



FOLLOW-UP MECHANISM FOR THE IMPLEMENTATION  
OF THE INTER-AMERICAN CONVENTION AGAINST  
CORRUPTION

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ARGENTINA

FINAL REPORT

(Adopted at the March 17, 2017 plenary session)

## SUMMARY

This report contains a comprehensive review of the implementation of the recommendations formulated to the Republic of Argentina in the Second Round Report with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption. These provisions refer, respectively, to systems for hiring public servants and procurement of government goods and services and protecting public servants and private citizens who in good faith report acts of corruption, as well as to the characterization of acts of corruption mentioned in Article VI of the Convention. It makes reference, where appropriate, to new developments in implementing those provisions.

The report also includes a comprehensive analysis of the implementation in Argentina of paragraphs 3 and 12 of Article III of the Convention, regarding, respectively, measures to establish, maintain, and strengthen instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, and the study of other preventive measures that take into account the relationship between equitable compensation and probity in public service, which were selected by the MESICIC Committee of Experts for the Fifth Round. It also makes reference to the best practices reported by the State with respect to implementation of the provisions selected for the Second and Fifth Rounds.

The review was conducted in accordance with the Convention, the Report of Buenos Aires, the Committee's Rules of Procedure, and the methodologies it has adopted for conducting on-site visits and for the Fifth Round, including the criteria set out therein for guiding the review based on equal treatment for all states parties, functional equivalence, and the common purpose of both the Convention and the MESICIC of promoting, facilitating, and strengthening cooperation among the states parties in the prevention, detection, punishment, and eradication of corruption.

The review was carried out mainly taking into account Argentina's response to the questionnaire and information gathered during the on-site visit to that State from October 4 to 6, 2016, by a representative of Brazil, as a member of the Argentina review subgroup. With the support of the Technical Secretariat of MESICIC, during that visit, the information furnished by Argentina was clarified and supplemented with the opinions of civil society and private sector organizations, professional associations on the issues under review.

With regard to the implementation of the recommendations that were formulated to Argentina in the report from the Second Round which the Committee, in the Third Round report, found required additional attention, based on the methodology for the Fifth Round and bearing in mind the information provided in the response to the questionnaire and during the on-site visit, the Committee made a determination as to which of those recommendations had been satisfactorily implemented, which required additional attention, which should be reframed, and which were no longer valid.

As regards progress with the implementation of those recommendations, worth noting is the training provided for drawing up government job profiles and for the selection processes relating to those jobs; the adoption of new provisions to attract public servants through merits-based systems, such as those developed in Decree 2098/2008 (Federal Government Employment System - SINEP) and Law 26.861/2013 (on the Democratic and Egalitarian Entry of Personnel into the Federal Judiciary and Federal Public Prosecutors' Office); the adoption of new rules for Government procurement of goods and services in the Executive (such as Decree 1030/2016)), the Legislature (such as resolutions 145/12 and 318/16 of the Chamber of Deputies and the Senate, respectively, the Judiciary (such as Resolution

254/15), and in the Federal Public Prosecutors' and Federal Public Defenders' Offices (such as Resolutions PGN 1107/14 and DGN 230/11, respectively); the presentation to the Legislature of sundry bills relating to protection of whistleblowers and witness of acts of corruption; and the establishment of a Commission (created by means of Decree 678/2012), which drew up the "Preliminary Draft Comprehensive Reform of the Criminal Code," which was presented in 2014, and the report prepared for that purpose by the Anti-Corruption Office.

Some of the recommendations made in the Second Round that are still pertinent are geared to such goals as further development of public sector job profiles; further progress with regularizing the categorization of government employees; the adoption of measures to ensure that direct procurement of goods and services is strictly limited to the exceptions provided for by law; the adoption of specific oversight mechanisms for each public works contract; the adoption of comprehensive regulations to protect public servants and private individuals who in good faith report acts of corruption; and adjusting and/or supplementing, as the case may be, certain articles in criminal legislation, so that they cover particular features of acts of corruption addressed in Article VI.1 of the Convention.

In addition, based on the analyses of new developments undertaken by Argentina with respect to implementing the provisions of the Convention selected for the Second Round, the Committee also formulated recommendations regarding such matter as expediting the personnel selection processes contemplated in Decree 2098/2008 (SINEP); extending the period of time for which the orders of merit and short-lists resulting from those processes remain valid; amending Law 26.861/2013 so that appointments to occupy employee and services personnel positions in the Judiciary and in the Federal Public Prosecutors' Office are made on the basis of the score obtained by candidates in the order of merit of candidates selected as a result of a public competitive process, and not by the drawing of lots among all those on that list; swiftly adopting a new law on alternates to fill vacancies left by judges; compiling detailed, annual statistics on the outcomes of personnel selection processes in the three branches of government and in the Public Prosecutors' Office; analyze whether the imposition of a bond required by the contracting rules of the executive branch (Decree 1030/2016), of the Senate (Resolution 318/16), of the judicial branch (Resolution 254/14), and of the Federal Public Prosecutors' Office (Resolution PGN 1107/14) inappropriately limits challenges to bid appraisals, and, if it is found to do so, eliminate that limitation; facilitate access to information on contracting procedures for goods and services conducted by the three branches of government and by the Federal Public Defenders' Office; provide training to officials of the Federal Public Defenders' Office on the new contracting regulations; strengthen the training given to officials of the Federal Public Prosecutors' Office on the new contracting regulations; strengthen the training that public officials from the executive branch national have been receiving on the COMPR.AR electronic procurement system, and provide training on it for the State's suppliers of goods and services; and implementing electronic procurement systems in the Senate and in the Chamber of Deputies.

For the analysis of the first provision selected for the Fifth Round, which is contained in Article III (3) of the Convention and concerns instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities," in accordance with the methodology for this Round, the country under review chose the personnel of the Federal Public Administration trained by the Anti-Corruption Office (OA) and the Ministry of Modernization; the personnel pertaining to the OA itself; and the personnel of the Federal Public Revenue Administration (AFIP), given the major powers vested in both the OA and the Ministry of Modernization in this field and the functions performed by AFIP personnel in highly sensitive and high-risk matters of public ethics and transparency.

This review sought to determine whether, in relation to those groups of personnel, provisions and/or measures have been adopted to ensure proper understanding of their responsibilities and the ethical rules that govern their activities, the manner and timing of that instruction, the programs envisaged for that

purpose, the bodies with responsibilities in that regard, and objective results obtained from the application of those provisions and/or measures governing the activities of the personnel of the aforementioned institutions. At the same time it took note of any difficulties and/or shortcomings in accomplishing the object of that provision of the Convention.

Some of the recommendations put to Argentina, for its consideration, with regard to the above, pursue objectives such as: having the training provided through the General Program of Mandatory Training Activities for Incoming Personnel, adopted by Resolution No. 384/14 of the Office of the Chief of Staff of the Ministerial Cabinet, be mandatory not just for Federal Public Administration (APN) personnel selected competitively but also for APN personnel selected differently; making the training provided through the Government Ethics Training System (SICEP) be obligatory for APN personnel; having the training provided by AFIP in its induction courses be mandatory for all its public servants, not just incoming personnel; and ensuring that the training given to APN personnel includes content on the corruption risks inherent in the performance of their duties.

In keeping with the above Methodology, the review of the second provision selected for the Fifth Round, envisaged in Article III (12) of the Convention, sought to determine if the State has studied further preventive measures that take into account the relationship between equitable compensation and probity in public service and if it has established objective and transparent guidelines for determining civil servant remunerations. On that basis, it was recommended, inter alia, that Argentina establish in the Federal Executive Branch, a centralized and systematized information system that makes it possible to discern, in relation to Article 80 of Decree 2098/08 (SINEP), what each public servant is charging and on what basis, thereby facilitating oversight.

**COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM ON THE  
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION**

**REPORT ON FOLLOW-UP ON IMPLEMENTATION IN ARGENTINA OF THE  
RECOMMENDATIONS FORMULATED AND PROVISIONS REVIEWED IN THE SECOND  
ROUND, AND ON THE PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW IN  
THE FIFTH ROUND<sup>1/</sup>**

**INTRODUCTION**

**1. Content of the Report**

[1] As agreed upon by the Committee of Experts (hereinafter “the Committee”) of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) at its Twenty-fourth Meeting,<sup>2</sup> this report will first refer to follow up on implementation of the recommendations formulated to the Republic of Argentina in the report from the Second Round, which the Committee, in the Third Round report, found required additional attention. Those reports are posted on the following Internet website: <http://www.oas.org/juridico/spanish/arg.htm>

[2] Second, where applicable, it will refer to new developments in the Republic of Argentina with regard to the provisions of the Inter-American Convention against Corruption (hereinafter “the Convention”) selected for the Second Round, and regarding such matters as the legal framework, technological developments and results, and, if applicable, appropriate observations and recommendations will be formulated.

[3] Third, it will address implementation of the provisions of the Convention selected by the Committee for the Fifth Round. Those provisions are contained in paragraphs 3 and 12 of Article III regarding, respectively, measures to establish, maintain, and strengthen “*instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*”, and “*the study of preventive measures that take into account the relationship between equitable compensation and probity in public service.*”

**2. Ratification of the Convention and adherence to the Mechanism**

[4] According to official records of the OAS General Secretariat, Argentina ratified the Convention on October 9, 1997.

[5] In addition, it signed the Declaration on the Mechanism for Follow-up of Implementation of the Inter-American Convention against Corruption on June 4, 2001.

**I. SUMMARY OF INFORMATION RECEIVED**

**1. Reply by Argentina**

[6] The Committee wishes to acknowledge the cooperation that it received from Argentina throughout the review process, in particular, from the Anti-Corruption Office of the Ministry of Justice and Human

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<sup>1-</sup> This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 17, 2017, at its Twenty-eighth meeting, held at OAS Headquarters, March 13 – 17, 2017.

<sup>2-</sup> See the Minutes of the 24th Meeting of the Committee, available at: [http://www.oas.org/juridico/docs/XXIV\\_acta.doc](http://www.oas.org/juridico/docs/XXIV_acta.doc)

Rights, which was evidenced, inter alia, in its reply to the Questionnaire, in the willingness to clarify or complete its contents, and in the support for the on-site visit referred to below. Together with its response, Argentina sent the provisions and documents it considered pertinent.<sup>3/</sup>

[7] The Committee also notes that the country under review gave its consent for the on-site visit, in accordance with item 5 of the *Methodology for Conducting On-site Visits*.<sup>4/</sup> As a member of the preliminary review subgroup, the representative of Brazil conducted the on-site visit from October 4 to 6, 2016, with the support of the MESICIC Technical Secretariat. The information obtained during that visit is included in the appropriate sections of this report, and the agenda of meetings is attached hereto, in keeping with provision 34 of the above-mentioned *Methodology*.

[8] For its review, the Committee took into account the information provided by Argentina up to October 6, 2016, as well as that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its *Rules of Procedure*<sup>5/</sup>; *the Methodology for Follow-up on the Implementation of the Recommendations Formulated and Provisions reviewed in the Second Round and for Analysis of the Convention Provisions Selected for the Fifth Round*<sup>6/</sup>; and *the Methodology for Conducting On-Site Visits*.

## **2. Documents and information received from civil society organizations and/or, inter alia, private-sector organizations, professional associations, academics, and researchers.**

[9] The Committee also received, by the deadline set in the Schedule for the Fifth Round, documents of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, presented by the Inter-American Bar Association (IABA), the "Foro de Estudios sobre la Administración de Justicia" (FORES), and Fundación Poder Ciudadano (the Argentina chapter of Transparency International), and remitted by those organizations pursuant to Article 34.b of the Committee's Rules of Procedure.<sup>7</sup>

[10] Furthermore, in the course of the on-site visit conducted in the country under review from October 4 to 6, 2016, information was collected from other civil society and private sector organizations, professional associations, academics, and researchers invited to participate in meetings to that end, in keeping with the provisions contained in provision 27 of the *Methodology for Conducting On-site Visits*. A list of those persons is included in the agenda for that visit, which is appended hereto. Pertinent parts of this information are reflected in the appropriate sections of this report.

## **II. FOLLOW UP ON IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS WITH REGARD TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND**

[11] The Committee will first refer to progress made and new information and developments in Argentina with respect to the recommendations formulated and measures for their implementation suggested by the Committee in its Second Round report<sup>4</sup> that were deemed to require additional attention in the report of the Third Round, and it will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as

<sup>3-</sup> Available at: <http://www.oas.org/juridico/spanish/arg.htm>

<sup>4-</sup> Available at: [http://www.oas.org/juridico/english/met\\_onsite.pdf](http://www.oas.org/juridico/english/met_onsite.pdf)

<sup>5-</sup> Available at: [http://www.oas.org/juridico/english/mesicic\\_rules.pdf](http://www.oas.org/juridico/english/mesicic_rules.pdf)

<sup>6-</sup> Available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_metodologia\\_en.pdf](http://www.oas.org/juridico/PDFs/mesicic5_metodologia_en.pdf)

<sup>7-</sup> These documents were received in good time electronically and can be consulted on the MESICIC website, in the section corresponding to Argentina (Fifth Round) <http://www.oas.org/juridico/spanish/arg.htm> ).

applicable, restate or reformulate them in accordance Section V of the Methodology adopted by the Committee for the Fifth Round.

[12] In this section, the Committee will, where applicable, take note of any difficulties indicated by the country under review with implementing the recommendations and measures alluded to in the foregoing paragraph and of any technical cooperation requested by the country in that connection.

[13] Second, where applicable, it will refer to new developments in Argentina in respect of the provisions of the Convention selected for the Second Round regarding such matters as the regulatory framework, technological developments and outcomes, and will formulate any observations and recommendations that may be applicable.

## **A. COOPERATION WITH PROVINCIAL AND MUNICIPAL GOVERNMENTS**

Sole recommendation by the Committee that was satisfactorily considered under the terms contemplated in the report from the Third Round:

Recommendation:

*"... the Committee encourages the Argentina Republic to continue to undertake joint actions with its Provincial States aimed at obtaining information on the implementation of the Convention, and strengthening the cooperation and coordination between the federal government and the provincial and municipal governments for its effective implementation, and at providing them with the technical assistance they may need to that end."*

[14] The Committee has already noted the satisfactory consideration of the foregoing recommendation by the country under review under the terms contemplated in the report on Argentina it adopted in the Third Round.<sup>8</sup> Bearing in mind that said report states that this recommendation, by its nature, requires continuity in its implementation, the Committee hopes that the country under review will furnish information on actions taken to that end in the annual progress reports provided for in Article 32 of the Rules of Procedure of the Committee.

## **B. CONCLUSIONS AND RECOMMENDATIONS FOR THE FEDERAL LEVEL**

### **1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)**

#### **1.1. SYSTEMS FOR HIRING GOVERNMENT OFFICIALS**

##### **1.1.1. Follow-up on implementation of the recommendations formulated in the Second Round**

Recommendation 1.1.1:

*Strengthen systems for hiring public servants in the federal Executive Branch.*

Measure a) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Advance even further with the preparation of job description manuals*

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<sup>8</sup> Third Round Report on Argentina, p. 36

[15] In its response to the questionnaire,<sup>9</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[16] - "Given the changes that have taken place in society, it has become especially important to classify positions within the Federal Public Administration. The Collective Working Agreement for Personnel of the Federal Public Employment System (SINEP) took the first steps in that direction and toward establishing a Central Directory for Labor Skills and Minimum Requirements to be met for positions and functions."

[17] – "Although some measures have been adopted in recent years, such as the establishment of the rules governing a Central Register of Government Employment Vacancies covering more than 11,000 numbered positions, a Classification of Executive Functions, or the implementation of a series of regulations regarding the classification of specific functions, they have not sufficed."

[18] - Positions to be filled have so far been handled with the help of the Public Employment Secretariat, which has ruled on the names of the positions, the requirements profiles, and inscriptions in the Central Register of Public Employment Vacancies."

[19] - "In order to expedite and provide tools for drawing up accurate profiles of the Public Administration jobs to be filled competitively, the Federal Public Employment Office has organized training workshops on the writing of job profiles and on selection processes, formulated guidelines (...) and set up a Central Directory of Labor Skills, which needs to be updated to reflect changing needs and the adaptation of a series of tools."

[20] - "The Public Employment Secretariat in the Ministry of Modernization is planning to implement a Nomenclature Classifying Positions and Functions over the next few years that will meet the needs of the various rules and regulations governing Public Employment. The Central Directory of the Labor Skills needs to be constantly updated and adapted and the Nomenclature of Management Positions needs to be implemented. Both were established by regulations currently in effect."

[21] In addition to the foregoing information provided in the response to the questionnaire, the Committee was also told during the on-site visit that a draft for the design of job profiles already exists and is currently being examined with a view to ensuring that it can be developed by the various public entities without its essence being distorted. The idea here is to avoid profiles being slanted in such a way as to favor certain candidates competing for a job, especially for positions filled on a temporary basis.

[22] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure a) of the recommendation contained in section 1.1.1 of Chapter II of this report, but since it also transpires from the information provided by the country that those steps do not yet suffice, the Committee also notes the need for the country under review to continue to address this matter. (See Recommendation 1.1.3.1 in Section 1.1.3 of Chapter II of this report.)

[23] With respect to the foregoing recommendation measure, the document of the civil society organization Poder Ciudadano<sup>10</sup> states, inter alia, that: "... Article 16 of the Decree establishing SINEP provides for the adoption of a nomenclature classifying positions and functions, which, as of June 2016, has not been approved."

#### Measure b)

<sup>9</sup> Response of Argentina to the questionnaire, pp. 2 and 3.

<sup>10</sup> Document entitled "Civil Society Report," p. 22

[24] This measure received satisfactory consideration under the terms contemplated in the Third Round report and therefore needs no further attention.

Measure c) suggested by the Committee, which requires additional attention under the terms contemplated in the Third Round report:

*Continue adopting measures to avoid the use of the hiring regime regulated by Decree No. 1184/01, the purpose of which is to provide professional services on a personal basis, to hire persons who, based on their characteristics and in view of the nature of the functions to be performed, should be hired through a different regime.*

[25] In its response to the questionnaire,<sup>11</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[26] - "Decrees N° 707/2005, N° 2031/2006, and N° 480/08 ordered the hiring - through the employment regime contemplated in Article 9 of the Annex to the Framework Law Regulating Public Employment N° 25164 - of persons already hired under the regime established by Decree N° 1184/2001 for as long as the reasons warranting their services persist."

[27] - "Subsequently, Decree N° 2345/2008 replaced the Hiring Regime approved by Decree N° 1184 and established new profiles and a new remuneration regime based on the function and experience of professional consultants and conducive to greater equality and transparency in the determination of their fees."

[28] - "It also facilitated the hiring of professionally more qualified consultants for services of an extraordinary, specialized, or specific nature."

[29] - "At the same time, it obliged organs and entities in the Federal Public Administration to provide information before approving contracts, by remitting the data regarding persons to be hired to the current Secretariat of Public Employment, for it to issue a certificate that the proposed consultant has not been registered as ineligible or been reported by any State agency as having had a contract rescinded for cause."

[30] - "The aforementioned regime is currently being updated with a view to adapting the set of functions involved in completing tasks by broadening profiles, reassessing the requirements called for, and adjusting pay scales."

[31] - " There is also a proposal to recognize specific functions for ICT profiles, as so as incorporate I.T. needs into the regime and enable the Federal State to hire the services of I.T. professionals or specialists."

[32] In addition to the information provided in the response to the questionnaire, the Committee was also told during the on-site visit that, although Decree N° 2345/2008, which replaced Decree N° 1184/2001, establishes that the number of personal services contracts under the regime established by that Decree in each organ and entity included in Article 8 of Law No. 24.156 may not exceed FIFTEEN PERCENT (15%) of the total number of staff positions, that ceiling is not being respected. Hopefully, the implementation of an I.T. tool such as electronic case files will render oversight of this matter more effective.

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<sup>11</sup> Response of Argentina to the questionnaire, pp. 4 and 5.

[33] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure c) of the recommendation contained in section 1.1.1 of Chapter II of this report, but since it also transpires from the information provided by the country that it has not yet managed to avoid using the regime for contracts involving the provision of professional services in a personal capacity (now contained in Decree N° 2345/2008, which replaces Decree N° 1184/01) to hire persons who, because of their qualifications and the nature of the functions to be performed should be hired under a different regime, it also notes the need for the country under review to continue giving this matter its attention. The Committee considers it best that the matter be addressed in the following way in order to reflect the above-mentioned change in the regulations (see Recommendation 1.1.3.2 in section 1.1.3 of Chapter II of this report):

[34] *Adopt the measures necessary to ensure that hiring directed at the provision of professional services in a personal capacity is not used as a means of filling permanent staff positions.*

[35] With respect to the foregoing recommendation measure, it is worth noting that the document of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, presented by the Inter-American Bar Association (IABA),"<sup>12</sup> states, inter alia, that: "The misuse of temporary appointments through short-term contracts that are continuously renewed has become a habitual practice, which avoids the requirement for positions to be filled through competition."

