgo mío, de comercializar una parte de la tanda publicitaria. Todos los gastos de producción periodística del ciclo, así como los honorarios artísticos, han corrido siempre por cuenta excluyente de mi productora.

La eliminación de mi programa de la grilla de Radio Nacional es un claro e innegable episodio de crudo autoritarismo y supresión de las opiniones diferentes dentro de los medios públicos. La señora Moncalvillo ya se había quejado explícitamente hace muy pocas semanas en una entrevista con el diario Crónica que yo los mataba con mis comentarios a quienes hoy ocupan el gobierno.

El gobierno del presidente Néstor Kirchner repite, así, sin cambios el mismo esquema de oficialismo burdo y desvergonzado que caracterizó a la emisora del Estado en la época de Carlos Menem. Lo hace con una saña llamativa. El gobierno de Kirchner maneja a Radio Nacional, emisora pública de la sociedad argentina, como si fuera una dependencia privada de su parcialidad partidaria.

Debe saberse que desde comienzos de 2005, la programación de Radio Nacional debe interrumpir obligatoriamente y de modo abrupto su secuencia normal de emisiones cada vez que el Presidente habla en público, mecanismo que se ha venido practicando rigurosamente antes, durante y después de la reciente campaña electoral. Esto sucede varias veces por semana. Las órdenes de la Casa Rosada son taxativas: si el Presidente participa de un acto, no importa cuándo, ni donde, ni por qué, su palabra debe salir al aire por Radio Nacional.

El Gobierno se ha valido de algunos antecedentes de la Sra. Moncalvillo para procurar darle un perfil progresista a su programación, que ahora incluye una hora semanal permanente, y en horario central, confiada personalmente a la señora Hebe de Bonafini.

Integrante histórica del núcleo fundador de Poder Ciudadano y columnista de la revista Humor en los años iniciales de la democracia, Moncalvillo me confesó, al anunciarme las órdenes del Gobierno, que estás vinieron, directamente, de arriba. ¿De quién? ¿Del matrimonio presidencial? ¿De Alberto Fernández? Nadie sino ellos tres tiene ese poder: debajo de ellos todo es obediencia debida. Cuando le pregunté a ella órdenes de quien obedecía, solo me respondió de arriba.

La cancelación de mi programa Esto Que Pasa de la programación de Radio Nacional es un alevoso golpe a la libertad de expresión en la Argentina. Han atacado un medio periodístico consagrado y respetado en todos los ámbitos, y que no significaba erogaciones dinerarias para un Gobierno que, además, invierte anualmente más de 100 millones de pesos en abierta propaganda oficialista bajo el cínico lema Argentina, un país en serio.

Al sacarme del aire se pretende eliminar una voz libre del debate nacional. Es un paso más en la progresiva y evidente asfixia de la libertad que, amargamente, padece hoy la Argentina.

Viví exiliado durante diez años. Tuve que salir de la Argentina en 1974, durante el gobierno peronista, cuando la Triple A iniciaba con sus exterminios la tarea que asumirían formalmente las Fuerzas Armadas en 1976, cuando se implantó el terror de Estado. Regresé en 1984, con y por la democracia. Hoy me han censurado.

Pido su solidaridad y su apoyo.

Con esperanza, sin miedo, pero con profunda preocupación por el futuro de la Argentina.

© pepe eliashev

**100:** The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

**75:**

**50:** The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

**25:**

**0:** The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

7c. In practice, there is no prior government restraint on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

#### Comments:

A study of journalists published by FOPEA (Foro de Periodismo Argentino) revealed that 26 percent identified political pressures” as a main difficulty preventing the professional exercise of journalism. Twenty-four percent identified censorship from the media entity for which he/she works as one of the main problems in the professional field. Fourteen percent recognized auto-censorship as one of the main difficulties.

Based on relevant journalists’ comments, it is possible to connect government pressure directly to media owners and editors. This could be an indirect way the government might be restraining the publication of corruption-related stories.

The Inter-American Press Association stated in its report on that the government’s direct attacks on independent journalism, verbal aggression and dispair toward professional journalism was more than common in 2005 and the beginning of 2006. President Kirchner and Senator Fernandez (his wife) have repeatedly criticized journalists and the media for acting as the opposition. They questioned the contents of articles and editorials critical to government policies.

Added to this, the Inter-American Press Association, Asociacion por los Derechos Civiles and Poder Ciudadano have individually criticized the unobjective allocation of official advertising by the government, which could damage freedom of speech and promote lack of transparency in the administration of public funds.

The report says that “the institutionality of the Republic is seriously threatened by the increasing presidential power and the obsessive intention to impose always his will in all sectors of the state, damaging the division of powers. Unacceptable was the reply received by José Miguel Vivanco, executive director of the organization Human Rights Watch, when he adhered to the criticisms against the project to reform the Judicial Council, which finally was passed affecting independence and balance of the political and professional members of the body which is responsible for the appointment and removal of judges”.

#### References:

[www.fopea.org](http://www.fopea.org)

Un informe reciente elaborado por las entidades Iniciativa Pro Justicia (Open Society Justice Initiative) y la Asociación de Derechos Civiles (ADC) aborda los problemas que pueden comprometer a la libertad de expresión en nuestro continente, como lo es la caprichosa distribución selectiva de los avisos oficiales entre los medios de comunicación. Este análisis, publicado en el libro *Censura Sutil*, describe las formas indirectas de presión que afectan el desenvolvimiento editorial de los medios de prensa.

Pero no siempre el censor gubernamental es encubierto. También actúa abiertamente levantando un programa de radio, conducido por el periodista José Eliashev hasta diciembre último por la emisora estatal Radio Nacional, y en cual criticaba algunos actos de gobierno.

Esta posición del gobierno nacional repercute en otros ámbitos gubernamentales consecuentes con el poder central, tal el proyecto del gobernador de Tucumán, José Alperovich, que promueve un peligroso derecho de réplica, para ser incorporado en la modificación de la Constitución provincial. La Asociación de Diarios del Interior de la República Argentina (ADIRA), expresó su preocupación por los renovados intentos de interferir en el pleno ejercicio de la libertad de prensa.

Pretender la cesión de espacios obligatorios en diario radios y TV y demás publicaciones por supuestas críticas a funcionarios o particulares pone a los editores en la disyuntiva de correr el riesgo de opinar o difundir agravios, como lo califica el gobierno tucumano, o compartir páginas y minutos con la perorata oficial.

Por otra parte, las trabas gubernamentales al proyecto legislativo de Acceso a la Información Pública, finalmente congelado por presiones de alto nivel, parecen confirmar este quiebre en las relaciones entre el poder y la sociedad.

También el Poder Judicial pretendió una censura previa cuando la fiscal interina de Instrucción N° 38 solicitó al director de la revista *Veintitrés*, informes y precisiones acerca de la redacción de una nota, que todavía no se había publicado.

Otro incidente preocupante afectó al escritor y periodista argentino José Ignacio García Hamilton, cuando se le prohibió el ingreso a Cuba el 18 de febrero del corriente año. La Cancillería argentina pidió explicaciones y embajador en La Habana se interesó en el problema. No se conoce todavía la contestación de la Cancillería cubana, pero en oportunidad de una visita posterior a Cuba del gobernador de la provincia de Santa Fe, Jorge Obeid, declaró a la agencia oficial argentina Télam que el gobierno cubano procedió correctamente al no permitir la entrada a la isla del Dr. García Hamilton por ser un opositor a Fidel Castro y haber escrito el prólogo de un libro de un disidente.

En esta dificultosa actividad profesional, periodistas del diario dominical *Perfil*, fueron increpados y amenazados por personal apostado frente al domicilio que el presidente de la Nación posee en Río Gallegos, capital de la provincia de Santa Cruz, para que se alejen del lugar. Desde varios autos, personas identificadas por la policía local y que se desempeñarían en medios periodísticos locales, trataron de arrebatarles a los enviados el equipo fotográfico. Los periodistas de editorial *Perfil* efectuaron la denuncia policial, que fue derivada al Juzgado de Instrucción N° 1 a cargo del juez Santiago Losada, por agresión e impedir por la vía del hecho la actividad de los profesionales de prensa en el ejercicio del derecho constitucional de informar.

La revista *Noticias*, también de Editorial *Perfil*, fue blanco de los dardos presidenciales que la calificó como enemiga del gobierno. Según una nota publicada por el periodista Joaquín Morales Solá en el diario *La Nación*, el presidente Kirchner expresó: No tengo nada personal contra nadie, ni siquiera contra los periodistas más críticos y subrayó que a veces sólo me divierte. Sí, tengo una cuestión personal contra un periodista porque siento que calumnia. Mencionó al destinatario, pero *Noticias* aceptó que el periodista que nombró el Presidente era su fundador, Jorge Fontevecchia.

Otros tres periodistas fueron heridos a pedradas y perdieron sus equipos fotográficos y de filmación, mientras cubrían un operativo antidroga en el barrio porteño de Mataderos. Los afectados pertenecen a la agencia oficial Télam, a diario *Clarín* y a Canal 9 de la Capital Federal.

Por su parte Germán Pomar, del diario *Norte de Resistencia*, Chaco, fue herido cuando efectuaba la cobertura periodística de un desalojo en Pueblo Vilelas, en esa provincia argentina.

No sólo los medios o empresas periodísticas sobrellevan dificultades con la libertad de informar sino también hasta los simples ciudadanos. La señora Cecilia Pando de Mercado, autora de una carta del lector publicada en el diario *La Nación* el año pasado en la que criticaba la decisión del gobierno de separar de sus funciones a un obispo con sede en las Fuerzas Armadas, padeció una censura a la libertad de expresión, y una clara demostración de las presiones para silenciarla o castigarla por el solo hecho de criticar al gobierno. Su esposo, militar de carrera y con una foja de servicios brillante fue pasado a disponibilidad por ser co-responsable de los dichos de su esposa. Durante un acto que se llevó a cabo en la sede presidencial el 8 de marzo, y cuando el presidente Néstor Kirchner, se refería al papel de la mujer en su día, expresó que hoy la mujer argentina está muy preparada, es muy inteligente y tiene un pensamiento absolutamente independiente y dicen lo que piensan. La autora de aquella carta interrumpió al Presidente y le dijo: Señor Presidente, yo no puedo decir lo mismo porque mi marido se quedó sin trabajo por algo que yo dije.

El gobierno de Argentina ha aceptado participar en el canal oficial Telesur, empresa propagandística del presidente venezolano Hugo Chávez, mientras que Uruguay solicitó que no se le mencione como socio hasta que la iniciativa sea aprobada por el parlamento, al que al Poder Ejecutivo de ese país envió el 10 de marzo el proyecto respectivo

**100:** The government never prevents publication of controversial corruption-related materials.

**75:**

**50:** The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. In countries where illiteracy is higher, the government may allow a free print press but censor broadcast media.

**25:**

**0:** The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material.

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## 8. Are the media credible sources of information?

69

8a. In law, media companies are required to disclose their ownership.

YES | NO

### References:

Law 19.550

**YES:** A YES score is earned if media companies are required by law to disclose all owners of the company.

**NO:** A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

8b. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

### Comments:

According to Mendelovich (2005), the International Center for Journalists did not find any code of ethics for journalists in Argentina. It did not even find a representative project. In the U.S. there are 13, in Canada seven, in England six and in France five.

The study of journalists published by FOPEA showed that one out of three journalists considered 5" the "general ethical level" in a scale going from 1 to 10 (10 representing the grade for "most ethical"). Of the journalists consulted, 18.4 percent graded the ethical level at a four and 11percent at three. No one graded the ethical level in the upper half of the scale.

However, journalists (almost 60 percent) recognized the need to conduct their professional activity according to a code of ethics. Only 12 percent said there was no need for a referential framework.

Many major media outlets produce their own frameworks. These are usually internal rules applied to that media outlet. At the end of the 1990s, some newspapers established internal rules, probably inspired by the prestigious and efficient “Libro de estilo” (Book of style) of the Spanish newspaper El País. Newspaper Clarín edited its “Manual de Estilo” in February 1997. Two months after that, newspaper La Nación released its book of style, written by Octavio Hornos Paz y Nevio Nacinovich and edited by Grupo Planeta and Espasa Calpe. Both books sold out. In 1998, newspaper Perfil emerged on the market with a book called “How to Better Read the Newspaper,” which included a code of ethics.

**References:**

Mendelevich, Pablo (2005) *Ética periodística en Argentina y en el mundo*.

Buenos Aires: FOPEA/KAS. [www.fopea.org](http://www.fopea.org)

FOPEA (2005) *Sobre los periodistas y su profesión. Encuesta*. Buenos Aires: FOPEA, [www.fopea.org](http://www.fopea.org)

**100:** Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

**75:**

**50:** Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

**25:**

**0:** Editors and journalists are widely known to sell favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

8c. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

**Comments:**

There were no studies on media monitoring for the October 2005 legislative election. According to the research done by Poder Ciudadano for the 2003 presidential election, there was a correlation between receiving the most votes and receiving the most media coverage. These candidates also tended to be the best investors, buying advertising time on TV, radio, newspapers and magazines.

