

Overall Score:

87 - Strong

Legal Framework Score:

97 - Very Strong

Actual Implementation Score:

77 - Moderate

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁹¹Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

In Argentina, NGOs are created under the form of non-profit associations or civil foundations. The right of association is protected by the Constitution and the Civil Code.

References:

Article 14, National Constitution (freedom of association)

http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

Civil Code Article 33/45

http://www.infoleg.gov.ar/infolegInternet/anexos/105000-109999/109481/texactley340_librol_S1_tituloI.htm

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes

No

Comments:

NGOs are authorized to function under the legal form of a civil association or a Foundation. According to the legal framework, there is no special limitation for funding anti-corruption NGOs.

References:

Law of Foundations, 19.836, Article 1

Inspeccion General de Justicia, Administrative Decision N 07/2005 <http://www.infoleg.gov.ar/infolegInternet/anexos/105000-109999/109087/texact.htm>

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes

No

References:

Law 19836, <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=65478>

Law 22315, <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=21159>

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

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

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

92

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

References:

Interview with Eugenia Braguinsky from CIPPEC. Interview date: Tuesday, November 2, 2010. Place: Balcarce Coffe Bar, Av. Callao.

Interview with national expert Dolores Lavalle Cobo, author of the book "Derecho de Acceso a la Informacion." Interview date: Thursday, October 21, 2010. Place: Starbucks Coffe, Av. Callao.

Interview with Ines Selwood, journalist (member of the NGO FOPEA) and former member of the NGO Poder Ciudadano (local chapter of TI). Interview date: Thursday, November 4, 2010. Place: Coffee Store, Galerias Pacifico.

Interview with Pablo Secchi, national expert and NGO member. Interview date: November 17, 2010. Place: Poder Ciudadano.

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

In Argentina, NGOs engaged in transparency, good governance and anti-corruption are very active. They are fostering a very ambitious agenda including regulations on the lobby in the Congress as well as the approval of the Access to Information Law.

References:

Interview with Eugenia Braguinsky from CIPPEC. Interview date: Tuesday, November 2, 2010. Place: Balcarce Coffe Bar, Av. Callao.

Interview with national expert Dolores Lavalle Cobo, author of the book "Derecho de Acceso a la Informacion). Interview date: Thursday, October 21, 2010. Place: Starbucks Coffe, Av. Callao.

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

All of the interviewees were certain that no NGO was shut down because of its work on anti-corruption

References:

Interview with Eugenia Braguinsky from CIPPEC. Interview date: Tuesday, November 2, 2010. Place: Balcarce Coffe Bar, Av. Callao.

Interview with national expert Dolores Lavalle Cobo, author of the book "Derecho de Acceso a la Informacion." Interview date: Thursday, October 21, 2010. Place: Starbucks Coffe, Av. Callao.

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

No: A NO score is earned if any NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

There are no records of NGO members imprisoned for their work on anti-corruption matters.

References:

Interview with Eugenia Braguinsky from CIPPEC. Interview date: Tuesday, November 2, 2010. Place: Balcarce Coffe Bar, Av. Callao.

Interview with national expert Dolores Lavalle Cobo, author of the book "Derecho de Acceso a la Informacion). Interview date: Thursday, October 21, 2010. Place: Starbucks Coffe, Av. Callao.

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

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 person 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. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes

No

Comments:

No records exist on NGO activists being physically harmed because of their job on anti-corruption.

References:

Interview with Eugenia Braguinsky from CIPPEC. Interview date: Tuesday, November 2, 2010. Place: Balcarce Coffe Bar, Av. Callao.

Interview with national expert Dolores Lavalle Cobo, author of the book, "Derecho de Acceso a la Informacion). Interview date: Thursday, October 21, 2010. Place: Starbucks Coffe, Av. Callao.

Yes: A YES score is earned if there were no documented cases of NGO 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. YES is a positive score.

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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes

No

Comments:

No NGO activists were killed.

References:

Interview with Eugenia Braguinsky from CIPPEC. Interview date: Tuesday, November 2, 2010. Place: Balcarce Coffe Bar, Av. Callao.

Interview with national expert Dolores Lavalle Cobo, author of the book "Derecho de Acceso a la Informacion." Interview date: Thursday, October 21, 2010. Place: Starbucks Coffe, Av. Callao.

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

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.

4. Can citizens organize into trade unions?

88

04a. In law, citizens have a right to organize into trade unions.

Yes

No

References:

National Constitution, Article 14 bis

http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

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.

04b. In practice, citizens are able to organize into trade unions.

100

75

50

25

0

References:

Interview with Dolores Lavalle Cobo.

100: Trade unions are common and are an important part of 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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes

No

References:

Article 14 of the Constitution established that all inhabitants have the right to publish their ideas through the press without prior censorship.

http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

New legislation was approved by Congress on freedom of the media; the Audiovisual Communication Services Law recognizes in Article 2 the inalienable human right to express, receive, disseminate and research information, ideas and opinions.

<http://www.infoleg.gov.ar/infolegInternet/anexos/155000-159999/158649/norma.htm>

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

No: A NO score is earned if any specific publication relating to government affairs 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.

05b. In law, freedom of speech is guaranteed.

Yes | No

References:

National Constitution — Articles 14, 32, and 75 (22)

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/0-4999/804/norma.htm>

Inter-American Convention on Human Rights, Article 13

<http://www.oas.org/juridico/spanish/tratados/b-32.html>

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to 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.

6. Are citizens able to form print media entities?

94

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

No license is needed for print media entities to operate. Freedom for launching a print media entity is guaranteed by Article 14 of the National Constitution.

One of the interviewees expressed her concern regarding the use of public advertising as a means of pressure on the press. In any case, this type of pressure can't be seen as a barrier for the creation of an entity.

References:

Interview with International expert Ines Selwood. Place: Coffee Store Cafe.

Interview with academic expert Dolores Lavalle Cobo. Place: Starbucks Cafe.

Responses by Public Television Director, Martin Bonavetti.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print 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.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

The Supreme Court issued decisions in the same sense: Emissiones Platenses (1997), Fallos 320:1191, June 12, 1997. <http://falloscsn.blogspot.com/2006/10/emisiones-platenses-1997.html>

Experts interviewed explained that there is no license needed for print media (Ms. Ines Selwood).

References:

No license is needed to create a print media entity (Article 14). There is no situation of NO concession of a license.

The Constitution, in Article 14/32, establishes that there is a fundamental right of the press and that the Congress can't approve laws that limit the freedom of the press.

The Inter-American Human Rights Convention, Article 13

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

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

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No license is needed (Article 14, National Constitution).

References:

Interview with International expert Ines Selwood. Place: Coffee Store cafe.

Interview with academic expert Dolores Lavalle Cobo. Place: Starbucks Cafe.
Responses by Public Television Director, Martin Bonavetti.

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No license required.

References:

Interview with international expert Ines Selwood. Place: Coffee Store cafe.

Interview with academic expert Dolores Lavalle Cobo. Place: Starbucks Cafe.
Responses by Public Television Director, Martin Bonavetti.

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 citizens able to form broadcast (radio and TV) media entities?

88

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

By October 10, 2009, a new broadcasting law was approved by the National Congress. The new legislation is open to different types of broadcasters (commercial, community service and public service entities). A public agency is in charge of authorizing new broadcasting entities. Although the law establishes a number of conditions for authorizing a new entity, experts consider those requirements to be reasonable.

References:

Interview with International expert Ines Selwood. Place: Coffee Store cafe.

Interview with academic expert Dolores Lavalle Cobo. Place: Starbucks Cafe.
Responses by Public Television Director, Martin Bonavetti.

100: Broadcast 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. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast 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: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes

No

Comments:

The National Administrative Law provides that any decision taken by a public agency is subject to an appeal process (it is mandatory to go through an administrative appeal before having the chance of asking a judicial revision of the public decision, per Articles 30 and 31.)

In the case of denying a license for a broadcasting entity, the person requiring the license always has the right to appeal.

References:

National Law of Administrative Procedures (Law 19.549). <http://infoleg.mecon.gov.ar/infolegInternet/anexos/20000-24999/22363/norma.htm>

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

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

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100

75

50

25

0

Comments:

The new broadcasting law establishes a maximum of 60 days for awarding authorization for new broadcasting entities.

The law is already in force, but there is, as yet, no practical experience on the time that would, in practice, be required to award the license.

References:

Interview with international expert Ines Selwood. Place: Coffee Store cafe.

Interview with academic expert Dolores Lavalle Cobo. Place: Starbucks Cafe.
Responses by Public Television Director, Martin Bonavetti.

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

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

Comments:

Broadcasting law provides that for authorizing a new broadcast entity, the public authority must analyze the financial sustainability for supporting the investment plan that was presented before such authority.

Once the broadcasting entity is authorized, it must pay a percentage of its wealth (maximum is 5%). In this case, it must be mentioned that there is no practical experience yet on the evaluation of the "financial sustainability" required by law.

References:

Interview with international expert Ines Selwood. Place: Coffee Store cafe.

Interview with academic expert Dolores Lavalle Cobo. Place: Starbucks Cafe.
Responses by Public Television Director, Martin Bonavetti.

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.

8. Can citizens freely use the Internet?

100

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

All sources fully agree that there is no limit to the use of the Internet by citizens.

References:

Interview with international expert Ines Selwood. Place: Coffee Store cafe.

Interview with academic expert Dolores Lavalle Cobo. Place: Starbucks Cafe.
Responses by Public Television Director, Martin Bonavetti.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

All sources agree that there is no censorship for Internet content.

References:

Interview with international expert Ines Selwood. Place: Coffee Store cafe.

Interview with academic expert Dolores Lavalle Cobo. Place: Starbucks Cafe.
Responses by Public Television Director, Martin Bonavetti.

Interview with ONG member, Ms. Eugenia Braguisky.

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

92

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

Comments:

Recently, Congress passed a new law amending the Penal Code with the abolition of libel and slander (also known as defamation) criminal offenses formerly provided by Article 112 of the Penal Code.

http://www.argentina.ar/_es/pais/C2741-despenalizacion-de-las-calumnias-e-injurias.php

References:

Freedom of the press is guaranteed by the Constitution.

Law 26551

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#16>

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

Comments:

Some sources expressed their view that self-censorship was not a key problem in Argentina. Others expressed that, although it won't be said "on record," journalist accept "off the record" that self censorship is "quite strong."

An FOPEA survey supports the idea of self-censorship not being a core aspect in dealing with anti-corruption investigations.

References:

Interview with Ms. Ines Selwood. Place: Coffe Store Cafe

Interview with Ms. Dolores Lavalle Cobo. Place: Starbucks Cafe.

FOPEA Survey "Sobre los Periodistas y su Profesion," (2005)

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Comments:

In this case, all sources agree that there is no prior censorship by the government on corruption-related news.

References:

Interview with Ms. Ines Selwood. Place: Coffe Store Cafe

Interview with Ms. Dolores Lavalle Cobo. Place: Starbucks Cafe

Response by Public Television Broadcasting Mr Martin Bonavetti

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. This score is appropriate if in countries where illiteracy is high, 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. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

70

10a. In law, print media companies are required to publicly disclose their ownership.

Yes

No

References:

Law 19550 (Private Companies) <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=25553>

Law 22315 (Registration of Company Agency) <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=21159>

Yes: A YES score is earned if print media companies are required by law to publicly 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 types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes

No

References:

Law 26522 (Broadcasting), Article 72.

<http://www.infoleg.gov.ar/infolegInternet/anexos/155000-159999/158649/norma.htm>

Yes: A YES score is earned if broadcast media companies are required by law to publicly 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 types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

In Argentina, journalists do not have a general code of ethics and some say that big media journalists are sometimes inclined to air opinions that favor sector interests (sometimes in favor of the government, sometimes against the government). There exists a strong journalist NGO called FOPEA that supports a code of ethics. All members of FOPEA must follow the code of ethics; breaching the code may result in expulsion.

References:

Interview with international expert Ines Selwood.

Interview with international expert Dolores Lavallo Cobo.
Responses by Director of Public Broadcasting Martin Bonavetti

FOPEA (Foro de Periodismo Argentino), Code of Ethics.
http://www.fopea.org/Etica/Codigo_de_Etica

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.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

References:

Interview with international expert Ines Selwood.

Interview with international expert Dolores Lavallo Cobo.

The report “Medios y Campana,” published by the website of the Argentina Elections of the Political Science Department at the University of British Columbia.
http://www.argentinaelections.com/2007/11/medios_y_campana.php

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.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

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

Comments:

According to interviewees, the access to state-owned media outlets was not completely equitable. Interviewees stated that in the last elections (2009), the official candidates received more space in the coverage by state broadcasting. There were also some concern for interviewees on a certain confusion between coverage of official activities and campaign activities by official party candidates.

References:

Interview with international expert Ines Selwood.

Interview with international expert Dolores Lavalle Cobo.

The report "Medios y Campana," published by the website of the Argentina Elections of the Political Science Department at the University of British Columbia.

http://www.argentinaelections.com/2007/11/medios_y_campana.php

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. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

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.

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes

No

Comments:

There are no records of journalists imprisoned for investigations related to corruption at the federal level.

References:

Interviews with international expert Ines Selwood.

Interview with international expert Ms. Dolores Lavallo Cobo.

Interview with international expert Pablo Secchi.

Interview with Mr. Gerardo Serrano (anti-corruption office director).

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

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. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes

No

Comments:

There are no records of journalists physically harmed because of investigations related to corruption at the federal level.

References:

Interview with international expert Ms. Ines Selwood.

Interview with international expert Ms. Dolores Lavallo Cobo.

Interview with international expert Mr. Pablo Secchi.

Interview with Director of Transparency Policies of AO, Mr. Gerardo Serrano.

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. A YES score is positive.

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.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes

No

Comments:

There are no records of journalists being killed because of investigations related to corruption at the federal level.

References:

Interview with international expert Ms. Ines Selwood.

Interview with international expert Ms. Dolores Lavallo Cobo.

Interview with international expert Mr. Pablo Secchi.

Interview with Director of Transparency Policies of AO, Mr. Gerardo Serrano.

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. A YES score is positive.

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.

92
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

12a. In law, citizens have a right to request government information and basic government records.

Yes

No

References:

The right to request and receive government information is protected by the Constitutional approval of the Inter-American Convention of Human Rights, Article 13.

In the Executive branch, there exists Decree 1172/2003.

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. 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.

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

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes

No

References:

Decree 1172/2003 guarantees the right to appeal a denial of access to information (derecho de amparo).

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

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

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes

No

Comments:

Decree 1172/2003 establishes a complete procedure for access to government records. The concept is similar to the FOIA organization, with officials in each agency responsible for receiving and responding request of access to records.

References:

Decree 1172/2003.

<http://www.infoleg.gov.ar/infolegInternet/anexos/90000-94999/90763/norma.htm>

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.

13. Is the right to information requests effective?

71

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Opinions on this point are diverse. Some say that government agencies take too long to respond to requests, stressing that there is no uniformity since each agency manages requests by itself (some agencies are very efficient while others not so). Other interviewees expressed that agencies, in general, answer requests in due time.

References:

Interview with international expert Ines Selwood.

Interview with international expert Dolores Lavalle Cobo.

Interview with NGO member Eugenia Braguinsky.

Interview with Gerardo Serrano, Director of Transparency Policies Department of the Anti-corruption Office.

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.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to information is free of charge (requesters may have to pay for copies).

References:

Interview with international expert Ines Selwood.

Interview with international expert Dolores Lavallo Cobo.

Interview with NGO member Eugenia Braguinsky.

Interview with Gerardo Serrano, Director of Transparency Policies Department of the Anti-corruption Office.