Measure (d) suggested by the Committee, which requires further attention under the terms provided in the report from the Third Round:

*Continue to move forward with regularizing the position of public-sector employees, as the economic crisis that gave rise to the prohibition against filling vacancies in the public administration passes, adopting the measures necessary to ensure the effective use of merit-based selection procedures.*

[36] In its response to the questionnaire,<sup>13</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[37] - "Between 2009 and 2015, 17,838 authorized positions were registered, only 13,551 of which were posted to be filled competitively. 2,500 were designated (i.e., for persons appointed directly)."

[38] The Secretariat for Public Employment is conducting a survey and analysis of competitive processes initiated in prior periods, along with a diagnostic assessment of processes currently under way, as stipulated in Decree 254/2015."

[39] Worth highlighting is the progress made in the regulations governing the selection procedures and mechanisms for hiring persons with disabilities to work in the Federal Public Administration."

[40] - "In this framework, and based on Ministry of Modernization guidelines, the Secretariat for Public Employment has embarked on a comprehensive plan to move an initial set of 2,500 positions into the permanent staff, filled by persons with more than 10 years of service in the Public Administration using a competitive course selection procedure (*modalidad curso-concurso*) to be implemented in second half 2016."

<sup>12</sup> Document of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption," Seventh Report, p. 23.

<sup>13</sup> Response of Argentina to the questionnaire, pp. 5 and 6.

[41] - "That procedure was designed in response to issues encountered in implementing public competitive exams in previous year for personnel hired under a variety of arrangements who had been in public service for more than 10 years."

[42] - "In order to ensure transparent entry mechanisms, with a federal call for applications to fill positions with a variety of profiles under Article 9 of the Annex to the Public Employment Framework Law No. N° 25.164, notices of vacancies are being issued, in coordination with the Ministry of Modernization, for positions with a range of profiles in Federal Public Administration agencies, open, through merit-based and transparent mechanisms, to people with a range of qualifications: not just to personnel seeking to qualify for job stability but to any citizen wishing to serve in the Federal Public Administration."

[43] In addition to the foregoing information provided in response to the questionnaire, it transpired during the on-site visit that a survey had been needed to provide a "snapshot" of the number of people serving in temporary positions. The findings of that survey had been that of the approximately 70,000 employees just in Central Government (Executive Branch), about 50,000 were occupying temporary positions. That situation is to be gradually rectified based on a "regularization" timetable.

[44] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure d) of the recommendation contained in section 1.1.1 of Chapter II of this report, but since it also transpires from the information provided by the country that steps still need to be taken to conclude the review and regularizations of public servants' status, the Committee also notes the need for the country under review to continue to address this matter. (See Recommendation 1.1.3.3 in Section 1.1.3 of Chapter II of this report.)

[45] With respect to the foregoing recommendation measure, the document of the civil society organization Foro de Estudios sobre la Administración de Justicia (FORES),<sup>14</sup> states, inter alia, that: "The fact is: Argentina has continue extending emergency legislation year after year, the last time being November 3, 2015, with the promulgation of Law 27200."

Recommendation 1.1.2:

*Strengthen systems for hiring public servants in the federal Legislative Branch.*

Measure a) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Amend, through the competent authority, Parliamentary Decree DP-43/97, in order to adopt a rule on Article 5 (e) of Law 24.600, so that no preference shall accrue to the status of temporary worker of the Congress of the Nation of applicants to positions on its permanent staff, abiding for that purpose by the principles of openness, equity, and efficiency provided in the Convention.*

[46] In its response to the questionnaire, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[47] - The comments contained in the section of the response to the questionnaire that deals with the Chamber of Deputies,<sup>15</sup> to the effect that: "Regarding new developments, provisions, and measures

<sup>14</sup> Document REPORT TO MESICIC - FIFTH ROUND OF CONSULTATIONS 2016 -, P. 25.

<sup>15</sup> Response of Argentina to the questionnaire, pp. 10 and 11.

adopted with a view to the competent authority amending Parliamentary Decree DP-43/97, in order to adopt a rule on Article 5 (e) of Law 24.600 (so that no preference shall accrue to the status of temporary worker of the Congress of the Nation of applicants to positions on its permanent staff), the country informs the Committee that in order not to violate the principles upheld in the Inter-American Convention against Corruption (IACC) and while the resources needed to amend the regulations are being put in place, a survey is being conducted of all the administrative areas making up the Honorable Chamber of Deputies of the Nation."

[48] - The comments contained in the section of the response to the questionnaire that deals with the Chamber of Deputies,<sup>16</sup> to the effect that: "We agree on the need not to make it a privilege to be a member of the permanent staff and indeed we are in the process of amending the above-mentioned decree (DP 43/97) along with another series of measures such as the existence of complete dockets duly justifying entries and promotions (...)."

[49] In addition to the foregoing information provided in response to the questionnaire, it transpired during the on-site visit that studies are currently under way along with efforts to muster the consensus needed to amend Parliamentary Decree DP 43/97 and modernize staffing procedures.

[50] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure a) of the recommendation contained in section 1.1.2 of Chapter II of this report, but since it also transpires from the information provided by the country that Parliamentary Decree DP 43/97 has not yet been amended in such a way that no preference shall accrue to the status of temporary worker of the Congress of the Nation of applicants to positions on its permanent staff, the Committee also notes the need for the country under review to continue to address this matter. (See Recommendation 1.1.3.4 in Section 1.1.3 of Chapter II of this report.)

[51] With respect to the foregoing recommendation measure, the document of the civil society organization Poder Ciudadano<sup>17</sup> states, inter alia, that: "On this it is true to say that as of the time this report was written (June 2016), Parliamentary Decree DP 43/97 has not been amended, so that, as indicated above, preference is still given to temporary worker status in the Congress, which unjustifiably rewards temporary worker status more than merit when it comes to applying for a permanent staff position."

[52] Measure b) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt, through the appropriate authorities, the terms and conditions for the competitive hiring processes referred to in the Rules of Procedure of the Honorable Chamber of Deputies of the Nation (Article 39(12) and Article 213), and in the Rules of Procedure of the Senate (Article 32(j)), observing the principles of openness, equity, and efficiency provided for in the Convention.*

[53] In its response to the questionnaire, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[54] - The comments contained in the section of the response to the questionnaire that deals with the Chamber of Deputies,<sup>18</sup> in which reference is made to the signing, on December 29, 2015, of the

<sup>16</sup> Response of Argentina to the questionnaire, p. 11.

<sup>17</sup> Document entitled "Civil Society Report," p. 37.

<sup>18</sup> Response of Argentina to the questionnaire, pp. 9 to 12.

"Technical Assistance Agreement" and "Technical Assistance Program" entered into with the University of Buenos Aires (UBA), which provide that the University shall furnish professional assistance to this Honorable Chamber with verifying compliance with current regulations in the hiring of human resources through December 10, 2015. One of the objectives of said Agreement is "to appraise the system for selecting and hiring personnel" and two of the actions included under that objective are "to verify the systems used for taking on personnel" and "verify compliance with entrance requirements." The Committee also notes the mention in that section of the country's reply that the office of the Director General of Human Resources is currently examining a draft amendment to the regulations.

[55] - The comments contained in the section of the response to the questionnaire that deals with the Senate,<sup>19</sup> to the effect that: "...as an institutional response, several of the items mentioned in 2006 were not followed up on as had been hoped and were first addressed only recently in an audit by the University of Buenos Aires, which is attached hereto,<sup>20</sup> with a view to improvements and needed reforms in the area of human resources...". In addition, the comments in that section<sup>21</sup> to the effect that "competitive hiring is one of our institutional management goals; at the same time it was observed and pointed out that competitive hiring processes were not being used. That change, aimed at bringing the procedure into line with the norm, and how it will be regulated is currently the subject of conversations with the legislative bodies in the current joint negotiations with a view to it being adopted at upcoming sessions.

[56] In addition to the foregoing information provided in response to the questionnaire, the Committee was told during the on-site visit by Chamber of Deputy officials that progress was being made on the draft regulatory amendment and on procedures and functions manuals; and by Senate officials that work was being done on adjusting selection procedures and that competitive hiring processes were going to be used, given that, for instance, none of the current 72 positions had been filled competitively.

[57] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure b) of the recommendation contained in section 1.1.2 of Chapter II of this report, but since it also transpires from the information provided by the country that the terms and conditions for the competitive hiring processes referred to in the Rules of Procedure of both the Chamber of Deputies and the Senate have not yet been published, the Committee also notes the need for the country under review to continue to address this matter. (See Recommendation 1.1.3.5 in Section 1.1.3 of Chapter II of this report.)

[58] With respect to the foregoing recommendation measure, the document of the civil society organization Poder Ciudadano<sup>22</sup> states, inter alia, that: "Regarding the adoption of the terms and conditions governing selection procedures referred to in the Rules of Procedure of both the Honorable Senate and the Honorable Chamber of Deputies of the Nation, it is true to say that, as of the time this questionnaire was prepared, no changes are discernible, because neither the Legislature (comprising both Chambers) nor the Congressional Library or Printshop or any of their units have adopted any kind of legislation or public policy involving progress toward incorporating the principles of openness, equity, and efficiency provided for in the Convention in competitive processes for employment in the Legislature."

[59] In addition, in the section of the response to the questionnaire that deals with the Chamber of Deputies,<sup>23</sup> there is a reference to the Technical Assistance Agreement with the University of Buenos Aires, which reads as follows: "...in connection with the implementation of that Agreement, surveys were conducted in the various areas of this Honorable Chamber, which gave rise to observations regarding procedures

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<sup>19</sup> Response of Argentina to the questionnaire, pp. 11 and 12.

<sup>20</sup> This document is posted at: ([http://www.oas.org/juridico/spanish/mesicic5\\_arg.htm](http://www.oas.org/juridico/spanish/mesicic5_arg.htm)) together with the other documents constituting Argentina's response.

<sup>21</sup> Response of Argentina to the questionnaire, p. 12.

<sup>22</sup> Document entitled "Civil Society Report," pp. 39 and 40.

<sup>23</sup> Response of Argentina to the questionnaire, pp. 9 to 12.

followed to appoint personnel in 2015, including: a)...; b) failure to comply with the requirements/impediments for entry or promotion into permanent staff positions; c)..."

[60] In light of the above, the Committee deems that it would be appropriate for the country under review to consider adopting pertinent measures to ensure effective oversight of compliance with requirements/impediments for entry or promotion into permanent staff positions in the Chamber of Deputies. The Committee will make a recommendation in that regard. (See recommendation 1.1.3.6 in Section 1.1.3 of Chapter II of this report.)

[61] Finally, in the section of the reply to the questionnaire regarding the Senate,<sup>24</sup> documents are attached relating to the audit commissioned by the Senate from the University of Buenos Aires, one of which (corresponding to the "Final Human Resources Report - HCSN" of May 2, 2016) states, inter alia, that: "In our opinion, oversight within the unit is deficient, particularly since we observed noncompliance with legal requirements currently in effect (Law 26.600), inasmuch as there are permanent staffers performing tasks in political coalitions and temporary staff performing technical and/or administrative tasks; personnel on the current payroll with identical reported addresses; incomplete dockets and inconsistencies between the documentation they contain and the data uploaded to the personnel management system (SARHA)."

[62] In light of the above, the Committee deems that it would be appropriate for the country under review first, to consider adopting pertinent measures to ensure effective oversight of legal requirements currently in effect (Law 26.600), to prevent situations in the Senate in which permanent staff are assigned to perform tasks in political coalitions and temporary staff are assigned to technical and/or administrative tasks; and, second, to consider verifying that the documentation contained in personnel files is complete and that there are no inconsistencies between said documentation and the data in the staff management system (SARHA). The Committee will make recommendations in that regard. (See recommendations 1.1.3.7 and 1.1.3.8 in Section 1.1.3 of Chapter II of this report.)

#### Recommendation 1.1.3:

*Strengthen the systems for hiring public servants in the federal Judicial Branch.*

Sole measure suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Establish guidelines, by the appropriate authority, with the level of detail required, so that the selection procedures used by the Courts of Appeals, pursuant to the delegation made thereto by the Supreme Court of Justice through the Ruling of March 3, 1958, are inspired by the principles of openness, equity, and efficiency provided for in the Convention; and that it adopts the measures needed for that authority to verify the adequate implementation of those guidelines, and the unification of criteria in that regard.*

[63] In its response, the country under review did not provide information regarding implementation of foregoing measure, so that it cannot be established that the guidelines and measures referred to therein have been adopted. Nor was there a representative of the Supreme Court of Justice present during the on-site visit who could indicate that they were adopted.

[64] In the light of the above, the Committee reiterates the need for the country under review to give further attention to implementation of the sole measure contained in recommendation 1.1.3 of Chapter II of this report. (See recommendation 1.1.3.9 in Section 1.1.3 of Chapter II of this report.)

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<sup>24</sup> Response of Argentina to the questionnaire, pp. 11 and 12.

Recommendation 1.1.4:

*Strengthen the systems for hiring public servants in the Public Ministry of the Nation.*

Measure a) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt, through the appropriate authority, a merit-based selection procedure prior to receiving applications from candidates for permanent employment in the career service corresponding to the Technical-Juridical, Technical-Administrative, and Support Services groupings of the Prosecutorial Public Ministry, bearing in mind the eminently technical nature of those positions.*

[65] In its reply to the questionnaire,<sup>25</sup> the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that lead it to believe that it has been satisfactorily considered:

[66] - Regarding the adoption of a merit-based selection procedure prior to receiving applications from candidates for permanent employment in the various career service ladders corresponding to the Technical-Juridical, Technical-Administrative, and Support Services groupings of the Prosecutorial Public Ministry, it should be pointed out that Law 26.861, "Law on the Democratic and Egalitarian Hiring of Personnel for the federal Judicial Branch and the Public Prosecutors' Office ("Prosecutorial Public Ministry")," passed on May 29, 2013, established that the hiring of personnel for the various career ladders in both institutions must be carried out through public competitive selection procedures."

[67] - The handing down of Resolutions PGN 507/14 and 508/14, which regulate the enforcement of Law 26.861 of 2013 in relation to the Prosecutorial Public Ministry.

[68] The Committee takes note of the satisfactory consideration given by the country under review to measure a) of the recommendation contained in section 1.1.4 of Chapter II of this report. Nevertheless new comments and observations will be considered when it comes to analyzing the new regulatory developments constituted by Law 26.861 of 2013 and Resolutions PGN 507/14 and 508/14, which regulate its enforcement in connection with the Prosecutorial Public Ministry, under the terms envisaged in the methodology for reviews conducted in the Fifth Round.

[69] With respect to the foregoing recommendation measure, the document of the civil society organization Poder Ciudadano<sup>26</sup> states, inter alia, that: "Given that the Office of the Attorney General is the law enforcement authority for the Prosecutorial Public Ministry, in 2013, through Resolutions PGN 507/14 and 508/14, it issued complete enabling regulations for Law 26.861 in respect of the Prosecutorial Public Ministry. Thus, and based on the aforementioned resolutions, it may be said that the Prosecutorial Public Ministry regulated the democratic hiring procedure and created a digital registration system with an individual user log-on for conducting all steps in the process on line. Within that framework, that organ established a schedule for registration and competitive selection processes for each entity, many of which have already been carried out, while others are in process. Hence it is fair to say that the mechanism contemplated in Law 26.861 is being implemented."

Measure b) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

<sup>25</sup> Response of Argentina to the questionnaire, pp. 16 and 17.

<sup>26</sup> Document entitled "Civil Society Report," pp. 39 and 40.

*Adopt, by the appropriate authorities, the regulations for the designation and promotion of the officers and personnel of the Office of the Defender General of the Nation, to which reference is made in Article 65(e) of Organic Law No. 24,966, observing the principles of openness, equity, and efficiency provided for in the Convention.*

[70] Bearing in mind that, in its reply to the questionnaire,<sup>27</sup> the country under review pointed out that on June 18, 2015, a new Organic Law of the Federal Public Ministry for the Defense of Human Rights (No. 27,149) was promulgated, providing for a new ministerial structure and modus operandi, and that "in light of that regulatory change it becomes necessary to make changes to the legal regime in effect so as to align it with the new Organic law and the various specific situations resolved since its entry into force", as with the promulgation of Law 26.861 in May 2013, entitled "Democratic and Egalitarian Hiring of Personnel for the Federal Judicial Branch and the Federal Public Prosecutors' Office, both of which legal instruments constitute new regulatory developments in the area referred to in the foregoing measure, the Committee considers that said measure has ceased to be relevant given that it has been affected by the new aforementioned provisions. For that reason, the Committee considers that the review should focus on these latter instruments and their enabling regulations and, pursuant to the methodology adopted for the Fifth Round, proceed to make any applicable observations and recommendations concerning them in the corresponding section of this report.

### **1.1.2. New developments in respect of the Convention provision on civil servant hiring systems**

#### **1.1.2.1. New developments in the regulatory framework**

##### a) Scope

- Legal provisions applicable to public servants in the Legislative Branch of government, including, in particular:

[71] - The Collective Working Agreement for Personnel of the Federal Public Employment System (SINEP), ratified by Decree No. 2098/2008, in which Article 4 establishes the Standing Committee for Interpretation and Career (*Comisión Permanente de Interpretación y Carrera*); Article 9 provides for a career ladder and administrative career system; Article 14 establishes the minimum requirements for access to each step on the ladder; Article 16 states that a Nomenclature shall be developed classifying positions and functions, along with a Central Directory of Labor Skills and Minimum Requirements for positions and functions; Article 21 refers to the Management Function and orders the establishment of a Nomenclature of such functions; Article 24 establishes that upon entry into the service, personnel shall be appointed to the starting grade and initial step on the ladder of the Grouping corresponding to the job for which the person concerned was selected and that, should the selection organ consider an appointee to be exceptionally well qualified, it may recommend that she or he be placed in the grade immediately above the aforementioned starting grade; Article 33 provides that entry into the career service and promotion, shall be governed by the selection rules that the State employer has previously agreed upon with the trade union signatories to this Agreement; Article 34 establishes that selection processes shall be based on competition and the assessment of qualifications; and Article 35 spells out the various stages in the selection process.

[72] Article 42 of the aforementioned Agreement also provides that the enabling regulations shall establish that the various stages in the selection process and the corresponding preparation and presentation of the ranking or slate of the three top candidates, as the case may be, shall be completed in no more than sixty (60) days from the date of the deadline for registration, with the possibility of a

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<sup>27</sup> Response of Argentina to the questionnaire, pp. 17 to 22.

FIFTEEN (15) day extension on properly substantiated grounds; while Article 45 establishes that selection process shall be convened in March and September each year through media that ensure broad public dissemination at least TEN (10) days prior to the start of registration of candidates. It also specifies that the State employer may, exceptionally, call for applications to cover vacancies that turn out to be indispensable for maintaining services that are essential for the population or for Public Administration.

[73] Article 47 of the aforementioned Agreement also establishes that the competent authority shall appoint the candidate based on the ranking of merit or slate, as the case may be, and that for positions involving executive or management functions as defined in this Agreement, the authority may choose among the top THREE (3) candidates listed, provided that that possibility was announced at the time the vacancy was posted. Article 48 provides that the order of merit ranking and slates shall remain valid for SIX (6) months from the date on which the first candidate is appointed. For its part, Article 51 establishes that the trade union signatories to the Agreement shall be duly notified and invited to designate ONE (1) regular supervisor and one alternate supervisor each before the appointment of members of the selection committee or body, in each of the competitive processes announced.