Political leaders from the opposition tend to criticize political incumbents for abusing their relationships with state-owned media to gain favor for themselves or their candidates.

**References:**

There were no studies on media monitoring for the October 2005 legislative election.

**100:** All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

**75:**

**50:** Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

**25:**

**0:** The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

8d. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | **50** | 25 | 0

**Comments:**

Political leaders from opposition parties usually claim that political incumbents and candidates from the party in government usually have special access to state-owned media outlets.

**References:**

There were no reports on media access for the last election (October 2005).

**100:** The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content.

**75:**

**50:** The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

**25:**

**0:** The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

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## 9. Are journalists safe when investigating corruption?

100

9a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

**YES** | NO

**Comments:**

There were no reported cases of imprisonment.

**References:**

There were no reported cases.

**YES:** A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period.

**NO:** A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

**References:**

There were no documented cases.

**YES:** A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

**NO:** A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

**References:**

There were no documented cases.

**YES:** A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period.

**NO:** A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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## 10. Do citizens have a legal right of access to information?

67

10a. In law, citizens have a right of access to government information and basic government records.

YES | NO

### Comments:

The NC and international treaties guarantee the right of access to information. However, Argentina does not have a formal law that allows access to information. In 2005, a bill modified by the Senate after it had been passed by the House of Representatives lost parliamentary statute.

President Kirchner signed decree 1172 in 2003. It regulated the right of access to information within the scope of the executive branch. However, the absence of national legislation leaves it up to the legislative and the judicial branches free to translate constitutional guarantees on their own.

### References:

International Treaties  
Decree 1172/2003 (executive branch)

**YES:** A YES score is earned if there is a formal right to access any government documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request. There should be a formal process for requesting this information.

**NO:** A NO score is earned if there is no such right.

10b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

### Comments:

In the case of the executive branch, decree 1172 establishes an administrative appealing mechanism through the Anti-Corruption Office if the request is denied. If the person requesting the information doesn't feel this is enough, he/she has the right to go to the Courts under article 43.

In the case of the judicial and the legislative branches, a citizen can go to the courts under article 43 of the national constitution.

### References:

National Constitution – Article 43

Artículo 43.- Toda persona puede interponer acción expedita y rápida de amparo, siempre que no exista otro medio judicial más idóneo, contra todo acto u omisión de autoridades públicas o de particulares, que en forma actual o inminente lesione, restrinja, altere o amenace, con arbitrariedad o ilegalidad manifiesta, derechos y garantías reconocidos por esta Constitución, un tratado o una ley. En el caso, el juez podrá declarar la inconstitucionalidad de la norma en que se funde el acto u omisión lesiva.

Podrán interponer esta acción contra cualquier forma de discriminación y en lo relativo a los derechos que protegen al ambiente, a la competencia, al usuario y al consumidor, así como a los derechos de incidencia colectiva en general, el afectado, el defensor del pueblo y las asociaciones que propendan a esos fines, registradas conforme a la ley, la que determinará los requisitos y formas de su organización.

Toda persona podrá interponer esta acción para tomar conocimiento de los datos a ella referidos y de su finalidad, que consten en registros o bancos de datos públicos, o los privados destinados a proveer informes, y en caso de falsedad o discriminación, para exigir la supresión, rectificación, confidencialidad o actualización de aquéllos. No podrá afectarse el secreto de las fuentes de información periodística.

Cuando el derecho lesionado, restringido, alterado o amenazado fuera la libertad física, o en caso de agravamiento ilegítimo en la forma o condiciones de detención, o en el de desaparición forzada de personas, la acción de hábeas corpus podrá ser interpuesta por el afectado o por cualquiera en su favor y el juez resolverá de inmediato, aun durante la vigencia del estado de sitio.”

Specifically for the Executive Branch: Decree 1172/2003 (Arts. 12, 13, 14 and 19)  
[www.infoleg.gov.ar](http://www.infoleg.gov.ar)

**YES:** A YES score is earned if there is a formal process of appeal for rejected information requests.

**NO:** A NO score is earned if there is no such formal process.

10c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

**Comments:**

There is no law allowing access to information. The executive branch regulates access to information under decree 1172/2003. It establishes an institutional mechanism to request executive branch records.

There are no institutional mechanisms at the legislative and judicial branches.

Some studies show that the decree facilitated access to information in the executive branch. Accessing government records in the other branches is rather difficult, sometimes almost impossible.

Asociacion Civil Por la Igualdad y la Justicia ([www.acji.org.ar](http://www.acji.org.ar)) sued a committee of the legislative branch because a request for information was denied.

**References:**

Only for the executive branch: decree 1172/2003

[www.infoleg.gov.ar](http://www.infoleg.gov.ar)

See report on the enforcement of Decree 1172 at [www.cippec.org](http://www.cippec.org)

See report on the accessibility of information in the Argentine state at [www.poderciudadano.org](http://www.poderciudadano.org)

**YES:** A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

**NO:** A NO score is earned if there is no such formal mechanism or institution.

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## 11. Is the right of access to information effective?

11a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

**Comments:**

Although Decree 1172/2003 facilitated access to information in the executive branch, congress and the judicial branch fail on the task. Three times last year Poder Ciudadano asked for the complete list of subsidies and grants allocated by deputies and authorities at the house of representatives. The organization never got a response.

In the same house, Poder Ciudadano failed to access complete copies of affidavits (patrimonial statements) completed by 257 representatives in 2005. However, after winning in the Courts, Poder Ciudadano accessed that information from the 72 senators since 2000.

Congress published more administrative and legislative information on the Web site. However, when asking about contracts, lists of human resources and other budgetary information, access to information tends to be more difficult.

After winning another case in the Courts, Poder Ciudadano accessed the complete copies of the personnel census that took place in the senate in 2000 and 2001.

**References:**

[www.poderciudadano.org](http://www.poderciudadano.org)  
See El Congreso bajo la lupa 2004  
El Congreso bajo la lupa 2005

**100:** Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

**75:**

**50:** Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

**25:**

**0:** Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

11b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

**Comments:**

When files are huge, citizens usually have to photocopy them, often at great cost.

For many semesters, Poder Ciudadano had to photocopy the complete executive branch allocation lists published in official advertising at a cost up to US\$100. Since 2006 (after insistently demanding it) Poder Ciudadano was able to obtain a digital

version of the information on CD.

When the information is not voluminous, the executive branch will send a copy to the requestor. However, there have been no studeis that show what happens when the requestor does not live in Buenos Aires, the capital district where all federal agencies are located.

In the case of congress, when Poder Ciudadano requests access to information, it as usually at no cost.

As CIPPEC's reports show, the executive branch has made important efforts to train at least one responsible person in each agency to enforce decree 1172.

**References:**

[www.poderciudadano.org](http://www.poderciudadano.org)  
[www.cippecc.org](http://www.cippecc.org)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

11c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

**Comments:**

The executive branch, under decree 1172, tends to act within the legally set period. However the legislative and the judicial branches are slow and the requestor is often forced to consider going to the courts under Article 43 of the National Constitution.

**References:**

[www.poderciudadano.org](http://www.poderciudadano.org)  
Interview with Pablo Secchi (Poder Ciudadano, responsible for El Congreso bajo la lupa)

**100:** The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

11d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | **25** | 0

**Comments:**

In the case of the executive branch, the administrative costs tend to be inexpensive. However, when a citizen needs to go to the courts, the cost of accessing legal advice is usually high. Often citizens do not have enough information about lawyers' pro-bono practices.

**References:**

[www.poderciudadano.org](http://www.poderciudadano.org)  
Interview with Pablo Secchi (Poder Ciudadano)  
[www.abogadosvoluntarios.net](http://www.abogadosvoluntarios.net)

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

**25:**

**0:** The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

11e. In practice, the government gives reasons for denying an information request.

100 | 75 | **50** | 25 | 0

**Comments:**

The executive branch usually gives a reason for the denial. If the requestor is not satisfied, he/she can consider a judicial strategy.

In the case of congress and the judiciary, requestors do not usually receive an explanation for denial.

**References:**

Interview with Pablo Secchi (Poder Ciudadano).

**100:** The government always discloses to the requestor the specific, formal reasons for denying information requests.

**75:**

**50:** The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

**25:**

**0:** The government does not regularly give reasons for denying an information request to the requestor.

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## Category II. Elections

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### II-1. <sup>87</sup>Voting & Citizen Participation

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#### 12. Is there a legal framework guaranteeing the right to vote?

100

12a. In law, universal and equal adult suffrage is guaranteed to all citizens.

**YES** | NO

**Comments:**

The National Constitution guarantees universal, equal, secret and compulsory voting. It is regulated by the electoral code.

**References:**

National Constitution, Article 37.

Electoral Code

Artículo 37.- Esta Constitución garantiza el pleno ejercicio de los derechos políticos, con arreglo al principio de la soberanía popular y de las leyes que se dicten en consecuencia. El sufragio es universal, igual, secreto y obligatorio. La igualdad real de oportunidades entre varones y mujeres para el acceso a cargos electivos y partidarios se garantizará por acciones positivas en la regulación de los partidos políticos y en el régimen electoral”.

**YES:** A YES score is earned if the right to vote is guaranteed to all citizens of that country. A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

**NO:** A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

12b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

**Comments:**

The National Constitution establishes different terms for each elected official: four years for president and vice-president, four years for deputies/representatives and six years for the senators.

Congress passed law 25.983 in 2004. It modified the electoral code and determined that elections for national offices in the executive branch and legislative branch will take place on the fourth Sunday of October.

**References:**

National Constitution  
Law 25.983/2004 – Modification of Electoral Code.

**YES:** A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

**NO:** A NO score is earned if no such framework exists.

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### 13. Can all citizens exercise their right to vote?

100

13a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

**Comments:**

Since redemocratisation in 1983, there have been no suspicions of discrimination. The electoral registrar is known as one of the most safe in the region.

**References:**

Interview with Pablo Secchi (Poder Ciudadano).

**100:** Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

**75:**

**50:** Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

**25:**

**0:** Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

13b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally ballots are secret.

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** Ballots are secret, or there is a functional equivalent protection, in all cases.

**75:**

**50:** Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

**25:**

**0:** Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

13c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

**Comments:**

Congress passed a law fixing the electoral calendar in 2004. It was implemented in 2005.

**References:**

Law 25.983/2004 – Modification of Electoral Code

**100:** Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

**75:**

**50:** Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

**25:**

**0:** Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

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## 14. Are citizens able to participate equally in the political process?

75

14a. In law, all citizens have a right to form political parties.

YES | NO

### Comments:

The National Constitution and the Law of Political Parties guarantee the right of political association of citizens in democratic political parties.

### References:

National Constitution  
Article 14: right of association  
Article 38: constitutional status of political parties

Law 23.298/1985 of Political Parties

ARTICULO 1.- Se garantiza a los ciudadanos el derecho de asociación política para agruparse en partidos políticos democráticos.

Se garantiza a las agrupaciones el derecho a su constitución, organización, gobierno propio y libre funcionamiento como partido político, así como también el derecho de obtener la personalidad jurídico-política para actuar en uno, varios o todos los distritos electorales, o como confederación de partidos, de acuerdo con las disposiciones y requisitos que establece esta ley”.

**YES:** A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

**NO:** A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

14b. In law, all citizens have a right to run for political office.

YES | NO

### Comments:

All citizens – unless they are convicted or accused of any crime, are able to run for office as candidates of political parties. Only political parties can present candidates to run for office.

### References:

National Constitution  
Electoral Code

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

**NO:** A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

14c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

**Comments:**

Forming a political party on the provincial level in Argentina is quite easy. A new political organization needs four signatures for every one thousand citizens from the province expressing interest on the new organization.

The flexibility of the party system, allowed by the law and nurtured by political fragmentation, is bringing some difficulties as far as the effectiveness of the electoral regulator.

**References:**

Camara Nacional Electoral – [www.pjn.gov.ar](http://www.pjn.gov.ar)  
Law 23.298

**100:** While there is no guarantee of electoral success, political parties can form freely without opposition.

**75:**

**50:** Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

**25:**

**0:** Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

14d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

**Comments:**

The costs of running a campaign and the chance of winning if the candidate belongs to an opposition party is rather difficult.

In October 2005, the party in government invested huge amounts of money, compared with the opposition. Some experts said that the misuse of public resources created imbalance in the political playfield.

**References:**

Interview to Pablo Secchi (Poder Ciudadano)

Reports about the funding of October's 2005 election in [www.poderciudadano.org](http://www.poderciudadano.org)

**100:** While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

**75:**

**50:** Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

**25:**

**0:** Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

14e. In practice, an opposition party is represented in the legislature.

100 | 75 | **50** | 25 | 0

**Comments:**

The party in government has a strong majority in both houses. The legislative opposition is not great enough to oppose to the official majority. Also, opposition in congress is fragmented (there are more than 10 political parties in the senate and more than 25 in the house of representatives).