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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

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

Comments:

On this point, opinions are also diverse. In general, interviewees expressed that responses are given, but they are not always complete or of good quality. Mr. Serrano expressed that in the cases where he had the chance to intervene, responses were of good quality. On the other hand, Ms. Lavallo Cobo expressed that responses are of poor quality.

References:

Interview with international expert Ines Selwood.

Interview with international expert Dolores Lavallo Cobo.

Interview with NGO member Eugenia Braguinsky.

Interview with Gerardo Serrano, Director of Transparency Policies Department of the Anti-corruption Office.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In this aspect, although opinions are diverse, in general, interviewees expressed that appeals are resolved in a timely manner.

References:

Interview with international expert Ines Selwood.

Interview with international expert Dolores Lavalle Cobo.

Interview with NGO member Eugenia Braguinsky.

Interview with Gerardo Serrano, Director of Transparency Policies Department of the Anti-corruption Office.

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.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Appeals to information requests are free of charge.

References:

Interview with international expert Ines Selwood.

Interview with international expert Dolores Lavalle Cobo.

Interview with NGO member Eugenia Braguinsky.

Interview with Gerardo Serrano, Director of Transparency Policies Department of the Anti-corruption Office.

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.

13f. In practice, the government gives reasons for denying an information request.

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

Comments:

Opinions are diverse on this topic. Interviewees tend to think that reasons given for denying information are not reasonable enough. Ms. Braguinsky expressed that recently government agencies began to use a “cliche” when denying requests: that giving access to certain government records would affect privacy rights.

References:

Interview with international expert Ines Selwood.

Interview with international expert Dolores Lavalle Cobo.

Interview with NGO member Eugenia Braguinsky.

Interview with Gerardo Serrano, Director of Transparency Policies Department of the Anti-corruption Office.

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.

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

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes

No

Comments:

Law 8871 of 1912 (known as the Saenz Peña Law) is the General Suffrage Law and establishes that all male citizens over eighteen and under seventy (after seventy vote is optional) were obliged to vote in general elections. The law also establishes that suffrage is universal, compulsory, and secret. Women were not allowed to vote until 1951 when Law 13.010 of 1947 approved the female vote.

References:

The National Constitution (Constitution of the federal state) of 1994 guarantees the right to vote. Article 37 establishes that suffrage is universal, equal, secret and compulsory.

www.senado.gov.ar (in Spanish).

http://pdpa.georgetown.edu/Constitutions/Argentina/argen94_e.html (in English).

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). 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.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes

No

References:

The Constitution sets regular intervals for elections. In the case of the president and vice president, Article 90 provides for four-year terms and Article 95 establishes that general elections for electing the president and vice president shall take place in the two months prior to the ending of their terms.

Senators, according to Article 56 of the Constitution, shall hold office for terms of six years and may be re-elected. Elections for Senate renovation shall take place every two years and one-third of the Senate shall be renewed in each election.

Deputies, according to Article 50 of the Constitution, shall hold office for terms of four years and may be re-elected. Elections for the House of Deputies renovation shall take place every two years and one-half of the House shall be renewed in each election.

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.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

In practice, considering that voting is an obligation under the Constitution, there is no limitation to exercise the right to vote.

Reports show no incidence of cases stating that someone was illegally prevented from voting.

References:

Interview with international election expert Pablo Secchi. Place: Poder Ciudadano. Date: November 17, 2010

Reports.

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.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

The secrecy of the vote is respected. In some few cases there have been reports of tampering with the ballots after the election closed. In other cases, some of the ballots were reportedly stolen to force the vote for one of the political parties, but overall experts consider that the ballots are secret and safe.

References:

Interview with Pablo Secchi (international elections expert). Place: Poder Ciudadano. Date: November 17, 2010.

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.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

Interview with Pablo Secchi (international elections expert) "Place: Poder Ciudadano. Date: November 17, 2010.

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.

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

100

16a. In law, all citizens have a right to form political parties.

Yes | No

Comments:

According to the law, the existence of a political party depends on the authorization by the judiciary and a minimum number of persons affiliated.

References:

Article 1, National Law of Political Parties.

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/20000-24999/23893/texact.htm>

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.

16b. In law, all citizens have a right to run for political office.

Yes | No

Comments:

In Argentina, access to political office is through the nomination by a political party. There are no independent candidacies. An "independent" candidate can access a nomination by a political party even if he is not affiliated with the party.

References:

National Constitution, Articles 37 and 38.

http://www.argentina.gov.ar/argentina/portal/documento/constitucion_nacional.pdf

National Law of Political Parties, 23298.

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.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

Interview with Pablo Secchi.

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.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Experts agree that running for political office is fairly open. As stated before, access to political office is always through a nomination by a political party. Political parties receive public funding, so once a political party is authorized by the judiciary, access to office is not limited to only those with private support.

References:

Interview with Pablo Secchi.

Interview with Dolores Lavalle.

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. A system of party lists may discourage or prevent independent 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.

16e. In practice, an opposition party is represented in the legislature.

Comments:

Opposition parties have representation both in the House and the Senate. Since 2009 elections, the ruling party lost the majority in both chambers.

References:

La Nacion Newspaper.

Clarín Newspaper.

Pablo Secchi.

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.

2.2. Election Integrity

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

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes | No

References:

Law 19108, Creation of the National Electoral Chamber.

http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=22160&CI=INDEX100

The National Electoral Justice has the core capacities for monitoring the integrity of election processes:

1. Jurisdiction application of sanctions for violations of the National Electoral Code and the National Law of Political Parties (Article 116 of the National Constitution).
2. Control of party financing, Law 25600.
3. Administration of electoral rolls, quantity and disposition of polling stations and response to claims by citizens and party representatives regarding the rolls.
4. Registration of voters.

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

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists 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, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

90

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes | No

Comments:

The entity monitoring elections is a part of the judicial power. The specific branch in the judicial power is called the National Electoral Justice. Being judges, those who monitor elections are independent of political parties.

References:

Law 19108, Creation of the National Electoral Chamber.

http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=22160&CI=INDEX100

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting 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 domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The appointment of judges in the electoral justice is similar to the processes for the designation of any other judge. This process includes background, opposition contests, selection of an Order of Merit by the Executive, and final approval by the Senate.

In general, selection of the staff of the judiciary is free of interference from political parties.

References:

Interview with Pablo Secchi.

Interview with Dolores Lavalle.

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.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Experts agree that staffs of the agencies are professional and full-time.

References:

Interview with Pablo Secchi.

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.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

References:

Interview with Pablo Secchi.

Reports available on the web page of judicial power.

Evaluation of 2009 elections process.

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluación%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

Report of the CEELA (Latinamerica Electoral Experts Council).

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20CEELA%202009.pdf>

Reports available on the web page of the Ministry of the Interior.

http://www.mininterior.gov.ar/asuntos_politicos_y_alectorales/dine/partpol/partidos_politicos.php?idName=asuntos&idNameSubMenu=DINE&idNameSubMenuDer=DINEPartidos

http://www.mininterior.gov.ar/asuntos_politicos_y_alectorales/dine/juzgelec/juzgados_electorales.php?idName=asuntos&idNameSubMenu=DINE&idNameSubMenuDer=DINEJuzgElect

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.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

References:

Interview with Pablo Secchi.

Reports available on the web page of the judicial power.

Evaluation of 2009 elections process.

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluación%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

Report of the CEELA (Latinamerica Electoral Experts Council).

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20CEELA%202009.pdf>

Reports available on the web page of the Ministry of the Interior.

http://www.mininterior.gov.ar/asuntos_politicos_y_alectorales/dine/partpol/partidos_politicos.php?idName=asuntos&idNameSubMenu=DINE&idNameSubMenuDer=DINEPartidos

http://www.mininterior.gov.ar/asuntos_politicos_y_alectorales/dine/juzgelec/juzgados_electorales.php?idName=asuntos&idNameSubMenu=DINE&idNameSubMenuDer=DINEJuzgElect

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.

19. Are elections systems transparent and effective?

88

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

Interview with Pablo Secchi.

Reports available on the web page of the judicial power.

Evaluation of 2009 elections process.

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluación%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

Report of the CEELA (Latinamerica Electoral Experts Council).

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20CEELA%202009.pdf>

Reports available on the web page of the Ministry of the Interior.

http://www.mininterior.gov.ar/asuntos_politicos_y_alectorales/dine/partpol/partidos_politicos.php?idName=asuntos&idNameSubMenu=DINE&idNameSubMenuDer=DINEPartidos

http://www.mininterior.gov.ar/asuntos_politicos_y_alectorales/dine/juzgelec/juzgados_electorales.php?idName=asuntos&idNameSubMenu=DINE&idNameSubMenuDer=DINEJuzgElect

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.

19b. In law, election results can be contested through the judicial system.

Yes | No

References:

Citizens and political parties can challenge allegedly fraudulent elections through the federal justice. Law 19108 provides for the organization of the Federal Electoral Justice.

<http://www.espaciosjuridicos.com.ar/datos/LEY/LEY19108.htm>

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.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

In general, experts consider that fraud is not a tool for election decisions in Argentina. Occasionally, citizens denounce cases of fraud, but there is not a tradition for political parties to go through the judicial system to challenge elections results.

An exception in the 2009 elections occurred in the province of Cordoba where opposition candidate Luis Juez denounced fraud as key element for the victory of his rival, the current Governor Schiaretti.

References:

Interview with international expert Pablo Secchi

Evaluacion del proceso electoral 2009 – Document prepared by the National Electoral Chamber

<http://www.pjn.gov.ar/cne/documentos/Memoria-Conclusiones.pdf>

http://archivo.lavoz.com.ar/nota.asp?nota_id=110728

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.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Military and security forces remained strictly neutral in the election process since the return of democracy in 1983.

References:

Interview with international expert Pablo Secchi.

Report by the Instituto Inter-Americano de Derechos Humanos (IIDH) y Centro de Asesoría y Promoción Electoral (CAPEL), MISIÓN TÉCNICA INTERNACIONAL ELECCIONES LEGISLATIVAS 2009 ARGENTINA.

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20Capel%202009.pdf>

Report by CEELA (Consejo de Expertos Electorales de Latinoamerica) — MISIÓN ELECTORAL EN LA REPÚBLICA ARGENTINA ELECCIONES LEGISLATIVAS, June 28, 2009.

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20CEELA%202009.pdf>

Report of the seminar Evaluacion de los Comicios Legislativos 2009, produced by the National Electoral Chamber.

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluación%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

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 overly 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.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes

No

Comments:

The Ministry of the Interior and the National Electoral Chamber invited international technical missions, one by a relevant number of electoral authorities of LAC countries.

Report by Instituto Inter-Americano de Derechos Humanos (IIDH) y Centro de Asesoría y Promoción Electoral (CAPEL) MISIÓN TÉCNICA INTERNACIONAL ELECCIONES LEGISLATIVAS 2009 ARGENTINA.
<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20Capel%202009.pdf>

A second one was undertaken in a report by CEELA (Consejo de Expertos Electorales de Latinoamerica), MISIÓN ELECTORAL EN LA REPÚBLICA ARGENTINA ELECCIONES LEGISLATIVAS June 28, 2009.
<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20CEELA%202009.pdf>

No local observers were admitted.

References:

Judicial power website.

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.

19f. In practice, election observers are able to effectively monitor elections.

100

75

50

25

0

Comments:

No local observers were admitted.

References:

Interview with Pablo Secchi.

The Ministry of the Interior and the National Electoral Chamber invited international technical missions, one by a relevant number of electoral authorities of LAC countries:

Report by Instituto Inter-Americano de Derechos Humanos (IIDH) y Centro de Asesoría y Promoción Electoral (CAPEL) MISIÓN TÉCNICA INTERNACIONAL ELECCIONES LEGISLATIVAS 2009 ARGENTINA.
<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20Capel%202009.pdf>

A second one was undertaken in a report from CEELA (Consejo de Expertos Electorales de Latinoamerica), MISIÓN ELECTORAL EN LA REPÚBLICA ARGENTINA ELECCIONES LEGISLATIVAS JUNE 28, 2009.
<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20CEELA%202009.p>

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.

93
2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are limits on individual donations to political parties.

Yes

No

Comments:

The law establishes limits to regular contributions to political parties and special limits during political campaigns.

References:

Law 26215 (Political Parties Funding Law).

<http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=124231>

Article 16, Article 44.

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

Comments:

Contributions by corporations have limits when they are made off campaigns.
Contributions by corporations are prohibited during electoral campaigns.

References:

Law 26215 (Political Parties Funding Law).
<http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=124231>

Article 16, Article 44 bis.

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

20c. In law, there are limits on total political party expenditures.

Yes | No

Comments:

Limits apply during campaigns.

References:

Law 26215 (Political Parties Funding Law).
<http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=124231>
article 45

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

Comments:

Political parties must disclose a list of donations received.

References:

Law 26215 (Political Parties Funding Law).

<http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=124231>

articles 23 / 24

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

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes

No

Comments:

Article 23 provides for annual controls of regular financing of political parties, while Articles 53 to 61 establish procedures for auditing campaign expenditures.

References:

Law 26215 (Political Parties Funding Law), Article 26/53 to 61.

http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=33174&CI=INDEX100

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes

No

Comments:

Article 23 provides for the functions of the federal electoral justice and for the National Electoral Chamber (with the assistance of a body of accounting auditors) for the monitoring of regular financing of political parties. Articles 53 to 61 do the same in relation to the financing of campaigns.

References:

Law 26215, Articles 23/53 to 61.

http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=33174&CI=INDEX100

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are limits on individual donations to political candidates.

Yes

No

Comments:

This article of the Constitution establishes that political parties have the power for nomination of candidates for elective public positions. The Organization Law is more explicit since it provides that political parties have exclusive responsibility for the nomination of candidates for elected public positions. A political party may present the candidacy of a person, even though he or she is not affiliated with any of the parties.

As was stated before, political parties have their own regulation, so the prohibition of individual candidates must be interpreted as a YES answer.

References:

National Constitution, Article 38.

Transcription:

Section 38: Political parties are basic institutions of the democratic system. This Constitution guarantees the free establishment and exercise of their activities, as well as their democratic organization and performance, representation of minority groups, competition for those standing as candidates for elective public positions, access to public information and communication of their ideas. The state contributes to the economic support of their activities and the training of their leaders. Political parties shall make public the source and destination of their funds and assets.

Law 23298 (Organization of Political Parties Law), Article 2.

http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=33173&CI=INDEX100

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

Comments:

This article of the Constitution establishes that political parties have the power for nomination of candidates for elective public positions. The Organization Law is more explicit since it provides that political parties have exclusive responsibility for the nomination of candidates for elected public positions. A political party may present the candidacy of a person, even though he or she is not affiliated with any of the parties.

As was stated before, political parties have their own regulation, so the prohibition of individual candidates must be interpreted as a YES answer.

References:

National Constitution, Article 38.

Transcription:

Section 38: Political parties are basic institutions of the democratic system. This Constitution guarantees the free establishment and exercise of their activities, as well as their democratic organization and performance, representation of minority groups, competition for those standing as candidates for elective public positions, access to public information and communication of their ideas. The state contributes to the economic support of their activities and the training of their leaders. Political parties shall make public the source and destination of their funds and assets.

Law 23298 (Organization of Political Parties Law), Article 2.

http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=33173&Cl=INDEX100

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

Comments:

This article of the Constitution establishes that political parties have the power for nomination of candidates for elective public positions. The Organization Law is more explicit since it provides that political parties have exclusive responsibility for the nomination of candidates for elected public positions. A political party may present the candidacy of a person, even though he or she is not affiliated with any of the parties.

As was stated before, political parties have their own regulation, so the prohibition of individual candidates must be interpreted as a YES answer.