[74] - Resolution 39/2010 of the Secretariat for Public Management, approving the Collective Working Agreement for Personnel of the Federal Public Employment System (SINEP), contemplated in Article 33 of the aforementioned Agreement. Article 2 of the resolution establishes that a General Notice of Vacancy (*Convocatoria General*) is open to personnel included in the SINEP that meet the established minimum requirements. Article 3 indicates that an Open Notice of Vacancy (*Convocatoria Abierta*) is open to any applicant who meets those requirements. Articles 15 and 20 refer to the Notice of Vacancy, the terms and conditions governing the competitive process and their dissemination in the official gazette, in the Public Employment Vacancies bulletin board (posters and website) and in any (poster or website) bulletin boards specifically assigned to each ministerial department or decentralized entity in which the post to be filled is located. Article 29 deals with the composition of the Selection Committees. Article 33 establishes those Committees' functions and responsibilities, including the evaluation and ranking of candidates (subparagraph f), moving the selection process forward so that it is completed by the deadline established in Article 42 of the SINEP, or duly substantiating in writing an extension to that deadline, as required under that Article, and preparing the short list based on merit and submitting it to the authority that convened the process. Articles 41 to 60 spell out in detail the various stages in the selection process. Article 61 specifies that the Selection Committee shall draw up the order of merit ranking based on the results of the different stages, recorded in their respective minutes, and that the final ranking shall be based on each candidate's final score. Article 65 addresses the appeals that can be filed against the administrative decision ratifying the final ranking. Article 66 states that once the deadline for appeals has passed or resolutions on those appeals have been handed down, instructions shall be given to assign the vacancies for which the competitive process was conducted in accordance with the ranking or slate of candidates, as the case may be (pursuant to the second paragraph of Article 64 the slate shall comprise the top THREE (3) candidates, any one of whom may be appointed).

[75] In addition, Article 79 of the foregoing resolution establishes the composition of the Technical Secretariat of the Selection Committee. Article 80 establishes its duties, which include answering queries put to it by the Selection Committee; providing technical and administrative assistance requested or arranging for it be furnished by the corresponding units ( subparagraph e); and altering deadlines for duly substantiated reasons of force majeure (subparagraph j). Transitional Article 82 establishes that, until the Nomenclature Classifying Positions and Functions and the Central Directory of Labor Skills and Minimum Requirements are approved pursuant to Article 16 of SINEP, the profile of requirements to be met shall be approved along with the terms and conditions of the competition.

[76] - Decree N° 2345/2008, which replaces Decree N° 1184/01 and establishes the new profiles and remuneration rules for hiring professional consultants. Article 3 of the new decree provides that the hiring

rules it establishes may not be used to hire people for administrative or general services activities. Article 6 states that as of January 1, 2009 the number of personal services contracts awarded under the current rules in each jurisdiction and entity covered by Article 8 of Law 24.156 and amendments thereto may not exceed FIFTEEN PERCENT (15%) of the permanent staff positions assigned to such hiring jurisdiction or entity, while Article 8 establishes that the Federal Audit Office (*SINDICATURA GENERAL DE LA NACION*) shall verify compliance with the provisions of this decree.

[77] - Decree 735/2016, which amends Decrees 1421/01 and 2345/2008. Its Article 1 states that the hiring rules cover fixed-term contracts and appointments to temporary positions and it sets out the provisions to which that regime will be subject, which include (under subparagraph a) the provision that personnel shall be assigned exclusively to such activities of a temporary or seasonal nature as are needed to supplement the performance of the actions and competencies assigned to each decentralized jurisdiction or entity and (under subparagraph c) the minimum required contents of contracts, including the functions to be performed by the appointee and expected outcomes he or she is expected to achieve (Point I), the grade corresponding to the position on the administrative ladder based on the minimum requirements established for each position (Point II), and the duration of the contract (Point III). Article 1.f provides for the MINISTRY OF MODERNIZATION authorizing exceptions to Point II of foregoing subparagraph c) in substantiated cases of highly specialized functions in the labor market according to standards it may establish in that regard.

[78] The aforementioned Decree also ratifies, in Article 2, each job description and requirements, while pointing out that the Ministry of Modernization may permit, exceptionally and for properly substantiated reasons, the hiring of consultants who possess specialized I.T. qualifications difficult to come by in the labor market, in which case the requirements of a university degree or other tertiary education diploma and accreditation of the years of experience stipulated in these rules may be dispensed with. It "may also authorize, exceptionally and for properly substantiated reasons, the hiring of consultants who possess specialized qualifications difficult to come by in the labor market but who do not meet one or other of the established specific requirements for the job."

- Legal provisions applicable to public servants in the Federal Judiciary and Federal Public Prosecutors' Office, notably:

[79] -Law 26.861/2013, "Democratic and Egalitarian Hiring of Personnel for the Federal Judicial Branch and the Federal Public Prosecutors' Office." Article 1 of which states that the purpose of the present law is to regulate the democratic and egalitarian entry of personnel into the Federal Judicial Branch (PJM) and Federal Public Prosecutors' Office (*Ministerio Público de la Nación* - MPN) by means of a public competitive process. Article 3 provides that its provisions shall apply to competitions for legal advisor, employee and service personnel positions and jobs in the PJM or MPN, with the limitation imposed by Article 113 of the Constitution regarding staff and employees of the Supreme Court of Justice and excluding also from the scope of this law staff and employees pertaining to the governing and management organs of the Office of the Attorney General, the Federal Public Defender's Office (*Defensoría General de la Nación*), and the Judicial Council. Article 5 points out that, exceptionally, there may be direct appointments to fill the positions of clerk or rapporteur of the Court (*relator de Cámara*) and lower court clerk (*secretario privado de primera instancia*), but such persons may not be promoted definitively to permanent staff position. The same article adds that the head of the unit may directly appoint two (2) legal advisors (*cargos letrados*), on the same terms as established in the foregoing paragraph. Articles 7 and 8 establish that the requirements for service and specialized personnel (*personal de maestranza y oficios*), employees and advisors (including the requirement that advisors be attorneys). Article 12 requires competitive processes to be conducted in accordance with the rules set by the applications authority and observe the principles of broad disclosure (publicity), competition, equality, and transparency, and that the applications authority shall establish an examination program, identify the

material involved, post its contents on the web along with the invitation to submit applications, take the exams and conduct the corresponding assessments, in accordance with applicable rules and regulations. Article 14 sets out the general requirements to be met by candidates, while Article 18 establishes that, within five days following the last day for registration, minutes shall be drawn up followed by a definitive list of all registered applications that complied with the requirements of this law.

[80] In addition, the aforementioned law refers specifically, in Articles 19 to 27, to the entry of employees and service and specialized personnel. Article 19 requires, for the admission of such personnel into the PJN and the MNP, in addition to the requisites set forth in Article 14, a personal interview and proof of training in the specialty or activity concerned, followed by a public drawing of lots (*sorteo público*). Article 21 states that once the definitive list of registered applicants contemplated in Article 18 has been drawn up, a date shall be set for the candidates to do the written exam. Article 23 provides that candidates be awarded a score of between zero (0) and one hundred (100) and that a minimum score of 60 in each test is required for appointment to the position. Article 24 requires the application authority to draw up a list of all the candidates who pass the tests required in this law and that future vacancies shall be filled by a drawing of lots (by Lotería Nacional S.E) among all those on the list. Article 27 specifies that the lists referred to in Article 24 shall remain valid for two (2) years.

[81] The aforementioned law also makes specific reference, in Article 28 to 35, to the admission of legal advisors. Article 28 stipulates that, once the definitive list referred to in Article 18 has been drawn up, a date shall be set for an anonymous written exam within the next 30 days and that the exam shall consist of finding a solution to a legal problem, which will test the candidate's specific knowledge of the area of law required by the position the candidate is applying for and by the Constitution. Article 29 states that the competitive test will be awarded a score of between zero (0) and seventy (70, whereby the minimum score needed to be included in the list of candidates is forty (40). Article 30 states that up to a maximum of 30 points may be awarded in the assessment and score for candidates' experience and qualifications for filling the legal advisor vacancies, based on the criterion established therein. Article 31 establishes that once the tests have been marked and the qualifications assessed, a list showing the final order of merit or ranking shall be drawn up and those on the list shall be notified with a view to their filling any future vacancies. Article 33 establishes that appointments made to fill vacancies occurring in any of the positions shall take the definitive ranking into account and that the head of the unit or person in charge of it may select a candidate from among the top twenty (20) on the final list. Article 34 establishes that the lists referred to in Article 31 shall remain valid for two (2) years.

[82] Finally, Article 36 of the above-mentioned law establishes that, once it enters into force, new appointment in the PJN and the MPN may only be made to the positions included in it, in accordance with the procedure provided for in that law. It also provides that, exceptionally, from its entry into force until the lists contemplated in Articles 24 and 31 are first drawn up, positions may be filled on a temporary basis and that the personnel appointed in this manner may not be promoted to permanent staff. That notwithstanding, they may apply to be appointed on the same terms and conditions applicable to other candidates. Article 39 establishes that the applications authority shall issue any explanatory and supplementary regulations to the present law.

- Legal provisions applicable to public servants in the Federal Judiciary, including, in particular:

[83] - Resolution (*Acordada*) 26/2013 of the Supreme Court of Justice (regarding the Law on the Democratic and Egalitarian Hiring of Personnel for the Federal Judicial Branch and the Federal Public Prosecutors' Office" - Law 26.861 of 2013), point 1) of which establishes that the Supreme Court of Justice of the Nation, as the enforcement authority for Law N° 26.861, shall approve the regulations governing the competitive procedure envisaged for admission into the Federal Judiciary. Point 2 provides

that the Supreme Court shall issue appropriate measures to ensure orderly enforcement of the aforementioned law. Point 3 states that, as of promulgation of the present Resolution and until the lists referred to in Articles 24 and 31 of Law N° 26.861 are drawn up, positions to be covered in the Judiciary shall be temporary, save for the established exceptions; Point 4 establishes the areas relating to the Judicial Council that are exempt from the public competitive procedure. Point 5 excludes from the provisions of Article 4 of Law 26.861 public service positions that do not require accreditation of legal advisor (attorney) status. Article 6 calls for joint Committee of the Branches of Government (*Comisión Interpoderes*) with a view to ensuring generalized observance of the principle of democratic and egalitarian entry into all branches of government.

[84] - Resolution 49/2013 of the Supreme Court of Justice, preambular paragraph V of which states that "under the powers conferred on this Court by Law 26.861 and those invested in it, on an exclusive basis, as the entity in charge of this Branch of Government, the Supreme Court issued Resolution 26/13 on August 21, ruling, in the matter at hand, that until the lists referred to in Article 24 and 31 of Law 26.861 are drawn up, positions to be filled in the entire Federal Judiciary shall be temporary (Conf. Point 3)." Preambular paragraph VI notes that "on that same occasion, this Court provided for appropriate measures being issued to permit orderly enforcement of the law (Cf. Point 2)." Point 1) establishes entry-level positions for the purposes of Law 26.861. Point 2) approves the form to be used to register as a candidate for admission to the Federal Judiciary. Point 3 establishes that those interested in being admitted to the Federal Judiciary shall meet the requirements set forth in Articles 7 and 8 of Law 26.861. Point 4 contains instructions for submitting the registration forms referred to in Article 13 of Law 26.861. Point 5 states that, until the admission rules contemplated in Law 26.861 are actually implemented (which this Court will order as the application authority), the courts shall retain the powers of Judgments resolution 240:107 for appointing and promoting, employees, personnel or temporary workers in staff positions or on short-term contracts.

[85] - Resolutions Nos. 1/16 and 2/16, issued by the Federal Judicial Council on February 4, 2016, to cover vacancies for the position of judge until the selection process established in Law 24937 is completed or a new law on alternates is passed.

- Legal provisions applicable to public servants in the Federal Public Prosecutors' Office, including, in particular:

[86] - Resolution No. PGN 507/14, ratifying the rules of procedure for applying Law 26.861/2013 in the Federal Public Prosecutors' Office (MPF). Article 1 of the resolution establishes that it shall apply to positions in the "Auxiliary," "Technical-Administrative," and "Technical-Judicial Services" groupings. Article 4 states that, pursuant to Articles 3 and 5 of Law 26.861, the following shall be exempted from these rules: a) positions corresponding to the MPF Corps of Rapporteurs, who may not be definitively promoted to permanent staff positions; b) two legal advisor positions in each unit, should their structure warrant them, whose occupants may be incorporated into the Technical-Judicial Services" grouping and who may not be promoted to permanent staff positions; and c) permanent and non-permanent positions pertaining to the governing and management organs of the Office of the Attorney General (for them a specific system for evaluating suitability will be implemented).

[87] The foregoing resolution also makes reference, in Article 9 to 11, to the call for candidacies to fill vacancies. Articles 12 to 15 address requirements to be met and impediments. Articles 16 to 20 deal with registration to take part in competitive processes; Article 21 to 26 deals with the Standing Committee for Evaluating Candidates. Articles 27 to 68 address matters relating to the evaluation procedure, with a particular reference in Article 39 to the "Support Services" category, for which, when a vacancy arises, the application authority shall remit the final list of candidates in each exam to Loteria Nacional S.E. for a drawing of lots to decide the selection order. Article 40 stipulates that the Committee or the head of the

respective unit may choose from among the candidates chosen by lot to fill the top 10 places in the ranking.

[88] As regards the "Technical Administrative" grouping, the aforementioned resolution also establishes, specifically in Article 51, that the applications authority shall remit for a drawing of lots by Lotería Nacional S.E. up to one hundred (100) persons on the final list of candidates by order of merit who fit the required profile and that it shall also determine the number of people (up to a maximum of 10) to be "lifted out of the bag" (*desinsaculados*). Article 52 establishes that the head of the respective unit shall select, based on the established suitability parameter, the candidate among those "lifted out of the bag" in accordance with the procedure established in the foregoing article.

[89] Finally, Article 64 of the above-mentioned resolution establishes, with regard to the "Technical-Juridical" services category, that when a vacancy arises, the head of the respective unit shall select the candidate from among those in the top twenty (20) places in the order of merit.

[90] - Resolution No. PGN508/14, which, in operative section I to IV, calls for open and public competitive processes for admission to the MPF's "Auxiliary," "Technical-Administrative," and "Technical-Juridical Services" groupings, pursuant to the schedule appended to that resolution; establishes the computerized system for democratic and egalitarian admission on the MPF website (<https://www.mpf.gov.ar/ingresodemocratico>); appoints the members of the Standing Committee for Evaluating Candidates (CPE) to a two-year term; orders the publication of this call for applications for three (3) days in the Official Gazette of the Argentine Republic; and instructs the MPF's Directorate of Institutional Communication to publicize it extensively on the MPF website, through the Institution's social network accounts, in local, provincial and/or nationwide mass media, and on posters placed at the entrances to MPF units.

[91] - The Organic Law of the Federal Public Prosecutors' Office (Nº 27.148), promulgated on June 17, 2015, which established a new structure and modus operandi for the Federal Public Prosecutors' Office.

- Legal provisions applicable to public servants in the Federal Public Defenders' Office, including, in particular:

[92] - Resolution DGN N. 1628/10, authorizing the "Legal Regime applicable to Judges, Staff and Employees of the Federal Public Defenders' Office (hereinafter MPD). Article 34.f of the resolution includes among the requirements for admission to the MPD the accreditation of suitability for appointment to the position to be held, whereby such aptitude may be verified by the evaluation process established to that end in regulations.

[93] - Resolution DGN N. 75/14, amended by Resolution DGN N. 1124/15, which approved a consolidated text of "Rules of Procedure for the Admission of Personnel to the Federal Public Defenders' Office." Article 1 of Resolution DGN N. 75/14 states that, pursuant to Article 34.f of the Legal Regime applicable to Judges, Staff and Employees of the Federal Public Defenders' Office," approved by Resolution DGN No. 1628/10, it shall be applied to evaluations accrediting suitability conducted for admission into the "Technical-Juridical", "Technical-Administrative," and "Support Services" categories in the MPD. Articles 5 to 9 regulate the call for applications. Articles 10 to 13 refer to the evaluation bodies. Articles 14 to 16 address matters relating to registration and the exam. Articles 17 to 24 refer to the evaluation procedure for admission into the "Technical-Juridical" grouping, whereby Article 22 stipulates that when a vacancy arises or a new position is created in that category, the head of the respective unit or person in charge of it shall select a candidate from among the top twenty (20) by order of merit on the corresponding final list.

[94] The foregoing resolution also refers, in Articles 25 to 36, to the evaluation procedure for admission to the "Technical-Administrative" category, whereby Article 33 stipulates that when a vacancy arises or a new position is created in that category, the head of the respective unit or person in charge of it shall select a candidate from among the top ten (10) by order of merit on the corresponding final list.

[95] Also addressed, in Articles 37 to 49 of the aforementioned resolution, is the evaluation procedure for admission to the "Support Services" category, whereby Article 45 stipulates that when a vacancy arises or a new position is created in that category, the head of the respective unit or person in charge of it shall select a candidate from among those on the list of candidates who passed the personal interview test. It adds that, as appointments are made, and following the order of merit, new interviews shall be convened so that the head of the unit or person in charge of it at the time can choose from at least ten (10) candidates, unless the total number of candidates who passed the exam is less than that number.

[96] Finally, the aforementioned resolution establishes, in Article 51, that the Ombudsperson (*el/la Defensor/a General de la Nación*) may order, through a resolution stating his or her reasons, appointments or hirings that are not contemplated in these rules of procedure, when there are exceptional circumstances or they are needed to staff the Public Defense service.<sup>28</sup>

[97] - The Organic Law of the Federal Public Prosecutors' Office (N° 27.149), promulgated on June 18, 2015, which established a new structure and modus operandi for the Federal Public Prosecutors' Office.

#### b) Observations

[98] In the first place, the Committee would like to recognize the new regulatory measures adopted by the country under review to continue to push forward with the creation, maintenance, and strengthening of its systems of government hiring as referred to in Article III (5) of the Convention.

[99] Nevertheless, some considerations are deemed appropriate regarding the advisability of supplementing, developing, and/or adjusting certain provisions referred to in these new developments, without prejudice to the observations put forward by the Committee in foregoing section 1.1.1 in relation to the follow-up to implementation of the recommendations made to the country under review in the Second Round report

- With respect to public servants in the Federal Executive Branch of government, the Committee has the following to say:

[100] First, from the information provided by the country under review in its response to the questionnaire,<sup>29</sup> it transpires, with respect to the Collective Working Agreement for Personnel of the Federal Public Employment System (SINEP), ratified by Decree No. 2098/2008, that the Nomenclature

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<sup>28</sup> On February 9, 2017, in Argentina's comments document on the preliminary draft of this report, the Federal Public Defenders' Office reported that : "Through Resolution AGN N° 310/2016, the Office of the Auditor General of the Nation (*Auditoría General de la Nación*) approved the audit report on compliance with the Competitive Exams System for Magistrates and the System governing the Entry of Personnel into this Public Defenders' Office. In that report, it verified approval by the National Ombudsperson's Office (*Defensoría General de la Nación*) of Resolutions N° 75/14, 254/14, 366/14, and 1.047/14, with a view to bringing its own specific regulations into line with the provisions of Law 26,861. It concluded in that report that "nothing subject to review was detected that would lead one to consider that the institution has failed to comply with any significant aspect of applicable rules and regulations."

<sup>29</sup> Argentina's reply to the questionnaire, pp. 2 and 3.

Classifying Positions and Functions contemplated in Article 16 thereof has not yet been established, that the Central Directory of Labor Skills and Minimum Requirements for Positions and Functions also contemplated in that Article has not yet been drawn up; and that the Nomenclature for Management Functions, also envisaged in that article, has not yet been adopted.

[101] Given the importance of the above for the system for selecting public servants in the Federal Executive Branch and for achieving the goals pursued by the various regulations governing Public Employment, as the country under review itself acknowledges in its response, the Committee will make a recommendation in that regard (see Recommendation 1.1.3.10 in Section 1.1.3 of Chapter II of this report).

[102] It should be pointed out that the document of the civil society organization Poder Ciudadano<sup>30</sup> notes, inter alia, that: "... Article 16 of the Decree establishing SINEP provides for the adoption of a nomenclature classifying positions and functions, which, as of June 2016, has not been approved." Moreover, the same Article establishes the Central Directory of Labor Skills and Minimum Requirements, which is to be used for quality control in hiring and to validate government hiring in general based on the requirements and profiles established in its calls for applications. However, as mentioned earlier, that article has not yet been regulated so that said Directory is not yet performing the functions envisaged for it. That being so, and given that Article 16 of the Decree has not been regulated, the Office of the Chief of Staff of the Federal Ministerial Cabinet implemented Resolution 166/2015, Article 82 of which established that, as a temporary measure and until such time as the Central Directory of Labor Skills and Minimum Requirements starts to perform its functions, the profile of requirements to be met shall be adopted along with the terms and conditions governing each competitive process."

[103] Second, bearing in mind that although Article 43 of Decree No. 2098/2008 (SINEP) establishes that the various stages in the selection process and the corresponding drawing up and presentation of the order of merit or slate, as the case may be, shall be carried out in no more than 60 days from the final date for registration, with a possible, duly substantiated extension of no more than 15 additional days, that deadline is not being met according to information provided during the on-site visit, due to the cumbersome nature of selection processes and the fact that the selection committees do not have a Technical Secretariat with the capacity needed to fully manage those processes, the Committee will formulate a recommendation to address the issue (see Recommendation 1.1.3.11 in Section 1.1.3 of Chapter II of this report).