The debate on the reform of the Judicial Council on December 2005 showed that the opposition parties in congress were not able to change the will of the executive and its majority in congress.

**References:**

Poder Ciudadano (El Congreso bajo la lupa 2005)

[www.poderciudadano.org](http://www.poderciudadano.org)

**100:** The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

**75:**

**50:** The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

**25:**

**0:** The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

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## II-2. Election Integrity

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15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

**Comments:**

The election monitoring agency is based in the judicial branch, so it copies the structure of the courts. At the first level, parties and citizens may go to the federal justice, which oversees the electorate in 24 districts and the national level. When appealing, parties and citizens have to address to the national electoral chamber.

**References:**

[www.pjn.gov.ar](http://www.pjn.gov.ar)  
Electoral Code

**YES:** A YES score is earned if there is an agency or set of agencies/entities formally assigned to ensure the integrity of the election process.

**NO:** A NO score is earned if no agency or set of agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police.

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16. Is the election monitoring agency effective?

75

16a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

**Comments:**

An election monitoring agency is part of the judicial branch, thus independence is essentially guaranteed.

**References:**

National Constitution

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**YES:** A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies being contested in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no election monitoring agency.

16b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

There were no new appointments in the last year. Three members of the National Electoral Chamber were independently appointed – two of them in recent years through public contest run by the Judicial Council.

**References:**

[www.poderciudadano.org](http://www.poderciudadano.org)

**100:** Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

16c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Unfortunately, the staff is not large enough and it probably needs more training. Offices tend to be uncomfortable and do not have enough technological support to do an efficient and effective job. This is a general situation at the Judiciary Branch. Electoral institutions do not have enough budget to include new technological tools and train officials.

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

16d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** Reports are released to the public on a predictable schedule, without exceptions.

**75:**

**50:** Reports are released, but may be delayed, difficult to access, or otherwise limited.

**25:**

**0:** The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

16e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the fact that many investigations have taken place, there haven't been many penalties imposed as a result of the investigations. On the other hand, it is very difficult for citizens to access those proceedings.

**References:**

Interview with Pablo Secchi, Poder Ciudadano Foundation.

**100:** When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

**75:**

**50:** The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

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## 17. Are elections systems transparent and effective?

92

17a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

**Comments:**

The system is safe. Some fake IDs were found several times, however the percentage was not enough to change an electoral result.

**References:**

Interview with Pablo Secchi (Poder Ciudadano)  
Electoral Code

**100:** There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

**75:**

**50:** There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

**25:**

**0:** The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

17b. In law, election results can be contested through the judicial system.

YES | NO

**Comments:**

The electoral code established the right to challenge results through the electoral justice system.

**References:**

Electoral Code  
www.pjn.gov.ar

**YES:** A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

**NO:** A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

17c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

**Comments:**

The system is safe. There were no electoral appeals at a national level since redemocratisation in 1983.

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

**75:**

**50:** The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

**25:**

**0:** The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

17d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

**75:**

**50:** The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

**25:**

**0:** The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

17e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

**Comments:**

There are no expressed prohibitions. Informal observations have been taking place since 1983. Usually there are no international or domestic observations since the system legitimacy and credibility is high, compared to other systems in Latin America (especially in Central America and the Caribbean).

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**YES:** A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

**NO:** A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

17f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Secchi (Poder ciudadano)

**100:** Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

**75:**

**50:** Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

**25:**

**0:** Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

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89  
II-3. Political Financing

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18. Are there regulations governing political financing?

100

18a. In law, there are regulations governing private contributions to political parties.

YES | NO

**Comments:**

Private contributions are allowed. Some types of corporate donors are banned, for example foreign ones or trade unions. Individual donors can make donations.

Companies are allowed to donate up to 1 percent of allowed spending by law. Individuals can donate up to 0.5 percent of allowed spending. Companies and individuals can donate to more than one party or coalition.

The amount of allowed total spending for parties is calculated considering one peso per registered citizen (districts with a population less than 500,000 are treated as if they have a population of 500,000).

**References:**

Law 25.600/2002, funding of political parties and election campaigns

**YES:** A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

**NO:** A NO score is earned if there is no regulation of private contributions to political parties.

18b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

**Comments:**

Donations are limited: One percent of maximum allowed expense for corporate donors and 0.5 percent for individuals. Article 40 of Law 25.600 sets that total amount permitted to parties is calculated on the basis of the electoral register. Each registered citizen counts as one peso unless a district has a population smaller than 500,000. In these cases, the district is calculated as if it has 500,000 registered citizens.

One peso is worth US\$0.34 USD. For the 2003 presidential election, total allowed expense for each party was up to 10 million dollars.

**References:**

Law 25.600, funding of political parties and election campaigns

**YES:** A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

**NO:** A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

**Comments:**

Private contributions are allowed. Some types of corporate donors are banned (for example foreign corporate donors or trade unions). Individual donations are allowed.

Companies are allowed to donate up to 1 percent of allowed spending by law. Companies and individuals can donate to more than one party or coalition.

Some companies cannot make donations by law (ie. Foreign companies, those that have contracts with national, provincial or municipal governments).

The amount of allowed total spending for parties is calculated considering one peso per registered citizen. Districts with less than 500,000 registered citizens are calculated as if they have 500,000 registered citizens.

**References:**

Law 25.600 of Funding of political parties and election campaigns

**YES:** A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

**NO:** A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18d. In law, there are limits on total political party expenditures.

YES | NO

**Comments:**

Parties cannot spend more than is allowed by law. The calculations are based on the total population living in each of the 24 provincial districts.

**References:**

Law 25.600, funding of political parties and election campaigns

**YES:** A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

**NO:** A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

18e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

**Comments:**

Political parties and electoral coalitions must disclose financial contributions (private and public) and a list of expenses. They have to present a report ten days before the election and 60 days after it to the regulator.

**References:**

Law 25.600, funding of political parties and election campaigns

**YES:** A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

**NO:** A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

18f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

**References:**

Law 25.600, Funding of political parties and election campaigns

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

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## 19. Are the regulations governing political financing effective?

46

19a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | **25** | 0

**Comments:**

Individual donations were rare in past elections. The private sector was not a great donor. Many believe that disclosure prevents donations, others tend to believe that important individuals and companies prefer non-disclosure. It is said that "hidden" donations are still made to main parties, however it has not been proven by the regulator yet.

According to official reports published by parties, it can be concluded that parties tend to fund themselves with public funding and contributions made by candidates and members.

**References:**

Interview with Martin Astarita (Poder Ciudadano)

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

**75:**

**50:** Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

**Comments:**

For some companies, the limits might be low. There are ways to bypass limits to donations. Controlling mechanisms are still weak to deter this practice.

**References:**

Interview with Martin Astarita (Poder Ciudadano)

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

**Comments:**

According to experts, limits are not necessarily effective. For parties in the fragmented" opposition, access to donations is not easy.

The party in government tends to be at an advantage when it comes to collecting donations from individuals and the corporate sector. However, private donations in political campaigns have not been a massive issue for citizens during campaigns. The corporate sector tends to be more conservative than in other countries.

The party in government might be tempted to use public resources (funds, human resoruces, vehicles, phones, equipment) to fund their campaigns.

**References:**

Interview with Martin Astarita (Poder Ciudadano)

**100:** Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

19d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | **50** | 25 | 0

**References:**

Interview with Martin Astaría (Poder Ciudadano)

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

**75:**

**50:** The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

19e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

**References:**

Interview with Martin Astarita (Poder Ciudadano)

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

**75:**

**50:** The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

19f. In practice, contributions to political parties and candidates are audited.

100 | 75 | **50** | 25 | 0

**Comments:**

The auditing institution does not have enough technological resources, budget and human resources to be 100 percent effective. Auditing mechanisms are rather simple. However, when irregular behaviour has been detected, the regulator has acted as expected.

**References:**

Interview with Martin Astarita (Poder Ciudadano)

**100:** Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

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## 20. Can citizens access records related to political financing?

92

20a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | **75** | 50 | 25 | 0

**Comments:**

As the regulator imposed some penalties in recent years (i.e. suspension of public funding, lost of legal status), most political parties tend to disclose sources of funding according to periods established by Law 25.600 (annual balance and electoral funding reports)

**References:**

Interview with Martin Astarita (Poder Ciudadano)

**100:** Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

**25:**

**0:** Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

20b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The regulator designed software to standardise political parties' financial presentations in electoral periods. They were available online for six days, five days before the election last October 2005. Annual balances can also be found online.

Some parties published that information on their own Web sites.

**References:**

Interview with Martin Astarita (Poder Ciudadano)  
[www.pjn.gov.ar](http://www.pjn.gov.ar) (Electoral)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take two to four weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

20c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

More information is available on the Web, mainly on the Electoral Justice: [www.pjn.gov.ar](http://www.pjn.gov.ar) (Electoral) Web site.

**References:**

[www.pjn.gov.ar](http://www.pjn.gov.ar) (Electoral)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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Category III. Government Accountability

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III-1. <sup>71</sup>Executive Accountability

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21. In law, can citizens sue the government for infringement of their civil rights?

100

21. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

**References:**

National Constitution

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

**NO:** A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

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## 22. Can the chief executive be held accountable for his/her actions?

50

22a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | **50** | 25 | 0

### Comments:

President Kirchner does not give press conferences. Major newspapers and relevant journalists have criticized this practice. Typically, few ministers appear in the media (the chief of the cabinet and interior minister are usually interviewed). It is said that main incumbents in the executive branch must consult the secretary of media before conducting an interview.

Although the Chief of Cabinet does answer questions before Parliament on a monthly basis, such sessions have been criticized by opposition parties as superficial.

### References:

[www.lanacion.com.ar](http://www.lanacion.com.ar)  
[www.clarin.com](http://www.clarin.com)

**100:** The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

**75:**

**50:** The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

**25:**

**0:** The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

22b. In law, the judiciary can review the actions of the executive.

**YES** | NO

**References:**

National Constitution

**YES:** A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

22c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | **50** | 25 | 0

**Comments:**

The Supreme Court has taken some decisions in the last year. However, it might take five years or more to reach the Supreme Court. At the first levels, the judiciary tends to be slow. Some judges have been suspected of corruption and political dependence.

**References:**

Interview with Nicolas Dassen  
[www.fores.org](http://www.fores.org)

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

22d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | **0**

**References:**

Reports by Delia Ferreira Rubio on the utilization of decrees of necessity and urgency (DNU) by President Kirchner. [www.poderciudadano.org](http://www.poderciudadano.org) El Congreso bajo la lupa 2005”

**100:** The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

**75:**

**50:** The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

**25:**

**0:** The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

---

### 23. Is the executive leadership subject to criminal proceedings?

100

23a. In law, the heads of state and government can be prosecuted for crimes they commit.

**YES** | NO

**Comments:**

Congress has to start impeachment. After being removed by congress, the head of state and government (president) can be investigated, charged and prosecuted.

**References:**

National Constitution

**YES:** A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

23b. In law, ministerial-level officials can be prosecuted for crimes they commit.

**YES** | NO

**References:**

National Constitution  
Civil Code  
Code of Ethics in Public Office  
Law 25.188

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

---

## 24. Are there regulations governing conflicts of interest by the executive branch?

75

24a. In law, the heads of state and government are required to file a regular asset disclosure form.

**YES** | NO

**References:**

Law 25.188 (1999)  
[www.anticorruccion.jus.gov.ar](http://www.anticorruccion.jus.gov.ar)

**YES:** A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES.

**NO:** A NO score is earned if either the head of state or government is not required to disclose assets.

24b. In law, ministerial-level officials are required to file a regular asset disclosure form.

**YES** | NO

**References:**

Law 25.188 (1999)  
[www.anticorruccion.jus.gov.ar](http://www.anticorruccion.jus.gov.ar)

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

**NO:** A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

24c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

**References:**

Law 25.188 (1999)

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

24d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

**References:**

Law 25.188 (1999)

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

24e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

**References:**

Law 25.188

Convencion de las Naciones Unidas Contra la Corruption

**YES:** A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

24f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

24g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

24h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | **50** | 25 | 0

**Comments:**

Auditing mechanisms are rather simple.

**References:**

Interview with Pilar Arcidiacono (Poder Ciudadano)

**100:** Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Executive branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

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## 25. Can citizens access the asset disclosure records of the heads of state and government?

83

25a. In law, citizens can access the asset disclosure records of the heads of state and government.

**YES** | NO

**References:**

[www.anticorrupcion.gov.ar](http://www.anticorrupcion.gov.ar)

Interview with Pablo Secchi (Poder Ciudadano)

**YES:** A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

25b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | **50** | 25 | 0

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some additional delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

**100** | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 26. In practice, is the ruling party distinct from the state?

50

26. In practice, is the ruling party distinct from the state?

100 | 75 | 50 | 25 | 0

### Comments:

Argentina has a weakened party system. However political leaders use party structures to re-elect. Once in office, differences between party and the state are blurred. This is a cultural pattern when discussing political issues in Argentina.