References:

National Constitution, Article 38.

Transcription:

Section 38: Political parties are basic institutions of the democratic system. This Constitution guarantees the free establishment and exercise of their activities, as well as their democratic organization and performance, representation of minority groups,

competition for those standing as candidates for elective public positions, access to public information and communication of their ideas. The state contributes to the economic support of their activities and the training of their leaders. Political parties shall make public the source and destination of their funds and assets.

Law 23298 (Organization of Political Parties Law), Article 2.
http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=33173&Cl=INDEX100

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

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

Comments:

This article of the Constitution establishes that political parties have the power for nomination of candidates for elective public positions. The Organization Law is more explicit since it provides that political parties have exclusive responsibility for the nomination of candidates for elected public positions. A political party may present the candidacy of a person, even though he or she is not affiliated with any of the parties.

As was stated before, political parties have their own regulation, so the prohibition of individual candidates must be interpreted as a YES answer.

References:

National Constitution, Article 38.

Transcription:

Section 38: Political parties are basic institutions of the democratic system. This Constitution guarantees the free establishment and exercise of their activities, as well as their democratic organization and performance, representation of minority groups, competition for those standing as candidates for elective public positions, access to public information and communication of their ideas. The state contributes to the economic support of their activities and the training of their leaders. Political parties shall make public the source and destination of their funds and assets.

Law 23298 (Organization of Political Parties Law), Article 2.
http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=33173&Cl=INDEX100

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes

No

Comments:

This article of the Constitution establishes that political parties have the power for nomination of candidates for elective public positions. The Organization Law is more explicit since it provides that political parties have exclusive responsibility for the nomination of candidates for elected public positions. A political party may present the candidacy of a person, even though he or she is not affiliated with any of the parties.

As was stated before, political parties have their own regulation, so the prohibition of individual candidates must be interpreted as a YES answer.

References:

National Constitution, Article 38.

Transcription:

Section 38: Political parties are basic institutions of the democratic system. This Constitution guarantees the free establishment and exercise of their activities, as well as their democratic organization and performance, representation of minority groups, competition for those standing as candidates for elective public positions, access to public information and communication of their ideas. The state contributes to the economic support of their activities and the training of their leaders. Political parties shall make public the source and destination of their funds and assets.

Law 23298 (Organization of Political Parties Law), Article 2.

http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=33173&CI=INDEX100

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

63

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100

75

50

25

0

Comments:

Sources support the importance of limits to private contributions to political parties as a barrier for particular interests to take control over parties. In Argentina, the existence of public funding for parties is also recognized as an important element. On the other hand, there are strong calls for enhancing the transparency of the information regarding party financing.

References:

Interview with Pablo Secchi. Place: Poder Ciudadano.

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, "Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay."

http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Sources support the importance of limits to private contributions to political parties as a barrier for particular interests to take control over parties. In Argentina, the existence of public funding for parties is also recognized as an important element. On the other hand, there is strong request for enhancing transparency of the information regarding party financing.

References:

Interview with Pablo Secchi. Place: Poder Ciudadano..

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, "Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay."

http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

Paper by Fernando Navarrete Yanez,. "Financiamiento, Politico en America Latina."

<http://www.scribd.com/doc/18064950/el-financiamiento-de-los-partidos-politicos-bernardo-navarrete>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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

References:

Interview with Pablo Secchi. Place: Poder Ciudadano.

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, "Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay."

http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

Paper by Fernando Navarrete Yanez, "Financiamiento Politico en America Latina."

<http://www.scribd.com/doc/18064950/el-financiamiento-de-los-partidos-politicos-bernardo-navarrete>

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

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

Comments:

Investigations are initiated by a federal judge with electoral competence.

References:

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, "Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay."

http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

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Report by the La Nacion newspaper on a decision by the federal electoral judge making controls on political funding more "flexible."
http://www.lanacion.com.ar/nota.asp?nota_id=1116850

Report of the Seminar Evaluacion del Proceso Electoral 2009
<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluación%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

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

References:

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, "Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay."
http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

Paper by Fernando Navarrete Yanez, "Financiamiento Politico en America Latina."
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Report of the Seminar Evaluacion del Proceso Electoral 2009
<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluación%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

CAPEL report of the International Technical Mission of 2009 elections.
<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20Capel%202009.pdf>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The National Electoral Chamber is the agency that performs the audits on party funding.

References:

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, "Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay."

http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

Paper by Fernando Navarrete Yanez, "Financiamiento Politico en America Latina."

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Report by the La Nacion newspaper on a decision by the federal electoral judge making controls on political funding more "flexible."

http://www.lanacion.com.ar/nota.asp?nota_id=1116850

Report of the Seminar Evaluacion del Proceso Electoral 2009

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluación%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

CAPEL report of the International Technical Mission of 2009 elections.

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20Capel%202009.pdf>

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

As explained before, individual candidates must be nominated by parties, so qualifications assigned to party indicators will be replicated here.

References:

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, "Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay."

http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

Paper by Fernando Navarrete Yanez, "Financiamiento Politico en America Latina."

<http://www.scribd.com/doc/18064950/el-financiamiento-de-los-partidos-politicos-bernardo-navarrete>

Report by the La Nacion newspaper on a decision by the federal electoral judge making controls on political funding more "flexible."

http://www.lanacion.com.ar/nota.asp?nota_id=1116850

Report of the Seminar Evaluacion del Proceso Electoral 2009

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluación%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

CAPEL report of the International Technical Mission of 2009 elections.

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20Capel%202009.pdf>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

References:

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, “Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay.”

http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

Paper by Fernando Navarrete Yanez, “Financiamiento Politico en America Latina.”

<http://www.scribd.com/doc/18064950/el-financiamiento-de-los-partidos-politicos-bernardo-navarrete>

Report by the La Nacion newspaper on a decision by the federal electoral judge making controls on political funding more “flexible.”

http://www.lanacion.com.ar/nota.asp?nota_id=1116850

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CAPEL report of the International Technical Mission of 2009 elections.

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20Capel%202009.pdf>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

References:

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, “Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay.”

http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

Paper by Fernando Navarrete Yanez, “Financiamiento Politico en America Latina.”

<http://www.scribd.com/doc/18064950/el-financiamiento-de-los-partidos-politicos-bernardo-navarrete>

Report by the La Nacion newspaper on a decision by the federal electoral judge making controls on political funding more "flexible."

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CAPEL report of the International Technical Mission of 2009 elections.

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20Capel%202009.pdf>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

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

References:

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, "Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay."

http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

Paper by Fernando Navarrete Yanez, "Financiamiento Politico en America Latina."

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CAPEL report of the International Technical Mission of 2009 elections.

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20Capel%202009.pdf>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

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

References:

Article by Congresswoman and expert in political funding Ms. Delia Ferreyra Rubio, "Financiamiento Politico en el Cono Sur: Argentina, Brasil, Chile, Paraguay y Uruguay."

http://www.idea.int/publications/good_practices_la/upload/Parte2Cap3.pdf

Paper by Fernando Navarrete Yanez, "Financiamiento Politico en America Latina."

<http://www.scribd.com/doc/18064950/el-financiamiento-de-los-partidos-politicos-bernardo-navarrete>

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CAPEL report of the International Technical Mission of 2009 elections.

<http://www.pjn.gov.ar/cne/documentos/seminario/Informe%20Capel%202009.pdf>

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

94

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Pablo Secchi.

Reports available at the National Electoral Chamber website regarding the presentation of financial reports.

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2054.pdf>

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2058.pdf>

Report of the evaluation of the 2009 elections process.

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluaci3n%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

Statistical report of party financing.

http://www.pjn.gov.ar/cne/documentos/C.Electora_02-12-09.pdf

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Data is fully available at the National Electoral Chamber website.

References:

Interview with Pablo Secchi.

Reports available at the National Electoral Chamber website regarding the presentation of financial reports.

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2054.pdf>

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2058.pdf>

Report of the evaluation of the 2009 elections process.

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluaci3n%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

Statistical report of party financing.

http://www.pjn.gov.ar/cne/documentos/C.Electora_02-12-09.pdf

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to financial records is free of charge.

References:

Interview with Pablo Secchi.

Reports available at the National Electoral Chamber website regarding the presentation of financial reports.

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2054.pdf>

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2058.pdf>

Report of the evaluation of the 2009 elections process.

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluaci3n%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

Statistical report of party financing.

http://www.pjn.gov.ar/cne/documentos/C.Electora_02-12-09.pdf

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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Reports are generally accurate but some investigations reveal a tendency to under evaluate the amount of contributions to stay below legal limits.

References:

Interview with Pablo Secchi.

Reports available at the National Electoral Chamber website regarding the presentation of financial reports.

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2054.pdf>

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2058.pdf>

Report of the evaluation of the 2009 elections process.

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluación%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

Statistical report of party financing.

http://www.pjn.gov.ar/cne/documentos/C.Electora_02-12-09.pdf

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

94

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Since individual candidacies are not allowed in Argentina, candidates must be nominated by political parties. In that sense, we'll replicate the same qualifications assigned to indicators regarding these same issues for parties.

References:

Interview with Pablo Secchi.

Reports available at the national electoral chamber website regarding the presentation of financial reports.
<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2054.pdf>

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2058.pdf>

Report of the evaluation of the 2009 election process.

<http://www.pjn.gov.ar/cne/documentos/ALE/Evaluación%20del%20Proceso%20Electoral%202009%20-%20Memoria%20y%20Conclusiones.pdf>

Statistical report of party financing.

http://www.pjn.gov.ar/cne/documentos/C.Electora_02-12-09.pdf

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Since individual candidacies are not allowed in Argentina, candidates must be nominated by political parties. In that sense, we'll replicate the same qualifications assigned to indicators regarding these same issues for parties.

References:

Interview with Pablo Secchi.

Reports available at the national electoral chamber website regarding the presentation of financial reports.

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2054.pdf>

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2058.pdf>

Report of the evaluation of the 2009 election process.

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Statistical report of party financing.

http://www.pjn.gov.ar/cne/documentos/C.Electora_02-12-09.pdf

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Since individual candidacies are not allowed in Argentina, candidates must be nominated by political parties. In that sense, we'll replicate the same qualifications assigned to indicators regarding these same issues for parties.

References:

Interview with Pablo Secchi.

Reports available at the national electoral chamber website regarding the presentation of financial reports.

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2054.pdf>

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2058.pdf>

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Statistical report of party financing.

http://www.pjn.gov.ar/cne/documentos/C.Electora_02-12-09.pdf

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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Since individual candidacies are not allowed in Argentina, candidates must be nominated by political parties. In that sense, we'll replicate the same qualifications assigned to indicators regarding these same issues for parties.

References:

Interview with Pablo Secchi.

Reports available at the national electoral chamber website regarding the presentation of financial reports.

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2054.pdf>

<http://www.pjn.gov.ar/cne/documentos/seminario/Cumplimiento%20oportuno%20art%2058.pdf>

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Statistical report of party financing.

http://www.pjn.gov.ar/cne/documentos/C.Electora_02-12-09.pdf

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁷⁷Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes

No

References:

National Constitution, Article 43.

http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

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.

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

75

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100

75

50

25

0

Comments:

General opinions are that the president often gives reasons for policy decisions. Newspapers tend to criticize the lack of structured agenda for press conferences. It is to be mentioned that the Chief of Cabinet, Mr. Fernandez, often offers press conferences to express reasons for policy decisions.

References:

Mr. José Massoni, former head of the anti-corruption office, addressing questions by mail.

La Nación, newspaper, "Un Nuevo Round entre la Presidenta y la Prensa."

http://www.lanacion.com.ar/nota.asp?nota_id=1229144

La Nación, newspaper, "Los Kirchner y la Prensa," by Fernando Laborda. http://www.lanacion.com.ar/nota.asp?nota_id=1297429

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.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

References:

National Constitution, Articles 51 and 52, regarding the impeachment process. It leaves application of penal sanctions to the decision of ordinary judges.

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

References:

Interview with former Judge and judicial policy expert Jose Massoni.

Interview with Director of Transparency Policies of the Anti-corruption Office, Gerardo Serrano.

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. It does not need to rely upon the executive to initiate a constitutional or legal review.

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.

27d. 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:

Interview with Director of Transparency Policies of the Anti-corruption Office, Gerardo Serrano.

Interview with scholar (Ph.D. candidate in Political Science at the University of Austin), Manuel Balan.

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.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

References:

The President can be subject to the penal process. She cannot be detained until an impeachment process determines her case as President.

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

References:

The ministers can be subject to the penal process. They cannot be detained until an impeachment process determines their cases.

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.

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

84

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

References:

National Ethics Law (Law 25188), in Article 5.a, establishes that the President and Vice President must file a financial disclosure form. Article 4 of Law 25188 provides that those required to file disclosure forms must do so when taking office, then on a yearly basis and, finally, when leaving office.

<http://www.anticorrupcion.gov.ar/25.188.PDF>

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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

References:

National Ethics Law (Law 25188), in Article 5.f, establishes that the Chief of the Council of Ministers, ministers, secretaries and undersecretaries must file financial disclosure forms. Article 4 of Law 25188 provides that those required to file disclosure forms must do so when taking office, then yearly and, finally, when leaving office.

<http://www.anticorrupcion.gov.ar/25.188.PDF>

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

References:

National Ethics Law (Law 25188) in Article 18, establishes that public officials are not allowed to receive gifts and/or hospitality.

Executive Branch Decree 164/99 regulates the application of the National Ethics Law in the Executive Branch and provides information in relation to gifts and hospitality in Article 21.

<http://www.anticorrupcion.gov.ar/25.188.PDF>

<http://www.anticorrupcion.gov.ar/164-99.pdf>

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.

29d. 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 25188 provides for independent auditing of financial disclosure forms by the National Ethics Commission.

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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes

No

Comments:

Article 15 of the National Ethics Law (25.188) established a post-employment restriction, but this article was repealed by a special decree issued for the use of powers delegated by Congress to the President (Decree 862/01). There have been arguments in favor of reinstating the original text of the law due to the limited scope of the Ethics Code (the Executive Branch).

<http://www.anticorruccion.gov.ar/862-01.pdf>

<http://www.anticorruccion.gov.ar/25.188.PDF>

References:

Decree 41/1999 that approved the Code of Ethics for the Executive Branch provides in Article 46 that all public officials (including the President and the ministers according to the scope detailed in Articles 3 and 4) have a one year to post employment restrictions.

<http://www.infoleg.gov.ar/infolegInternet/anexos/55000-59999/55841/norma.htm>

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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

29f. 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

Comments:

On this point, opinions diverge. Mr. Serrano stated that from his point of view there are not many incidents of post-employment conflicts dealing with public officials leaving office. On her side, Ms. Braguinsky said that she sees no action in controlling post-employment regulations.

References:

Interview with Director of Transparency Policies of the anti-corruption office, Gerardo Serrano.

Interview with NGO member Ms. Eugenia Braguinsky.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

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

Comments:

Opinions are diverse also on this point. Mr. Serrano said that regulations on gifts to officials apply partially. Ms. Braguinsky expressed her view that there is no action at all on controlling gifts.

References:

Interview with Director of Transparency Policies of the anti-corruption office, Gerardo Serrano.

Interview with NGO member, Ms. Eugenia Braguinsky.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

References:

Annual Report, 2009, by the anti-corruption office. <http://www.anticorrupcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Interview with Director of Transparency Policies of the anti-corruption office, Mr. Gerardo Serrano.

Interview with NGO member, Ms. Eugenia Braguinsky.

Responses to questionnaire by scholar (Ph.D. candidate) Mr. Manuel Balan.

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. Audits may be performed by entities known to be partisan or biased in their practices.