[104] It is worth mentioning, regarding the foregoing, that in its response to the questionnaire the country under review notes that:

[105] - "Despite the regulatory progress made, the actual carrying out of public competitive procedures results in inefficiency as regards the deadline envisaged in the regulations, because of the bureaucratization of the processes involved and inefficiencies in resource allocations, and other reasons. The regulatory norms are being re-examined, with a view to expediting Public Administration selection processes and making them more transparent, while generating the possibility of ongoing competitive and vetting processes to make it possible to hire the right personnel as needed."

[106] Third, the Committee observes that Article 47 of Decree No. 2098/2008 (SINEP) also establishes that the competent authority shall appoint the candidate based on the ranking of merit or slate, as the case may be, and that for positions involving executive or management functions as defined in said Agreement, the authority may choose among the top THREE (3) candidates listed, provided that that possibility was announced at the time the vacancy was posted.

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<sup>30</sup> Document entitled "Civil Society Report," p. 22.

[107] With regard to the above, the Committee deems it advisable that, guided by one of the principles set forth in the Convention with respect to government hiring, such as the principle of equity, the country under review consider adopting objective criteria for selecting the candidate in the slate who is going to be appointed to fill a position in which she or he will be called upon to perform executive or management functions in cases in which this possibility was announced at the time the vacancy was posted (see Recommendation 1.1.3.12 in Section 1.1.3 of Chapter II of this report).

[108] Fourth, bearing in mind that Article 48 of Decree No. 2098/2008 (SINEP) provides for the merit-based ranking and slates remaining in effect for six months from the date on which the first candidate is appointed, the Committee deems it advisable -- given the effort, time, and resources that the country under review should devote to carrying out the selection processes that will result in the aforementioned ranking and slates -- for the country under review to consider extending their validity, based in this respect on one of the principles set forth in the Convention with regard to government hiring, such as the efficiency principle (see Recommendation 1.1.3.13 in Section 1.1.3 of Chapter II of this report).

[109] Fifth, bearing in mind that, although Article 6 of Decree No. No. 2345/2008 provides that, as of January 1, 2009, the number of personal services contracts provided under that regime in each jurisdiction and entity included in Article 8 of Law N° 24.156 and amendments thereto may not exceed FIFTEEN PERCENT (15%) of the number of permanent staff positions assigned to said hiring jurisdiction or entity, that ceiling has not been respected according to information provided by the country under review during the on-site visit, and there is no effective oversight instrument to guarantee compliance with it, the Committee will formulate a recommendation in that regard (see Recommendation 1.1.3.14 in Section 1.1.3 of Chapter II of this report).

[110] It should be pointed out that the reference to the 15 percent ceiling not being respected came from a representative of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption." a member of the civil society organization known as the Inter-American Bar Association (IABA) and of the Bar Association of Buenos Aires.

[111] Sixth, bearing in mind that Article 1.f of Decree 735/16, regarding fixed-term contracts and appointments to temporary staff positions, provides for the Ministry of Modernization being able to authorize exceptions to Point II of subparagraph c) of that Article (which deals with the minimum requisite contents of contracts), on properly substantiated grounds that the functions concerned are so specialized that they are hard to come by in the labor market in terms of standards set in regulations issued to that effect, and that, according to information provided by the country under review during the on-site visit, those standards have not yet been adopted, the Committee will formulate a recommendation in that regard (See Recommendation 1.1.3.15 in Section 1.1.3 of Chapter II of this report).

[112] Seventh, the Committee observes that Article 2 of Decree 735/16, which ratifies each job description and requirements, envisages the Ministry of Modernization being authorized "to permit, exceptionally and for properly substantiated reasons, the hiring of consultants who possess specialized I.T. qualifications difficult to come by in the labor market, in which case the requirements of a university degree or other tertiary education diploma and accreditation of the years of experience stipulated in these rules may be dispensed with" and being authorized "exceptionally and for properly substantiated reasons, to hire consultants who possess specialized qualifications difficult to come by in the labor market who do not meet one or other of the established specific requirements for the job."

[113] With respect to the foregoing, the Committee deems it advisable that, guided by one of the principles set forth in the Convention regarding government hiring, such as the equity principle, the country under review consider adopting criteria for applying the exceptions provided for in Article 2 of

above-mentioned Decree 735/16. The Committee will make a recommendation in that regard. (See recommendation 1.1.3.16 in Section 1.1.3 of Chapter II of this report.)

- With respect to Law 26.861/2013, "Law on the Democratic and Egalitarian Hiring of Personnel for the Federal Judicial Branch and the Federal Public Prosecutors' Office" which applies to the personnel of both institutions, the Committee has the following to say:

[114] First, the Committee observes that, although Article 1 of Law 26.861/2013 states that the purpose of the law is to regularize the democratic and egalitarian admission of personnel to the Federal Judiciary (PJN) and to the Federal Public Prosecutors' Office (MPN) via a public competitive process, Article 5 provides for admission, exceptionally, via direct appointment, to the positions of rapporteur of the Court or lower court clerk and for the head of the unit directly designating two (2) legal advisors. That, given the technical nature of those positions, and even though the same article establishes that officials designated in that manner may not be definitively promoted to permanent staff positions, opens up the possibility of discretionary direct appointment that could distort the whole point of the law which is to establish admission through a public competitive process. For that reason, the Committee will formulate a recommendation in that regard (see Recommendation 1.1.3.17 in Section 1.1.3 of Chapter II of this report).

[115] It should be pointed out, with respect to the foregoing, that the document of the civil society organization Foro de Estudios sobre la Administración de Justicia (FORES),<sup>31</sup> states, inter alia, that: "The exceptions established by the norm and the absence of Supreme Court regulation, mean that, in a sense, the rule is inverted: admission is not through a public competitive process."

[116] Second, the Committee observes that Article 24 of Law 26.861/2013, regarding the admission of employees and service and specialized personnel, establishes that the applications authority shall draw up a list of the candidates that have passed the evaluation tests required under that law and that future vacancies shall be filled by having the Lotería Nacional S.E draw lots among all those on the list. That leaves the selection of candidates to fill the position up to chance, not merit, above all when one considers that by virtue of the same law (Articles 21 and 23) the candidates submitted to a competitive process involving a written exam and evaluations marked on a scale of zero to 100 but the list includes those who obtained the minimum qualifying score of 60, which could result in someone obtaining the minimum score being appointed to the position over the heads of those who obtained higher scores (a difference that could amount to 40 points vis-à-vis a candidate who was not appointed but scored 100 points). For that reason, the Committee will formulate a recommendation in that regard (see Recommendation 1.1.3.18 in Section 1.1.3 of Chapter II of this report).

[117] Third, the Committee observes that Articles 27 and 34 of Law 26.861/2013 provide for the lists of candidates referred to in Article 24 and 31 remaining valid for two (2) years.

[118] Bearing in mind that the aforementioned lists are used to fill positions as a result of competitive processes for employees, service and specialized personnel, and legal advisors that require considerable effort, time, and resources on the part of the country under review, the Committee deems that the State should consider extending the validity period, based on one of the principles set forth in the Convention regarding government hiring, such as the efficiency principle (See Recommendation 1.1.3.19 in section 1.1.3 of Chapter II of this report).

[119] With respect to the above, it is worth mentioning that, during the on-site visit, representatives of both the Federal Public Prosecutors' Office (MPF) and the Federal Public Defenders' Office (MPD)

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<sup>31</sup> Document REPORT TO MESICIC - FIFTH ROUND OF CONSULTATIONS 2016 -, p. 27.

agreed that that the above-mentioned two-year period of validity is short if consideration is given to the resources and time invested in the competitive processes, above all in remote parts of the country, as that it would be best to extend it.

[120] Fourth, the Committee observes that Article 31 of Law 26.861/2013 on the admission of legal advisors establishes that once the tests have been evaluated and qualifications and experience assessed, a list shall be drawn up with the definitive ranking based on merit, while Article 33 adds that appointments made to fill any vacancies that arise shall take the definitive list ranking into account and that the head of the unit concerned or whoever is in charge of it at the time may select the candidate from the top twenty (20) in the ranking based on merit. The Committee considers that this leaves too much room for discretionality.<sup>32</sup> For that reason, the Committee will formulate a recommendation in that regard (see Recommendation 1.1.3.20 in Section 1.1.3 of Chapter II of this report).

- With respect to public servants in the Federal Judiciary, the Committee has the following to say:

[121] First, without prejudice to the observations formulated in the foregoing section of this report with respect to Law 26.861/2013, "Law on the Democratic and Egalitarian Hiring of Personnel for the Federal Judicial Branch and the Federal Public Prosecutors' Office", bearing in mind that Point 1) of Resolution 26/2013 of the Supreme Court of Justice establishes that the Supreme Court, as the authority responsible for enforcing that law, shall approve the enabling regulations for the competitive procedure envisaged for admission to the Federal Judiciary, and that, according to the information provided by the country under review during the on-site visit those enabling regulations have not yet been adopted, the Committee will make a recommendation in that regard (see Recommendation 1.1.3.21 in Section 1.1.3 of Chapter II of this report).

[122] It should be pointed out that the document of the civil society organization Foro de Estudios sobre la Administración de Justicia (FORES),<sup>33</sup> states, inter alia, that: "Those enabling regulations, if they do in fact exist, could not be found for the purposes of this report. Nor does the existence of those regulations transpire from the interviews conducted; on the contrary, as far as the interviewees could tell, appointments are carried out as they always were."

[123] Second, with respect to resolutions 1/16 and 2/16, handed down by the Federal Judicial Council on February 4, 2016 on filling vacancies for the position of judge, the Committee deems it advisable that the country under review consider promptly promulgating the new law on alternates referred to in those resolutions, bearing in mind its importance for the selection of alternate judges, given that, as the Committee was informed by a representative of that Council during the on-site visit, 260 of the approximately 979 positions are being filled by alternate judges. The Committee will therefore make a recommendation in that regard (see Recommendation 1.1.3.22 in Section 1.1.3 of Chapter II of this report).

[124] It is worth mentioning, regarding the foregoing, that in its response to the questionnaire,<sup>34</sup> the country under review notes that: "Special consideration needs to be given to the matter of a civil servant

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<sup>32</sup> On this point, it should be noted that the merit-based ranked list is the result of a competitive process involving a written exam (marked on a scale of 0 to 70) and an assessment of qualifications and experience (for which up to 30 points may be awarded), in which candidates are included who scored at least 40 points in the written exam. That could result in selection for the position of one of the 20 candidates who may have obtained the minimum score of 40 over the heads of those who scored higher, with a difference that could amount to as much as 30 points, if one of the candidates not selected obtains the maximum score of 70 point for the written exam and a score in the assessment of qualifications and experience equal to that of the selected candidate

<sup>33</sup> Document REPORT TO MESICIC - FIFTH ROUND OF CONSULTATIONS 2016 -, p. 27.

<sup>34</sup> Argentina's reply to the questionnaire, p. 15.

classified as "alternate judge" (*juez subrogante*). - Thus, as of today's date, the Argentine Republic lacks a law governing the use of alternates, that is to say persons appointed to fill vacancies that may arise for the position of judge. While until 2015 this matter was governed by Laws 26376 and 26372, they were repealed by Law 27145, which, in turn, was declared unconstitutional by the Federal Supreme Court on November 4, 2015 in the "Uriarte judgment" on the grounds that it established provisional parameters for the appointment of alternates. As a result of that judgment, in February 4, 2016, the Judicial Council handed down resolutions N° 1/16 and 2/16 to fill the respective vacancies until the selection process established by Law 24937 has been completed or a new law is passed on alternates."

[125] At the same time, during the on-site visit, it was pointed out by both a representative of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption," who is a member of the civil society organization known as the Inter-American Bar Association (IABA) and of the Bar Association of Buenos Aires, and by a representative of the civil society Organization Poder Ciudadano, that it was important to pass a new law on alternates without delay, given that 25 percent of today's judges are alternates.

- With respect to public servants in the Federal Public Prosecutors' Office, the Committee has the following to say:

[126] First, in keeping with the observations formulated in this report regarding Law 26.861/2013, "Law on the Democratic and Egalitarian Hiring of Personnel for the Federal Judicial Branch and the Federal Public Prosecutors' Office," and, in particular, with recommendation 1.1.3.17 formulated with regard to that Law, the Committee deems it appropriate that the country under review consider excluding from the exceptions to enforcement of the competitive selection process contemplated in Article 4.d of Resolution N. PGN 507/14, the positions in the MPF's Corps of Rapporteurs referred to in subparagraph a) of the aforementioned Article, as well as the two legal advisor positions in each unit referred to in subparagraph d) of the same Article, given the technical nature of those positions. The Committee will make a recommendation in that regard. (see recommendation 1.1.3.23 in Section 1.1.3 of Chapter II of this report.)

[127] Second, bearing in mind that subparagraph c) of Article 4 of Resolution N. PGN 507/14 points out, with respect to the exception to enforcement of the competitive selection rules contemplated in said resolution, regarding positions pertaining to the governing and management organs of the Office of the Attorney General, that for them a specific system for evaluating suitability will be implemented, and that according to information culled during the on-site visit, that system has not been officially implemented, the Committee will make a recommendation in that regard (see Recommendation 1.1.3.24 in Section 1.1.3 of Chapter II of this report.)

[128] Third, in keeping with the observations made in this report regarding Law 26.861/2013, "Law on the Democratic and Egalitarian Hiring of Personnel for the Federal Judicial Branch and the Federal Public Prosecutors' Office," and, in particular, with recommendations 1.1.3.18 and 1.1.3.20 formulated with regard to that Law, the Committee deems it appropriate that the country under review consider stipulating that appointments to positions in the "Support Services", "Technical-Administrative", and "Technical-Judicial" categories be made on the basis of the candidates' scores obtained as a result of the public competitive process, amending for that purpose, as necessary, any relevant provisions in Resolution N. PGN 507/14. The Committee will make a recommendation in that regard. (see recommendation 1.1.3.25 in Section 1.1.3 of Chapter II of this report.)

[129] Fourth, while the Committee was told during the on-site visit that the schedule for competitive processes envisaged in resolution No. PGN508/14 was being drawn up, it was also told that there were budgetary issues due above all to the fact that the processes have to be conducted over a wide geographical area, including parts of the country far removed from the capital, and therefore require considerable effort and

resources. In light of the foregoing, the Committee will make a recommendation (see recommendation 1.1.3.26 in Section 1.1.3 of Chapter II of this report).

[130] Fifth, bearing in mind that during the on-site visit the Committee was told by MPF representatives that Decree 257/17, issued by the Executive Branch, repealed some provisions of the Organic Law of the Federal Public Prosecutors' Office (N° 27.148 of 2015), including an Article establishing positions equivalent to today's positions in the MPF to bring them into line with said Law (Article 84), and that for that reason it was necessary to amend or repeal the aforementioned Decree, particularly in that respect, in order for those positions to be compatible with the aforementioned Law, the Committee will make a recommendation on the matter (See recommendation 1.1.3.27 in Section 1.1.3 of Chapter II of this report).

- With respect to public servants in the Federal Public Defenders' Office, the Committee has the following to say:

[131] First, in keeping with the observations made in this report regarding Law 26.861/2013, "Law on the Democratic and Egalitarian Hiring of Personnel for the Federal Judicial Branch and the Federal Public Prosecutors' Office," and, in particular, with recommendations 1.1.3.18 and 1.1.3.20 formulated with regard to that Law, the Committee deems it appropriate that the country under review consider promoting that appointments to positions in the "Support Services", "Technical-Administrative", and "Technical-Judicial" categories be made on the basis of the candidates' scores obtained as a result of the corresponding public competitive process, amending for that purpose, as necessary, any relevant provisions in Resolution DGN N. 75/14 (amended by Resolution DGN N. 1124/15). The Committee will make a recommendation in that regard. (see recommendation 1.1.3.28 in Section 1.1.3 of Chapter II of this report.)

[132] Second, bearing in mind that Article 51 of DGN N. 75/14 (amended by Resolution DGN N. 1124/15) establishes that the Federal Ombudsperson (*el/la Defensor/a General de la Nación*) may order, by means of a duly substantiated resolution, appointments or hirings not contemplated in the rules of procedure, when there exceptional circumstances or when they are needed to keep the Public Defense Service staffed, and that, according to information culled during the on-site visit, no criteria for exercising those powers have been officially adopted, the Committee will make a recommendation in that regard (see recommendation 1.1.3.29 in Section 1.1.3 of Chapter II of this report).

[133] Third, while the Committee was told during the on-site visit that competitive processes were proceeding as planned, it was also told about budgetary issues, particularly in places far from the capital. In light of the foregoing, the Committee will make a recommendation (See recommendation 1.1.3.30 in Section 1.1.3 of Chapter II of this report).

[134] Fourth, bearing in mind that in its response to the questionnaire the country under review reported, in reference to the Organic Law of the Federal Public Defenders' Office (N° 27.149 of 2015), which made provision for the Office to be given a new structure and modus operandi, that "in light of that regulatory change it becomes necessary to make changes to the legal regime in effect so as to align it with the new Organic law and the various specific situations resolved since its entry into force," and that "as a result work was being done on a new amendment to the 'Legal Regime applicable to Judges, Staff and Employees of the Federal Public Defenders' Office'," the Committee will make a recommendation in that regard (See recommendation 1.1.3.31 in Section 1.1.3 of Chapter II of this report).

### **1.1.2.2. New developments with respect to technological aspects**

[135] Under this heading, the Country under review lists the following developments, in its response to the questionnaire, with respect to the Federal Executive Branch<sup>35</sup>:

[136] "-Personnel appointed/seconded (*personal adscripto*)

[137] - Tertiary-level training - Federal Public Employment System (SINEP) personnel

[138] - Job vacancies bulletin board (Central Register of Government Employment Vacancies -RCOE)

[139] - Central Register of Persons Hired (RCPC)

[140] - Central Register of Persons with Disabilities (RCPD)

[141] - SINAPA (Federal Administrative Profession System) - SINEP reclassification system. Procedures for level and grade promotion. Bonus for outstanding performance and list of persons admitted via competitive process (SINEP personnel).

[142] - Nomenclature of titles

[143] - Nomenclature of agencies

[144] - Temporary Appointments Register

[145] - Consultation/inquiries via e-mail

[146] - Electronic Processing System (SITE)

[147] - "CONCURSAR" (compete) Registration System

[148] - "The 'CONCURSAR' Registration System makes an Electronic Pre-Registration System available to the agencies that opt to use the app."

[149] - "By going to the [www.concursar.gob.ar](http://www.concursar.gob.ar) website, candidates can register to compete for positions of entry into the permanent staff of the Federal Public Administration and find out everything they need to know regarding current vacancy announcements."

[150] - " The Federal Public Employment Office (ONEP) runs training courses on the "Concursar" Registration System for the personnel unit teams that decide to use the app. The course is both theoretical and practical and aims to develop, transfer, and strengthen the knowledge and skills used in the personnel selection process, in particular in Electronic Pre-Registration and Document Registration."

[151] The Committee takes note of the new developments in the technological sphere relating to government hiring systems in the National Executive Branch listed by the State under review in its response to the questionnaire and of the staggered implementation of the Electronic Document Management System and, bearing in mind that during its on-site visit it was told of the importance of having an electronic tool that those present regarded as tremendously useful in this field, namely electronic personnel files, the Committee will make a recommendation in that regard (see recommendation 1.1.3.32 in Section 1.1.3 of Chapter II of this report).

[152] Regarding the above, the Committee notes that by means of Decrees 434/2016 and 561/2016, the State Modernization Plan and the implementation of the Electronic Document Management System (GDE) were approved; that by means of Decree 1301/2016, the implementation of the Works and Services Contracting Module (LOYS) was approved; that the Ministry of Modernization, under resolution 65/2016, obligatorily requires the use of the GDE's three modules (Official Communications, Electronic Documents Generator, and Electronic Files) for certain jurisdictions, the number of which is being increased by means of new resolutions from that Ministry (101/2016, 227/2016, 355/2016, 400/2016, and others), and that although its implementation is being staggered, a growing number of jurisdictions and agencies are using the Electronic Document Management Platform (GDE) for their formalities.<sup>36</sup>

<sup>35</sup> Argentina's reply to the questionnaire, p. 56.