Parties tend to use public resources to fund themselves illegally through the use of human resources, telephone, postal mail, emails, etc. There is a complex situation when a political leader in office runs for re-election. He/she doesn't know the difference between party campaigning and state campaigning.

### References:

Interview with Martin Astarita (Poder Ciudadano)

**100:** Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

**75:**

**50:** The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

**25:**

**0:** The government is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

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## III-2. Legislative Accountability

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### 27. Can members of the legislature be held accountable for their actions?

92

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27a. In law, the judiciary can review laws passed by the legislature.

YES | NO

**Comments:**

If there is unconstitutional risk, a law can be reviewed by the judiciary (Supreme Court of Justice).

**References:**

National Constitution

**YES:** A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

27b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

**References:**

Interview with María Julia Pérez Tort (Poder Ciudadano)

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

27c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

**Comments:**

A national legislator can be impeached and removed by congress. After losing privileges, he/she can be subject to criminal proceedings. If congress does not remove him/her, the judiciary has to wait until the end of his/her term.

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**YES:** A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

**NO:** A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

---

28. Are there regulations governing conflicts of interest by members of the national legislature?

50

28a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

**References:**

Law 25.188

**YES:** A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any member of the legislature is not required to disclose assets.

28b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs

**YES:** A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

28c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

**References:**

Law 25.188

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

28d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

**References:**

Law 25.188

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

28e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

28f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

28g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Asset disclosure forms are filed. However, there is no established auditing mechanism.

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Legislative branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

---

29. Can citizens access the asset disclosure records of members of the national legislature?

58

29a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

**References:**

Law 25.188

**YES:** A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

29b. In practice, citizens can access these records within a reasonable time period.

**Comments:**

Poder Ciudadano went to the court in 2000 to access senators' asset disclosure forms after the senate denied his request. Since then, Poder Ciudadano regularly has access to them.

There are no studies about what happens when an individual ask for the information. In the case of the house of representatives, the formal proceeding through the administrative secretary does not work. When requested, many representatives might send their asset disclosure forms the the requestor. However, that is not the proper proceeding.

Some legislators voluntarily publish their asset disclosure forms on the Web.

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

29c. In practice, citizens can access these records at a reasonable cost.

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

## 30. Can citizens access legislative processes and documents?

75

30a. In law, citizens can access records of legislative processes and documents.

YES | NO

### References:

National Constitution

**YES:** A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

**NO:** A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

30b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

Legislative information is available on the Web site. Some administrative information is difficult to access.

### References:

Interview with Pablo Secchi (Poder Ciudadano)  
[www.poderciudadano.org](http://www.poderciudadano.org) (El Congreso bajo la lupa 2005)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

When it is possible to access to the requested information, there are usually no costs. There is no information about what happens when ordinary citizens ask for huge pieces of documentation.

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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69  
III-3. Judicial Accountability

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31. Are judges appointed fairly?

92

31a. In practice, there is a transparent procedure for selecting national-level judges.

YES | NO

**References:**

NC  
Law 24.937 (1997) of creation of the Judicial Council

**YES:** A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages.

**NO:** A NO score is given if there is no formal process of selection or the process is conducted without public oversight.

31b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | **75** | 50 | 25 | 0

**References:**

[www.poderciudadano.org](http://www.poderciudadano.org)

Una Mirada Atenta Sobre el Consejo de la Magistratura,” Poder Ciudadano Foundation’s publication.

**100:** National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

**75:**

**50:** Most national-level judges selected meet these qualifications, with some exceptions.

**25:**

**0:** National-level judges are often unqualified due to lack of training or experience.

31c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

**YES** | NO

**Comments:**

The Executive needs the confirmation of the Senate for national-level judicial appointments. In the case of judges for the Supreme Court and federal judges, President Kirchner opened a consultation process with civil society through decree 1172/2003.

**References:**

Interview with Agustina Rocca (Poder Ciudadano Foundation)

**YES:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

**NO:** A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

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32. Can members of the judiciary be held accountable for their actions?

32a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

**Comments:**

It's a general principle of law, called principle of consistency. It is included in the procedural rules.

**References:**

Interview with Agustina Roca, Poder Ciudadano Foundation

**YES:** A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

**NO:** A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

32b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Agustina Roca, Poder Ciudadano Foundation

**100:** Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

**75:**

**50:** Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

**25:**

**0:** Judges commonly issue decisions without formal explanations.

32c. In law, there is an ombudsman (or equivalent agency or mechanism) for the national-level judicial system.

YES | NO

**Comments:**

The Council of Justice is the agency responsible for the judges' discipline, the beginning of the processes of magistrates' removals, their suspension, and the beginning of the corresponding accusations.

It is responsible, as well, for the development of the judiciary's rules and all those mechanisms that may guarantee the independence of judges.

**References:**

NC (art 114) law 24.937 and modifications- Laws 24.939 and 25.669

**YES:** A YES score is earned if there is a ombudsman or equivalent mechanism for the judicial system. A judicial ombudsman is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

**NO:** A NO score is earned if no agency or mechanism is specifically mandated to act as a judicial ombudsman.

32d. In law, the judicial ombudsman (or equivalent agency or mechanism) is protected from political interference.

YES | NO

**Comments:**

According to law 24.937, the Council of Magistrature is a permanent agency of the judicial branch.

**References:**

NC (art 114) law 24.937 and modifications- Laws 24.939 and 25.669

**YES:** A YES score is earned if there are formal rules establishing that the judicial ombudsman is operationally independent from political interference by the executive, legislative or judicial branches.

**NO:** A NO score is earned if there are no formal rules establishing the independence of the judicial ombudsman. A NO score is given if the judicial ombudsman function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

32e. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

[http://www.lanacion.com.ar/EdicionImpresa/politica/nota.asp?nota\\_id=839311](http://www.lanacion.com.ar/EdicionImpresa/politica/nota.asp?nota_id=839311)

**100:** The ombudsman aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The ombudsman is fair in its application of this power.

**75:**

**50:** The ombudsman will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The ombudsman, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The ombudsman rarely investigates on its own or cooperates in other agencies' investigations, or the ombudsman is partisan in its application of this power.

32f. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

**References:**

Una Mirada Atenta Sobre el Consejo de la Magistratura," Poder Ciudadano's publication

**100:** When rules violations are discovered, the ombudsman is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The ombudsman enforces rules, but is limited in its effectiveness. The ombudsman may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The ombudsman does not effectively penalize offenders. The ombudsman may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The ombudsman may be partisan in its application of power.

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### III-4. Budget Processes

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33. Can the legislature provide input to the national budget?

33a. In law, the legislature can amend the budget.

YES | NO

**References:**

NC

**YES:** A YES score is earned if the legislature has the power to add or remove items to the national government budget.

**NO:** A NO score is earned if the legislature can approve, but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

33b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

**Comments:**

Even though the legislature approves most significant expenditures, there are some exceptions. Thanks to these exceptions, the government may introduce modifications to the approved budget, with great discretion.

According to the Ley de Administración Financiera,” and it’s last modifications introduced by government, the chief of the cabinet may substantially modify the approved budget. In this case, he is not obliged to justify those expenditures. On the other hand, government may approve significant expenditures using “Decretos de Necesidad y Urgencia” in case of emergency or an unexpected situation. This decree should be reviewed by congress, specifically, by a bicameral commission. Unfortunately, this commission still haven’t been created, although government has been making modifications and deciding expenditures on its own with, great discretion.

Decretos de necesidad y urgencia, superpoderes, fondos fiduciarios, entidades que se encuentran por fuera del presupuesto de la APN reforma a la ley de administración financiera, que otorga al jefe de Gabinete facultades permanentes para modificar el presupuesto sin control del Congreso.

**References:**

Cada cual, ¿atiende su juego?”, Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento’s publication. [http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=829046&high=superpoderes](http://buscador.lanacion.com.ar/Nota.asp?nota_id=829046&high=superpoderes)  
[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=828570&high=superpoderes](http://buscador.lanacion.com.ar/Nota.asp?nota_id=828570&high=superpoderes)

**100:** All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

**75:**

**50:** Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive’s personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

33c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

**References:**

Cada cual, ¿atiende su juego?", Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento publication. "Índice Latinoamericano de Transparencia Presupuestaria 2005" Poder Ciudadano Foundation.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

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### 34. Can citizens access the national budgetary process?

50

34a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

**Comments:**

The executive branch is responsible for the budget's formulation. In this stage, many actors exert pressure on the executive in order to be favored. Most of these negotiations are closed to the public.

Before the budget's final approval (the legislature's responsibility), there is a debate period from September 15th to December 10th. During this time, the legislature may introduce modifications in the original budget project. The debates are developed in each "Comisión de Presupuesto y Hacienda" (complete information about these debates are not available) and in both chambers (in this case, it is possible to access to the shorthand versions of the debates).

**References:**

Cada cuál, ¿Atiende su juego?", Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento's publication. Pablo Secchi, Poder Ciudadano Foundation

**100:** Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

**75:**

**50:** There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

**25:**

**0:** Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

34b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | **25** | 0

**Comments:**

CSOs' impact is marginal on the budget process; that said, budget information is public and citizens can access the budget bill sent by the Executive to Congress. Budget hearings are of marginal value and the budget is usually negotiated directly between the executive and Congressional leaders.

**References:**

Índice Latinoamericano de Transparencia Presupuestaria 2005" Poder Ciudadano Foundation.

**100:** Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

**75:**

**50:** Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

**25:**

**0:** Citizens or CSOs have no formal access to provide input to the budget debate.

34c. In practice, citizens can access itemized budget allocations.

100 | 75 | **50** | 25 | 0

**Comments:**

In this case, the Access to Information Law will be a great mechanism to improve citizens' access to itemized budget allocations.

**References:**

Índice Latinoamericano de Transparencia Presupuestaria, 2005” Poder Ciudadano Foundation

**100:** Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

**75:**

**50:** Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

**25:**

**0:** Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

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35. In law, is there a separate legislative committee which provides oversight of public funds?

100

35. In law, is there a separate legislative committee which provides oversight of public funds?

**YES** | NO

**References:**

[www.diputados.gov.ar](http://www.diputados.gov.ar) – Comision de Presupuesto y Hacienda”

[www.senado.gov.ar](http://www.senado.gov.ar) – “Comision de Presupuesto y Hacienda”

**YES:** A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

**NO:** A NO score is earned if no such body exists. A NO score is earned if there is a body executing this function but it is not under the direction of the legislature.

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36. Is the legislative committee overseeing the expenditure of public funds effective?

31

36a. In practice, department heads regularly submit reports to this committee.

**Comments:**

The problem has to do with the gulf between the formal procedures and what occurs in practice. As the Executive has a clear majority in both chambers of Congress, the formal process works but does not have a real impact in enhancing legislative budget oversight.

**References:**

Cada cuál, ¿atiende su juego?”, Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento’s publication.

**100:** Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

**75:**

**50:** Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

**25:**

**0:** There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

36b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee’s work to roughly the same extent as any other member of the committee.

**75:**

**50:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members’ ability to shape the committee’s activities.

**25:**

**0:** The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

36c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

**75:**

**50:** This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

**25:**

**0:** This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

36d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pablo Secchi (Poder Ciudadano)

**100:** When irregularities are discovered, the committee is aggressive in investigating the government.

**75:**

**50:** The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

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## IV-1. <sup>74</sup>Civil Service Regulations

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37. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

37a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

**YES** | NO

**Comments:**

According to Law 25.188, all civil servants must respect ethical values related to honesty, austerity, rectitude and taking care of the state's resources, for example. On the other hand, the Civil Service Ethics Code disallows civil servants from participating in activities or interests which may affect their independence.

**References:**

Public Ethics Law (Law 25.188), Decree 862/01, Decree 164/99,  
Civil Service Ethics Code (Decree 41/99),  
Civil Service Law (Law 25.164), Inter-American Convention Against Corruption (Law 24.759)  
<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

**NO:** A NO score is earned if there are no formal rules establishing an independent civil service.

37b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

**YES** | NO

**Comments:**

According to Law 25.188, civil servants, their relatives and friends may not benefit from public services and facilities. According to the Civil Service Ethics Code, civil servants may not appoint relatives or friends into their organizations without proving their abilities for the assigned position.

**References:**

Public Ethics Law (Law 25.188), Decree 164/99, Civil Service Ethics Code (Decree 41/99), Civil Service Law (Law 25.164)

**YES:** A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

**NO:** A NO score is earned if no such regulations exist.

37c. In law, there is an independent redress mechanism for the civil service.

**YES** | NO

**References:**

Rules of administrative investigations, decree 467/99  
Interview with Nicolás Dassen, Lawyer, Expert in Anticorruption Affairs

**YES:** A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

**NO:** A NO score is earned if no such mechanism exists.

37d. In law, civil servants convicted of corruption are prohibited from future government employment.

**YES** | NO

**Comments:**

According to Law 25.164, convicted felons are prohibited from working in the national or provincial civil service.