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

94

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

References:

National Ethics Law (25188) provides in Article 10 that every person may access the assets disclosure forms filed by the President (including receiving a hard copy of it).

<http://www.anticorrupcion.gov.ar/25.188.PDF>

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.

30b. 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

Comments:

All sources confirm that citizens can have access to financial disclosure forms in about 48 hours.

References:

Annual Report, 2009, by the anti-corruption office. <http://www.anticorruptcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Interview with Director of Transparency Policies of the anti-corruption office, Mr. Gerardo Serrano.

Interview with NGO member, Ms. Eugenia Braguinsky.

Responses to questionnaire by scholar (Ph.D. candidate) Mr. Manuel Balan.

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.

30c. 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

Comments:

Access to disclosure forms is free of charge.

References:

Annual Report, 2009, by the anti-corruption office. <http://www.anticorruptcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Interview with Director of Transparency Policies of the anti-corruption office, Mr. Gerardo Serrano.

Interview with NGO member, Ms. Eugenia Braguinsky.

Responses to questionnaire by scholar (Ph.D. candidate) Mr. Manuel Balan.

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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

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

Comments:

In general, disclosures are of good quality since there is an electronic system and the anti-corruption office performs controls of the contents disclosed.

References:

Annual Report, 2009, by the anti-corruption office. <http://www.anticorruptcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Interview with Director of Transparency Policies of the anti-corruption office, Mr. Gerardo Serrano.

Interview with NGO member, Ms. Eugenia Braguinsky.

Responses to questionnaire by scholar (Ph.D. candidate) Mr. Manuel Balan.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

75

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

Comments:

Opinions were not unanimous. Ms. Braguinsky stated that, in her view, there was strong confusion between official positions and party positions. The two other interviewees think that they are reasonably separated.

References:

Interview with Director of Transparency Policies of the anti-corruption office, Mr. Gerardo Serrano.

Interview with NGO member, Ms. Eugenia Braguinsky.

Responses to questionnaire by scholar (Ph.D. Candidate) Mr Manuel Balan.

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 the 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 bureaucracy 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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

92

32a. In law, the judiciary can review laws passed by the legislature.

Yes | No

Comments:

In Argentina, the Constitution and international treaties are above the national law. If a law passed by Congress is opposed to one of the said instruments, any judge can take action (ex-officio or through an action by a citizen) to review and analyze the legitimacy of such piece of legislation.

References:

National Constitution, Articles 28, 32, and 33.

http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

Law 48, Article 14.

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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

El Tucumano, newspaper. Date: 12/9/2010.

<http://www.tucumanoticias.com.ar/noticia.asp?id=51201>

Rap, "Revista del Derecho Administrativo."

http://www.revistarap.com.ar/Derecho/constitucional_e_internacional/accion_de_inconstitucionalidad/1cnt0003096768000.html

Rap, "Revista del Derecho Administrativo."

http://www.revistarap.com.ar/Derecho/constitucional_e_internacional/accion_de_inconstitucionalidad/1cnt0003096768000.html

La Nacion, newspaper. "Supreme Court Declares Unconstitutional Military Regime Amnesty Laws."

http://www.lanacion.com.ar/nota.asp?nota_id=713067

Perfil Newspaper. "Judge Declares Unconstitutional New Broadcasting Law Articles."

http://www.perfil.com/contenidos/2009/12/16/noticia_0032.html

Cels, Gargarella vs. Sagues.

http://www.cels.org.ar/common/documentos/gargarella_vs_sagues.pdf

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes

No

Comments:

In Argentina, members of Parliament are subject to criminal proceedings, but can't be detained until they leave their position. Exceptions to the detention ban is when a legislator is caught "in fraganti delicto." The Chambers, if notified of the accusation against one of its members, can suspend him or her and can require the legislator to appear before the courts.

References:

National Constitution, Articles 68, 69, and 70.

http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

43

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes

No

References:

National Ethics law 25.188 establishes that members of the legislature (Senators and deputies) must file financial disclosure forms (Article 5.b) when entering office, then yearly and, finally, when leaving the Legislature (Article 4).

<http://www.anticorrupcion.gov.ar/25.188.PDF>

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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | No

Comments:

Law 25.188, when approved, provided post-employment restrictions for all of the branches (Article 15). However, the rationale of the article was clearly intended to generate post-employment restrictions just for members of the Executive Branch since the whole conflicts-of-interests chapter is written with that aim.

In any case, Decree 862/01 amended Article 15 and at the present day there are no legal provisions on post-employment for members of the Legislature.

References:

<http://www.anticorrupcion.gov.ar/25.188.pdf>

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

References:

The National Ethics Law (Law 25188), in Article 18, establishes that public officials are not allowed to receive gifts and/or hospitality. According to the definition of public officials by Article 1 of the Law, members of the Legislature are considered public officials.

<http://www.anticorrupcion.gov.ar/25.188.PDF>

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | No

References:

National Ethics Law (Law 25188) in Articles 23 to 25 established a National Public Ethics Commission as an independent body.

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with NGO member Ms. Eugenia Braguinsky.

Interview with NGO member Mr. Federico Giargia.

Anti-corruption Office, report to the OAS Experts Committee on implementation of recommendations of the MESICIC in the first round of analysis.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

OAS, Experts Committee of the MESICIC (follow-up mechanism of the ICAC), First Hemispheric Report.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with NGO member Ms. Eugenia Braguinsky.

Interview with NGO member Mr. Federico Giargia.

Anti-corruption Office, report to the OAS Experts Committee on implementation of recommendations of the MESICIC in the first round of analysis.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

OAS, Experts Committee of the MESICIC (follow-up mechanism of the ICAC), First Hemispheric Report.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with NGO member Ms. Eugenia Braguinsky.

Responses to questionnaire by scholar (Ph.D. candidate in Political Science), University of Austin), Mr. Manuel Balan.

Anti-Corruption Office, report to the OAS Experts Committee on implementation of recommendations of MESICIC in the first round of analysis.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

OAS, Experts Committee of the MESICIC (follow-up mechanism of the ICAC), First Hemispheric Report.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

La Nacion, newspaper article, "Nadie Investiga Posibles Casos de Enriquecimiento Illicito."

http://www.lanacion.com.ar/nota.asp?nota_id=880792&origen=relacionadas

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: 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.

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

56

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes

No

References:

National Ethics Law (25188) provides in Article 10 that every person may access the assets disclosure forms filed by the members of the Legislature (including receiving a hard copy).

<http://www.anticorrupcion.gov.ar/25.188.PDF>

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, non-governmental 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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100

75

50

25

0

References:

Interview with NGO member Ms. Braguinsky.

“Índice Regional de Transparencia Parlamentaria – Transparencia y Acceso a la Información en el Congreso de la Nación Argentina,” by Poder Ciudadano. http://www.poderciudadano.org.ar/up_downloads/news/475_1.pdf

La Nacion, newspaper.

http://www.lanacion.com.ar/nota.asp?nota_id=880792&origen=relacionadas

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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Financial disclosure can be accessed free of charge.

References:

Interview with Eugenia Braguinsky.

Response by scholar Mr. Manuel Balan.

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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

References:

Interview with Ms. Eugenia Braguinsky.

Responses by scholar Mr. Manuel Balan.

La Nacion newspaper.

http://www.lanacion.com.ar/nota.asp?nota_id=880792&origen=relacionadas

Clarín newspaper.

<http://edant.clarin.com/diario/2008/07/26/elpais/p-01723330.htm>

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

92

35a. In law, citizens can access records of legislative processes and documents.

Yes

No

Comments:

Both chambers give broad access to citizens through their web pages for records and legislative procedures.

References:

National Constitution, Decree 392/2005, which creates the Senate's Institutional Enhancement Program.

<http://www.senado.gov.ar/web/proyectos/cuerpo1.php>

Deputies' chamber rules of procedure.

<http://www1.hcdn.gov.ar/dependencias/dip/congreso/regladip.pdf>

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 are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100

75

50

25

0

Comments:

Sources discuss the advances (especially by the Senate) of Congress in making records and information more accessible to citizens.

References:

Interview with Ms. Eugenia Braguinsky.

“Transparencia y Acceso a la Información en el Congreso de la Nación Argentina,” report by NGO Poder Ciudadano.
http://www.poderciudadano.org.ar/up_downloads/news/475_1.pdf

Reports by the Senate available at: www.senate.gov.ar

Reports available at: www.diputados.gov.ar

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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interviews with Eugenia Bragunisky.

Responses by scholar Mr. Manuel Balan.

Report by Poder Ciudadano.

http://www.poderciudadano.org.ar/up_downloads/news/475_1.pdf

Reports by the Senate and the House.

www.senado.gov.ar

www.diputados.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 NGOs. 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 NGOs trying to access this information.

71
3.3. Conflicts of Interest Safeguards & Checks and Balances:
Judicial Branch

36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes

No

References:

National Constitution, Article 114 (Consejo de la Magistratura).

http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

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. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100

75

50

25

0

Comments:

Sources express the need for enhancement of the Consejo de la Maagistratura to guarantee a transparent and fair selection of judges.

References:

Interview with Jose Massoni.

“Por una Reforma Democrática del Consejo de la Magistratura,” presentation by Poder Ciudadano related to need for reforms in the Consejo de la Magistratura.

“La Reforma del Consejo de la Magistratura debe Apuntar a Reducir el Número de Jueces Provisorios,” paper by Manuel Garrido, published by the NGO CIPPEC.

<http://www.cippec.org/Main.php?categoryId=5&do=documentsShow>

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

References:

National Constitution, Articles 99.4 to 114.

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

88

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

Comments:

The obligation for judges to give reasons for their decisions have Constitutional roots since both Article 18 (protection of the legality principle) and Article 17 (protection of property rights) require a judicial decision based on previous law. The federal Supreme Courts have issued decisions taken as precedents addressing the formal requirement.

References:

National Constitution, Articles 17 and 18.

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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

Interview with former judge, Mr. Jose Massoni.

Interview with expert, Ms. Ines Selwood.

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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

References:

Law 24937.

<http://www1.hcdn.gov.ar/dependencias/dip/textos%20actualizados/L24937-16-3-06.pdf>

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes

No

References:

National Constitution, Article 114.

Law 24937.

<http://www1.hcdn.gov.ar/dependencias/dip/textos%20actualizados/L24937-16-3-06.pdf>

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100

75

50

25

0

References:

Interview with former judge, Mr. Jose Massoni.

Interview with NGO member, Ms. Eugenia Braguinsky.

Reports by La Nacion newspaper.

http://www.lanacion.com.ar/nota.asp?nota_id=1300100

http://www.lanacion.com.ar/nota.asp?nota_id=1280465

Position paper by Poder Ciudadano, "Por una Reforma Democratica del Consejo de la Magistratura."

<http://poderciudadano.org/?p=927>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

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

Comments:

According to the opinions collected in the interviews, the Council is not a very efficient body when it comes to the application of sanctions. The report by the Council (last available was 2008) shows that of a total of 287 denounces, the Council applied administrative sanctions in 4 cases and rejected the denounces in 283 cases.

In particular, in the section on the activity of the Disciplinary Commission (Section C-1 of the report), the figures support the same conclusion: adding to the 283 cases rejected, another 110 denounces were repealed "in limine" (with out further consideration).

In the case of impeachments, the body recommended the removal of a federal judge in one case.

References:

Interview with Mr. Jose Massoni.

Interview with NGO member, Ms. Eugenia Braguinsky.

Annual Report of the Council of the Judiciary (2008).

http://www.pjn.gov.ar/02_Central/ViewDoc.Asp?Doc=28858&CI=INDEX100

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

43

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

References:

Law 25188, Article 5.

<http://www.infoleg.gov.ar/infolegInternet/anexos/60000-64999/60847/norma.htm>

Yes: A YES score is earned if all members of the national-level judiciary 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 national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

References:

Law 25188, Article 18.

<http://www.infoleg.gov.ar/infolegInternet/anexos/60000-64999/60847/norma.htm>

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

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

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

References:

Law 25188.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary 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 national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

References:

Post-employment contents of Law 25188 were amended by Decree 862/01.

Yes: A YES score is earned if there are regulations restricting national-level judges' 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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

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

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Eugenia Braguinsky.

Report to the MESICIC regarding actions taken to implement recommendations of the first round of analysis of implementation of the ICAC.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

MESICIC, final report of the third round of analysis of implementation of the ICAC.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-%20Infome%20final%20argentina.pdf>

MESICIC, final report of the first round of analysis.

http://www.oas.org/juridico/spanish/mec_inf_arg.pdf

OAS, hemispheric report regarding the implementation of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges 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 cases, judges 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. Judges 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Eugenia Braguinsky.

Report to the MESICIC regarding actions taken to implement recommendations of the first round of analysis of implementation of the ICAC.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

MESICIC, final report of the third round of analysis of implementation of the ICAC.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-%20Infome%20final%20argentina.pdf>

MESICIC, final report of the first round of analysis.

http://www.oas.org/juridico/spanish/mec_inf_arg.pdf

OAS, hemispheric report regarding the implementation of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges 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 are rarely or never enforced. Judges 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.

38g. In practice, national-level judiciary asset disclosures are audited.

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Eugenia Braguinsky.

Report to the MESICIC regarding actions taken to implement recommendations of the first round of analysis of implementation of the ICAC.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

MESICIC, final report of the third round of analysis of implementation of the ICAC.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-%20Infome%20final%20argentina.pdf>

MESICIC, final report of the first round of analysis.

http://www.oas.org/juridico/spanish/mec_inf_arg.pdf

OAS, hemispheric report regarding the implementation of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary 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: The regulations are rarely or never enforced. Judges 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.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

69

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes

No

References:

Law 25188, Article 10.

<http://www.infoleg.gov.ar/infolegInternet/anexos/60000-64999/60847/norma.htm>

Yes: A YES score is earned if members of the national-level judiciary 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-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Eugenia Braguinsky.

Report to the MESICIC regarding actions taken to implement recommendations of the first round of analysis of implementation of the ICAC.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

MESICIC, final report of the third round of analysis of implementation of the ICAC.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-%20Infome%20final%20argentina.pdf>

MESICIC, final report of the first round of analysis.

http://www.oas.org/juridico/spanish/mec_inf_arg.pdf

OAS, hemispheric report regarding the implementation of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Eugenia Braguinsky.

Report to the MESICIC regarding actions taken to implement recommendations of the first round of analysis of implementation of the ICAC.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

MESICIC, final report of the third round of analysis of implementation of the ICAC.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-%20Infome%20final%20argentina.pdf>

MESICIC, final report of the first round of analysis.

http://www.oas.org/juridico/spanish/mec_inf_arg.pdf

OAS, hemispheric report regarding the implementation of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

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

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Eugenia Braguinsky.

Report to the MESICIC regarding actions taken to implement recommendations of the first round of analysis of implementation of the ICAC.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

MESICIC, final report of the third round of analysis of implementation of the ICAC.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-%20Infome%20final%20argentina.pdf>

MESICIC, final report of the first round of analysis.

http://www.oas.org/juridico/spanish/mec_inf_arg.pdf

OAS, hemispheric report regarding the implementation of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

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

58

40a. In law, the legislature can amend the budget.

Yes

No

Comments:

The budget is sent by the Executive and approved by Congress.

References:

National Constitution.

http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

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

40b. In practice, significant public expenditures require legislative approval.

100

75

50

25

0

Comments:

For the last two decades, the Executive Branch has requested the delegation of powers to reassign the budget allocation. This year the opposition parties advanced the elimination of such “super powers.” The Deputies Chamber approved the elimination, but it was not confirmed by the Senate.

References:

La Nacion newspaper, opinion on the so-called budget “superpowers.”

http://www.lanacion.com.ar/nota.asp?nota_id=1281950

La Nacion newspaper.

http://www.lanacion.com.ar/nota.asp?nota_id=1323676

Pagina 12 newspaper.