<sup>36</sup> These provisions may be found at: <https://www.argentina.gob.ar/modernizacion/administrativa/gde/normativa>

[153] In addition, the country under review refers in its response<sup>37</sup> to technological developments in the Federal Public Defenders' Office (MPD). The Committee highlights those that relate to government hiring systems, namely:

[154] - "The MPD has an Institutional Portal ([www.mpd.gov.ar](http://www.mpd.gov.ar)), which, for the sake of openness, contains information on the agency, the way it is organized, units, judicial schedules, procurement and hiring, and the regulations governing the scope of its work and the ways in which it acts. This information can be uploaded to the Portal by the various areas in the MPD and by the Portal managers. One of the most important functions of the Portal is to publicize the MPD's entry exams and competitions for posts as public servants and judges, so that the entry and appointment system is fairer and more transparent.

[155] - "Another example of technological progress in the Public Defenders' Office is the I.T. System for Comprehensive Management of Human Resources and Salaries (SURH), established by Resolution DGN N° 65/2016, with a view to optimizing the effectiveness and quality of the results obtained by the human resource management procedures used by the Public Defenders' Office, which used to involve communications on paper, e-mails, telephone calls, and so on, and have since been replaced by more modern and fluid management channels that have improved communication between the areas and enhanced the dependability, reliability, and availability of information."

[156] - "As regards the benefits that this new SURH system brings to the day-to-day work of the members of the MPD, one of the main contributions is the expediting of the red tape and consultations that MPD members typically have to deal with thanks to use of what is known as the "employee's portal" ("Mi Portal MPD"), i.e. the I.T. platform that employees can access on a personal and individual basis within the secure environment of the MPD Intranet. Users can access a range of functions, such as: a) PERSONAL FILE; b) WAGES RECEIPTS; c) CERTIFICATES OF REMUNERATION; d) PERMISSIONS/LICENSES; e) EXAMS AND COMPETITIONS, and f) TRAINING."

[157] The Committee takes note of the technological developments relating to hiring systems for public servants in the Federal Public Defenders' Office (MPD) that the country under reviews lists in its response.

### 1.1.2.3. Results of the legal framework and/or other measures

[158] First, in its reply to the questionnaire regarding outcomes relating to the hiring of personnel in the Federal Executive Branch (PEN),<sup>38</sup> the country under review noted the following: "Reports published: Reports on Personnel Included in the General Collective Working Agreement (Annual); Personnel Seconded (*personal adscripto*) (Annual); Register and Update of Positions and Contracts Performed by Persons with Certified Disabilities (Half-yearly); Personnel Hired (Annual)."

[159] Among the documents that the country under review submitted electronically,<sup>39</sup> with respect to the above, the Committee would like to draw attention to a report entitled "Some significant characteristics of personnel included in the General Collective Working Agreement of the Federal Public Administration at December 31, 2014," the executive summary of which point out, inter alia, the following:

[160] "The report highlights the characteristics and situation of the 131,181 persons who, under different career schemes and a variety of working arrangements, figured on December 31, 2014 in the General Collective Working Agreement of the Federal Public Administration (hereinafter: CCTG-APN), according to

<sup>37</sup> Response of Argentina to the questionnaire, pp. 58 and 59.

<sup>38</sup> Argentina's reply to the questionnaire, p. 9.

<sup>39</sup> These documents may be consulted at: [http://www.oas.org/juridico/spanish/mesicic5\\_arg.htm](http://www.oas.org/juridico/spanish/mesicic5_arg.htm)

information reported by Ministerial Departments and Decentralized Entities to the Information System for Oversight of the Registration and Updating of Positions and Contracts performed by Persons with Certified Disabilities and to the Central Register of Hired persons (R.C.P.C.)."

[161] "a) Of the 377,221 positions budgeted in Law N° 26.895 (2014), 88 percent form part of the FEDERAL EXECUTIVE BRANCH. Only 39.7 percent of the latter are reserved for civilian personnel (N=131,766). Of those, 100,244 are covered by the CCTG-APN."

[162] "b) Within the FEDERAL EXECUTIVE BRANCH, numerous extrabudgetary entities (not counting Federal Universities) reported having 95,567 civilian workers."

[163] "c) On the aforementioned date, the number of persons appointed to permanent staff and temporary positions and others with labor contracts included in the CCTG-APN numbered 134,181 out of a total of 249,966 in the entire FEDERAL EXECUTIVE BRANCH."

[164] "d) 48.4 percent of those covered by the CCTG-APN figure as career service staff or as having job stability, 3.3 percent are appointed on a temporary basis to a permanent staff position, 4.2 percent are appointed to temporary positions, and 44 percent are employed under fixed-term contracts, either under the regime contemplated in the Framework Law Regulating Federal Public Employment N° 25.164, or under Work Contract Law N° 20.744, or other regimes."

[165] "e) The percentages of filled budgeted positions for permanent and temporary staff are 70.3 percent and 81.9 percent, respectively. That suggests that there is a 'job reserve' of 29,125 budgeted positions."

[166] "f) 66.2 percent encompassed by the Federal Public Employment System (51.2 percent) and by the Armed Forces and Security Forces Civilian Personnel regime (15 percent). The size of the collective bargaining units (*colectivos*) ranges from 50 to 68,641."

[167] "g) 63.7 percent have a sectoral collective bargaining agreement, as follows:

**Personal comprendido en los CCTS de la APN según Modalidad de Vinculación (II Sem. 2014)**

CONVENIO COLECTIVO DE TRABAJO SECTORIAL	Decreto Nº	MODALIDAD DE VINCULACIÓN LABORAL					
		Personal Cargo Permanente		Personal Cargo No permanente		Total	%
		Régimen Estabilidad	Designación Transitoria	Planta Transitoria	Contrato		
Sistema Nacional de Empleo Público	2098/08	17.160	4.314	563	46.604	68.641	80,4
Instituto Nacional de Tecnología Agropecuaria	127/07	4.636		2.475		7.111	8,3
Servicio Nacional de Sanidad y Calidad Agroalimentaria	40/06	1.886		16	2.636	4.538	5,3
Profesional de los Establecimientos Hospitalarios y Asistenciales e Institutos de Investigación y Producción	1133/09	874	33		2.111	3.018	3,5
Instituto Nacional de Tecnología Industrial	109/07	593				593	0,7
Sindicatura General de la Nación	1714/10	390	4		218	612	0,7
Instituto Nacional de Cine y Artes Audiovisuales	1032/09	355			116	471	0,6
Orquestas, Coros y Ballet Nacionales	973/08	377	29		21	427	0,5
<b>SUBTOTAL (1)</b>		<b>26.271</b>	<b>4.380</b>	<b>3.054</b>	<b>51.706</b>	<b>85.411</b>	<b>100,0</b>
<b>TOTAL CCTG-APN (2)</b>		<b>64.967</b>	<b>4.452</b>	<b>5.665</b>	<b>59.097</b>	<b>134.181</b>	
<b>% (1/2)</b>		<b>40,4</b>	<b>98,4</b>	<b>53,9</b>	<b>87,5</b>	<b>63,7</b>	

[168] With regard to the foregoing information, the Committee considers that, although it gives an idea of the characteristics and types of labor ties with the PEN referred to, as of December 31, 2014, in order to identify challenges and, if necessary, recommend corrective measures, it would be useful if the Country under review could consider compiling detailed annual statistics on the results of the selection processes for the above-mentioned personnel, in such a way as to show clearly the number of public servants hired through competitive merit-based processes, temporary or provisional appointments, exceptional appointments, discretionary appointments (*designaciones en cargos de libre nombramiento*), the use of professional services rendered in a personal capacity, such as advisory services and consultant's contracts, and the number of appeals filed against decisions taken in selection processes and against the outcomes of those processes (see Recommendation 1.1.3.33 in section 1.1.3 of Chapter II of this report).

[169] Second, in its response to the questionnaire regarding outcomes with respect to the hiring of personnel in the Federal Judicial Branch (PJM),<sup>40</sup> the country under review cited by way of illustration (attached in an annex) a set of statistics on the personnel currently employed in the judiciary. Having reviewed that annex, the Committee observes that the information it contains refers to the number of public servants in the Federal Judiciary (18,485) and the number of people employed by the Federal Judicial Council (1,011), giving a total of 19,496. There is then a breakdown into women and men and judges and other public servants, followed by a list of the names and of the positions filled. As in the case of PEN personnel, the Committee considers that, in order to identify challenges and, if necessary, recommend corrective measures, it would be useful if the Country under review could consider compiling, with respect to PJM personnel, the detailed annual statistics referred to in the foregoing paragraph (see Recommendation 1.1.3.33 in section 1.1.3 of Chapter II of this report).

[170] Third, in its reply to the questionnaire regarding outcomes relating to the hiring of personnel in the Federal Public Prosecutors' Office (MPF),<sup>41</sup> the Country under review noted the following:

[171] "For statistical purposes, it may be mentioned that: 1) At December 4, 2015, 73 percent of the 90 competitive processes envisaged had been completed; 2) 122,484 persons registered, 52 percent of whom registered for at least one of the competitive processes. 3) 81 percent of those who registered were admitted. 4) 20,314 people were evaluated, half of whom (50 percent) passed. 5) Absenteeism was 42 percent. 6) At this initial stage, 270 people filled a vacancy; 79 percent in the Technical-Administrative category, 16 percent in the Support Services category, and 5 percent in the Technical-Juridical category."

[172] Regarding the above information, the Committee considers that while it establishes that in connection with the MPF competitive processes are being held to fill the positions referred to, in order to identify challenges and, if necessary, recommend corrective measures, it would be useful if the Country under review could, as suggested for PEN and PJM personnel, consider compiling, with respect to MPF personnel, the detailed annual statistics referred to above (see Recommendation 1.1.3.33 in section 1.1.3 of Chapter II of this report).

[173] Fourth, in its reply to the questionnaire regarding outcomes relating to the hiring of personnel in the Federal Public Defenders' Office (MPD),<sup>42</sup> the Country under review noted the following:

[174] "As of today's date, eighty-seven (87) exams have been processed for admission into the "Technical-Juridical" category, along with thirty-eight (38) evaluations for admission into the "Technical Administrative" category, and thirty-seven (37) evaluations for admission into the Support Services" category. The numbers do not count the exams and evaluations currently being processed or those competitive processes still to be announced and which are scheduled for this year. --

<sup>40</sup> Argentina's reply to the questionnaire, p. 15.

<sup>41</sup> Argentina's reply to the questionnaire, p. 17.

<sup>42</sup> Argentina's reply to the questionnaire, p. 22.

Thanks to implementation of the competitive processes for qualifying for appointments to the three aforementioned categories ("Technical-Juridical", "Technical-Administrative", and "Support Services") in 2014/2015 alone more than 1,500 evaluations were carried out for the first of those categories, 5,200 for positions in the "Technical-Administrative" category, and nearly 1,900 for "Support Services."

[175] At the same time, as requested during the on-site visit, the MPD provided the following information electronically:

[176] "As regards the number of exams conducted for admission into the Technical-Juridical, Technical-Administrative, and Support Services categories in the institution, at October 21, 2016, 125 exams had been conducted for admission into the Technical-Juridical category; 75 exams for admission into the Technical-Administrative category; and 73 exams for admission into the Support Services category. - In addition, pursuant to Resolution DGN N° 1582/16, of October 13, 2016, 16 new exam notices went out - subsequent to the meeting held on October 5, 2016 (...)."

[177] **"1) Number and percentage of civil servants appointed through merits-based selection procedures (\*):**

	<b>2011.</b>	<b>2102.</b>	<b>2013.</b>	<b>2014.</b>	<b>2015.</b>	<b>TOTAL</b>
<b>Number of positions</b>	10.	30.	135.	240.	177.	<b>592.</b>
<b>Percentage</b>	1.69%	5.07%	22.80%	40.54%	29.90%	<b>100%</b>

(\*) Annual percentage of the total number of civil servants admitted through merits-based selection procedures in the past five years"

[178] "This Table shows for each year the number of public servants admitted to the MPD through a merits-based selection process (exam) and their percentage of the total for the past five years, bearing in mind that for the Technical-Juridical category this selection mechanism was adopted as of 2008, while for the Technical-Administrative and Support Services categories it began at end-2013 and continued progressively during 2014."

[179] **Number and percentage of civil servants in career positions thanks to temporary or provisional appointments (\*):**

[180] The following Table distinguishes for MPD personnel those who performed as staff (*efectivos*) and those who were non-staff (*los no efectivos*) (i.e., personnel admitted to the Institution on a temporary appointment or staff promoted to that status only for a given period).

<b>Year</b>	<b>All personnel</b>	<b>Staff</b>		<b>Non-staff</b>	
		<b>Quantity</b>	<b>%</b>	<b>Quantity</b>	<b>%</b>
<b>2011.</b>	1831.	1339.	73.13.	492.	26.87.
<b>2012.</b>	1958.	1405.	71.76.	553.	28.24.
<b>2013.</b>	1979.	1469.	74.23.	510.	25.77.
<b>2014.</b>	2078.	1637.	78.78.	441.	21.22.
<b>2015.</b>	2295.	1756.	76.51.	539.	23.49.

(\*)The data provided for each category are annual averages"

[181] **Number and percentage of civil servants in career positions thanks to exceptional appointments (to meet functional needs) (\*):**

	<b>2011.</b>	<b>2012.</b>	<b>2013.</b>	<b>2014.</b>	<b>2015.</b>	<b>TOTAL</b>
<b>Quantity</b>	32.	112.	19.	20.	6.	<b>189.</b>
<b>Percentage</b>	16.93%	59.26%	10.05%	10.58%	3.17%	<b>100%</b>

(\*) Annual percent of the total number of positions of the past 5 years"

[182] **"4) Number and percentage of discretionally appointed civil servants (*en cargos libre nombramiento*):**

[183] No such appointments are registered."

[184] **"5) Number and percentage of persons hired under "professional services rendered in a personal capacity" arrangements, such as advisory services or consultant's contracts.**

[185] Currently there are twenty-three services contracts in effect, under which professionals are appointed for their expertise or because of the specific nature of the tasks they are needed to perform, for instance, implementation of new technologies required for computerization in the Public Defender's Office and areas relating to services complementing exercise of the right to official public defense, such as those proved my medical specialists, psychologists, and social workers."

[186] **"6) Number and percentage of appeals filed against decisions issued in recruitment processes and the current status of proceedings involving such cases:**

[187] a. Five (5) appeals for reconsideration filed in connection with matters relating to admission to the MPD were resolved.

[188] b. Seven (7) appeals for reconsideration relating to promotions to other positions were resolved."

[189] **"SUMMARY TABLE - STATISTICAL PERCENTAGES OF APPOINTMENTS MADE IN THE PAST FIVE YEARS (Current personnel):**

Merit-based selection	<b>65%</b>
Temporary or provisional	<b>19%</b>
Exceptional	<b>16%</b>

[190] As regards the foregoing information, the Committee considers that it establishes that, with respect to the MPD, competitive processes have progressively been adopted for the positions referred to; that in that institution merit-based selection is the norm, compared to provisional or exceptional appointments; and that the appeals contemplated in the regulations for personnel selection procedures have been processed and resolved.

[191] Fifth, bearing in mind that the country under review did not present information regarding outcomes in relation to the hiring of personnel for the Federal Legislature and that the Committee considers that in order to identify challenges and, if necessary, recommend corrective measures, it would be useful if the country under review could consider compiling detailed annual statistics on the procedures for hiring said personnel, the Committee will make a recommendation in that regard (See Recommendation 1.1.3.33 of section 1.1.3 of Chapter II of the Report).

### **1.1.3. Recommendations**

[192] In light of the comments made in Sections 1.1.1 and 1.1.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

- 1.1.3.1 Complete job profile manuals for the Federal Executive Branch (hereinafter PEN) - (see paragraph 22 in section 1.1.1 of Chapter II of this report).
- 1.1.3.2 Adopt the necessary measures to ensure that hiring directed at the provision of professional services in a personal capacity is not used as a means of filling permanent staff positions. (see paragraph 34 in section 1.1.1 of Chapter II of this report).
- 1.1.3.3 Adopt the necessary measures to regularize the position of public-sector employees in the PEN as the economic crisis that gave rise to the prohibition against filling vacancies in the public administration passes, adopting the measures necessary to ensure the effective use of merit-based selection procedures. (see paragraph 44 in section 1.1.1 of Chapter II of this report).
- 1.1.3.4 Amend, through the competent authority, Parliamentary Decree DP-43/97, in order to adopt an enabling regulation on Article 5 (e) of Law 24.600, so that no preference shall accrue to the status of temporary worker of the Congress of the Nation of applicants to positions on its permanent staff, abiding for that purpose by the principles of openness, equity, and efficiency provided in the Convention. (see paragraph 50 in section 1.1.1 of Chapter II of this report).
- 1.1.3.5 Adopt, through the appropriate authorities, the terms and conditions for the competitive hiring processes referred to in the Rules of Procedure of the Honorable Chamber of Deputies of the Nation (Article 39(12) and Article 213), and in the Rules of Procedure of the Senate (Article 32(j)), observing the principles of openness, equity, and efficiency provided for in the Convention. (see paragraph 57 in section 1.1.1 of Chapter II of this report).
- 1.1.3.6 Adopt pertinent measures to ensure continuous, timely, and effective oversight of compliance with requirements/impediments for entry or promotion into permanent staff positions in the Chamber of Deputies. (see paragraph 60 in section 1.1.1 of Chapter II of this report).
- 1.1.3.7 Adopt pertinent measures to ensure effective oversight of legal requirements currently in effect in the Senate (Law 26.600), to prevent situations in which permanent staff are assigned to perform tasks in political coalitions and temporary staff are assigned to technical and/or administrative tasks. (see paragraph 62 in section 1.1.1 of Chapter II of this report).
- 1.1.3.8 Adopt pertinent measures to ensure that it is possible in the Senate to verify that the documentation that should be in the personnel files is complete and that there are no inconsistencies between said documentation and the data in the staff management system (SARHA). (See paragraph 62 in section 1.1.1 of Chapter II of this report).
- 1.1.3.9 Ensure that the appropriate authority establishes guidelines, with the level of detail required, so that the selection procedures used by the Courts of Appeals, pursuant to the delegation made thereto by the Supreme Court of Justice through the Resolution of March 3, 1958, are inspired by the principles of openness, equity, and efficiency provided for in the Convention; and adopt the measures needed for that authority to verify the adequate implementation of those guidelines, and the unification of criteria in that regard. (see paragraph 64 in section 1.1.1 of Chapter II of this report).
- 1.1.3.10 Adopt the Nomenclature Classifying Positions and Functions and the Nomenclature for Management Functions provided for in Articles 16 and 21 of Decree No.2098/2008, which ratifies the Collective Sectoral Working Agreement for Personnel of the Federal Public

- Employment System (SINEP), and draw up the Central Directory of Labor Skills and Minimum Requirements for Positions and Functions contemplated in Article 16 of the aforementioned Decree. (see paragraph 101 in section 1.1.1 of Chapter II of this report).
- 1.1.3.11 Adopt pertinent measures to expedite development of the selection processes envisaged in Decree No. 2098/2008 (SINEP), such as strengthening the Selection Committees' Technical Secretariat so that they can count on the capacity needed to fully manage those processes. (see paragraph 103 in section 1.1.1 of Chapter II of this report).
  - 1.1.3.12 Adopt criteria for selecting the candidate in the slate who is going to be appointed to fill a position in which she or he will be called upon to perform executive or management functions. in cases in which, pursuant to Article 47 of Decree No.2098/2008 (SINEP), this possibility was announced at the time the vacancy was posted. (see paragraph 107 in section 1.1.1 of Chapter II of this report).
  - 1.1.3.13 Consider extending the six-month validity period envisaged in Article 48 of Decree No. 2098/2008 (SINEP) for the order of merit (ranking) and slates resulting from the selection processes. (see paragraph 108 in section 1.1.1 of Chapter II of this report).
  - 1.1.3.14 Adopt pertinent measures to ensure compliance with the obligation established in Article 6 of Decree No. 2345/2008, that the number of personal services contracts provided under the regime referred to in said Decree in each jurisdiction and entity included in Article 8 of Law N° 24.156 and amendments thereto may not exceed FIFTEEN PERCENT (15%) of the number of permanent staff positions assigned to said hiring jurisdiction or entity. (see paragraph 109 in section 1.1.1 of Chapter II of this report).
  - 1.1.3.15 Adopt the rules that, in accordance with Article 1.f of Decree 735/16, regarding fixed-term contracts and appointments to temporary staff positions, the Ministry of Modernization must establish given its powers to authorize exceptions to Point II of subparagraph c) of that Article (which deals with the minimum requisite contents of contracts), on properly substantiated grounds that the functions concerned are so specialized that they are hard to come by in the labor market. (see paragraph 111 in section 1.1.1 of Chapter II of this report).
  - 1.1.3.16 Adopt criteria governing the implementation by the Ministry of Modernization of Article 2 of Decree 735/16, which approves the description and requirements for each function and provides for that Ministry being able to authorize, exceptionally and for well substantiated reasons, the hiring of consultants in specific cases (see paragraph 113 in Section 1.1.1 of Chapter II of this report).
  - 1.1.3.17 Consider deleting Article 5 of Law 26.861/2013, (Democratic and Egalitarian Hiring of Personnel for the Federal Judicial Branch -PJN and the Federal Public Prosecutors' Office - MPN), which provides for admission, exceptionally, via direct appointment, to the positions of rapporteur of the Court and lower court clerk and for the head of the unit directly designating two (2) legal advisors, given the technical nature of said positions (see paragraph 114 in section 1.1.1 of Chapter II of this report).
  - 1.1.3.18 Consider amending Articles 20, 24, and 26 of Law 26.861/2013, in such a way that appointments to positions of employees and service and specialized personnel in the PJN and the MPN take into account the scores obtained by candidates in the merit ranking established in the list of candidates drawn up as a result of the respective public competitive process and are not decided by a drawing of lots among all those on that list. (see paragraph 116 in section 1.1.1 of Chapter II of this report).