**References:**

Civil Service Law (25.164)

**YES:** A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

**NO:** A NO score is earned if no such rules exist.

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38. Is the law governing the administration and civil service effective?

38a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

In 2006, government put pressure on Alejandro Rúa, Director of the Especial Unit that was in charge of the investigation of the terrorist attack to the AMIA (Asociación Mutual Isarelita argentina), because he accused the government of delaying the investigation. Eventually Rúa resign his position in the Especial Unit. This example shows how civil servants may not be protected from political interference.

**References:**

<http://www.nuevasion.com.ar/sitio/nuevasion/MostrarNoticia.asp?edicion=53&seccion=22&noticia=2960>  
[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=786912&high=alejandro%20r%Faa](http://buscador.lanacion.com.ar/Nota.asp?nota_id=786912&high=alejandro%20r%Faa)  
[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=785849&high=alejandro%2520r%25FAa](http://buscador.lanacion.com.ar/Nota.asp?nota_id=785849&high=alejandro%2520r%25FAa)

**100:** Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

**75:**

**50:** Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

**25:**

**0:** Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

38b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the Civil Society's report (Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption), there are many irregularities in the way the legislature and the executive and judicial branches appoint civil servants (nepotism, cronyism and patronage).

**References:**

Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis. Civil Society's Report.  
[www.poderciadano.org](http://www.poderciadano.org)

**100:** Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

38c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

**Comments:**

According to the Civil Society's Report (Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption), there are many irregularities in the way the legislature, and the executive and judicial Branches appoint civil servants (nepotism, cronyism, and patronage).

**References:**

Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis. Civil Society's Report.  
[www.poderciadadano.org](http://www.poderciadadano.org)

**100:** Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

**75:**

**50:** Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

**25:**

**0:** Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

38d. In practice, civil servants have clear job descriptions.

100 | **75** | 50 | 25 | 0

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

**75:**

**50:** Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

**25:**

**0:** Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

38e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nicolás Dassen, expert in anticorruption affairs.

**100:** Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

**75:**

**50:** Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

**25:**

**0:** Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

38f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

**Comments:**

The Civil Service National Office publishes all the information related to civil service positions in the National Public Administration via the Internet. The senate publishes its lists of civil servant positions on its Web Site (Information about permanent staff, temporary staff, permanent staff authorities and hired services.) The House of Deputies does it as well. In this case the information published refers to permanent and temporary staff.

**References:**

<http://www.sgp.gov.ar/sitio/empleo/movimientos/main.html>  
<http://www.senado.gov.ar/web/acts/administrativa/orgrh.php>  
<http://www.diputados.gov.ar/>

**100:** The government publishes such a list on a regular basis.

**75:**

**50:** The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

**25:**

**0:** The government rarely or never publishes such a list, or when it does it is wholly incomplete.

38g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | **25** | 0

**Comments:**

The opening of the summaries depends on the political will.

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs

**100:** The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

**75:**

**50:** The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

**25:**

**0:** The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

38h. In practice, in the past year, the government has paid civil servants on time.

100 | **75** | 50 | 25 | 0

**Comments:**

According to the information analyzed, the government has paid civil servants on time in the past year. However, the salaries paid are often too low for civil servants, based on their responsibilities and tasks. For this reason, they sometimes go on strike, pressing the government to increase salaries.

**References:**

<http://www.clarin.com/diario/2005/12/13/elpais/p-00701.htm>

**100:** In the past year, no civil servants have been paid late.

**75:**

**50:** In the past year, some civil servants have been paid late.

**25:**

**0:** In the past year, civil servants have frequently been denied due pay.

38i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

**Comments:**

In the last months the agriculture secretary, Miguel Campos, has been under investigation for possible misuse of public resources. He continues to keep his position, and the government has said he won't be removed.

**References:**

<http://www.clarin.com/diario/2006/04/21/elpais/p-01401.htm>

<http://www.infobae.com/notas/nota.php?Idx=250683&IdxSeccion=100799>

Interview with Nicolas Dassen, expert in anti-corruption affairs.

**100:** A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

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39. Are there regulations addressing conflicts of interest for civil servants?

39a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

**Comments:**

The Ethics Code disallows civil servants from participating in decisions that may be influenced by conflicts of interests.

**References:**

Public Ethics Law (Law 25.188),  
Civil Service Ethics Code (Decree 41/99),  
Civil Service Law (Law 25.164), Inter-American Convention Against Corruption (Law 24.759), Ministries Law (Decree 438/92),  
Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, First Round of Analysis. Official Report.  
<http://infoleg.mecon.gov.ar/infolegInternet>  
[www.anticorruccion.jus.gov.ar](http://www.anticorruccion.jus.gov.ar)

**YES:** A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

**NO:** A NO score exists if no such requirements exist in regulation or law.

39b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

**Comments:**

There no restrictions for civil servants entering the private sector after leaving the government.

**References:**

Interview with Nicolás Dassen, Expert in Anticorruption Affairs.

**YES:** A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

39c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

**Comments:**

The Public Ethics Law defines the rules regarding gifts for civil servants (Chapter I disallowing them from receiving benefits or gifts for performing their duties). The Civil Service Ethics Code establishes rules regarding gifts and other benefits, as well (Chapter I).

**References:**

Public Ethics Law (Law 25.188),  
Civil Service Ethics Code (Decree 41/99), Inter-American Convention Against Corruption (Law 24.759),  
<http://infoleg.mecon.gov.ar/infolegInternet>.

**YES:** A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

**NO:** A NO score is earned if there are no such guidelines or regulations.

39d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no regulations.

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

39f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

**75:**

**50:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

**25:**

**0:** Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

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40. Can citizens access the asset disclosure records of senior civil servants?

40a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

**Comments:**

According to Chapter III of the Public Ethics Law, civil servants must present their asset disclosure records within the first 30 days from their first day in office, update it yearly and present a final record within 30 days after leaving the position.

Citizens can access asset disclosure records by asking the corresponding department. Access rules are based on the department's internal regulations.

**References:**

Public Ethics Law (25.188),  
Civil Service Ethics Code (Decree 41/99),  
Inter-American Convention Against Corruption (24.759), Acordada N°1/2000 Supreme Court (Regulation about asset disclosure records for the Judiciary Branch);  
Rules of the Senate (Art 49).

Declaraciones Juradas de Funcionarios Públicos Anticorruption Office publication, Strategies for Transparency.

<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

**NO:** A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

40b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

According to information given by Poder Ciudadano Foundation, it can be accessed within a reasonable time period when asked of the Senate. On the other hand, it hasn't been possible to access the asset disclosure records of senior civil servants related to house of representatives members and the judicial branch. In both cases, Poder Ciudadano hasn't had an affirmative answer when asking for that information.

Some legislators voluntarily publish their asset disclosure forms on the Internet.

In regards to the executive branch, citizens can access the asset disclosure records of senior civil servants within a reasonable time period, through the Internet ([www2.jus.gov.ar/minjus/oac/cgi/register.htm](http://www2.jus.gov.ar/minjus/oac/cgi/register.htm)).

**References:**

Poder Ciudadano Foundation;  
[buscador.lanacion.com.ar/Nota.asp?nota\\_id=822073&high=oficina%2520anticorrupci%25F3n](http://buscador.lanacion.com.ar/Nota.asp?nota_id=822073&high=oficina%2520anticorrupci%25F3n)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

40c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

[www.poderciudadano.org](http://www.poderciudadano.org)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## IV-2. Whistle-blowing Measures

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41. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

63

41a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

**References:**

Criminal Procedural Code; Law 25.764 (Protection of witnesses and Accused National Program) Inter-American Convention Against Corruption (Law 24.759)

Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis. Civil Society's Report.

<http://infoleg.mecon.gov.ar/infolegInternet>

[www.poderciudadano.org](http://www.poderciudadano.org)

**YES:** A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for public-sector whistleblowers.

41b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

**Comments:**

It's well known that a member of the Justice General Inspectorate (Inspección General de Justicia) pressed charges against a superior and was removed to another head office of the department, losing rank and responsibilities as punishment. The report also notes the experiences of some civil servants whose contracts were not renewed because they reported cases of corruption.

**References:**

[www.poderciudadano.org](http://www.poderciudadano.org)

**100:** Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

41c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

**References:**

Criminal Procedural Code; Law 25.764 (Protection of witnesses and Accused National Program)  
Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis. Civil Society's Report.

**YES:** A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for private-sector whistleblowers.

41d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

**Comments:**

There were no such cases identified in the press.

**References:**

Interview with Nicolás Dassen, lawyer, expert in anti-corruption affairs

**100:** Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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42. Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?

69

42a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Both the Anticorruption Office and the National Administrative Investigations Attorney have professional and full time staffs, highly recognized by their peers.

**References:**

Interview with Nicolàs Dassen, lawyer, expert in anti-corruption affairs

**100:** The agency/entity has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

42b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

Unfortunately, witnesses protection and the protection of the Accused National Program does not receive appropriate funding, According to the Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis.

**References:**

Interview with Nicolàs Dassen, lawyer, expert in anti-corruption affairs,  
Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis,  
Civil Society's Report

**100:** The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

42c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nicolàs Dassen, lawyer, expert in anti-corruption affairs.

**100:** The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

42d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis. Civil Society's Report.

[www.poderciudadano.org](http://www.poderciudadano.org)

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

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66  
IV-3. Procurement

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43. Is the public procurement process effective?

93

43a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

**Comments:**

The Ethics Code disallows civil servants from participating in decisions that may be influenced by conflicts of interests.

**References:**

Public Ethics Law (Law 25.188); Civil Service Ethics Code (Decree 41/99), Public Employment National Law (Law 25.164); Public Ministry Organic Law (Law 24.946 ); Acquisition, and procurement of public goods and services Regulation (Decree 436/00), Inter-American Convention Against Corruption (Law 24.759), Public Procurement Regulation (Decree 1023/01); Vulnerable Public Contracting, published by Poder Ciudadano Foundation <http://infoleg.mecon.gov.ar/infolegInternet>  
[www.poderciudadano.org](http://www.poderciudadano.org)

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private gain for public procurement officials.

**NO:** A NO score is earned if no such rules exist.

43b. In law, there is mandatory professional training for public procurement officials.

YES | NO

**References:**

Public Employment National Law (Law 25.164) – DEL FONDO PERMANENTE DE CAPACITACION Y RECALIFICACION LABORAL”  
<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

**NO:** A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, or voluntary.

43c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Gaston Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

**100:** Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

**75:**

**50:** Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

43d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

**References:**

Public Ethics Law (25.188),  
Civil Service Ethics Code (Decree 41/99),  
Inter-American Convention Against Corruption (24.759)

**YES:** A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

**NO:** A NO score is earned if no such mandate exists.

43e. In law, major procurements require competitive bidding.

YES | NO

**Comments:**

According to Decree 1023/01 and Decree 436/00, procurements of over 75,000 pesos require competitive bidding.

**References:**

Acquisition and procurement of public goods and services Regulation (Decree 436/00);

Public Procurement Regulation (Decree 1023/01);

Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis.

Civil Society's Report.

Interview with Gaston Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation.

<http://infoleg.mecon.gov.ar/infolegInternet>

<http://www.poderciudadano.org>

**YES:** A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

**NO:** A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

43f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

**References:**

Decree 1023/01,

Interview with Gaston Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

**YES:** A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

**NO:** A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

43g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

**Comments:**

According to Decree 1023/01, unsuccessful bidders can instigate an official review of the process on a case-by-case basis. On the other hand, Decree 436/00 says that the opportunity exists. In this case, the recusal must be done within the first five days after the participants were notified about the resolution of the process.

**References:**

Decree 1023/01; Decree 436/00; Interview with Gaston Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if there is a formal appeal process for unsuccessful bidders.

**NO:** A NO score is earned if no such process exists.

43h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

**YES** | NO

**Comments:**

Unsuccessful bidders can challenge procurement decisions in a court of law. The mechanism is defined in the bidding terms of each process, although a free process is not guarantee in all cases.

**References:**

Decree 1023/01,  
Decree 436/00,

Interview with Gaston Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

**YES:** A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

**NO:** A NO score is earned if no such process exists.

43i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

**YES** | NO

**Comments:**

Both decrees prohibit convicted felons from participating in procurement bids.

**References:**

Decree 1023/01,  
Decree 436/00,

Interview with Gaston Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

**NO:** A NO score is earned if no such process exists.

43j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | **50** | 25 | 0

**Comments:**

The National Contracting Office has an elaborate registry of companies guilty of corruption. However, sometimes when companies are accused of major violations of procurement regulations, they change their names in order to participate in future procurement bids. This makes it very difficult to carry out an effective mechanism to prohibit those companies from participating in future procurement bids.

**References:**

Interview with Gastón Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

**100:** A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

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#### 44. Can citizens access the public procurement process?

63

44a. In law, citizens can access public procurement regulations.

**YES** | NO

**Comments:**

Public procurement regulations must be published on the Transactions National Office Web site. Transparency and access to information are two of the main principles listed by both regulations.