<http://www.pagina12.com.ar/diario/ultimas/20-157474-2010-11-24.html>

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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

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

References:

Siena Foundation.

<http://www.aaeap.org.ar/apuntes1siena.pdf>

Draft legislation for creation of a Budget Office in the Congress.

<http://www.ferrarigustavo.com/archivos/Analisis-y-seguimiento-del-Presupuesto-Nacional.pdf>

CIPPEC (Fiscal policies focused NGO) report on the creation of the Budget Office in the Congress

<http://www.cippec.org/Main.php?do=contentShow&id=63>

Report by the Oficina de vinculacion ciudadana of the Senate

<http://oficinavinulacionciudadana.blogspot.com/>

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.

41. Can citizens access the national budgetary process?

67

41a. 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

References:

Ambito Financiero newspaper, budget debate.
<http://www.ambito.com/noticia.asp?id=544275>

Report of initiation of debates on the budget in Congress.
<http://www.continental.com.ar/nota.aspx?id=1361288>

La Nacion newspaper, opinion article on budget 2011.
http://www.lanacion.com.ar/nota.asp?nota_id=1314433

Pagina 12 newspaper, article on the budget debate.
<http://www.pagina12.com.ar/diario/ultimas/20-157038-2010-11-17.html>

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.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

References:

CIPPEC budget, 2011 report, analysis of the draft budget.
<http://www.cippec.org/files/documents/lyME/IPPfinal.pdf>

Report of budget situation, input by CIPPEC expert Luciana Diaz Frers.
<http://mardelplataeconomica.blogspot.com/2010/11/fracasa-debate-por-presupuesto-2011-en.html>

El Litoral newspaper, budget 2011.
<http://www.ellitoral.com/index.php/diarios/2010/12/14/opinion/OPIN-02.html>

La Nacion investigation article on NGO incidents strategies.
<http://rendircuentas.org/2010/09/la-legitimidad-y-el-poder-de-las-organizaciones-sociales/>

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

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

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

Reports by the National Budget Office at the Ministry of Economics.
<http://www.mecon.gov.ar/onp/html/>

Argentina Federal Government Transparency web page.
<http://www.argentina.gov.ar/argentina/portal/paginas.dhtml?pagina=308>

Ministry of Education budget information.
<http://portal.educacion.gov.ar/universidad/financiamiento/informacion-presupuestaria/>

El Cronista newspaper, article on budget transparency.
<http://www.cronista.com/notas/253542-la-argentina-mitad-camino-transparencia-presupuestaria>

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

75:

50: Citizens, journalists and NGOs 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.

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

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

References:

Public Expenditure Congress Committee, Article 127.
<http://www.mecon.gov.ar/digesto/leyes/ley24156.htm>

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 within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

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

83

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

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.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

Recent distribution of responsibilities in congressional committees, as a consequence of the opposition winning the 2009 elections, produced an outcome in which most of the committees are chaired by opposition representatives and representation is extremely balanced between ruling and opposition parties.

References:

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

Interview with Ms. Luciana Mora.

Interview with Ms. Vanesa del Boca.

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.

Category 4. Public Administration and Professionalism

4.1. ⁸⁹Civil Service: Conflicts of Interest Safeguards and Political Independence

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

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes

No

Comments:

General principles for the civil service are established in Law 25164, providing for a set of principles that apply to all civil servants, with some few exceptions for agents with their own regimes (security forces, political appointees).

References:

Law 25164 (Public Service Law).

<http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=60458>

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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

Article 43 of the Ethics Code prohibits nepotism and cronyism.

References:

Decree 41/99, Article 43.

<http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=55841>

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.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

References:

Law 25164 (Civil Service Law), Article 16 and Articles 39 to 41.

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | No

References:

Law 25164 (Civil Service Law).

<http://www.infoleg.gov.ar/infolegInternet/anexos/60000-64999/60458/norma.htm>

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 or if the ban is not a lifetime ban.

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

75

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In general, interviewees expressed that bureaucracy at the federal government has improved and that in most of the cases there is no political influence on administrative decisions. The INDEC case remains as a pending issue but recently the federal government initiated a round of consultations with public universities to improve the performance of the agency.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-corruption Office report to the MESICIC, Annex 2, on the second round of analysis that includes recommendations on civil service.

<http://www.anticorruptcion.gov.ar/documentos/OEA%20a%20r%20-Resp%20Cuest%20-%20anexo%202.pdf>

OAS Hemispheric Report of MESICIC, second round of analysis.

http://www.oas.org/juridico/spanish/mec_ron2_inf_hemis.pdf

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In general, party affiliation is not a relevant issue for selecting officials for public positions. On the other hand, there's still a barrier for open calls for selection of new officials for public positions since there is a freeze on available positions. The result is temporary appointments that are supposed to be confirmed through a formal competitive process.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-corruption Office report to the MESICIC, Annex 2, on the second round of analysis that includes recommendations on civil service.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%202.pdf>

OAS Hemispheric Report of MESICIC, second round of analysis.

http://www.oas.org/juridico/spanish/mec_ron2_inf_hemis.pdf

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.

45c. 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:

Nepotism, cronyism and patronage have not been identified as a central problem at the federal civil service.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

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OAS Hemispheric Report of MESICIC 2nd round of Analysis

http://www.oas.org/juridico/spanish/mec_ron2_inf_hemis.pdf

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.

45d. In practice, civil servants have clear job descriptions.

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

Comments:

Experts maintained that job descriptions for positions were accurate, but since the OAS recommended enhancing the job description manuals, it appears that there are still challenges to be addressed in this field.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-corruption Office report to the MESICIC, Annex 2, on the second round of analysis that includes recommendations on civil service.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%202.pdf>

OAS Hemispheric Report of MESICIC 2nd round of Analysis

http://www.oas.org/juridico/spanish/mec_ron2_inf_hemis.pdf

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Experts agree that bonuses are just a small part of wages.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

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OAS Hemispheric Report of MESICIC 2nd round of Analysis

http://www.oas.org/juridico/spanish/mec_ron2_inf_hemis.pdf

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.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

Comments:

The government publishes each and every position, but because of the job freeze, each appointment has to be especially authorized and publicized. On the other hand, as stated before, standardization in covering public positions is still pending because of the freeze.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

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OAS Hemispheric Report of MESICIC 2nd round of Analysis

http://www.oas.org/juridico/spanish/mec_ron2_inf_hemis.pdf

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.

45g. In practice, the independent redress mechanism for the civil service is effective.

Comments:

In general, experts consider redress mechanisms to be fairly effective.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-corruption Office report to the MESICIC, Annex 2, on the second round of analysis that includes recommendations on civil service.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%202.pdf>

OAS Hemispheric Report of MESICIC 2nd round of Analysis

http://www.oas.org/juridico/spanish/mec_ron2_inf_hemis.pdf

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.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

All sources agree that there have been no delays in payments to civil servants.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-corruption Office report to the MESICIC, Annex 2, on the second round of analysis that includes recommendations on civil service.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%202.pdf>

OAS Hemispheric Report of MESICIC 2nd round of Analysis

http://www.oas.org/juridico/spanish/mec_ron2_inf_hemis.pdf

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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

Records show that there is not even one case of a convicted civil servant being in public office. Before a new agent is appointed, he or she has to file a certificate with the Convictions Registry Agency (Dirección de Reincidencia) stating that he or she has not been charged with criminal convictions. According to the interviews, this condition is fulfilled in 100 percent of the cases.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-corruption Office report to the MESICIC, Annex 2, on the second round of analysis that includes recommendations on civil service.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%202.pdf>

OAS Hemispheric Report of MESICIC 2nd round of Analysis

http://www.oas.org/juridico/spanish/mec_ron2_inf_hemis.pdf

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. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

83

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

The scope of Article 5 of the Ethics Law clearly covers all senior civil servants.

References:

National Ethics Law (25188) establishes that senior civil servants must file a disclosure form when appointed, once a year, and when leaving the civil service.

Yes: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

Comments:

Civil servants are obliged to recuse themselves when personal (or family) interests are involved.

References:

National Ethics Law 25188:

- 1) Article 2, Section i, Ethics Obligations.
- 2) Article 13, Conflicts-of-Interests.

Civil service Law, Article 23, Prohibited Activities.

Code of Ethics (Decree 41/1999) Articles 41 and 42, Prohibited Activities and Conflicts-of-Interests.

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | No

References:

Code of Ethics, Decree 41/1999, Article 46.

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

References:

National Ethics Law 25188, Article 18.

Code of Ethics, Article 36.

Civil Service Law, Article 24, Section f.

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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | No

References:

Ethics law 25188, Article 25.

<http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=60847>

Decree 102/1999.

<http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=61724>

Decree 164/1999, Articles 2 to 20.

<http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=61900>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Sources stated that revolving-door situations were not common for civil servants, but that some cases may still occur. In particular, they signaled the need for a reform to the Ethics Law to strengthen control of post-employment conflicts.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-corruption Office report to the MESICIC, Annex 2, on the second round of analysis that includes recommendations on civil service.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%202.pdf>

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Although, in general, interviewees consider that rules on gifts are well-known by civil servants, there is no operative regulation in the Ethics Law, posing difficulties in enforcing legal provisions.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, Annex 1, on recommendations of the second round of analysis that includes recommendations on civil service conflicts-of-interests and post-employment aspects.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

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

Comments:

Despite the existence of provisions related to incompatibilities, enforcement is still a challenge. Some of the interviewees consider that it is not common that bureaucracy members would be involved in situations of conflict. The Anti-Corruption Office produced a set of guidelines for civil servants, but dissemination of the guidelines has been limited.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, Annex 1, on recommendations of the second round of analysis that includes recommendations on civil service conflicts-of-interests and post-employment aspects.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Anti-Corruption Office performs regular control of the financial disclosure forms of senior civil servants.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, Annex 1, on recommendations of the second round of analysis that includes recommendations on civil service conflicts-of-interests and post-employment aspects.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

OAS Experts Committee, Hemispheric Report of the first round of analysis of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

100

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

References:

National Ethics Law, Article 10.

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The annual report by the Anti-Corruption Office describes the cases of disclosure form requirements.

The OAS report on follow-up of the ICAC implementation, in its first round of analysis, recognized that financial forms are easily accessible by citizens. The independent report of civil society, presented at the same event, also pointed out the same.

Interview with person responsible at Anti-Corruption Office describes the process as simple and stated that a financial form was never denied.

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Financial declarations are accessible at zero cost.

References:

OA reports.

<http://www.anticorrupcion.gov.ar/documentos/OEA%20a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

OAS report.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

Interviews with Director of Transparency Policies of Anti-Corruption Office, Mr. Gerardo Serrano.

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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Experts consider that, after ten years of the implementation of the new system of financial forms, civil servants present declarations of high quality, containing detailed information regarding assets and interests.

References:

Interview with professor at the School of Public Lawyers and administrative specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, Annex 1, on recommendations of the second round of analysis that includes recommendations on civil service conflicts-of-interests and post-employment aspects.

<http://www.anticorrupcion.gov.ar/documentos/OEA%20a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

OAS Experts Committee, Hemispheric Report of the first round of analysis of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

31

48a. 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

Comments:

The absence of a law for protection of witnesses in corruption cases has been pointed out by the OAS Experts Committee in their reports. Interviews with members of the NGO, and with officials from the Anti-Corruption office, confirmed that no such law has been passed recently.

References:

There is not an specific law on the protection of civil servants reporting cases of corruption.

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.

48b. 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.

Comments:

While some of those interviewed underlined operative measures to protect whistle blowers, the OAS stressed the need for regulations establishing labor protection for those reporting acts of corruption.

References:

Interview with Transparency Unit Director at the Ministry of Defense, Ms. Paula Honisch.

Interview with Director of Transparency Policies of the AO, Mr. Gerardo Serrano.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, third round of analysis, Annex 2, on recommendations on the second round of analysis that includes recommendations on whistle-blower protection.

OAS Expert Committee, Final Report, of Argentina's implementation of the ICAC second round of analysis.

http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf

OAS Experts Committee, Hemispheric Report of the first round of analysis of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

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.

48c. 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

Comments:

The absence of a law for protection of witnesses in corruption cases has been pointed out by the OAS Experts Committee in their reports. Interviews with members of the NGO and with officials from the Anti-Corruption Office confirmed that no such law has been passed recently.

Private sector whistle blowers have no legal protection when denouncing acts of corruption.

References:

There is no legislation.

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.

48d. 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:

Some international companies encourage employees to come forward to denounce corruption, offering labor protection. Mr. Serrano considers the law for protection of witnesses in cases of kidnapping and drug traffic to be applicable to corruption cases.

References:

Interview with Director of Transparency Policies, Mr. Gerardo Serrano.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes | No

Comments:

Decree 102/1999 and Res.1316/2008 by the Ministry of Justice established the mechanisms for whistle blowers to get protection

through anonymity (by phone or mail) or with identity protection.

References:

Decree 102/99.

<http://www.infoleg.gov.ar/infolegInternet/anexos/60000-64999/61724/norma.htm>

Res.1316/2008, Ministry of Justice and Human Rights.

<http://www.infoleg.gov.ar/infolegInternet/anexos/140000-144999/140863/norma.htm>

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

88

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Considering that the Anti-Corruption Office is the main “internal mechanism” for receiving corruption tips, experts consider that the AO indeed has a professional full-time staff.

References:

Interview with Transparency Unit Director at the Ministry of Defense, Ms. Paula Honisch.

Interview with Director of Transparency Policies of the AO, Mr. Gerardo Serrano.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, third round of analysis, Annex 2, on recommendations on the second round of analysis that includes recommendations on whistle-blower protection.

OAS Expert Committee, Final Report, of Argentina’s implementation of the ICAC second round of analysis.

http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf

OAS Expert Committee, Final Report, of Argentina’s implementation of the ICAC second round of analysis.

http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf

OAS Experts Committee, Hemispheric Report of the first round of analysis of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The FNIA and the AO receive regular funding.

References:

Interview with Transparency Unit Director at the Ministry of Defense, Ms. Paula Honisch.

Interview with Director of Transparency Policies of the AO, Mr. Gerardo Serrano.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, third round of analysis, Annex 2, on recommendations on the second round of analysis that includes recommendations on whistle-blower protection.

OAS Expert Committee, Final Report, of Argentina's implementation of the ICAC second round of analysis.

http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf

OAS Experts Committee, Hemispheric Report of the first round of analysis of the ICAC.

http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In the majority of cases, the agencies act promptly, but there are some complex cases where resolution may take a long time.

References:

Interview with Transparency Unit Director at the Ministry of Defense, Ms. Paula Honisch.

Interview with Director of Transparency Policies of the AO, Mr. Gerardo Serrano.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, third round of analysis, Annex 2, on recommendations on the second round of analysis that includes recommendations on whistle-blower protection.

OAS Expert Committee, Final Report, of Argentina's implementation of the ICAC second round of analysis.
http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf

OAS Experts Committee, Hemispheric Report of the first round of analysis of the ICAC.
http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Interview with Transparency Unit Director at the Ministry of Defense, Ms. Paula Honisch.

Interview with Director of Transparency Policies, Mr. Gerardo Serrano.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, third round of analysis, Annex 2, on recommendations on the second round of analysis that includes recommendations on whistle-blower protection.

OAS Expert Committee, Final Report, of Argentina's implementation of the ICAC second round of analysis.
http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf

OAS Experts Committee, Hemispheric Report of the first round of analysis of the ICAC.
http://www.oas.org/juridico/spanish/mec_ron1_inf_hemis.pdf

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.