- 1.1.3.19 Consider extending the period of validity of the lists of candidates provided for in Articles 24 and 31 of Law 26.861/2013. (see paragraph 118 in section 1.1.1 of Chapter II of this report).
- 1.1.3.20 Consider amending Article 33 of Law 26.861/2013, in such a way that appointments to legal advisor positions in the PJN and the MPN take into account the scores obtained by candidates in the merit ranking established in the list of candidates drawn up as a result of the respective public competitive process and are not chosen by the head of the unit or whoever is in charge of it from among the 20 top candidates on that list. (see paragraph 120 in section 1.1.1 of Chapter II of this report).
- 1.1.3.21 Adopt the enabling regulations established by the Supreme Court of Justice, guided by the principles of openness, equity, and efficiency, for the competitive process contemplated for admission to the PJN in Law 26.861/2013, and referred to in Supreme Court Resolution (*Acordada*) 26/2013. (see paragraph 121 in section 1.1.1 of Chapter II of this report).
- 1.1.3.22 Consider promptly adopting a new law on alternate judges to cover vacancies that may arise, abiding for that purpose by the principles of openness, equity, and efficiency provided in the Convention. (see paragraph 123 in section 1.1.1 of Chapter II of this report).
- 1.1.3.23 Consider excluding from the exceptions to enforcement of the competitive selection process contemplated in Article 4.d of Resolution N. PGN 507/14, the positions in the Corps of Rapporteurs of the Federal Public Prosecutors' Office referred to in subparagraph a) of the aforementioned Article, as well as the two legal advisor positions in each unit referred to in subparagraph d) of the same Article, given the technical nature of those positions. (see paragraph 126 in section 1.1.1 of Chapter II of this report).
- 1.1.3.24 Implement the specific system for assessing suitability provided for in Article 4.c of Resolution N. PGN 507/14, regarding positions pertaining to the governing and management organs of the Office of the Attorney General. (see paragraph 127 in section 1.1.1 of Chapter II of this report).
- 1.1.3.25 Consider promoting that appointments to positions in the "Support Services", "Technical-Administrative", and "Technical-Judicial" categories be made on the basis of the candidates' scores obtained as a result of the public competitive process, amending for that purpose, as necessary, any relevant provisions in Resolution N. PGN 507/14. (see paragraph 128 in section 1.1.1 of Chapter II of this report).
- 1.1.3.26 Adopt pertinent measures to ensure, bearing in mind the availability of resources, that the MPF has the budget it needs to implement competitive processes. (see paragraph 129 in section 1.1.1 of Chapter II of this report).
- 1.1.3.27 Consider adopting pertinent measures to ensure that the titles of current position in the MPF match those provided for in its new Organic Law (Ley 27.148/15). (see paragraph 130 in section 1.1.1 of Chapter II of this report).
- 1.1.3.28 Consider promoting that appointments to positions in the "Support Services", "Technical-Administrative", and "Technical-Judicial" categories in the Federal Public Defenders' Office be made on the basis of the candidates' scores obtained as a result of the public competitive process, amending for that purpose, as necessary, any relevant provisions in Resolution N. PGN 1124/14. (see paragraph 131 in section 1.1.1 of Chapter II of this report).
- 1.1.3.29 Adopt criteria for exercising the authority provided for in Article 51 of DGN N. 75/14 (amended by Resolution DGN N. 1124/15) that the Federal Ombudsperson (*el/la Defensor/a General de la*

- Nación*) may order, by means of a duly substantiated resolution, appointments or hirings not contemplated in the rules of procedure, when there exceptional circumstances or when they are needed to keep the Public Defense Service staffed. (see paragraph 132 in section 1.1.1 of Chapter II of this report).
- 1.1.3.30 Adopt pertinent measures to ensure, bearing in mind the availability of resources, that the MPD has the budget it needs to implement competitive processes. (see paragraph 133 in section 1.1.1 of Chapter II of this report).
- 1.1.3.31 Adopt pertinent measures to align the Legal Regime applicable to Judges, Staff and Employees of the Federal Public Defenders' Office with the provisions contained in its new Organic Law (Law 27.149/15), while abiding by the principles of openness, equity, and efficiency established in the Convention. (see paragraph 134 in section 1.1.2.2 of Chapter II of this report).
- 1.1.3.32 Complete the pertinent measures to enable electronic personnel files to be used in the PEN. (see paragraph 151 in section 1.1.1 of Chapter II of this report).
- 1.1.3.33 Compile detailed annual statistics on the results of the selection processes for personnel to fill positions in the Federal Executive, Legislative, and Judicial Branches of Government and in the Federal Public Prosecutors' Office, in such a way as to show clearly the number of public servants hired through competitive merit-based processes, temporary or provisional appointments, exceptional appointments, discretionary appointments, the use of professional services rendered in a personal capacity, such as advisory services and consultant's contracts, and the number of appeals filed against resolutions handed down in selection processes and against the outcomes of those processes, so that challenges can be identified and, where necessary, corrective measures recommended. (see paragraphs 168, 169, 172, and 191 in section 1.1.2.3 of Chapter II of this report).

## **1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES**

### **1.2.1. Follow-Up to the Implementation of the Recommendations Formulated in the Second Round**

#### Recommendation 1.2.1:

*Strengthen the systems for government procurement of goods and services in the federal Executive Branch.*

Measure a) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt the regulation of Delegated Decree No. 1023/01, as directed by Article 39 thereof, through the appropriate authority (federal Executive Branch), observing the principles established by the Decree, as well as those of openness, equity, and efficiency provided for in the Convention.*

[193] In its reply to the questionnaire, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that lead it to believe that it has been satisfactorily considered:

[194] - The reference in the section of the reply to the questionnaire dealing with the Federal Executive Branch,<sup>43</sup> pointing out that "... on June 7, 2012, Decree N° 893/2012 was issued, containing the implementing regulations for Decree (*Decreto Delegado*) N° 1.023/01, issued by the Executive under powers delegated by Congress.

[195] - The information provided during the on-site visit that Decree N° 893/2012 had been repealed by Decree N° 1030/2016, issued in September 2016, which, like its predecessor, contains the implementing regulations for Decree (*Decreto Delegado*) N° 1.023/01.

[196] The Committee takes note of the satisfactory consideration given by the country under review to measure a) of the recommendation contained in section 1.2.1 of Chapter II of this report. Nevertheless, new comments and observations will be considered when it comes to analyzing the new regulatory developments set forth in Decree N° 1030/2016, which adopted the implementing regulations for Decree (*Decreto Delegado*) N° 1.023/01, pursuant to the methodology chosen for the Fifth Round/

Measure b) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt the comprehensive regulation of electronic public-sector contracts, as directed by Article 22 of Delegated Decree No. 1023/01, through the appropriate authority (federal Executive Branch), addressing the aspects mentioned therein, and observing the principles established by the Decree, as well as those of openness, equity, and efficiency provided for in the Convention.*

[197] In its reply to the questionnaire, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that lead it to believe that it has been satisfactorily considered:

[198] - The reference in the section of the reply to the questionnaire dealing with the Federal Executive Branch,<sup>44</sup> pointing out that "...Article 33 of Decree No.893/12 establishes the regulations governing electronic Government procurement and hiring processes. Accordingly, that provision establishes that: "All the procedures prescribed in these rules of procedure may be performed electronically using media authorized to that end by the NATIONAL PROCUREMENT OFFICE. Once it has been decided that a procedure is to be performed using the electronic medium designated by the NATIONAL PROCUREMENT OFFICE, provisions regarding material or in-person acts shall be regarded as non-existent for virtual acts through electronic media. Provisions referring to acts that can only be performed materially, such as the delivery of samples, shall comply with the regulations contained herein."

[199] - The information provided during the on-site visit that Decree N° 893/2012 had been repealed by Decree N° 1030/2016, issued in September 2016, which, like its predecessor, contains the implementing regulations for Decree (*Decreto Delegado*) N° 1.023/01 and, in Articles 31 to 34, establishes provisions governing electronic government procurement procedures.

[200] The Committee takes note of the satisfactory consideration given by the country under review to measure b) of the recommendation contained in section 1.2.1 of Chapter II of this report. Nevertheless, new comments and observations will be considered when it comes to analyzing the new regulatory developments set forth in Decree N° 1030/2016, particularly as regards regulation of electronic government procurement procedures, pursuant to the methodology chosen for the Fifth Round.

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<sup>43</sup> Response of Argentina to the questionnaire, p. 23.

<sup>44</sup> Response of Argentina to the questionnaire, p. 24.

Measure c) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt, by the appropriate authority of the Federal Executive Branch, the measures to ensure that the use of direct contracting is a result of the strict application of the exceptions provided by law.*

[201] In its response to the questionnaire, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[202] The reference in the section of the reply to the questionnaire related to the Federal Executive Branch,<sup>45</sup> points out that "...Article 15 of the Rules of Procedure adopted by Decree N° 893/12 establishes -- in line with Article 24 of Decree (*Decreto Delegado*) N° 1023/01 -- that competitive bidding via public tender (*licitación pública*) is the norm when it comes to choosing a procedure. Thus it states that: "*GENERAL RULE. By virtue of the general rules established in Article 24 of Decree (Decreto Delegado) N° 1023/01 and amendments thereto, public tender or competitive bidding procedures shall be validly applied regardless of the presumed amount of the contract and shall be directed at an indeterminate number of possible bidders...*" - "Conversely, the direct procurement procedure shall only be admissible in circumstances expressly contemplated in the regulations and only after the procuring agency has certified compliance with the admissibility requirements corresponding to each established ground for procurement."

[203] - The information provided during the on-site visit was that Decree N° 893/2012 had been repealed by Decree N° 1030/2016, issued in September 2016, which, like its predecessor, contains the implementing regulations for Decree (*Decreto Delegado*) N° 1.023/01, Article 14 of which provides as follows: "... The direct procurement procedure shall only be admissible in cases expressly contemplated in the subsections of Article 25.d of Decree (*Decreto Delegado*) N° 1.023/01, its amendments and complementary provisions. Direct procurement operations may use either fast-track bidding or simple contract award procedures."

[204] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure c) of the recommendation contained in section 1.1.2 of Chapter II of this report, but since the same recommendation was made to the country under review in the Second Round based on information regarding outcomes, in which it transpired that, in practice, direct procurement and private tenders had been the preferred forms of procurement during the three years covered by that information (2003, 2004, and 2005), and since the country under review has provided no indication (in its response to the questionnaire or in the on-site visit) that this state of affairs has changed in subsequent years, the Committee reiterates the need for the country under review to continue to address this recommendation (see recommendations 1.2.3.1 in Section 1.2.3 of Chapter II of this report.)

[205] With respect to the foregoing recommendation measure, it is worth noting that the document of the " Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, presented by the Inter-American Bar Association (IABA),"<sup>46</sup> states, inter alia, that: "The only oversight system for guaranteeing that direct procurement is the result of strict application of the exceptions provided for by law is that provided by the Evaluation Committee of the government entity doing the procuring. This means that the in-house appraisal unit of each Ministry or Agency engaged in procuring oversees the procedure involved. The fact that the in-house appraisal unit is the only body to oversee the

<sup>45</sup> Response of Argentina to the questionnaire, p. 25.

<sup>46</sup> Document of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption," Seventh Report, p. 33.

procedure is not a practice to be recommended, because it entails ample latent risk of bias in its appraisals."

Recommendation 1.2.2:

*Strengthen the systems of government procurement of goods and services in the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation.*

Measure a) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt, through the appropriate authorities of the federal Chamber of Deputies, the federal Judicial Branch, and the Public Ministry of the Nation, the regulation of Delegated Decree No. 1023/01, as directed by Article 39 of this Decree, so as to apply its regime in their respective jurisdictions, observing the principles established by the Decree, as well as those of openness, equity, and efficiency provided for in the Convention.*

[206] In its response to the questionnaire, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[207] - The reference in the section of the reply to the questionnaire dealing with the Chamber of Deputies<sup>47</sup> to the "Honorable Chamber of Deputies of the Nation [HCDN] having its own Rules of Procedure for the Procurement of Goods, Works, and Services, established by Presidential Resolution N° 1145/12, which is still fully in effect. - The purpose of those Rules of Procedure is to establish procedures for purchasing, disposing of, and procuring/hiring goods, works, and services within the purview of the HCDN (Article 1)."

[208] - The reference in the section of the reply to the questionnaire dealing with the Judiciary,<sup>48</sup> to "Resolution N° 254/15 having established the Procurement Rules of Procedure for the Judicial Council of the Federal Judiciary and the Federal Judicial Council's Single Set of General Terms and Conditions. These Rules of Procedure represent a major step forward for the Federal Judiciary and especially the Federal Judicial Council since they establish transparent mechanisms with mandatory provisions to ensure complete disclosure of the whole process, with each stage in it (such as dissemination in the media) being either cost free or cost-effective."

[209] - The reference in the section of the reply to the questionnaire dealing with the Federal Public Prosecutors' Office (*Ministerio Público Fiscal de la Nación*),<sup>49</sup> having "brought its in-house rules into line with Decree N° 1023/01; whereby on June 2, 2014, Resolution PGN N° 1107 adopted the New Procurement and Hiring Rules of Procedure for the Public Prosecutors' Office and repealed Administrative Resolution N° 133/06, which had adapted Decree Law N° 5720/72 to meet the needs of the institution, while Resolution PGN 763/16 recently amended the Procurement Module amount."

[210] - The reference in the section of the reply to the questionnaire dealing with the Federal Public Defenders' Office<sup>50</sup> to "Resolutions DGN N° 53/2011 and N° 230/2011 having adopted the Rules Governing the Purchase, Disposal and Procurement/Hiring of Goods and Services of the Public Defenders' Office and its Single Set of General Terms and Conditions." - "At the same time, note should

<sup>47</sup> Response of Argentina to the questionnaire, p. 25.

<sup>48</sup> Response of Argentina to the questionnaire, p. 28.

<sup>49</sup> Response of Argentina to the questionnaire, p. 30.

<sup>50</sup> Response of Argentina to the questionnaire, pp. 33 and 34.

be taken of the "Procedures Manual for the Purchase, Disposal and Procurement/Hiring of Goods and Services of the Public Defenders' Office, based on the procurement rules, that was adopted through Resolution DGN N° 980/2011."

[211] The Committee takes note of the State's satisfactory consideration of measure a) of the recommendation in Section 1.2.2 of Chapter II of this report, with respect to the Federal Chamber of Deputies, the Federal Judicial Council, the Public Prosecutors' office and the Public Defenders' Office, given the adoption of the new regulations for implementing said recommendation referenced in the reply to the questionnaire and summarized above. Nevertheless, the Committee may make new comments and observations when it comes to analyzing them under new regulatory developments, pursuant to the methodology chosen for the Fifth Round.

[212] At the same time, in view of the fact that the representatives of the Federal Judicial Council explained during the on-site visit that Resolution N° 254/15, adopted by that Council does not apply to procurement by the Federal Supreme Court of Justice, the Committee notes the need for the country under review to continue addressing measure a) of the recommendation made in Section 1.2.2. of Chapter II of this report in respect of the Supreme Court and deems it appropriate therefore, in light of that consideration, to rephrase said recommendation as follows: (see Recommendation 1.2.3.2 in Section 1.2.3 of Chapter II of this report.)

[213] *Have the Federal Supreme Court of Justice adopt the regulations for implementing Decree (Decreto Delegado) N° 1023/01, provided for in Article 39 of this Decree. so that they apply to areas under its jurisdiction [as well], while abiding by the principles set forth in said Decree and the principles of openness, equity, and efficiency provided for in the Convention.*

Measure b) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Develop, through the appropriate authorities, the agreement entered into in 2005 by the federal Judiciary (Judicial Council) and the Office of the Auditor General of the Nation, to perform audits of the Judicial Branch in areas that entail procurement operations.*

[214] In its response to the questionnaire,<sup>51</sup> the country under review presented the following information on the above measure:

[215] - "Pursuant to the last part of Article 117 of Law 24.156, through Resolution CM 290/05, the Judicial Council adopted a Framework Agreement with the Federal Audit Office (*Auditoría General de la Nación*) on the latter's external audit function with respect to this Federal Judiciary, which is limited to SAF 320."

[216] - "Finally, through Resolution No. 401/09, the Federal Judicial Council also established an auditor corps with autonomy vis-a-vis General Administration to address matters to be conducted pursuant to its Rules of Procedure approved by the Plenary of the Council. This means that the Judicial Council will have an oversight body of its own, independent of the Administration, that will enable it to strengthen safeguards to ensure compliance with established legal and regulatory rules and procedures applicable to this Council's procurement activities."

[217] During the on-site visit, the country under review also reported that there had been no new developments regarding the agreement signed between the Judicial Council and the Federal Audit Office referred to in measure b) of the recommendation made in Section 1.2.2. of Chapter II of this report. In

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<sup>51</sup> Response of Argentina to the questionnaire, pp. 34 and 35.

light of the above, the Committee reiterates the need for the country under review to consider paying further attention to implementation of said measure. (see recommendation 1.2.3.3 in Section 1.2.3 of Chapter II of this report.)

[218] With respect to the foregoing recommendation measure, it is worth noting that the document of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, presented by the Inter-American Bar Association (IABA),"<sup>52</sup> states, inter alia, that: "The agreement between the Judicial Council and the Federal Audit Office (AGN) was only partially implemented by the corresponding authorities. Based on data posted on the AGN website, the Council was last audited in 2009. This piece of information was corroborated by the AGN."

Measure c) suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt, by the appropriate authorities of the Senate and Chamber of Deputies, the measures to ensure that the use of direct contracting is a result of the strict application of the exceptions provided by law.*

[219] In its response to the questionnaire, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[220] - Resolution N° 1145/12, containing the Rules of Procedure for the Procurement of Goods, Works, and Services of the Federal Chamber of Deputies, Article 9 of which establishes that, as a general rule, all buying and selling, letting and leasing, concession, works, or supply contracts shall be awarded, through public tenders or competitive biddings, as applicable.

[221] - Resolution N° 318/16, adopting the Rules of Procedure for the Procurement of Goods, Works, and Services of the Federal Senate, Article 15 of which establishes that "The direct procurement procedure shall only be admissible in cases expressly contemplated in the subsections of Article 25.d of Decree (*Decreto Delegado*) N° 1.023/01 and its amendments."

[222] The Committee takes note of the steps taken by the country under review to move ahead with implementation of measure c) of the recommendation contained in section 1.2.2 of Chapter II of this report, but since the same recommendation was made to the country under review in the Second Round based on information regarding outcomes, in which it transpired that, in practice, direct procurement and private tenders had been the preferred forms of procurement during the year covered by that information (2006), and since the country under review has provided no indication (in its response to the questionnaire or in the on-site visit) that this state of affairs has changed in subsequent years, the Committee reiterates the need for the country under review to continue to address this recommendation (see recommendations 1.2.3.4 in Section 1.2.3 of Chapter II of this report.)

Recommendation 1.2.3:

*Strengthen the systems for the procurement of public works in the federal Executive Branch, the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation, supplementing the provisions in that area.*

Sole measure suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

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<sup>52</sup> Document of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption," Seventh Report, p. 33.