**References:**

Decree 1023/01,

Decree 436/00,

Interview with Gaston Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if procurement rules are, by law, open to the public.

**NO:** A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

44b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

**Comments:**

Public procurement regulations must be published on the Transactions National Office Web site. Transparency and access to information are two of the main principles listed by both regulations.

**References:**

Decree 1023/01,

Decree 436/00,

Interview with Gaston Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

44c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Most of them are published through Internet, on the National Contracting Office's Web Site ([www.argentinacompra.gov.ar](http://www.argentinacompra.gov.ar)). However, and according to the Vulnerable Public Contracting (Risk Map) published by Poder Ciudadano Foundhe at, tability to access information related to public procurements is weak on four points: There is no relationship between practice and what the rules say, the public departments are not used to publish information in general, only a few of them update the information in their Web sites and there is no free access to the information related to the execution of the contracts.

**References:**

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=804217&high=contrataciones%20p%FAblicas](http://buscador.lanacion.com.ar/Nota.asp?nota_id=804217&high=contrataciones%20p%FAblicas)

[www.poderciudadano.org](http://www.poderciudadano.org)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Most of them are published through the Internet.

**References:**

Interview with Gastón Rosenberg, responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation [www.argentinacompra.gov.ar](http://www.argentinacompra.gov.ar)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44e. In practice, major public procurements are widely advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

Most of them are published through Internet, on the National Contracting Office's Web Site ([www.argentinacompra.gov.ar](http://www.argentinacompra.gov.ar)). However, and according to the Vulnerable Public Contracting (Risk Map) published by Poder Ciudadano Foundhe at, tability to access information related to public procurements is weak on four points: There is no relationship between practice and what the rules say, the public departments are not used to publish information in general, only a few of them update the information in their Web sites and there is no free access to the information related to the execution of the contracts.

**References:**

Interview with Gastón Rosenberg, responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation [http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=804217&high=contrataciones%20p%FAblicas](http://buscador.lanacion.com.ar/Nota.asp?nota_id=804217&high=contrataciones%20p%FAblicas)  
www.poderciadadano.org

**100:** There is a formal process of advertising public procurements. This may include a government Web site, newspaper advertising, or other official announcements. All major procurements are advertised in this way.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective.

**25:**

**0:** There is no formal process of advertising major public procurements or the process is superficial and ineffective.

44f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | **25** | 0

**Comments:**

Most of them are published through Internet, on the National Contracting Office's Web Site ([www.argentinacompra.gov.ar](http://www.argentinacompra.gov.ar)). However, and according to the Vulnerable Public Contracting (Risk Map) published by Poder Ciudadano Foundhe at, tability to access information related to public procurements is weak on four points: There is no relationship between practice and what the rules say, the public departments are not used to publish information in general, only a few of them update the information in their Web sites and there is no free access to the information related to the execution of the contracts.

**References:**

Interview with Gastón Rosenberg, responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation [http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=804217&high=contrataciones%20p%FAblicas](http://buscador.lanacion.com.ar/Nota.asp?nota_id=804217&high=contrataciones%20p%FAblicas)  
www.poderciadadano.org

**100:** Records of public procurement results are publicly available through a formal process.

**75:**

**50:** Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

**25:**

**0:** This information is not available to the public through an official process.

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## 45. Is the privatization process effective?

83

45a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

### Comments:

Government did not privatize any state-owned assets during the study period. Most of the privatization processes were developed during 1989-1994.

Privatizations were regulated by the State Reform Law (Law 23.696) and Decree 287/92. Each privatization process had its own regulations.

It's important to say that most of the privatizations during 1989-1994 were developed with great discretion, without competitive selection processes or free access to information about the proceedings.

### References:

<http://mepriv.mecon.gov.ar/>

interview with Virginia Lencina, Poder Ciudadano Foundation

**YES:** A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

**NO:** A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

45b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

### References:

Public Ethic Law (Law 25188)

Decree 164/99

[infoleg.mecon.gov.ar](http://infoleg.mecon.gov.ar)

**YES:** A YES score is earned if there are formal regulations defining and regulating conflicts of interest for government officials involved in privatization.

**NO:** A NO score is earned if there are no such formal regulations.

45c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | **50** | 25 | 0

**Comments:**

Government did not privatize any state-owned assets during the study period. Most of the privatization processes were developed during 1989-1994.

It's important to say that most of the privatizations during 1989-1994 were developed with great discretion, without competitive selection processes or free access to information about the proceedings.

However, if a privatization were to happen today, it would be difficult to enforce conflicts of interest regulations. It would depend on the particular government official's will to confirm that there were no conflicts between the process and his/her own personal interests.

**References:**

[www.mepriv.mecon.gov.ar](http://www.mepriv.mecon.gov.ar)

Interview with Virginia Lencina, Poder Ciudadano Foundation

**100:** Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

**75:**

**50:** Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

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## 46. Can citizens access the terms and conditions of privatization bids?

75

46a. In law, citizens can access the terms and conditions of privatization bids.

**YES** | NO

**Comments:**

Government did not privatize any state-owned assets during the study period. Most of the privatization processes were developed during 1989-1994.

Privatizations were regulated by the State Reform Law (Law 23.696) and Decree 287/92. Each privatization process had its own regulations.

It's important to say that most of the privatizations during 1989-1994 were developed with great discretion, without competitive selection processes or free access to information about the proceedings.

Were a privatization process to occur today, the rules that would regulate access to the information would be: Public Ethics Law (Law 25.188), Administrative Process Law (Law 19.549), Carta Compromiso con el Ciudadano (Decree 229/00), and Decree 1172/03.

**References:**

[www.mepriv.mecon.gov.ar](http://www.mepriv.mecon.gov.ar)

Interview with Gastón Rosenberg, Poder Ciudadano Foundation

**YES:** A YES score is earned if there is a formal process of publishing the details of privatization bids that makes information available to all citizens.

**NO:** A NO score is earned if there is no formal publication process, or if any citizens are excluded by law from accessing this information.

46b. In law, the government is required to publicly announce the results of privatization decisions.

**YES** | NO

**Comments:**

Government did not privatized any state-owned assets during the study period. Most of the privatization processes were developed during 1989-1994.

Privatizations were regulated by the State Reform Law (Law 23.696) and Decree 287/92. Each privatization process had its own regulations.

It's important to say that most of the privatizations during 1989-1994 were developed with great discretion, without competitive selection processes or free access to information about the proceedings.

However, were a privatization process to occur today, the rules that would regulate access to the information would be: Public Ethics Law (Law 25.188), Civil Service Ethics Code (Decree 41/99), Administrative Process Law (Law 19.549), Carta Compromiso con el Ciudadano (Decree 229/00), Public Procurement Regulation (Decree 1023/01), Acquisition, and procurement of public goods and services Regulation (Decree 436/00), and Decree 1172/03.

**References:**

[www.mepriv.mecon.gov.ar](http://www.mepriv.mecon.gov.ar)

Interview to Gastón Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

46c. In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.

**Comments:**

Government did not privatized any state-owned assets during the study period. Most of the privatization processes were developed during 1989-1994.

It's important to say that most of the privatizations during 1989-1994 were developed with great discretion, without competitive selection processes or free access to information about the proceedings.

However, were a privatization process to occur today, there would be four types of weaknesses associated with the access to information related to the process. There is way to enforce in practice what the rules say; public agencies are not used to publishing information in general; only a few of them update the information on their websites; and last but not least, there is no free access to information related to the execution of the contracts. These problems are the same identified in the procurement processes.

**References:**

[www.mepriv.mecon.gov.ar](http://www.mepriv.mecon.gov.ar)

Interview with Gastón Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

46d. In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.

**Comments:**

Government did not privatized any state-owned assets during the study period. Most of the privatization processes were developed during 1989-1994.

If it were to happen today, public procurement mechanisms would be used. In this case, most of the information would be published through on the Internet.

**References:**

[www.mepriv.mecon.gov.ar](http://www.mepriv.mecon.gov.ar)

Interview to Gastón Rosenberg, Responsible for the Transparent Public Procurement Program, Poder Ciudadano Foundation

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## Category V. Oversight and Regulation

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### V-1. <sup>85</sup>National Ombudsman

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47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

**Comments:**

According to the National Constitution (Article 86), the National Ombudsman is an independent, autonomous organization overseen by the National Congress. The ombudsman's term runs for five years, and may extend to a second term.

**References:**

Ombudsman Law (Law 24.284 modified by Law 24.379); NC (art 86).

<http://infoleg.mecon.gov.ar/infolegInternet>

<http://www.senado.gov.ar/web/interes/constitucion/cuerpo1.php>

**YES:** A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

**NO:** A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

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48. Is the national ombudsman effective?

48a. In law, the ombudsman is protected from political interference.

YES | NO

**Comments:**

According to the NC, the Ombudsman is an independent entity that may act with autonomy.

**References:**

Law 24.284 modified by Law 24.379; NC.

<http://infoleg.mecon.gov.ar/infolegInternet>

<http://www.senado.gov.ar/web/interes/constitucion/cuerpo1.php>

**YES:** A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

48b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

There were no reported cases in the media.

**References:**

Interview with Maria Julia Perez Tort (coordinator of the Action for Justice Department, Poder Ciudadano Foundation).

**100:** This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

**75:**

**50:** This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

48c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

There have been no cases of removal without significant justification

**References:**

Interview with Pilar Arcidiacono, Poder Ciudadano Foundation

**100:** The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

48d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pilar Arcidiacono, Poder Ciudadano Foundation

**100:** The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

48e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pilar Arcidiacono, Poder Ciudadano Foundation

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

48f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The Ombudsman Agency receives regular funding from its own budget, donations and special benefits.

There are no known cases about funding problems in this agency.

**References:**

<http://www.defensor.gov.ar/institucion/organizacion-sp.htm>

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

48g. In practice, the agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

**Comments:**

Before May 31 of each year, the National Ombudsman submits an activity report to congress, which is published in the Official Bulletin and may be accessed via the Internet.

**References:**

<http://www.defensor.gov.ar/informes/infoanual-sp.htm>

**100:** The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

48h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

It's the Ombudsman's main responsibility to initiate investigations when it is suspected that rights, or constitutional guarantees, have been violated. In Argentina, many judicial cases have been the result of the Ombudsman's primary investigations.

**References:**

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=753111&high=ombudsman](http://buscador.lanacion.com.ar/Nota.asp?nota_id=753111&high=ombudsman)

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=791557&high=ombudsman](http://buscador.lanacion.com.ar/Nota.asp?nota_id=791557&high=ombudsman)

**100:** The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

**75:**

**50:** The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

48i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the national ombudsman does not impose penalties on offenders. However, this authority sometimes cooperates” with the justice system initiating and developing investigations.

**References:**

[www.defensor.gov.ar/institucion/quees-sp.htm](http://www.defensor.gov.ar/institucion/quees-sp.htm)

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

48j. In practice, the government acts on the findings of the agency (or agencies).

100 | 75 | 50 | 25 | 0

**References:**

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=794876&high=ombudsman](http://buscador.lanacion.com.ar/Nota.asp?nota_id=794876&high=ombudsman)

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=790872&high=ombudsman](http://buscador.lanacion.com.ar/Nota.asp?nota_id=790872&high=ombudsman)

**100:** Ombudsman’s reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, ombudsman’s reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

48k. In practice, the agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pilar Arcidiacono, Poder Ciudadano Foundation

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

---

#### 49. Can citizens access the reports of the ombudsman?

100

49a. In law, citizens can access reports of the ombudsman(s).

YES | NO

**Comments:**

Ombudsman must present an annual activity report to the congress. The report can be accessed via the Internet ([www.boletinoficial.gov.ar](http://www.boletinoficial.gov.ar); <http://www.defensor.gov.ar/informes/infoanual-sp.htm>).

**References:**

Law 24.284 modified by Law 24.379; NC.

<http://infoleg.mecon.gov.ar/infolegInternet>

<http://www.senado.gov.ar/web/interes/constitucion/cuerpo1.php>

<http://www.defensor.gov.ar/informes/infoanual-sp.htm>

**YES:** A YES score is earned if all ombudsman reports are publicly available.

**NO:** A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

49b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

[www.defensor.gov.ar/informes/infoanual-sp.htm](http://www.defensor.gov.ar/informes/infoanual-sp.htm)

**100:** Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

[www.defensor.gov.ar/informes/infoanual-sp.htm](http://www.defensor.gov.ar/informes/infoanual-sp.htm)

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## V-2. Supreme Audit Institution

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50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

**Comments:**

NC defines the external control of the national public sector (with respect to the economic, financial, and patrimony aspects) as National General Audit's main activity.

**References:**

NC (art. 116); Financial Administration and Public Control Systems Law, (Law 24.156).

Inter-American Convention Against Corruption (Law 24.759)

<http://www.senado.gov.ar/web/interes/constitucion/cuerpo1.php>

<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

**NO:** A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

---

51. Is the supreme audit institution effective?

84

51a. In law, the supreme audit institution is protected from political interference.