73

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

98

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes

No

Comments:

Decree 1023/2001 is a special decree (it was issued for legislative powers delegated to the president) so it has the power of a law. Article 18 provides for specific conflicts-of-interest in procurement situations.

References:

Law 25188.

<http://www.infoleg.gov.ar/infolegInternet/anexos/60000-64999/60847/texact.htm>

Decree 1023/2001, Article 18.

<http://www.infoleg.gov.ar/infolegInternet/anexos/65000-69999/68396/texact.htm>

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

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

51b. In law, there is mandatory professional training for public procurement officials.

Yes | No

References:

The National Procurement Office provides mandatory training for those agents who are part of Procurement Units at the agency level.

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

References:

Interview with Professor at the School of Public Lawyers and Administrative Specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, Annex 1, on recommendations of the second round of analysis that includes recommendations on procurement.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | No

Comments:

Ethics law mandates the filing of financial disclosure forms by those who are part of procurement units. The Anti-Corruption office monitors the assets declarations by these officials.

References:

Law 25188.

<http://www.infoleg.gov.ar/infolegInternet/anexos/60000-64999/60847/texact.htm>

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.

51e. In law, major procurements require competitive bidding.

Yes | No

References:

Decree 1023/2001, Article 25 (a) provides for a competitive public bidding process for every purchase of more than approximately \$US100.

<http://www.infoleg.gov.ar/infolegInternet/anexos/65000-69999/68396/texact.htm>

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

The legal framework is very specific regarding conditions for accepting sole-source procurement.

References:

Decree 1023/2001, Article 25 (d).

<http://www.infoleg.gov.ar/infolegInternet/anexos/65000-69999/68396/texact.htm>

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes

No

References:

Decree 436/2000, Articles 80, 106 and 108.

<http://www.infoleg.gov.ar/infolegInternet/anexos/60000-64999/63216/texact.htm>

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes

No

Comments:

The Administrative Procedure Law establishes that before a judicial action, plaintiffs must first go through the administrative appeals process. If their positions are not satisfied, they can present their cases to the judiciary.

References:

Law 19549, Administrative Procedure Law, Article 30.

<http://www.infoleg.gov.ar/infolegInternet/anexos/20000-24999/22363/texact.htm>

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

References:

Decree 1023/2001, Article 28.

<http://www.infoleg.gov.ar/infolegInternet/anexos/65000-69999/68396/txact.htm>

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. 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:

At the National Procurement Office, there is a register of sanctions for companies in violation of procurement regulations.

References:

Interview with Professor at the School of Public Lawyers and Administrative Specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, Annex 1, on recommendations of the second round of analysis that includes recommendations on procurement.

<http://www.anticorruccion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

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.

52a. In law, citizens can access public procurement regulations.

Yes | No

References:

Decree 1023/2001.

Decree 436/2000.

Decree 1172/2003.

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

References:

Decree 1023/2001, Article 9.

Decree 436/2000.

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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The National Procurement Office provides citizens with complete web access to procurement regulations. In the same sense, the official site of legal information (infoleg.gov.ar) provides access to all norms related to procurement.

References:

Interview with Professor at the School of Public Lawyers and Administrative Specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, Annex 1, on recommendations of the second round of analysis that includes recommendations on procurement.

<http://www.anticorruccion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

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. These records are defined here as the rules governing the competitive procurement process.

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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to procurement regulations is free of charge.

References:

Interview with Professor at the School of Public Lawyers and Administrative Specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, Annex 1, on recommendations of the second round of analysis that includes recommendations on procurement.

<http://www.anticorruccion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

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. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Major procurement is always advertised through newspapers and websites. All procurement processes are published on the website of the National Procurement Office.

References:

Interview with Professor at the School of Public Lawyers and Administrative Specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, Annex 1, on recommendations of the second round of analysis that includes recommendations on procurement.

<http://www.anticorruccion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

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. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

Comments:

Results of procurement processes are all available at the website of the National Procurement Office at: www.argentinacompra.gov.ar

References:

Interview with Professor at the School of Public Lawyers and Administrative Specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Anti-Corruption Office report to the MESICIC, Annex 1, on recommendations of the second round of analysis that includes recommendations on procurement.

<http://www.anticorruptcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

Interview with director of Transparency at the Anti-Corruption Office, Mr. Gerardo Serrano.

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

92

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

References:

Law 23696, Reform of the State Law.

<http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/98/texact.htm>

Decree 1105/1989 – Rules of Procedure of Law 23696 article 18

<http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/1890/texact.htm>

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes

No

Comments:

Article 13 is a general provision on conflicts-of-interests for civil service. Article 14 specifically address the prevention of conflicts-of-interests in the privatization business.

References:

Law 25188, Articles 13 and 14.

<http://www.infoleg.gov.ar/infolegInternet/anexos/60000-64999/60847/texact.htm>

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100

75

50

25

0

References:

Interview with Ms. Vanesa Del Boca.

Interview with Ms. Luciana Mora.

AO annual report, 2009.

<http://www.anticorrupcion.gov.ar/documentos/Informe%20annual%202009.pdf>

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.

54. Can citizens access the terms and conditions of privatization bids?

95

54a. In law, citizens can access privatization regulations.

Yes

No

Comments:

The great wave of privatization occurred during the 1990s. Recently the federal state regained possession of a number of companies that were privatized (mail, water, sanitation, and airlines). In any case, information on the privatization process is fully available.

References:

Law 23696 (reforming the state law).

<http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/98/texact.htm>

Decree 1105/1989, implementation of the reforming of the state law.

<http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/1890/texact.htm>

Decree 1172/2003, Chapter VII, access to information.

<http://www.infoleg.gov.ar/infolegInternet/anexos/90000-94999/90763/norma.htm>

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100

75

50

25

0

Comments:

In general, privatizations were advertised sufficiently. In some cases the Congress approved the call for privatization, in other

cases was a Presidential decision

References:

Interview with professor at the School of Public Lawyers and Administrative Specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Gordillo, Agustín. Tratado de derecho administrativo. Disponible en www.gordillo.com. 2009.

Marafusche, Miguel A. and others. Servicio público. Estudios a la luz de la reforma del Estado REUN. 1996.

Rodriguez Chirillo, Eduardo J. Privatización de la Empresa Pública y Post Privatización. Abeledo Perrot. 1995.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes

No

References:

Law 23696 (reforming the state law).

<http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/98/textact.htm>

Decree 1105/1989 (implementation of the reforming of the state law).

<http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/1890/textact.htm>

Decree 1172/2003, Chapter VII, access to information.

<http://www.infoleg.gov.ar/infolegInternet/anexos/90000-94999/90763/norma.htm>

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with professor at the School of Public Lawyers and Administrative Specialist Mr. Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Gordillo, Agustín. Tratado de derecho administrativo. Disponible en www.gordillo.com. 2009.

Marafusche, Miguel A. and others. Servicio público. Estudios a la luz de la reforma del Estado REUN. 1996.

Rodriguez Chirillo, Eduardo J. Privatización de la Empresa Pública y Post Privatización. Abeledo Perrot. 1995.

Memoria del proceso de privatizaciones en Argentina.

<http://mepriv.mecon.gov.ar/privatizaciones.htm>

100: Records (defined here as the rules governing the competitive privatization process) 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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access is free of charge.

References:

Interview with Professor at the School of Public Lawyers and Administrative Specialist, Mr Hugo Ramos. Place: School of Public Lawyers. Date: December 1, 2010.

Interview with Master in Public Services and Procurement Specialist, Ms. Vanesa del Boca.

Interview with Administrative Law Specialist, Ms. Luciana Mora.

Gordillo, Agustín. Tratado de derecho administrativo. Disponible en www.gordillo.com. 2009.

Marafusche, Miguel A. and others. Servicio público. Estudios a la luz de la reforma del Estado REUN. 1996.

Rodriguez Chirillo, Eduardo J. Privatización de la Empresa Pública y Post Privatización. Abeledo Perrot. 1995.

Memoria del proceso de privatizaciones en Argentina

<http://mepriv.mecon.gov.ar/privatizaciones.htm>

100: Records (defined here as the rules governing the competitive privatization process) 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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes

No

References:

National Constitution, Articles 86 and 43.

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.

56. Is the national ombudsman effective?

86

56a. In law, the ombudsman is protected from political interference.

Yes | No

References:

Law 24284 (Ombudsman Law), Articles 2, 10, and 11.

<http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/680/texact.htm>

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Although the ombudsman is recognized for independence, there have been recent discussions on the appointment of a new ombudsman after the resignation of the former one.

References:

La Nacion newspaper.

http://www.lanacion.com.ar/nota.asp?nota_id=1202789

Report 2009 by the Defensoria del Pueblo de la Nacion (Ombudsman).

<http://www.dpn.gob.ar/informes/ianual2009.pdf>

Interview with administrative law expert, Ms. Luciana Mora.

Interview with Ms. Vanesa del Boca.

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

La Nacion newspaper.

http://www.lanacion.com.ar/nota.asp?nota_id=1202789

Report 2009 by the Defensoria del Pueblo de la Nacion (Ombudsman).

<http://www.dpn.gob.ar/informes/ianual2009.pdf>

Interview with administrative law expert, Ms. Luciana Mora.

Interview with Ms. Vanesa del Boca.

Clarín newspaper.

<http://edant.clarin.com/diario/2009/04/11/elpais/p-01895370.htm>

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Ombudsman annual report, 2009.

<http://www.dpn.gob.ar/informes/ianual2009.pdf>

Centro de Informacion Judicial (Judicial Power news agency).

<http://www.cij.gov.ar/nota-451-Avalan-al-Defensor-del-Pueblo-en-queja-por-suba-de-tarifas-electricas.html>

Tucuman Noticias (news site).

<http://www.tucumanoticias.com.ar/noticia.asp?id=52700>

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Interview with expert, Ms. Vanesa del Boca.

Interview with expert, Ms. Luciana Mora.

Ombudsman annual report, 2009.

<http://www.dpn.gob.ar/informes/ianual2009.pdf>

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with expert, Ms. Vanesa del Boca.

Interview with expert, Ms. Luciana Mora.

Ombudsman annual report, 2009.

<http://www.dpn.gob.ar/informes/ianual2009.pdf>

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

Interview with expert, Ms. Vanesa del Boca.

Interview with expert, Ms. Luciana Mora.

Ombudsman annual report, 2009.

<http://www.dpn.gob.ar/informes/ianual2009.pdf>

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Interview with expert, Ms. Vanesa del Boca.

Interview with expert, Ms. Luciana Mora.

Ombudsman annual report, 2009.

<http://www.dpn.gob.ar/informes/ianual2009.pdf>

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

According to the legal framework, the ombudsman does not apply sanctions, but sources consider that he is very active in cooperating with the judiciary when dealing with complaints presented by the ombudsman.

References:

Supreme Court decision after a petition by the ombudsman.

<http://www.dpn.gob.ar/areas.php?id=06&ms=area6>

Judicial decision applying sanctions after a presentation by the ombudsman.

<http://www.dpn.gob.ar/areas.php?id=02&ms=area6>

Judicial decision imposing sanctions to a railway company after a presentation by the ombudsman.
<http://www.dpn.gob.ar/areas.php?id=04&ms=area6>

Interview with expert, Ms. Vanesa del Boca.

Interview with expert, Ms. Luciana Mora.

Ombudsman annual report, 2009.
<http://www.dpn.gob.ar/informes/ianual2009.pdf>

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

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

References:

Recommendation by the ombudsman related to social protection policies.
<http://www.dpn.gob.ar/areas.php?id=02&ms=area5>

Recommendation by the ombudsman related to broadening the scope of the Asignacion Universal por Hijo program.
<http://www.dpn.gob.ar/areas.php?id=05&ms=area5>

Recommendation to the Ministry of Health regarding relevant topics of the medical protection programs.
<http://www.dpn.gob.ar/areas.php?id=23&ms=area2>

ADPRA press.
<http://www.adpra.org.ar/prensa/%E2%80%99Cla-violencia-hacia-las-mujeres-violacion-los-derechos-humanos%E2%80%99D>

Interview with expert, Ms. Vanesa del Boca.

Interview with expert, Ms. Luciana Mora.

Ombudsman annual report, 2009.
<http://www.dpn.gob.ar/informes/ianual2009.pdf>

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Ombudsman annual report, 2009.

<http://www.dpn.gob.ar/informes/ianual2009.pdf>

Ombudsman position paper.

<http://www.dpn.gob.ar/content.php?cnt=46&tipo=arti¬i=arti01>

Judicial decisions following an Ombudsman presentation.

<http://www.dpn.gob.ar/areas.php?id=01&ms=area6>

Judicial decision following an ombudsman presentation.

<http://www.dpn.gob.ar/areas.php?id=06&ms=area6>

Interview with Ms. Luciana Mora.

Interview with Ms. Vanesa del Boca.

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.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

References:

Law 24284, Articles 30 and 31.

<http://www.dpn.gob.ar/areas.php?id=23&ms=area2>

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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Annual reports are accessible directly from the ombudsman's web page. In addition, there is online access to recommendations, decisions and information on the follow-up of judicial cases related to the ombudsman's investigations.

References:

Ombudsman annual report, 2009.

Interview with Ms. Vanesa del Boca.

Reports published online by the ombudsman.

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Ombudsman annual report, 2009.

Interview with Ms. Vanesa del Boca.

Reports published online by the ombudsman.

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes

No

References:

National Constitution, Article 85.

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/0-4999/804/norma.htm>

Law 24156, Financial Administration Law and creation of the AGN (Supreme Audit Institution), Article 116.

<http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/554/texact.htm>

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.

59. Is the supreme audit institution effective?

84

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

References:

Law 24156, Articles 121 and 122.

<http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/554/texact.htm>

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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There is no record of a head of the AGN being removed without justification.

References:

Interview with head of the Supreme Audit Institution (AGN), Mr. Leandro Despouy. Place: Mr. Despouy's office. Date: November 5, 2010.

Publication: "Constitucion Nacional Argentina y Normas Complementarias, Analisis Doctrinal y Jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Leandro Despouy.

Interview with AGN advisers, Mr. Damian Staffa and Oscar Rinaldi.

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

According to sources, the staff of the AGN is professional and full-time.

References:

Interview with head of the Supreme Audit Institution (AGN), Mr. Leandro Despouy. Place: Mr. Despouy's office. Date: November 5, 2010.

Publication: "Constitucion Nacional Argentina y Normas Complementarias, Analisis Doctrinal y Jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Leandro Despouy.

Interview with AGN advisers, Mr. Damian Staffa and Oscar Rinaldi.

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

According to experts, since appointments are promoted by general auditors, they may be inspired by partisan interests. On the other hand, sources also recognize that there is a spirit of institutional respect protecting the AGN.

References:

Interview with head of the Supreme Audit Institution (AGN), Mr. Leandro Despouy. Place: Mr. Despouy's office. Date: November 5, 2010.

Publication: "Constitucion Nacional Argentina y Normas Complementarias, Analisis Doctrinal y Jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Leandro Despouy.

Interview with AGN advisers, Mr. Damian Staffa and Oscar Rinaldi.

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget of the AGN is regular from year to year. There have been situations of limited delays when the Ministry of Finance sent funds to the AGN.

References:

Interview with head of the Supreme Audit Institution (AGN), Mr. Leandro Despouy. Place: Mr. Despouy's office. Date: November 5, 2010.

Publication: "Constitucion Nacional Argentina y Normas Complementarias, Analisis Doctrinal y Jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Leandro Despouy.

Interview with AGN advisers, Mr. Damian Staffa and Oscar Rinaldi.

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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The audit agency presents regular reports to congressional commissions. One key advance was the publication on the AGN website of full reports of the agency audits.