*Consider the implementation of control systems particular to each public works contract which, taking into account its size, provide for intervention (interventoria) or direct supervision of the execution of the contract by the contracting entity or whoever it designates; make it possible to put civic oversight or citizen watchdog activities in place; impose the duty to render accounts periodically as the contract unfolds; and make it possible to determine whether the anticipated cost-benefit ratio was actually attained and whether the quality of the works was as agreed.*

[223] In its response to the questionnaire, the country under review presented information and new developments with respect to the above measure. In this regard, the Committee notes the following as steps that contribute to progress in its implementation:

[224] - The reference in the section of the reply to the questionnaire related to the Federal Executive Branch<sup>53</sup> pointing out, inter alia, that:

[225] "The actions undertaken to implement the recommendation made by the Committee consist of passing Resolution N° 267/2008, which adopted the General Rules of Procedure for Accounting for Budget Funds Transferred to Provinces, Municipalities and/or other Entities, applicable to all programs within the purview of the Ministry of Federal Planning, Public Investment and Services that receive budget appropriations under subparagraphs 5, "Transfers" and 6, "Financial Assets." - The aforementioned Resolution provided that the Federal Executive Branch jurisdictions or entities whose budgets include appropriations under subparagraph 5 (Transfers, Transfers to Provincial and/or Municipal Governments and Financial Assets) to finance social development programs or actions carried out under bilateral agreements to be signed with the Provinces and/or Municipalities and subject to accountability requirements shall themselves be responsible for drawing up rules of procedure for accounting for the budgetary funds transferred. The aforementioned agreements shall be aligned with those rules. The Resolution requires the Executing Units (i.e., the under-secretariats and/or agencies putting forward the public works project to be carried out) of the programs and entities administering said programs, to draw up -- within 90 days of the date of the aforementioned Resolution and in accordance with the instructions it contains, the specific rules of procedure they deem necessary for each plan executed within their sphere of competence."

[226] "For public works resulting from public tenders, each Under-Secretariat and/or Agency answering to this Secretariat shall send an Inspector (Inspector de Obra) to verify the current status of the project and progress made. For oversight and verification purposes, each Contractor (*Empresa Contratista*) shall remit the certification of the work and of its state of progress to the Executing Unit. Disbursements shall be paid on the basis of the certification."

[227] "It should be noted that implementation of controls for systematically verifying the extent to which projects have progressed will form part of the new administration's ongoing improvement efforts."

[228] "Resolution N° 20/2016 of the Ministry of the Interior, Public Works, and Housing, of February 10, 2016, published in the Official Gazette on February 16, 2016, establishes the "Commission for Evaluating, Coordinating, and Monitoring Price Adjustment Processes."

[229] "Decree 691/2016 of the Federal Executive Branch, dated May 17, 2016 and published on May 19, 2016, adopts a new Set of Rules for Adjusting the Prices of Public Works and Public Works Consultants Contracts of the Federal Public Administration and establishes (within the Ministry of the Interior, Public Works, and Housing) a Commission to Oversee and Monitor the Set of Rules for

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<sup>53</sup> Response of Argentina to the questionnaire, pp. 37 to 41.

Adjusting the Prices of Public Works and Public Works Consultants Contracts of the Federal Public Administration coordinated by the Under-Secretariat for the Coordination of Federal Public Works."

[230] - The reference in the section of the reply to the questionnaire dealing with the Federal Legislative Branch<sup>54</sup> noting, inter alia, that:

[231] "As regards concrete steps taken to implement oversight systems for each works contract, they are based on the principles of efficiency, effectiveness and transparency. The administration section of the freely accessible website of the Honorable Federal Chamber of Deputies (<http://www.hcdn.gob.ar/institucional/administracion/index.html>) now contains the following:"

[232] "a).- NOTICE BOARD LISTINGS: This section lists all public and private tenders and direct procurement opportunities, with their respective bidding conditions, written records of the opening of bid envelopes and awarding of the contract, and the purchase order."

[233] "b).- RULES OF PROCEDURE FOR THE PROCUREMENT OF GOODS, WORKS, AND SERVICES OF THE HONORABLE FEDERAL CHAMBER OF DEPUTIES: They were established on August 13, 2012 by Presidential Resolution N° 1145/12, which states that it is essential to issue rules aimed at increasing legal certainty, efficiency, effectiveness, and transparency in the procurement activities of this Honorable Federal Chamber of Deputies."

[234] "c).- HISTORICAL ARCHIVE OF TENDERS: This section lists all public and private tenders and direct procurement processes from 2008 to the present day."

[235] "d).- ELECTRONIC BILLING: This section contains the notification required by Federal Public Revenue Administration (AFIP) Resolution N° 2853/10 and the e-mail address at which the dispatch of electronic invoices will be centralized."

[236] "e).- REGISTER OF SUPPLIERS: This section contains the application form that any company can download if it wishes to be included in the supplier database of the Honorable Federal Chamber of Deputies."

[237] "As regards new developments, provisions, and measures adopted in this area, the Office of the Director General of Works and General Services, which reports to this Administrative Secretariat, is preparing a draft section that will include, in addition to the aforementioned information: 1) Certification of (partial or final) progress made with a work; 2) Statistics on the companies providing the various services procured by the HCDN; 3) Cooperation agreements reached with government and/or private agencies for external audits of the above-mentioned works and the posting of the auditors' reports on the website."

[238] "In addition, efforts will be made to streamline the administration and promote a new culture of governmental efficiency through management geared to results, quality of services, and community participation in the oversight and evaluation of programs run by the State and government institutions."

[239] - The reference in the section of the reply to the questionnaire dealing with the Senate, as part of Federal Legislative Branch<sup>55</sup> which states that:

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<sup>54</sup> Response of Argentina to the questionnaire, pp. 41 and 42.

<sup>55</sup> Response of Argentina to the questionnaire, pp. 42 and 43.

[240] "Oversight of tenders is currently exercised not just by the Evaluation Board established by Presidential Decree (DP) 632/02, but also through internal inspections carried out by the Works and Services Directorate. However, they do not include the aforementioned provisions, which, with the change in the administration, should be incorporated in the new procedures."

[241] - The reference in the section of the reply to the questionnaire dealing with the Federal Public Prosecutors' Office (MPFN),<sup>56</sup> which states that:

[242] "For Public Works -- generic and specific rules for small-scale public works --, Resolution N° 3341, of October 22, 2015, adopted the Set of General Terms and Condition for Public Works of the MPFN."

[243] - The reference in the section of the reply to the questionnaire dealing with the Federal Public Defenders' Office,<sup>57</sup> which states that:

[244] "With respect to Public Works, this Office draws up the Set of Terms and Conditions to govern the entire bidding process pursuant to Law N° 13.064 - Federal Law on Public Works - and its enabling regulations. Accordingly, it is worth pointing out that the *Set of General Clauses for Public Works Tenders and Execution*, regulated by Resolution DGN N° 230/2011 and amendments thereto, cover both the work performed directly and the management and supervision of the work performed throughout implementation of the contract. Oversight by the Public Defenders' Office is exercised through inspections by the Works Directorate, which reports to the Office's Department of Architecture. Those inspections and visits to works being carried out serve to verify overall and detailed compliance with the terms of the contract. Also required is a monthly report on the state of progress of the work, pursuant to a pre-established work schedule."

[245] "In addition, our agency has a *Single Set of General Terms and Conditions Governing Small-Scale Public Works*, adopted by Resolution DGN No. 1908/2014, for the execution of low-cost public works to meet the functional needs of this body. It applies to building construction, repair and/or overhaul jobs that, from a technical standpoint, are deemed to be simple and straightforward."

[246] "Those regulations comply with the general guidelines applied to this Office's procurement activities, in line with our Procurement Rules of Procedure and Law N° 13.064, and seek to develop a more practical and flexible mechanism, while ensuring transparency, openness, competition, and effectiveness in procurement management."

[247] "Finally, all rules and regulations relating to procurement and hiring; the various processes under way (public, private, direct, and simplified or fast-track tenders); the invitations to bid; records of preliminary awards of contract; and Annual Procurement Plans may all be consulted on the Office's website (<http://www.mpd.gov.ar/index.php/compras-y-contrataciones>)."

[248] The Committee was also told, during the on-site visit, about the issuance by the Federal Executive Branch of Resolution 58/2016, adopting the General Rules of Procedure of the Ministry of the Interior, Public Works, and Housing for Accounting for Budget Funds Transferred to Provinces, Municipalities and/or other Entities, which replace Resolution 268/07 and contain new regulations. A model agreement was later provided that includes those regulations.

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<sup>56</sup> Response of Argentina to the questionnaire, p. 43.

<sup>57</sup> Response of Argentina to the questionnaire, pp. 44 and 45.

[249] Reference was also made during the on-site visit to the existence of a draft law (bill) on Transparency and Sound Practices for Executing Federal Government Works, which was later provided to the Committee. It was said to contain provisions that would be very useful for transparency and for monitoring management of public works procurement. Mention was likewise made of another bill on Public-Private Partnership Contract, which was deemed important for public works. It, too, was subsequently made available to the Committee.<sup>58</sup>

[250] The Committee was also told during the on-site visit of the drawing up of a cooperation agreement between the Anti-Corruption Office (OA) and the Federal Roadways Directorate (DNV) of the Ministry of Transport, which established an Ethics and Transparency Unit (UET) in the DNV, reporting directly to the Chief Administrator (*Administrador General*) and coordinated, with respect to technical matters, by the OA. Particular importance was attached to this agreement, given the scope of the DNV's powers with regard to public works.<sup>59</sup>

[251] The Committee takes note of the steps taken by the country under review and summarized in the foregoing paragraphs, to move ahead with implementation of the sole measure referred to in the recommendation contained in section 1.2.3 of Chapter II of this report, as well as of the need for the State to continue paying attention to the recommendation, to ensure that it achieves a set of regulations containing all the ingredients it mentions and encompassing all three branches of government and the Federal Public Prosecutors' Office, the ultimate aim being to strengthen public works procurement systems in all those bodies. (see Recommendation 1.2.3.5 in Section 1.2.3 of Chapter II of this report.)

[252] In this regard, it is worth bearing in mind:

[253] - The comments made in the reply to the questionnaire regarding the Federal Executive Branch,<sup>60</sup> to the effect that "it should be pointed out that oversight systems have yet to be implemented for systematically verifying the actual stage at which works are at on the ground. This is something that the new administration will constantly be trying to improve." The reply then adds: "The new administration is working on implementing a more expeditious, transparent, and egalitarian public works procurement system using, wherever feasible, online mechanisms to facilitate the process."

[254] - The comments made in the reply to the questionnaire regarding the Chamber of Deputies of the Federal Legislative Branch,<sup>61</sup> such as the following: "Regarding the existence of difficulties with implementing this recommendation, mention could be made of those faced by this body when it comes to verifying whether the firm that is awarded the contract has actually complied with all the requirements specified therein and has credibly completed the works."

[255] - The comments made in the reply to the questionnaire regarding the Senate of the Federal Legislative Branch,<sup>62</sup> such as the following: "Oversight of tenders is currently exercised not just by the Evaluation Board established by Presidential Decree (DP) 632/02, but also through internal inspections carried out by the Works and Services Directorate. However, they do not include the aforementioned provisions, which, with the change in the administration, should be incorporated in the new procedures."

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<sup>58</sup> These bills may be consulted at: [http://www.oas.org/juridico/spanish/mesicic5\\_arg.htm](http://www.oas.org/juridico/spanish/mesicic5_arg.htm). On March 10, 2017, the Argentine Republic reported that the Public-private Participation Bill was signed into law on November 16, 2016, (Law No. 27,328) and its regulations were approved by means of Decree 118/17, which was published in the Official Gazette on February 20, 2017.

<sup>59</sup> A supporting document was provided, which is posted at: ([http://www.oas.org/juridico/spanish/mesicic5\\_arg.htm](http://www.oas.org/juridico/spanish/mesicic5_arg.htm))

<sup>60</sup> Response of Argentina to the questionnaire, pp. 37 to 41.

<sup>61</sup> Response of Argentina to the questionnaire, pp. 41 and 42.

<sup>62</sup> Response of Argentina to the questionnaire, pp. 42 and 43.

[256] - The information provided, during the on-site visit, by a representative of the Federal Judiciary (Judicial Council). to the effect that they are reviewing the regulations governing public works procurement and are currently drafting a provision on overseeing public works.

[257] The Committee takes note of the steps taken by the country under review to advance toward implementation of this recommendation, as well as its intention to continue to do so, reflected in such actions as the bills it is preparing on public works and other activities. such as the cooperation agreement between the Anti-Corruption Office (OA) and the Federal Roadways Directorate (DNI) of the Ministry of Transport, and it encourages it to persevere with that endeavor.

[258] With respect to the foregoing recommendation, it is worth noting that the document of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, presented by the Inter-American Bar Association (IABA),<sup>63</sup> states, inter alia, that: "Argentina still lacks an officially regulated system for overseeing each and every public works contract. Moreover, government officials in several agencies, said, when consulted, that they were unaware of any special program for monitoring such contracts."

[259] In light of the comments made in the Federal Executive Branch section of the reply to the questionnaire, regarding the Federal Register of Public Works Contractors, to the effect that "the Register is being amended with a view to expediting public works tenders and making them more competitive and transparent," and given the importance of such a Register for openness, equity, and efficiency in public works procurement, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.6 in Section 1.2.3 of Chapter II of this report.)

[260] Finally, bearing in mind that, during the on-site visit, a representative of the Judicial Council reported that the lack of rules governing price adjustments in public works contracts, such as those envisaged in Federal Executive Branch Decree 691/16, was a problem that had led to some works being halted, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.7 in Section 1.2.3 of Chapter II of this report.)

## **1.2.2. New developments in respect of the Convention provision on government systems for the procurement of goods and services**

### **1.2.2.1. New developments in the regulatory framework**

#### a) Scope

- Legal provisions applicable in the Federal Executive Branch, including, in particular:

[261] - Decree No. 1030/2016, regulating Decree (*Decreto Delegado*) N. 1023/2001, Article 1 of which states that together with its annex, it constitutes the "Rules of Procedure for the Federal Administration Procurement System"; and Article 3 of which specifies contracts that are excluded therefrom, including: government employment contracts (subparagraph a); purchases governed by the Revolving Funds and Petty Cash Rules (subparagraph b); contracts entered into with foreign states, institutions governed by international public law, multilateral lending institutions, and contracts financed in whole or in part by funds from those organizations (subparagraph c); contracts forming part of public credit operation (subparagraph d); public works contracts (subparagraph e); and real estate acts, operations, and contracts

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<sup>63</sup> Document of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption," Seventh Report, p. 40.

entered into by the State Property Administration Agency, in the exercise of specific powers vested in it by Decree N. 1023/2001 and the amendment thereto.

[262] -The aforementioned annex to Decree 1030/16, Article 1 of which stipulates that the contracts encompassed by these Rules of Procedure shall be governed, as far as their drafting, awarding, effects and expiration are concerned, by Decree (*Decreto Delegado*) N° 1.023/01 and the amendments and supplements thereto; by these Rules of Procedure and provisions issued as a consequence thereof; by the sets of terms and conditions; and by the contract, agreement, and purchase or sales order, as applicable. Article 4 of the same Decree (1030/16) also provides that anyone who can accredit legitimate interest may examine the file used in a selection process, except in respect of documents covered by confidentiality rules or that have been declared restricted or secret by a competent authority.

[263] Article 10 of the aforementioned Annex provides that: "By virtue of the general rule established in Article 24 of Decree (*Decreto Delegado*) N° 1,023/01 and amendments thereto, public tender or competitive bidding procedures shall be validly applied regardless of the presumed amount of the contract and shall be directed at an indeterminate number of possible bidders. The public tender procedure shall be used when the criterion for selecting the other party to the contract is essentially based on financial considerations, whereas the public bidding procedure shall be used when the criterion for selecting the other party to the contract is essentially based on non-financial considerations, such as scientific or technical, artistic or other capabilities, as the case may be. Notwithstanding the general rule, in all cases the procedure to be followed shall be that which best contributes to achievement of the objective established in Article 1 of Decree (*Decreto Delegado*) N° 1.023/01, and amendments and supplements thereto, and that which is most cost effective, efficient, and effective in the use of public funds and thus best suits the public interest."

[264] Articles 11 to 24 of the aforementioned Annex address the admissibility of public auctions, tenders, or restricted calls for bids, the various types of public tenders and competitive bidding processes, and direct procurement. Article 9 establishes that direct procurement shall only be allowed in the cases expressly contemplated under Article 25.d of Decree (*Decreto Delegado*) N° 1.023/01, and amendments and supplements thereto, which may be either fast-track bidding or simple contract award procedures, as specified in subsequent Articles. In addition, Article 30 establishes a ban on splitting a selection procedure in order to evade application of the ceilings set in these Rules of Procedure and competencies to authorize or approve selection procedures.

[265] Articles 31 to 34 of the aforementioned Annex regulate government procurement via electronic means. Article 32 specifies that the NATIONAL PROCUREMENT OFFICE shall authorize the electronic media to be used for electronic performance of the procedures prescribed in these Rules of Procedure and shall issue procedure manuals which may contain specific stipulations that differ from those set forth in these Rules of Procedure. Article 35 establishes that the Single Set of General Terms and Conditions shall be approved by said Office. Articles 40 to 50 contain provisions to ensure transparency, openness, and dissemination. Article 48 provides that anyone can access the Single Set of General Terms and Conditions and specific sets of terms and conditions in the contracting jurisdiction or entity, on the Federal Procurement Office website, or on the electronic procurement system website, and that he or she may also withdraw or purchase them from the contracting jurisdiction or entity, or download them from the Internet.

[266] Articles 51 to 60 of the aforementioned Annex refer to bids; Articles 61 to 74 to the evaluation of bids; and Article 73 to challenges to the evaluation report. Article 73 states that: "Bidders may contest the evaluation decision within THREE (3) days of its notification. Others, that are not bidders, may contest it within THREE (3) days of its dissemination on the Federal Procurement Office or on the electronic procurement system website. In both cases the challengers must satisfy the guarantee requirement established in Article 78.d of these Rules of Procedure." This last-mentioned provision, for its part, requires bidder or parties to the contract to constitute guarantees: a)...., b)...., c) ...., d) "Challenging the bid

evaluation decision: THREE PERCENT (3%) of the amount of the bid shown in the item or items in respect of which the bid appraisal recommended awarding the contract."

[267] Finally, Articles 102 to 110 of the aforementioned Annex address penalties and sanctions, whereby Articles 103 and 109, on limitation periods, provide, respectively, that "penalties may not be imposed after TWO (2) years have elapsed since the date of the act that could have prompted them" and "sanctions may not be imposed after TWO (2) years have elapsed since the administrative authority ruled definitively on the act that could have prompted them." In addition, Article 115 establishes that the governing body shall be the Federal Procurement Office.

[268] - Provisions supplementing Decree 1030/2016, such as Federal Procurement Office provision ONC 62/216, which contains the Procedures Manual for the Federal Administration Procurement Rules, and ONC 63/2016, on the Single Set of the General Terms and Conditions of the Federal Administration Procurement Rules.

- Legal provisions applicable in the Federal Legislative Branch, including, in particular:

[269] - Resolution No. 1145/12, adopting the "Rules of Procedure for the Procurement of Goods, Works, and Services of the Honorable Federal Chamber of Deputies" (Annex I of the Resolution), Article 2 of which establishes that these Rules of Procedure shall govern all buying and selling, supply, services, consultancies, letting and leasing, exchange, and use of property concession contracts, as well as all contracts not expressly excluded or subject to special rules; and that in contracts subject to the special rules contained in Public Works Law N° 13.064 and amendments thereto these Rules of Procedure shall be applied to supplement for any lacunae therein. Article 3 excludes the following contracts: a) government employment contracts; b) contracts entered into with foreign states, institutions governed by international public law, multilateral lending institutions, and contracts financed in whole or in part by funds from those organizations; c) contracts forming part of public credit operations; and d) contracts performed under Petty Cash Rules.

[270] Article 4 of the aforementioned Resolution (Annex I) cites the following as general principles that should govern procurement: transparency in procedures (subparagraph a); openness and dissemination of all steps taken (subparagraph b); and equal treatment of interested parties and bidders (subparagraph c). Article 6 establishes that the competent authority for each area shall draw up the following year's procurement schedule, based on the area's activities, and submit it in good time to the Administrative Secretary. Article 9 stipulates that, as a general rule, all purchase and sales, rental, leasing, concession, works, and supplies contracts shall be awarded through public tender or public bidding processes, as the case may be, and then goes on to list cases in which contracts may be awarded through private tender or bidding processes, public auctions, or directly. Article 11 prohibits splitting a contract as a way to avoid having to go through a tender or bidding process. Article 19 allows computerized procurement, using a digitally signed digital format, for the purchase of homogeneous, low-cost items consumed in large quantities on a regular basis, for which, moreover, a permanent market exists.