YES | NO

**Comments:**

According to Law 24.156, the National General Audit has its own legal status and functional independence. It is also economically independent.

**References:**

NC; Financial Administration and Public Control Systems Law, (Law 24.156).

<http://www.senado.gov.ar/web/interes/constitucion/cuerpo1.php>

<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

51b. In practice, the head of the agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no known cases about removal without relevant justification

**References:**

Interview with Pilar Arcidiacono, Poder Ciudadano Foundation.

**100:** The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the agency can be removed at the will of political leadership.

51c. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pilar Arcidiacono, Poder Ciudadano Foundation.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

51d. In practice, agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pilar Arcidiacono, Poder Ciudadano Foundation.

**100:** Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

51e. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Pilar Arcidiacono, Poder Ciudadano Foundation.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

51f. In practice, the agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

Reports are available via the Internet

**References:**

[www.agn.gov.ar/](http://www.agn.gov.ar/)

**100:** The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

**25:**

**0:** The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

51g. In practice, the government acts on the findings of the agency.

100 | 75 | 50 | 25 | 0

**References:**

[www.clarin.com/diario/2005/10/21/sociedad/s-04701.htm](http://www.clarin.com/diario/2005/10/21/sociedad/s-04701.htm)

[www.clarin.com/diario/2006/07/16/elpais/p-00301.htm](http://www.clarin.com/diario/2006/07/16/elpais/p-00301.htm)

**100:** Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

51h. In practice, the supreme audit institution is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Federico Arenoso,. Poder Ciudadano Foundation.

**100:** The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

**75:**

**50:** The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

**25:**

**0:** The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

---

## 52. Can citizens access reports of the supreme audit institution?

100

52a. In law, citizens can access reports of the agency.

YES | NO

**Comments:**

In law, the Supreme Audit Institution must submit an activity report to congress (Comisión Parlamentaria Mixta Revisora de Cuentas") annually, before May 1st.

**References:**

NC; Financial Administration and Public Control Systems Law, (Law 24.156).

<http://www.senado.gov.ar/web/interes/constitucion/cuerpo1.php>

<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if all supreme auditor reports are available to the general public.

**NO:** A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

52b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Reports are available via the Internet

**References:**

<http://www.agn.gov.ar/>

**100:** Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Reports are available via the Internet

**References:**

<http://www.agn.gov.ar/>

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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95  
V-3. Taxes and Customs

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53. In law, is there a national tax collection agency?

100

53. In law, is there a national tax collection agency?

YES | NO

**Comments:**

The Federal Administration of Public Incomes is the agency responsible for national tax collection. It's part of the Economic Ministry.

**References:**

Decree 618/97

<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if there is a national agency formally mandated to collect taxes.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

---

54. Is the tax collection agency effective?

100

54a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Federico Arenoso, Poder Ciudadano Foundation.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

54b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The AFIP receives regular funding.

**References:**

Interview with Federico Arenoso, Poder Ciudadano Foundation

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

55. In practice, are tax laws enforced uniformly and without discrimination?

50

55. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

Some groups may occasionally evade tax law. Among those groups, it is possible to identify famous people, businessmen and others with political connections.

**References:**

Interview with Federico Arenoso (Poder Ciudadano Foundation).

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=773692&high=evasi3n%20impuestos&aplicacion\\_id=4](http://buscador.lanacion.com.ar/Nota.asp?nota_id=773692&high=evasi3n%20impuestos&aplicacion_id=4)  
<http://www.clarin.com/suplementos/zona/2006/04/09/z-03615.htm>

**100:** Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

**75:**

**50:** Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

**25:**

**0:** Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

---

## 56. In law, is there a national customs and excise agency?

100

56. In law, is there a national customs and excise agency?

**YES** | NO

**Comments:**

The Central Bank is an independent entity. Its main activity is the preservation of the national currency value.

**References:**

Financial Organizations Law;  
Central Bank Organic Document,  
Law 25.780; Decree 738/03

<http://infoleg.mecon.gov.ar/infolegInternet>

**YES:** A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist.

---

## 57. Is the customs and excise agency effective?

88

57a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Federico Arenoso, Poder Ciudadano Foundation  
www.bcra.gov.ar

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

57b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Federico Arenoso, Poder Ciudadano Foundation  
www.bcra.gov.ar

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

**References:**

Interview with Federico Arenoso (Poder Ciudadano Foundation)

**100:** Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

**75:**

**50:** Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

**25:**

**0:** Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

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## V-4. Financial Sector Regulation

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59. In law, is there a financial regulatory agency overseeing publicly listed companies?

100

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

**YES** | NO

**Comments:**

The Comisión Nacional de Valores” (CNV) was created by Law 17.811. It is responsible for conferring public offers, guaranteeing transparency in the share markets (mercados de valores) and the correct definition of prices, as well as the investors’ protection.

**References:**

Public Offer Law (Law 17.811)

**YES:** A YES score is earned if there is an agency tasked with overseeing publicly listed companies in the public interest and ensuring that disclosure rules are met.

**NO:** A NO score is earned if this function is spread over several agencies or does not exist.

---

## 60. Is the financial regulatory agency effective?

70

60a. In law, the financial regulatory agency is protected from political interference.

**YES** | NO

### Comments:

The Comisión Nacional de Valores” is a self-sufficient agency with jurisdiction throughout Argentina. It is related to the executive branch through the Ministry of Economy.

### References:

[www.cnv.gov.ar](http://www.cnv.gov.ar)  
Law 17.811

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

60b. In practice, the agency has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

### References:

Interview with Federico Arenoso, Poder Ciudadano Foundation

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

60c. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

[www.cvn.gov.ar](http://www.cvn.gov.ar)

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

60d. In practice, when necessary, the financial regulatory agency independently initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=723844&high=comisi%25252525F3n%2525252520nacional%2525252520valores](http://buscador.lanacion.com.ar/Nota.asp?nota_id=723844&high=comisi%25252525F3n%2525252520nacional%2525252520valores)

**100:** When irregularities are discovered, the agency is aggressive in investigating and/or in cooperating with other investigative bodies.

**75:**

**50:** The agency starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

60e. In practice, when necessary, the financial regulatory agency imposes penalties on offenders.

**References:**

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=744501&high=comisi%252525F3n%25252520nacional%25252520valores](http://buscador.lanacion.com.ar/Nota.asp?nota_id=744501&high=comisi%252525F3n%25252520nacional%25252520valores)

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partis

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## 61. Can citizens access the financial records of publicly listed companies?

83

61a. In law, citizens can access the financial records of publicly listed companies.

YES | NO

**Comments:**

Norms (R.G. 368/01), Chapters XXIII Regimen Informativo Periodico” and XXI.

**References:**

Mónica Tello  
www.cnv.gov.ar

**YES:** A YES score is earned if the financial information of all publicly traded companies is required by law to be public.

**NO:** A NO score is earned if any category of publicly- owned or publicly-traded company is exempt from this rule, or no such rules exist.

61b. In practice, the financial records of publicly listed companies are regularly updated.

100 | 75 | 50 | 25 | 0

**References:**

[/www.cnv.gov.ar/InfoFinan/Sociedad.asp?Lang=0&Letra=A](http://www.cnv.gov.ar/InfoFinan/Sociedad.asp?Lang=0&Letra=A)

**100:** Publicly traded companies always disclose financial data, which is generally accurate and up to date.

**75:**

**50:** Publicly traded companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

**25:**

**0:** Financial data is not available, or is consistently superficial or otherwise of no value to investors.

61c. In practice, the financial records of publicly listed companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

**Comments:**

In 1998, The Federación Argentina de Consejos Profesionales en Ciencias Económicas (F.A.C.P.C.E.)” decided to homogenize national accounting standards to the international ones. In 2000, the first stage of this process was already finished, although there is still a lot of work to be done.

**References:**

Interview with Federico Arenoso, Poder Ciudadano Foundation

**100:** Financial records of all public companies are regularly audited by a trained third party auditor using accepted international standards.

**75:**

**50:** Financial records of public companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

**25:**

**0:** Publicly traded companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

61d. In practice, citizens can access the records of disciplinary decisions imposed by the government on publicly-listed companies.

100 | 75 | 50 | 25 | 0

**References:**

[www.cnv.gov.ar](http://www.cnv.gov.ar)

**100:** These records are freely available to all citizens through a formal official process.

**75:**

**50:** These records are available to all citizens, with some exceptions.

**25:**

**0:** These records are generally not available through official processes.

61e. In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Records are available via the Internet.

**References:**

[www.cnv.gov.ar/InfoFinan/Sociedad.asp?Lang=0&Letra=A](http://www.cnv.gov.ar/InfoFinan/Sociedad.asp?Lang=0&Letra=A)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

61f. In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Records are available via the Internet

**References:**

[www.cnv.gov.ar/InfoFinan/Sociedad.asp?Lang=0&Letra=A](http://www.cnv.gov.ar/InfoFinan/Sociedad.asp?Lang=0&Letra=A)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 84 V-5. Business Licensing and Regulation

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### 62. Are business licenses available to all citizens?

75

62a. In law, anyone may apply for a business license.

**YES** | NO

**References:**

Law De Sociedades Comerciales” (Law 19550)  
[www.sepyme.gov.ar/index.php?btn=1&a=dyr&b=consultas](http://www.sepyme.gov.ar/index.php?btn=1&a=dyr&b=consultas)

**YES:** A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

**NO:** A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

62b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

**Comments:**

All administrative decisions can be appealed through the judiciary.

**References:**

[www.sepyme.gov.ar](http://www.sepyme.gov.ar)

**YES:** A YES score is earned if there is a formal process for appealing a rejected license.

**NO:** A NO score is earned if no such mechanism exists.

62c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the Subsecretaría de la pequeña y mediana empresa," citizens can establish a small business by registering it at the Justice General Inspectorate, the Commerce Public Registry, the Public Incomes Federal Administration or the corresponding city hall.

**References:**

[www.sepryme.me.gov.ar](http://www.sepryme.me.gov.ar)

**100:** Licenses are not required, or licenses can be obtained within roughly one week.

**75:**

**50:** Licensing is required and takes around one month. Some groups may be delayed up to a three months.

**25:**

**0:** Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

62d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**  
www.seprin.gov.ar

**100:** Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

---

### 63. Do businesses receive equitable regulatory treatment from the government?

63

63a. In law, basic business regulatory requirements for meeting health, safety, and environmental standards are transparent and publicly available.

**YES** | NO

**References:**  
Law 19.587 (Health and Security Law)  
Decree 351/79

**YES:** A YES score is earned if basic regulatory requirements for meeting health, safety, and environmental standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

63b. In practice, business inspections by the government are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

**Comments:**  
Although it is very difficult to prove, it is well known that there are many irregularities in business inspections. Sometimes extra payments requested by government officers in order to avoid penalties in cases where regulations are not followed.

**References:**

No sources were found.

**100:** Business inspections by the government (i.e. health, safety, or environmental inspections) are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government (i.e. health, safety, or environmental inspections) are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

**25:**

**0:** Business inspections (i.e. health, safety, or environmental inspections) are routinely carried out by the government in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

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Category VI. Anti-Corruption and Rule of Law

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VI-1. <sup>83</sup>Anti-Corruption Law

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64. Is there legislation criminalizing corruption?

100

64a. In law, attempted corruption is illegal.

**YES** | NO

**References:**

Criminal Code Art 209.

**YES:** A YES score is earned if corruption laws include attempted acts.

**NO:** A NO score is earned if this is not illegal.

64b. In law, extortion is illegal.

YES | NO

**References:**

Criminal Code Art. 168

**YES:** A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

**NO:** A NO score is earned if this is not illegal.

64c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

**References:**

Criminal Code. Art 258, modified by Law 25.188

Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis. Civil Society's Report.

Interview with the Responsible for the Transparent Public Procurement Program, Official Report  
[www.anticorrupcion.jus.gov.ar](http://www.anticorrupcion.jus.gov.ar)

**YES:** A YES score is earned if offering a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

64d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

**References:**

Criminal Code. Art 258, modified by Law 25.188

Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis.

Civil Society's Report. Interview with the Responsible for the Transparent Public Procurement Program, Official Report

**YES:** A YES score is earned if receiving a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

64e. In law, bribing a foreign official is illegal.

**YES** | NO

**References:**

Criminal Code. Art 258 bis, modified by Law 25.188

Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis. Official Report.

[www.anticorruptcion.jus.gov.ar](http://www.anticorruptcion.jus.gov.ar)

**YES:** A YES score is earned if bribing a foreign official is illegal.

**NO:** A NO score is earned if this is not illegal.

64f. In law, using public resources for private gain is illegal.

**YES** | NO

**References:**

Criminal Code, art 173

Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis. Official Report

[www.anticorruptcion.jus.gov.ar](http://www.anticorruptcion.jus.gov.ar)

**YES:** A YES score is earned if using public resources for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

64g. In law, using confidential state information for private gain is illegal.

**YES** | NO

**References:**

Criminal Code. Art, 223

**YES:** A YES score is earned if using confidential state information for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

64h. In law, money laundering is illegal.