References:

Interview with head of the Supreme Audit Institution (AGN), Mr. Leandro Despouy. Place: Mr. Despouy's office. Date: November 5, 2010.

Publication: "Constitucion Nacional Argentina y Normas Complementarias, Analisis Doctrinal y Jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Leandro Despouy.

Interview with AGN advisers, Mr. Damian Staffa and Oscar Rinaldi.

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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Experts consider that in a number of relevant cases the government took action following the findings of the AGN.

References:

Interview with head of the Supreme Audit Institution (AGN), Mr. Leandro Despouy. Place: Mr. Despouy's office. Date: November 5, 2010.

Publication: "Constitucion Nacional Argentina y Normas Complementarias, Analisis Doctrinal y Jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Leandro Despouy.

Interview with AGN advisers, Mr. Damian Staffa and Oscar Rinaldi.

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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Sources explained that the agency has full power to initiate investigations. The head of the AGN supported the idea of empowering the audit institution with legitimacy to appear before courts. This issue is pending and opinions on the rationale of such authorization is under strong debate.

References:

Interview with head of the Supreme Audit Institution (AGN), Mr. Leandro Despouy. Place: Mr. Despouy's office. Date: November 5, 2010.

Publication: "Constitucion Nacional Argentina y Normas Complementarias, Analisis Doctrinal y Jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Leandro Despouy.

Interview with AGN advisers, Mr. Damian Staffa and Oscar Rinaldi.

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.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

The AGN publishes the reports on their website and they are fully accessible to the general public

References:

Interview with head of the Supreme Audit Institution (AGN), Mr. Leandro Despouy. Place: Mr. Despouy's office. Date: November 5, 2010.

Publication: "Constitucion Nacional Argentina y Normas Complementarias, Analisis Doctrinal y Jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Leandro Despouy.

Interview with AGN advisers, Mr. Damian Staffa and Oscar Rinaldi.

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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available online.

References:

Interview with head of the Supreme Audit Institution (AGN), Mr. Leandro Despouy. Place: Mr. Despouy's office. Date: November 5, 2010.

Publication: "Constitucion Nacional Argentina y Normas Complementarias, Analisis Doctrinal y Jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Leandro Despouy.

Interview with AGN advisers, Mr. Damian Staffa and Oscar Rinaldi.

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

Comments:

Reports available online are accessible free of charge.

References:

Interview with head of the Supreme Audit Institution (AGN), Mr. Leandro Despouy. Place: Mr. Despouy's office. Date: November 5, 2010.

Publication: "Constitucion Nacional Argentina y Normas Complementarias, Analisis Doctrinal y Jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Leandro Despouy.

Interview with AGN advisers, Mr. Damian Staffa and Oscar Rinaldi.

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 NGOs. 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 NGOs trying to access this information.

95 5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

The decree is the creation of the Federal Administration of Public Revenues (AFIP).

References:

Decree 618/1997.

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/40000-44999/44432/texact.htm>

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.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with administrative law expert, Ms. Luciana Mora.

Interview with administrative policies expert, Ms. Vanesa del Boca.

AFIP Code of Ethics.

<http://www.afip.gov.ar/institucional/Documentos/839Disp16307afip.pdf>

Professionalization programs in AFIP.

http://www.ideared.org/?id_contenido=116

<http://espanol.news.yahoo.com/s/30112010/104/n-business-titular-afip-lamenta-contar-presupuesto.html>

Econoblog on the AFIP budget.

<http://www.econoblog.com.ar/9457/sin-aprobacion-del-presupuesto-2011-la-afip-retendra-un-monto-extra-en-ganancias-a-los-trabajadores/>

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.

62b. In practice, the tax agency receives regular funding.

References:

Interview with administrative law expert, Ms. Luciana Mora.

Interview with administrative policies expert, Ms. Vanesa del Boca.

AFIP Code of Ethics.

<http://www.afip.gov.ar/institucional/Documentos/839Disp16307afip.pdf>

Professionalization programs in AFIP.

http://www.ideared.org/?id_contenido=116

<http://espanol.news.yahoo.com/s/30112010/104/n-business-titular-afip-lamenta-contar-presupuesto.html>

Econoblog on the AFIP budget.

<http://www.econoblog.com.ar/9457/sin-aprobacion-del-presupuesto-2011-la-afip-retendra-un-monto-extra-en-ganancias-a-los-trabajadores/>

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

References:

Interview with administrative law expert, Ms. Luciana Mora.

Interview with administrative policies expert, Ms. Vanesa del Boca.

Econoblog.

<http://www.econoblog.com.ar/9457/sin-aprobacion-del-presupuesto-2011-la-afip-retendra-un-monto-extra-en-ganancias-a-los-trabajadores/>

Pagina 12 newspaper.
<http://www.pagina12.com.ar/diario/economia/2-156172-2010-11-03.html>

Pagina 12 newspaper.
<http://www.pagina12.com.ar/diario/economia/2-153317-2010-09-17.html>

La Nacion newspaper.
http://www.lanacion.com.ar/nota.asp?nota_id=1173215

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.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

References:

Decree 618/1997.

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/40000-44999/44432/texact.htm>

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.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with administrative law expert, Ms. Luciana Mora.

Interview with administrative policies expert, Ms. Vanesa del Boca.

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

Responses by Mr. Manuel Balan.

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The action of the customs agency was under scrutiny since the conflict between the government and sectors of the rural organizations related to the application of “retenciones” (special contributions paid by exports).

References:

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

Clarín newspaper.

http://www.ieco.clarin.com/economia/Diputados-avance-opositor-bajar-retenciones_0_161700007.html

El Parlamentario website.

<http://parlamentario.com/articulo-4427.html>

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

References:

There is no oversight agency. There exists the SIGEN (internal audit agency) with powers for financial auditing, but also management of all public entities, including state owned companies.

In particular, there are a number of sector regulatory bodies (energy, water, gas, transport, communications, banks, insurance companies, etc) that issue specific regulations governing each of the sectors. In some cases, these regulations govern state-owned companies like public banks, the national airline, and the national post company.

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

80

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

References:

There is no general legal framework for these oversight bodies. Some of them have authority through open competition, while others are appointed directly by the President.

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In general, both the SIGEN and the sector regulatory bodies have professional staffs.

References:

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The SIGEN receives regular budget funds. Regulatory bodies receive budget funds and they receive funds from the companies they oversee.

References:

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

100: The agency, series of agencies, or equivalent mechanism 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, series of agencies, or equivalent mechanism 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The SIGEN performs regular audits on state-owned companies and initiates investigations if findings suggest the occurrence of wrongdoings. In the case of sector regulatory bodies, they have the mandate for controlling the performance of private companies and may initiate investigations on alleged wrongdoings.

References:

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

85

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

References:

Decree 1172/2003, Annex VII, Article 2.

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/90000-94999/90763/norma.htm>

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Both the SIGEN and the AGN perform audits following strict international standards (INTOSAI/OLACEF). The same happens with internal audits in state-owned companies.

References:

"La Constitucion de la Nacion Argentina y normas complementarias. Analisis doctrinal y jurisprudencial," by Daniel Sabsay, Separata Auditoria General de la Nacion by Mr. Leandro Despouy.

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned 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: State-owned 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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Some companies publicize their financial records online, while for records of other companies, citizens must ask for access through Decree 1172/2003. In some cases, state-owned corporations have challenged the application of public norms (such as decree 1172/2003).

References:

Interview with Mr. Leandro Despouy.

Interview with Ms. Vanesa del Boca.

Interview with Ms. Luciana Mora.

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to information is free of charge.

References:

Interview with Vanesa del Boca.

Interview with Luciana Mora.

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 NGOs. 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 NGOs trying to access this information.

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

Rules authorizing the creation of companies are regulated by provincial and local (municipal) jurisdictions. In the case of City of Buenos Aires, the authorization is issued by the Inspeccion General de Justicia (IGJ).

References:

Law 19550, Commercial companies regulation.

http://www.jus.gov.ar/IGJ/pop_up.php?ruta=Normativas/mn-leyes/19.550.htm

Federal Code of Commerce, Article 25.

http://www.jus.gov.ar/IGJ/pop_up.php?ruta=Normativas/mn-codigos/cod_com_arg.html

Law of the Register of Companies Agency (IGJ) – article 4

http://www.jus.gov.ar/IGJ/pop_up.php?ruta=Normativas/mn-leyes/22.315.htm

Federal Administration of Public Revenues law

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/40000-44999/44432/texact.htm>

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.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

References:

Federal Administration of Public Revenues Law .

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/40000-44999/44432/texact.htm>

In the case of the City of Buenos Aires (Code).

http://estatico.buenosaires.gov.ar/areas/jef_gabinete/comision_decreto_1332/codigo_habilitaciones_permisos.pdf

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.

70c. 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:

Sometimes the license can take a long time because of a cumbersome process.

References:

Interview with Mr. Federico Saevich, former McDonald's Manager. Date: December 2, 2010. Responses by mail.

Interview with administrative law expert, Ms. Luciana Mora. Date: November 25, 2010. Banco Nacion Argentina.

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.

70d. 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

Comments:

Licenses are affordable.

References:

Interview with Mr. Federico Saevich, former McDonald's Manager. Date: December 2, 2010. Responses by mail.

Interview with administrative law expert, Ms. Luciana Mora. Date: November 25, 2010. Banco Nacion Argentina.

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes

No

References:

Law of Health and Security in Work Places.

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/17612/norma.htm>

Ministry of Health website.

<http://www.legisalud.gov.ar/>

Access to the PMO (Public Health Program)

<http://saluduniversal2010.blogspot.com/2010/05/pmo-programa-medico-obligatorio.html>

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes

No

References:

National Environmental Law 25675.

<http://www2.medioambiente.gov.ar/mlegal/marco/ley25675.htm>

Access to Environmental Information Law 25831.

http://www.theconservationlandtrust.org/descargas/programa_1/Ley_Nacional_25831.pdf

Yes: A YES score is earned if basic regulatory requirements for meeting public 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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes

No

References:

Law of Health and Security in Work Places.

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/17612/norma.htm>

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

42

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100

75

50

25

0

Comments:

The inspection of health conditions is performed by local governments. A number of cases of petty corruption have been reported.

References:

Interview with Mr. Federico Saevich.

Interview with Ms. Luciana Mora.

Interview with Ms. Vanesa del Boca.

100: Business inspections by the government to ensure that public health standards are being met 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 to ensure public health standards are met 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 to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

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

References:

Report of FARN (Environmental NGO) on the environmental challenges of the Riachuelo.
http://www.farn.org.ar/riachuelo/documentos/informe_riachuelo_abr2010.pdf

Interview with Ms. Luciana Mora.

La Nacion newspaper blog.
<http://blogs.lanacion.com.ar/ecologico/el-ambiente-en-general/en-busca-de-una-politica-ambiental/>

Pagina 12 newspaper, environmental consequences of mining.
<http://www.pagina12.com.ar/diario/elpais/1-144528-2010-04-24.html>

100: Business inspections by the government to ensure that public environmental standards are being met 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 to ensure public environmental standards are met 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 to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

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

References:

Interview with Mr. Martin Picca, lawyer and labor law expert.

Interview with Ms. Luciana Mora.

100: Business inspections by the government to ensure that public safety standards are being met 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 to ensure public safety standards are met 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 to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁸⁵Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes

No

Comments:

It is important to stress that in Argentina's legislation, corruption is not a specific criminal offense as it happens in other countries where corruption means bribery. In our case, as in most of the countries in Latin America, criminal codes provide for a number of offenses that cover the different aspects and forms of corruption crimes.

References:

The Federal Penal Code establishes in Article 42 that someone who begins the execution of a crime that is not consummated because of reasons beyond his control is subject to penalties. Article 44 reduces the penalties for the crime from one-third to one-half of the normal penalty for the crime.

In the case of attempted corruption, the Penal Code contains Title XI (Crimes against Public Administration) that criminalizes different corruption offenses.

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#7>

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes

No

References:

The Federal Penal Code criminalizes, in article 168, anyone who with intimidation and/or simulating public authority, compels a person to provide, post, place or otherwise make available for him or her or for a third party, things, money or documents. Penalties range from five to 10 years of imprisonment.

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes

No

Comments:

Argentina was evaluated by the OAS Committee of Experts on the follow-up mechanism of the Inter-American Anti-Corruption Convention on the implementation of this provision. Experts concluded that the offense provided by Argentina's Penal Code was in line with the requirements of the convention.

References:

The Federal Penal Code, in Article 258, criminalizes offering a bribe to a public official. Penalties range from one to six years of imprisonment and a lifetime disqualification for public positions (the last when the person offering the bribe is already a public official).

The text of the Penal Code for this article was replaced by Article 34 of the National Ethics Law 25.188.

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/textact.htm#25>

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

Comments:

Argentina was evaluated by an OAS committee of experts on the follow-up mechanism of the Inter-American Anti-Corruption Convention on the implementation of this provision. Experts concluded that the offense provided by Argentina's Penal Code was in line with the requirements of the convention. The code provides for an aggravation of a felony in cases where the official receiving the bribe is a judge.

References:

Federal Penal Code, in Article 256, criminalizes receiving a bribe by a public official. Penalties range from one to six years of imprisonment and lifetime disqualification for public positions.

The text of the Penal Code for this article was replaced by Article 31 of the National Ethics Law 25.188.

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/textact.htm#25>

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

Comments:

Argentina was evaluated by an OAS committee of experts on the follow-up mechanism of the Inter-American Anti-Corruption Convention on the implementation of this provision during the third round of analysis. Experts concluded that the offense provided by Argentina's Penal Code was in line with the requirements of the convention.

<http://www.anticorrupcion.gov.ar/documentos/OEA%20a%20r%20-%20Infome%20final%20argentina.pdf>

Argentina is also part to the OECD Convention against transnational bribery and was evaluated by the Working Group on Bribery on the implementation of this offense in particular.

References:

The Federal Penal Code, in Article 258 bis, criminalizes offering a bribe to a foreign public official or to a member of an international public organization. Penalties range from one to six years of imprisonment and lifetime disqualification for public positions.

The text of the Penal Code for this article was replaced by Article 1 of Law 25.825.

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/textact.htm#25>

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes

No

Comments:

This issue was partially addressed by the OAS follow-up mechanism when evaluating the implementation of Article VI in the ICAC's second round of analysis.

http://www.oas.org/juridico/english/mesicic_II_rep_arg.pdf

References:

A number of provisions in the Penal Code address the use of public resources for private gain.

Article 261 of the Penal Code criminalizes speculation by a public official, defining it as an aggravated form of embezzlement, with penalties ranging from four to 12 years of imprisonment.

Article 174 of the Penal Code criminalizes fraud against the public administration, with penalties ranging from two to six years of imprisonment and lifetime disqualification for public positions (the later if the perpetrator is a public official).

Article 173, Section 7, of the Penal Code criminalizes unfaithful stewardship.

Article 265 of the Penal Code criminalizes transactions incompatible with public functions, with penalties ranging from one to six years of imprisonment and lifetime disqualification for public positions.

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/txact.htm#20>

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.

73g. In law, using confidential state information for private gain is illegal.

Yes

No

Comments:

CHEQUEAR ESTE PUNTO (Check this point.)

References:

Article 157 of the Penal Code criminalizes the disclosure of secret information.

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.

73h. In law, money laundering is illegal.

Yes | No

References:

Article 277 of the Penal Code criminalizes money laundering as a specific form of concealment, in Section 1, Paragraphs c and e.

The same article establishes an aggravation of the penalties (from one to six years) in Section 2 in the following cases:

- a) The predicated offense is a particularly serious crime, with the minimum penalty being more than three years' imprisonment.
- b) The perpetrator acts for profit.
- c) The perpetrator habitually commits acts of concealment.
- d) The perpetrator is a public official.

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

References:

The National Penal Code, in Article 210, criminalizes conspiracy as "asociacion ilicita," an organization of three or more persons created for criminal purposes. Penalties range from five to 10 years of imprisonment.

http://www.csjn.gov.ar/cm/codigo_penal.html

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

Comments:

The prosecution of the administrative office reports to the Attorney General office and has powers over wrongdoings in the public administration only (the executive branch). The Anti-Corruption Office that reports to the Minister of Justice has the same scope. The National Ethics Commission does not have powers for the investigation of acts of corruption, but it does for ethics misdemeanors.

References:

Law 24.946 (Attorney General Law), Articles 43 and 45, provides for the organization and powers of prosecution of administrative Investigations.

<http://www.fia.gov.ar/>

Law 25.233, Article 13, created the Anti-Corruption Office.

The National Ethics Law (25188) instituted the National Public Ethics Commission with a mandate for receiving complaints for violation of the provisions of the Ethics Law.

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.

75. Is the anti-corruption agency effective?

81

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes

No

Comments:

The National Prosecutor of Administrative Investigations reports to the Attorney General whose office is independent, according to the provisions in the National Constitution and the General Organization Law of the public prosecutors office.

The Anti-Corruption Office has similar powers to those of the National Prosecutor of Administrative Investigations, but the AO is not independent, but a department inside the Ministry of Justice.

The National Ethics Commission is independent according to law.

References:

National Constitution, Article 120, on the institutional organization of the public prosecutor's office (Attorney General).

Law 24946 of the Public Prosecutors Office

Law 25188 National Ethics Commission

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In the case of the Prosecutor for Administrative Investigations, the designation and removal process is formally identical to the designation and removal of judges. Despite that, recently the prosecutor resigned alleging that a decision by the Attorney General was limiting his powers to investigate corruption cases and to intervene in the judicial process.

For designation, the prosecutor has to go through an opposition process and open hiring. The President proposes a short list in order of merit. The Senate confirms the designation.

In the case of the Anti-Corruption Office, the head of the office is designated and removed by the President as part of his discretionary powers. No head of the agency has been removed since all of the changes in the AO were the consequence of resignation by the former authorities.

References:

Reports to the OAS follow-up mechanism.

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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The Administrative Investigation Prosecutor is protected from political interference since his designation process requires

confirmation by the Senate. During 2009, the former prosecutor resigned, alleging limits to his powers by the General Attorney. The acting prosecutor is the former deputy prosecutor. Both of them were selected through an open competitive processes.

In the case of the head of the AO, he is appointed directly by the Ministry of Justice and Human Rights. Since the creation of the AO, no boss has been replaced or has been forced to resign.

References:

Interview with Director of Transparency Policies of the Anti-Corruption Office, Mr. Gerardo Serrano.

Interview with Transparency Unit of the Ministry of Defense, Ms. Paula Honisch.

MESICIC, report of the first round of analysis of implementation of the ICAC Anti-Corruption Office, Annual report, 2009.

<http://www.anticorrupcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Administrative Investigation Prosecutor, annual report, 2009.

http://www.fia.gov.ar/c/document_library/get_file?p_l_id=10755&folderId=11266&name=DLFE-2410.pdf

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

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

Comments:

Staffs of agencies dealing with Anti-Corruption are professional; the majority have experience in investigations (in the Judicial Branch or other public agencies).

References:

Interview with Director of Transparency Policies of the Anti-Corruption Office, Mr. Gerardo Serrano.

Interview with the Transparency Unit of the Ministry of Defense, Ms. Paula Honisch.

MESICIC, report of the first round of analysis of implementation of the ICAC Anti-Corruption Office, annual report, 2009.

<http://www.anticorrupcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Administrative Investigation Prosecutor, annual report, 2009.

http://www.fia.gov.ar/c/document_library/get_file?p_l_id=10755&folderId=11266&name=DLFE-2410.pdf

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

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

Comments:

Staff is professional and full-time. Some interviewees consider that according to the workload, staff should be increased in number and resources.

References:

Interview with Director of Transparency Policies of the Anti-Corruption Office, Mr. Gerardo Serrano.

Interview with the Transparency Unit of the Ministry of Defense, Ms. Paula Honisch.

MESICIC, report of the first round of analysis of implementation of the ICAC Anti-Corruption Office, annual report, 2009.

<http://www.anticorruptcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Administrative Investigation Prosecutor, annual report, 2009.

http://www.fia.gov.ar/c/document_library/get_file?p_l_id=10755&folderId=11266&name=DLFE-2410.pdf

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Director of Transparency Policies of the Anti-Corruption Office, Mr. Gerardo Serrano.

Interview with the Transparency Unit of the Ministry of Defense, Ms. Paula Honisch.

MESICIC, report of the first round of analysis of implementation of the ICAC Anti-Corruption Office, annual report, 2009.

<http://www.anticorrupcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Administrative Investigation Prosecutor, annual report, 2009.

http://www.fia.gov.ar/c/document_library/get_file?p_l_id=10755&folderId=11266&name=DLFE-2410.pdf

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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Both the FIA and the AO publish annual reports.

References:

Interview with Director of Transparency Policies of the Anti-Corruption Office, Mr. Gerardo Serrano.

Interview with the Transparency Unit of the Ministry of Defense, Ms. Paula Honisch.

MESICIC, report of the first round of analysis of implementation of the ICAC Anti-Corruption Office, annual report, 2009.

<http://www.anticorrupcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Administrative Investigation Prosecutor, annual report, 2009.

http://www.fia.gov.ar/c/document_library/get_file?p_l_id=10755&folderId=11266&name=DLFE-2410.pdf

Interview with Ines Selwood.

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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

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

Comments:

In the case of the AO and the Director of Transparency of the Ministry of Defense, experts consider they have powers sufficient to carry out their mandate.

Reports by the AO show that with current powers, the agency investigated a very significant number of cases and presented more than 3,000 cases before the judiciary.

In the case of FIA, the former prosecutor resigned alleging that a decision by the Attorney General was limiting his powers and creating barriers for efficient investigations by the FIA.

References:

Interview with Director of Transparency Policies of the Anti-Corruption Office, Mr. Gerardo Serrano.

Interview with the Transparency Unit of the Ministry of Defense, Ms. Paula Honisch.

MESICIC, report of the first round of analysis of implementation of the ICAC Anti-Corruption Office, annual report, 2009.

<http://www.anticorrupcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Administrative Investigation Prosecutor, annual report, 2009.

http://www.fia.gov.ar/c/document_library/get_file?p_l_id=10755&folderId=11266&name=DLFE-2410.pdf

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

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

Comments:

As pointed out in the previous indicator, the former FIA prosecutor alleged limits to his initiating investigations. On the other hand, figures in reports show that anti-orrption agencies actively initiate investigations.

References:

Interview with Director of Transparency Policies of the Anti-Corruption Office, Mr. Gerardo Serrano.

Interview with the Transparency Unit of the Ministry of Defense, Ms. Paula Honisch.

MESICIC, report of the first round of analysis of implementation of the ICAC
Anti-Corruption Office, annual report, 2009.

<http://www.anticorruptcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Administrative Investigation Prosecutor, annual report, 2009.

http://www.fia.gov.ar/c/document_library/get_file?p_l_id=10755&folderId=11266&name=DLFE-2410.pdf

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.

76. Can citizens access the anti-corruption agency?

88

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Director of Transparency Policies of the Anti-Corruption Office, Mr. Gerardo Serrano.

Interview with the Transparency Unit of the Ministry of Defense, Ms. Paula Honisch.

MESICIC, report of the first round of analysis of implementation of the ICAC
Anti-Corruption Office, annual report, 2009.

<http://www.anticorruptcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Administrative Investigation Prosecutor, annual report, 2009.

http://www.fia.gov.ar/c/document_library/get_file?p_l_id=10755&folderId=11266&name=DLFE-2410.pdf

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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

Interview with Director of Transparency Policies of the Anti-Corruption Office, Mr. Gerardo Serrano.

Interview with the Transparency Unit of the Ministry of Defense, Ms. Paula Honisch.

MESICIC, report of the first round of analysis of implementation of the ICAC Anti-Corruption Office, annual report, 2009.

<http://www.anticorrupcion.gov.ar/documentos/Informe%20anual%202009.pdf>

Administrative Investigation Prosecutor, annual report, 2009.

http://www.fia.gov.ar/c/document_library/get_file?p_l_id=10755&folderId=11266&name=DLFE-2410.pdf

Argentina's Report to the MESICIC, third round of analysis.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-Resp%20Cuest%20-%20anexo%201.pdf>

OAS Expert Committee of the MESICIC, Argentina's final report for the third round of analysis.

<http://www.anticorrupcion.gov.ar/documentos/OEA%203a%20r%20-%20Infome%20final%20argentina.pdf>

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.

77. Is there an appeals mechanism for challenging criminal judgments?

50

77a. In law, there is a general right of appeal.

Yes | No

References:

National Constitution, Article 108.

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/0-4999/804/norma.htm>

Inter-American Human Rights Convention, Article 8.2 (h), appeals on penal cases.

<http://www.oas.org/juridico/spanish/tratados/b-32.html>

Argentina's Federal Supreme Court decision in case "Casal."

<http://falloscsn.blogspot.com/2005/09/casal-2005.html>

Civil Law Procedures Code, Article 242.

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16547/texact.htm>

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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Luciana Mora.

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

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

Comments:

According to sources, the “social selection mechanisms” that mostly criminalize lower-class people are an obstacle for the chances of appealing.

In general, sources also stated that this problem does not affect corruption crimes (or white-collar crimes in general). On the contrary, in many cases, offenders have economic resources that block investigation efforts and artificially extend court proceedings.

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Luciana Mora.

Article “Algunos Apuntes Sobre la Participación Como Guerellantes de las ONGs en Causas de Corrupcion,” from the Blog “Sin Corrupcion” by AC NGOs CIPCE and ACIJ.

<http://sin corrupcion.wordpress.com/2010/12/29/algunos-apuntes-sobre-la-participacion-como-querellantes-de-las-ongs-en-causas-de-corrupcion/>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

100

78a. In practice, do judgments in the criminal system follow written law?

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Luciana Mora.

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.

79. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

Comments:

Sources expressed their view that in certain corruption cases, offenders have the power to postpone the enforcement of a judicial decision by appealing over and over.

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Luciana Mora.

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.

80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

References:

National Constitution, Article 108.

http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

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 includes 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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Sources consider that the media generates considerable pressure on judges. Criminal cases or corruption scandals tend to generate media debate that could provoke pressures on judges (in one way or another).

They also expressed their opinion that judges are not always free from political interference. During the 1990s, the federal criminal justice system was completely under the control of the Executive. Things have changed in the meantime and now federal judges are recognized as being more independent. There were also highly positive changes in the Supreme Court.

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Luciana Mora.

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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | No

Comments:

In consultations with different lawyers, they said that the software for distribution of cases was improved and now it is a fair system.

References:

The national justices use software to randomly distribute cases.

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.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

References:

A process for the removal of a judge must go through a jury at the Consejo de la Magistratura. Once the jury considers that there is a case for removal, the process is sent to Congress.

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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Luciana Mora.

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. YES is a positive score.

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Luciana Mora.

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. YES is a positive score.

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.

82. Do citizens have equal access to the justice system?

61

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

According to sources, racial issues (especially socially disadvantaged people) affect judicial decisions.

References:

Interview with Mr. Jose Massoni.

Interview with Ms. Luciana Mora.

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Interview with Jose Massoni.

Interview with Luciana Mora.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

References:

Code of Penal Procedures, Article 104.

<http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/383/texact.htm#1>

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

Interview with Jose Massoni.

Interview with Luciana Mora.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished 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 impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Interview with Jose Massoni.

Interview with Luciana Mora.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Interview with Jose Massoni.

Interview with Luciana Mora.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Interview with Jose Massoni.

Interview with Luciana Mora.

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

67

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

CELS , Human Rights in Argentina, 2010 Report, Chapter III, Institutional Violence and Public security Policies.
http://www.cels.org.ar/common/documentos/Informe_CELS_2010.pdf

La Nacion newspaper, re-draft of exonerated police agents, critics to the government.
http://www.lanacion.com.ar/nota.asp?nota_id=1113275

Website of the university of the federal police.
<http://www.universidad-policia.edu.ar/>

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Pagina 12 newspaper, recent creation of a new Public Security Ministry.
<http://www.pagina12.com.ar/diario/elpais/subnotas/158496-50828-2010-12-11.html>

La Nacion newspaper, creation of a new ministry.
http://www.lanacion.com.ar/nota.asp?nota_id=77013

La Nacion newspaper, shortage of resources for combating narcotics.
http://www.lanacion.com.ar/nota.asp?nota_id=938767

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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Government has just created a Ministry of Public Security Policies. Experts consider this an advance in enhancing governance in the security forces. The new minister is the former Defense Minister who is very experienced in dealing with hard topics, such as human rights violations and corruption.

References:

CELS, Human Rights in Argentina, 2010 report, Chapter III, Institutional Violence & Public Security Policies.
http://www.cels.org.ar/common/documentos/Informe_CELS_2010.pdf

La Gaceta newspaper.

<http://www.lagaceta.com.ar/nota/412439/argentina/Cristina-creo-Ministerio-Seguridad.html>

Pagina 12 newspaper

<http://www.pagina12.com.ar/diario/elpais/1-158530-2010-12-12.html>

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.

84. Can law enforcement officials be held accountable for their actions?

88

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes

No

Comments:

The Anti-Corruption Office has powers for investigating corruption in the police. There is a formal procedure for citizens to point out police corruption.

In the case of the ombudsmen, they have jurisdiction over the police forces in each province. The ombudsman of the City of Buenos Aires deals with complaints related to the federal police acting in the city.

References:

Law 25233 (creation of the Anti-Corruption Office).

Decree 102/1999.

Decree 164/1999.

National Constitution, creation of the Ombudsman, Article 86.
<http://infoleg.mecon.gov.ar/infolegInternet/anexos/0-4999/804/norma.htm>

City of Buenos Aires, Constitution Article 137.
http://www.argentina.gov.ar/argentina/portal/documentos/cp_cuidaddebsas.pdf

Law 3 of the City of Buenos Aires, Implementation of the Ombudsman Office
<http://www.cedom.gov.ar/es/legislacion/normas/leyes/ley3.html>

Province of Buenos Aires Constitution, Article 55, Ombudsman.
<http://www.gob.gba.gov.ar/legislacion/constitucion/cpppal.htm>

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

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

References:

MESICIC report of the third round of analysis of implementation of the ICAC.
<http://www.anticorrupcion.gov.ar/documentos/OEA%20a%20r%20-%20Infome%20final%20argentina.pdf>

News article on ombudsman reports,
http://www.noticiasurbanas.com.ar/info_item.shtml?sh_item=b35bc01c873030f96b7e0922dd75943b

Pagina 12 reports on complaints related to police abuses.
<http://www.pagina12.com.ar/diario/elpais/1-138081-2010-01-06.html>

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

References:

Prosecutors have the power to investigate and prosecute corruption by the police.
The AO also has powers for investigation and judicial action regarding police corruption.

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 may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Gerardo Serrano.

Anti-Corruption Office annual report, 2009.

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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

Comments:

There is no immunity for police officers.

References:

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/textact.htm>

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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

<http://www.telam.com.ar/vernota.php?tipo=N&idPub=175390&id=337239&dis=1&sec=1>

http://www.lanacion.com.ar/nota.asp?nota_id=1300390

CELS report on human rights in Argentina, 2010.

http://www.cels.org.ar/common/documentos/Informe_CELS_2010.pdf

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.