**YES** | NO

**References:**

Law 25.246

Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption National Report, Second Round of Analysis. Civil Society's Report.

Interview with the Responsible for the Transparent Public Procurement Program, Official Report

**YES:** A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

**NO:** A NO score is earned if this is not illegal.

64i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

**YES** | NO

**References:**

Criminal Code Art 210 bis

**YES:** A YES score is earned if organized crime is illegal.

**NO:** A NO score is earned if this is not illegal.

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## VI-2. Anti-Corruption Agency

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65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

**Comments:**

The Anticorruption Office was created as part of the Ministry of Justice and Human Rights, as the office responsible for preventing and promoting policies related to the fight against corruption.

The Anticorruption Office keeps the asset disclosure records submitted by all ministerial-level officials, which are available for public inspection. It also keeps the asset disclosure records submitted by the head of state.

**References:**

Ministries Law (Law 25,233);

Public Ministry Law (Law 24.946);

Anticorruption Office (Decree 102/99)

<http://infoleg.mecon.gov.ar/infolegInternet>

<http://www.anticorruccion.jus.gov.ar>

**YES:** A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

**NO:** A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

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## 66. Is the anti-corruption agency effective?

89

66a. In law, the agency (or agencies) is protected from political interference.

YES | NO

**References:**

Ministries Law (Law 25,233); Public Ministry Law (Law 24.946); Anticorruption Office (Decree 102/99)

<http://infoleg.mecon.gov.ar/infolegInternet>

<http://www.anticorruccion.jus.gov.ar>

**YES:** A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

66b. In practice, the agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the agency is protected from political interference, but it is important to point out that many of the investigations begun by the agency fall apart because of the slowness of the judicial branch.

**References:**

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=807685&high=oficina%252520anticorrupti%2525F3n](http://buscador.lanacion.com.ar/Nota.asp?nota_id=807685&high=oficina%252520anticorrupti%2525F3n)

**100:** This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

**75:**

**50:** This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

66c. In practice, the head of the agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

There were no cases of removal without relevant justification.

**References:**

Media.

**100:** The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director(s) can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director(s) can be removed at the will of political leadership.

66d. In practice, appointments to the agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

The Anticorruption Office has a professional staff, highly recognized by their peers.

**References:**

Interview with Nicolàs Dassen, lawyer, expert in anticorruption affairs.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

66e. In practice, the agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nicolàs Dassen, lawyer, expert in anticorruption affairs.

**100:** The agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

66f. In practice, the agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nicolàs Dassen, lawyer, expert in anticorruption affairs.

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66g. In practice, the agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

The Anticorruption Office makes public reports every six months. These reports include information related to the agency's activities, and results obtained. All reports are available via the Internet.

**References:**

<http://www.anticorruccion.jus.gov.ar/gestion.asp?CurPage=2>

**100:** The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

66h. In practice, the agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

**References:**

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=807685&high=oficina%252520anticorrupti%2525F3n](http://buscador.lanacion.com.ar/Nota.asp?nota_id=807685&high=oficina%252520anticorrupti%2525F3n)

**100:** The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

**75:**

**50:** The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

**25:**

**0:** The agency (or agencies) lacks significant powers which limit its effectiveness.

66i. In practice, when necessary, the agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the Anticorruption Office has initiated many investigations, some of which have been presented to the courts. For example, those related to civil servants' incomes and wealth, public company spending, and so on.

**References:**

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=825726&high=oficina%20anticorrupti%F3n](http://buscador.lanacion.com.ar/Nota.asp?nota_id=825726&high=oficina%20anticorrupti%F3n)

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=801305&high=oficina%252520anticorrupti%2525F3n](http://buscador.lanacion.com.ar/Nota.asp?nota_id=801305&high=oficina%252520anticorrupti%2525F3n)

**100:** When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

**75:**

**50:** The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

---

## 67. Can citizens access the anti-corruption agency?

75

67a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

### References:

Interview with Pilar Arcidiacono (program officer, Poder Ciudadano)

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

67b. In practice, citizens can complain to the agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

### References:

Interview with Pilar Arcidiacono (program officer, Poder Ciudadano)

**100:** Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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88  
VI-3. Rule of Law

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68. Is there an appeals mechanism for challenging criminal judgments?

67

68a. In law, there is a general right of appeal.

YES | NO

**References:**

NC art 18 (Proper Process Wright),  
NC art 117 (About original and appeal competence),  
Rules of each Fuero (Civil and commercial, administrative, criminal)

**YES:** A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

**NO:** A NO score is earned if there is no such process.

68b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Sometimes appeals take years to be resolved. The reason why is related to difficulties in the judicial branch, like infrastructure problems, excess cases to be resolved, absence of new technologies and so on.

**References:**

Interview with Maria Julia Perez Tort, Coordinator of the Action for Justice Department, Poder Ciudadano Foundation  
<http://www.clarin.com/diario/2006/01/10/opinion/o-02601.htm>

**100:** Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

**25:**

**0:** Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

68c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

**Comments:**

There is no fixed, established amount. This cost depends on the judge's decision at the end of the process, and it may be high.

**References:**

Maria Julia Perez Tort (Coordinator of Action for Justice Department, Poder Ciudadano Foundation)

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

**25:**

**0:** The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

---

69. In practice, do judgments in the criminal system follow written law?

75

69. In practice, do judgments in the criminal system follow written law?

100 | **75** | 50 | 25 | 0

**References:**

Interview with Maria Julia Perez Tort (Coordinator of Action for Justice Department, Poder Ciudadano Foundation)

**100:** Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

**75:**

**50:** Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

**25:**

**0:** Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

---

## 70. In practice, are judicial decisions enforced by the state?

75

70. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

### References:

Interview with Maria Julia Perez Tort, Poder Ciudadano Foundation

**100:** Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

**75:**

**50:** Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

**25:**

**0:** Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

---

## 71. Is the judiciary able to act independently?

88

71a. In law, the independence of the judiciary is guaranteed.

YES | NO

**Comments:**

According to NC, the judicial branch is composed of the Supreme Court of Justice and lower courts created by congress throughout the nation's territory.

Independence of the judiciary is the most important condition in order to guarantee impartial administration of justice.

**References:**

NC; Interview with Maria Julia Perez Tort, Coordinator of the Action with Justice Department, Poder Ciudadano Foundation  
<http://justiciaargentina.gov.ar>  
<http://pjn.gov.ar>  
<http://www.senado.gov.ar/web/interes/constitucion/cuerpo1.php>

**YES:** A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation and managing the budget of the courts ).

**NO:** A NO score is earned if there are no formal rules establishing an independent judiciary.

71b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=705442&high=acceso%2520justicia](http://buscador.lanacion.com.ar/Nota.asp?nota_id=705442&high=acceso%2520justicia)

**100:** National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

**75:**

**50:** National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

**25:**

**0:** National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

71c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

**Comments:**

Cases are distributed randomly: the mechanism is defined by the rules of each fuero

**References:**

Interview with Maria Julia Perez Tort, Coordinator of the Action with Justice Department, Poder Ciudadano Foundation

**YES:** A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

**NO:** A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

71d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

**Comments:**

National-level judges are protected from removal without justification. The removal may happen only when judges haven't carried out their responsibilities, or when committing a crime.

**References:**

NC (arts 110, 115)

**YES:** A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

**NO:** A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

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## 72. Are judges safe when adjudicating corruption cases?

100

72a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

**Comments:**

There were no documented cases.

**References:**

Interview with Maria Julia Perez Tort (Coordinator of Action for Justice Department, Poder Ciudadano Foundation).

**YES:** A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period.

**NO:** A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

72b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

**Comments:**

There were no documented cases

**References:**

Interview to Maria Julia Perez Tort (Coordinator of Action for Justice Department, Poder Ciudadano Foundation).

**YES:** A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period.

**NO:** A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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### 73. Do citizens have equal access to the justice system?

71

73a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

**Comments:**

Some groups may be occasionally discriminated against, for example, because of their religion, disabilities or nationality.

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=790858&high=discriminaci%25F3n%2520racial](http://buscador.lanacion.com.ar/Nota.asp?nota_id=790858&high=discriminaci%25F3n%2520racial)

**100:** Judicial decisions are not affected by racial or ethnic bias.

**75:**

**50:** Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

**25:**

**0:** Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

73b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

**Comments:**

No specific cases in which women had difficulties accessing the courts were identified. Nevertheless, it is not possible to affirm women have full access to the judicial system. Even though some advances have been made (two women are presently members of the Supreme Court), women may encounter some difficulties accessing the judicial system because of the existent old fashioned” laws that may not consider women rights. The expense of judicial processes may also hinder women from pursuing them.

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs,

<http://www.pagina12.com.ar/diario/elpais/1-58028-2005-10-17.html>

**100:** Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

**75:**

**50:** Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes.

**25:**

**0:** Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence.

73c. In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

**Comments:**

After the economic crisis in 2001, many people had to turn to state provided legal aid, because they could not afford a private defender. The system is not well prepared to properly answer such large demands.

**References:**

[www.cels.org.ar](http://www.cels.org.ar)

[http://buscador.lanacion.com.ar/Nota.asp?nota\\_id=778869&high=acceso%20justicia](http://buscador.lanacion.com.ar/Nota.asp?nota_id=778869&high=acceso%20justicia)

**100:** State-provided legal aid is basic, but well trained and effective in representing the rights of indigent defendants.

**75:**

**50:** State-provided legal aid is available, but flawed. Legal aid may be unavailable to some indigent defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

**25:**

**0:** State-provided legal aid is unavailable to most indigent defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

73d. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

**75:**

**50:** In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

**25:**

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits.

73e. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

**75:**

**50:** In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

**25:**

**0:** The cost of engaging the legal system prevents small businesses from filing suits.

73f. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

**75:**

**50:** Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

**25:**

**0:** Courts are unavailable to some regions without significant travel on the part of citizens.

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## VI-4. Law Enforcement

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74. Is the law enforcement agency (i.e. the police) effective?

50

74a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

Appointments are usually based on professional qualifications.

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

74b. In practice, the agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

Often the police budget is not enough for officers to carry out its activities. Sometimes basic elements like bullets, fuel or bullet-proof vest are not available because of insufficient budget.

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

74c. In practice, the agency is protected from political interference.

100 | 75 | **50** | 25 | 0

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

**75:**

**50:** The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

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## 75. Can law enforcement officials be held accountable for their actions?

83

75a. In law, there is an independent mechanism for citizens to complain about police action.

**YES** | NO

**Comments:**

The Anticorruption Office has an internal mechanism where civil servants can complain about police actions. Attorneys and police stations are available to receive this kind of complaint.

Si no es un hecho puntual delictual, sino que decis, la cana es ineficiente, u otra cosa, ahi tenès que ir a la dppt. Es mas, la dppt en la època de beliz hizo temas de transparencia con la cana.

**References:**

Law 25,233 (Ministries Law)  
Law 24,946 (Public Ministry Organic Law)  
Decree 102/99  
denuncia@jus.gov.ar

**YES:** A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions.

**NO:** A NO score is earned if there is no such mechanism.

75b. In practice, the independent reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nicolás Dassen, lawyer, expert in anticorruption affairs.

**100:** The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

75c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

**Comments:**

The Anticorruption Office (The Investigations Department) is in charge of evaluating civil servants, including law enforcement officials. It is able to investigate unlawful activities committed by civil servants.

The National Administrative Investigations Attorney is able to investigate corruption-related activities within law enforcement, as well.

The police department must also investigate cases of corruption committed by its officials (it must initiate a sumario administrativo”).

**References:**

Ministries Law (Law 25,233),  
Public Ministry Law (Law 24.946),  
Anticorruption Office (Decree 102/99),  
infoleg.mecon.gov.ar/infolegInternet  
www.anticorruccion.jus.gov.ar  
fia@mpf.gov.ar

**YES:** A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity is separate from the regular police department.

**NO:** A NO score is earned if no such agency/entity exists.

75d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | **75** | 50 | 25 | 0

**References:**

[http://www.anticorruccion.jus.gov.ar/quees\\_direccion\\_1a.asp](http://www.anticorruccion.jus.gov.ar/quees_direccion_1a.asp)

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

75e. In law, law enforcement officials are not immune from criminal proceedings.

**YES** | NO

**Comments:**

As citizens, police officers are not immune from criminal proceedings. Principio de igualdad ante la ley .”

**References:**

National Constitution (art 16)

**YES:** A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

**NO:** A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

75f. In practice, law enforcement officials are not immune from criminal proceedings.

**Comments:**

Even though there are some cases in which law enforcement officers have been subject to criminal investigation for misconduct, there have been several complaints about police behaviour (abuse of authority, for example) that haven't been addressed.

**References:**

[www.clarin.com/diario/2005/12/30/policiales/g-06401.htm](http://www.clarin.com/diario/2005/12/30/policiales/g-06401.htm)

**100:** Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

**75:**

**50:** Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

**25:**

**0:** Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.