[271] Articles 25 to 29 of the aforementioned Resolution (Annex I) are about the Sets of General Terms and Conditions. Articles 37 to 50 deals with bids, while Articles 51 to 59 deal with the rules for evaluating them (whereby Article 55 provides for the possibility of stakeholders contesting that appraisal within the time allowed in the bidding terms and conditions). Articles 110 to 115 address the subject of penalties and sanctions, whereby Article 115 specifies that no sanctions may be imposed after three years have elapsed since the date on which the HCDN was apprised of the violation. Article 117 provides that, after submitting a written application accrediting legitimate interest, anyone may, at any time, examine the proceedings relating to the awarding of a contract, with the exception of information officially rated confidential. Article 118 adds that, with respect to the access to documentation mentioned in Article 117, third parties must accredit their interest with written proof showing that they are the legal representatives of -- or have powers of attorney

granted by -- an individual or a legal entity active in the field related to the procurement, or of a Chamber or Federation of enterprises in that field, or a non-profit civil association for protecting the rights of consumers of the good or service concerned, or the environment in the event that the environment may, or could potentially, be impaired by the production of the good or delivery of the service under the terms stipulated in the Terms and Conditions or in the contract, provided that evidence for such a claim is produced.

[272] Finally, Article 122 of the aforementioned Resolution (Annex I) states that "in cases in which it proves necessary to establish special or general clauses for specific types of procurement that differ from the clauses set forth in these Rules of Procedure, the amendment must be authorized by the President of the HCDN, who shall take into consideration prior findings by the Office of the Director General for Legal Affairs and the Internal Audit Directorate. Said authorization shall be noted in the Special Clauses section of the respective contracts."

[273] - Resolution No. 318/16, adopting the "Rules of Procedure for Procurement of Goods, Works, and Services of the Honorable Federal Senate" (Annex I thereof), Article 1 of which states that the purpose of these rules is to regulate Decree (*Decreto Delegado*) N° 1023/01 and that they shall be mandatory for all procurement procedures involving the Senate and applicable also to contracts governed by Law N° 13.064 (Public Works Act) and amendments thereof in respect of matters not covered by that Law or its amendments. Article 2 establishes that the provisions in the Rules of Procedure shall not apply to the contracts referred to in Article 5 of Decree (*Decreto Delegado*) N° 1023/01. Article 6 provides that, after submitting an application accrediting legitimate interest, anyone may, at any time, examine the proceedings relating to the awarding of a contract, with the exception of information officially rated confidential, or declared restricted or secret by a competent authority. Article 7 adds that, with respect to the provisions in Article 6, third parties must accredit their interest with written proof showing that they are the legal representatives of -- or have powers of attorney granted by -- an individual or a legal entity active in the field related to the procurement, or of a Chamber or Federation of enterprises in that field, or a non-profit civil association for protecting the rights of consumers of the good or service concerned, or the environment in the event that the environment may, or could potentially, be impaired by the production of the good or delivery of the service under the terms stipulated in the Terms and Conditions or in the contract, provided that evidence for such a claim is produced.

[274] Article 9 of the aforementioned Resolution (Annex I) states that the Office of the President of the Senate shall approve the plan to be drawn up by the Office of the Director General of Administration through the Administration Directorate, based on information provided by each organizational unit in accordance with the budget law's appropriations to the Senate for the corresponding fiscal year. Article 11 provides that tender or public bidding procedures may be used, regardless of the estimated amount of the contract, and should be addressed in to an indeterminate number of possible bidders, pursuant to Article 24 of Decree (*Decreto Delegado*) N° 1023/01 and its amendments. Article 15 establishes that direct procurement shall only be allowed in the cases expressly contemplated under Article 25.d of Decree (*Decreto Delegado*) N° 1.023/01 and amendments thereto and then lists the forms it takes and cases in which it is permitted. Article 25 establishes a ban on splitting a selection procedure in order to evade application of the ceilings set in these Rules of Procedure and competencies to authorize or approve selection procedures.

[275] Articles 32 to 36 address Sets of Terms and Conditions. Articles 37 to 48 deals with transparency, openness, dissemination, communications, and notifications. Article 50 to 65 regulate bids, while Article 66 regulates the bid evaluation stage. Article 77 establishes that bidders may contest the evaluation decision within three (3) days of its notification. Others, that are not bidders, may contest it within three (3) days of its dissemination on the Federal Senate website. In both cases the challengers must satisfy the guarantee requirement established in Article 85 of these Rules of Procedure. Article 85.d establishes that in cases in which the bid appraisal is contested, the amount of the guarantee shall be equivalent to three percent (3%) of

the amount of the bid for the contested item(s), with a cap of 20 modules. Articles 109 to 115 refer to penalties and sanctions, whereby Article 115 specifies that no sanctions may be imposed after three years have elapsed since the date on which the Senate was apprised of the violation.

[276] Finally, Article 182 of the aforementioned Resolution (Annex I) states that, pursuant to Article 21 of Decree (*Decreto Delegado*) 1023/2001, the procurement activities encompassed by these Rules of Procedure may be performed using a digitally signed digital format; that the Senate may introduce electronic technology at the different stages of a procurement procedure, which it lists; and that agreements may be entered into with federal or provincial agencies that contribute to the inclusion of the requisite technology. In addition, this Resolution regulates (in Annex II) the Consolidated Computerized Register of Suppliers (RIUP).

- Legal provisions applicable in the Federal Judiciary, including, in particular:

[277] - Resolution No. 254/15, adopting the "Rules of Procedure for Procurement of the Judicial Council of the Federal Judiciary" (Annex I thereof), Article 1 of which states that the purpose of these Rules of Procedure is to regulate the Council's procurement activities and ensure that the goods and services procured are obtained transparently, in accordance with the principles that acts of government must be open and its decisions subject to public oversight; and obtained in a timely manner, as cost-effectively as possible. The goods and services procured must be of the highest quality; use technology adapted to the Council's needs; and be conducive to a democratic and efficient administration of justice. Article 2 states that the application of these Rules of Procedure shall be mandatory for all Council procurement contracts other than those expressly excluded. Article 3 lists the contracts not covered by these Rules, such as: 1. Government employment contracts; 2. Contracts entered into with entities governed by international public law; 3. Contracts forming part of public credit operations; 4. Public works contracts; 5. Contracts governed by petty cash rules. Article 4 deals with general principles for procurement, including transparency (numbered paragraph 1); reasonableness and efficiency (3); equal treatment for stakeholders and bidders (5); openness and dissemination (6); and electronic procurement (10), with the gradual and progressive introduction of electronic procedures and execution. Article 14 establishes that anyone who can accredit legitimate interest may examine the file used in a selection process, except in respect of documents covered by confidentiality rules or that have been declared restricted or secret.

[278] Article 22 of the aforementioned Resolution (Annex I) provides that the selection of the other party to a contract (*la selección del co-contratante*) may be affected by: 1. Public tender or bidding; 2. Public auction; 3. Private tender or bidding; 4. Direct hiring through fast track competitive bidding or direct awarding of contract; or 5. Via a simplified procedure. Article 23 provides that, as a general rule, tender or public bidding procedures may be used, regardless of the estimated amount of the contract, and should be addressed to an indeterminate number of possible bidders. Notwithstanding the general rule, the third paragraph states that in all cases the procedure to be followed shall be that which best contributes to achievement of the objective established in Article 1 of these, and amendments and supplements thereto, and that which is most cost effective, efficient, and effective in the use of public funds and thus best suits the public interest. Article 27 provides that direct procurement shall only be allowed in the cases expressly contemplated in these Rules of Procedure and that it may take the form of fast-track competitive bidding or direct award of contract; it then lists the cases in which it is allowed. Article 37 provides that the procurement activities governed by these rules may be performed digitally, using appropriate selection procedures and, modalities, as well as through the system authorized for that purpose by the Administration and Financial Commission of the Judicial Council. Article 39 establishes a ban on splitting a selection procedure in order to evade application of the ceilings set for another more rigorous procedure or to elude competencies to authorize or approve selection procedures.

[279] Articles 53 to 60 of the aforementioned Resolution (Annex I) refers to Sets of Terms and Conditions. Articles 61 to 69 deal with openness, dissemination, and notifications. Articles 79 to 121

regulated bids and how they are evaluated, whereby Article 115 establishes that interested parties may contest the preliminary award of contract decision within FIVE (5) days of notification of the appraisal and Article 116 states that a bidder filing more than TWO (2) challenged in a calendar year may be required to put up a "challenge bond" -- a requirement that should be included in the special terms and conditions -- equivalent to the percentage indicated in Article 126 of these Rules of Procedure, numbered paragraph 4 of which states that the percentage shall be one (1) percent of the challenger's bid and never less than two hundred pesos ((\$200).

[280] Finally, Articles 148 to 155 of the aforementioned Resolution (Annex I) refer to penalties and sanctions. Annex II regulates the Consolidated Set of General Terms and Conditions of the Judicial Council.

[281] - Resolution No. 401/09 of the Federal Judicial Council on the implementation of an Auditors Corps for the Federal Judiciary that is autonomous vis-a-vis the General Administration, one of its functions being to oversee said Council's procurement activities.

- Legal provisions applicable to the Public Prosecutors Office, including, in particular:

[282] - Resolution PGN No.1107/14, adopting the "Procurement Rules of Procedure of the Public Prosecutors Office" (Annex I thereof), Article 1 of which states that application of these Rules of Procedure shall be mandatory for buying and selling, supply, and services contracts, contracts for the rental of movable and immovable property with or without an option to purchase, and all contracts not expressly precluded. Article 3 states that the following contracts are excluded from the scope of these Rules of Procedure: a) government employment contracts; b) contracts subject to petty cash rules; c) contracts entered into with foreign states, institutions governed by international public law and/or multilateral lending institutions; d) contracts forming part of public credit operations; and e) public works contracts. Article 6 contains the general principles that should govern contractual procedures, including competition and equality (subparagraph b), openness and dissemination (subparagraph c), transparency (subparagraph d), efficiency and effectiveness (subparagraph e), and cost-effectiveness (*economía*) (subparagraph f).

[283] Article 22 of the aforementioned Resolution provides for the following kinds of procedure for selecting the other party to execute the contracts contemplated in these Rules of Procedure: a) Tenders or competitive bidding and b) Direct procurement. Article 23 provides that the selection of the other party to execute the contracts contemplated in these Rules of Procedure shall normally be done via public tender or public bidding. Article 25 lists the cases in which the direct hiring procedure will be used. The reasons for this option include the amount involved; cases in which a tender or bidding process is declared void or otherwise fails; urgency or emergency considerations; the specialized or exclusive nature of the good, works, or service to be procured, direct inter-agency procurement, or direct procurement from social service providers (*efectores sociales*). Article 27, on electronic procurement, establishes that the procurement activities covered by these Rules of Procedure may be performed using a digitally signed digital format, using appropriate selection procedures and modalities, pursuant to the Rules of Procedure. It also establishes that certificates and notifications issued in digitally signed digit formats shall be regarded as complying with the requirements of Law 19.549 and as having the same force of law as documents in hard copy.

[284] Articles 30 to 38 of the aforementioned Resolution (Annex I) refer to Sets of Terms and Conditions, whereby Article 38 prohibits the splitting of a procurement contract in order to elude the types of procedure or ceilings set in these Rules of Procedure. Articles 41 to 61 regulate bids and the Bid Evaluation Commission, whereby Article 61 permits stakeholders contesting that Commission's appraisal to file a challenged to it within three (3) work days of notification of the Commission's decision. Articles 62 to 69 deals with the call for bids, whereby Article 63 addresses openness and dissemination of the

bidding conditions. Article 70 refers to guarantees, including, in subparagraph b), including a bond for challenging the bid appraisal equivalent to one percent (1%) of the bid submitted by the challenger, in cases in which the same bidder has filed more than two (2) appraisal challenges within one calendar year. Articles 93 to 96 regulate different types of tenders or bidding processes, including public and private, and federal and international processes. Articles 97 to 100 refer to simplified or fast-track direct procurement. Articles 101 to 106 refer to direct procurement through direct award of contract and Articles 124 to 129 deal with penalties and sanctions.

[285] - Resolution ADM No. 173/06, containing (in Annex I) the Rules of Procedure for Hiring and Leasing Real Estate, Article 1 of which provides that the leasing of buildings by the Public Prosecutors' Office shall be governed by the general provisions of these Rules of Procedure unless they are amended by special clauses approved for each contract, with secondary recourse, as necessary, to the provisions on leasing contained in the Civil Code.

- Legal provisions applicable to the Public Defenders' Office, including, in particular:

[286] - Resolution DGN No. 230/11, which adopts the "Rules Governing the Purchase, Disposal, and Procuring/Hiring of Goods and Services of the Public Defenders' Office" (Annex I thereof), Article 2 of which states that the following contracts shall be governed by these Rules of Procedure: buying and selling, supply, services, swap, and real estate rental contracts, when the total amount of the procurement exceeds 500,000 pesos, rentals with an option to purchase and all contracts not expressly excluded or subject to special rules in the Public Defenders' Office. Article 3 states that the following contracts are excluded from the prescription of these Rules: a) government employment contracts; b) contracts performed under Petty Cash Rules; c) purchases using revolving funds; d) works and services hiring contracts approved in connection with Article 64 of Law 11.672; e) leasing of real estate contracts when the amount of the contract is less than 500,000 pesos; f) contracts entered into by the Public Defenders' Office with foreign states, institutions governed by international public law and/or multilateral lending institutions; g) contracts financed by funds from foreign states, institutions governed by international public law and/or multilateral lending institutions; and h) public works contracts, public works concession contracts, and public services franchise contracts.

[287] Article 17 of the aforementioned Resolution (Annex I) provides that anyone accrediting legitimate interest may, at any time, examine the proceedings relating to the awarding of a contract, with the exception of information officially rated confidential and that denial of access to those records shall be considered gross negligence on the part of the official or agent responsible for granting it. Article 23 provides that selection of the other party to the contract may be effected using the following procedures: a) tender or bidding; b) direct procurement; or c) public auction. Article 25 establishes that the selection of the other party to execute the contracts contemplated in these Rules of Procedure shall normally be done via public tender or public bidding, and indicates when the tender or bidding shall be public and when it shall be private; Article 28 refer lists the cases in which the direct hiring procedure will be used. The reasons for this option include the amount involved; urgency or emergency considerations; the need to carry out or purchase scientific, technical, or artistic works or services that have to be entrusted to specialized firms or individuals; the need to purchase goods that are manufactured or sold on an exclusive basis; or the goods or services are procured from government entities or agencies. Article 29 deals with the simplified versions of the aforementioned procedures.

[288] Article 37 of the aforementioned Resolution (Annex I) refers to electronic procurement and states that the procurement activities governed by these Rules of Procedure may be performed using a digitally signed digital format for the corresponding selection procedures and mechanisms. Articles 39 to 47 refer to Sets of terms and Conditions, whereby Article 47 prohibits splitting a procurement contract with a view to eluding enforcement of the ceilings set in these Rules of Procedure for selection procedures. Article 51 provides that the Purchases and Procurement Department of the Public Defenders' Office may consult the

Supplier Information System (SIPRO), administered by the Federal Procurement Office of the Federal Executive Branch to cross compare information on the status and current situation of the bidders applying to participate in the selection procedures processed in connection with the Public Defenders' Office. Article 52 establishes that all those interested in taking part in that Office's selection procedures shall provide the information indicated in the Set of General Terms and Conditions; that said information shall only be provided once along with the interested party's first bid; and that in subsequent submissions of bids the bidders shall only swear under oath that they already figure in the Register of Suppliers kept by the Public Defenders' Office.

[289] Article 54 of the aforementioned Resolution (Annex I) refers to openness and dissemination of the terms of references. Article 61 refers to guarantees/bonds. Articles 66 to 77 regulate bids. Article 89 provides that the Preliminary Award Commission (*Comisión de Pre-adjudicación*) shall issue a substantiated, non-binding appraisal, which it shall deliver to the competent authority for assessing the grounds cited in the administrative appraisal. That shall constitute the final stage in the selection procedure. Article 97 establishes that all bidders shall be reliably notified of the preliminary award decision within three days of its issuance and shall have three days from the date they are notified to contest it. Articles 124 to 134 deals with penalties and sanctions, whereby Article 134 states that the Public Defenders' Office may waive (*dispensar*) application of the penalties envisaged in these Rules of Procedure or order that a provider be warned in advance of its application, when there substantiated grounds for doing so.

[290] - Resolution DGN No. 980/11, adopting the "Manual of Procedures for the Purchase, Disposal and Procurement/Hiring of Goods and Services of the Public Defenders' Office (annexed thereto), which issues enabling regulations for the rules adopted through the aforementioned Resolution DGN No. 230/11.

[291] - Resolution ADM No. 564/07, containing (in Annex I) the Rules of Procedure for Hiring and Leasing Real Estate, Article 1 of which provides that the leasing of buildings by the Public Defenders' Office shall be governed by the general provisions of these Rules of Procedure and by special clauses approved for each contract, with secondary recourse, as necessary, to the provisions on leasing contained in the Civil Code.

#### b) Observations

[292] In first place, the Committee would like to recognize the new regulatory developments adopted by Argentina to continue to push forward with the creation, maintenance, and strengthening of its systems of government procurement of goods and services as referred to in Article III (5) of the Convention.

[293] Nevertheless, some considerations are deemed appropriate regarding the advisability of supplementing, developing, and/or adjusting certain provisions referred to in these new developments, without prejudice to the observations put forward by the Committee in foregoing section 1.2.1 in relation to the follow-up to implementation of the recommendations made to the country under review in the Second Round report.

- With respect to the provisions applicable to the Federal Executive Branch of government, the Committee has the following to say:

[294] First, the Committee notes that Article 4 of the Annex to Decree 1030/2016 containing the "Procedures Manual for the Federal Administration Procurement Rules" provides that "anyone who can accredit legitimate interest may examine the file used in a selection process, except in respect of documents covered by confidentiality rules or that have been declared restricted or secret by a competent authority." In addition, Article 4 of the Law on Access to Public Information (No. 27,275), which is to come into effect in September 2017, provides that all persons have the right to request and receive

information and that applicants may not be required to provide justification for their request, to establish a subjective right or legitimate interest, or to be assisted by counsel.<sup>64</sup>

[295] Regarding the above, the Committee believes it would be useful for the State under review to consider, until the planned entry into force in September 2017 of Law 27,275 on Access to Public Information, ensuring all persons access to information held in the files used to process selection procedures, without the provisions of Article 4 of the Annex to Decree 1030/26 posing an obstacle, and taking guidance in this from the standards of the Open Contracting Partnership and the principle of disclosure enshrined in the Convention (see Recommendation 1.2.3.8 of Section 1.2.3 of Chapter II of this report).

[296] In addition, with respect to the aforementioned provision, it is worth noting that the civil society organization Poder Ciudadano stated during the on-site visit that that requirement constitutes an obstacle to third parties being able to access information on State contracts that should be in the public domain and makes civil society oversight more difficult.

[297] Second, the Committee observes that the third paragraph of Article 10 of the Annex to Decree 1030/2016, containing the "Procedures Manual for the Federal Administration Procurement Rules", states - when referring to the general rule set forth in Article 24 of Decree 1023/01 that selection of the other party to a contract shall be via public tender or public bidding - that "notwithstanding the general rule, in all cases the procedure to be followed shall be that which best contributes to achievement of the objective established in Article 1 of Decree (Decreto Delegado) N° 1.023/01, and amendments and supplements thereto, and that which is most cost effective, efficient, and effective in the use of public funds and thus best suits the public interest."

[298] Regarding the above, the Committee considers that, guided by the principles of cost effectiveness, efficiency and effectiveness referred to in the provision transcribed above and by the principles of equity and openness upheld in the Convention, the country under review would be well advised to consider adopting criteria to govern the application of said provision. (See Recommendation 1.2.3.9 of Section 1.2.3. of Chapter II of this report).

[299] Third, the Committee notes that Article 73 of the Annex to Decree 1030/2016, containing the "Procedures Manual for the Federal Administration Procurement Rules", provides, concurrently with Article 78.d thereof, that in order for bidders or others that do not qualify as bidders to be able to challenge the bid evaluation decision they shall put up a guarantee or bond equivalent to THREE PERCENT (3%) of the amount of the bid shown in the item or items in respect of which the bid appraisal recommended awarding the contract.

[300] Regarding the above, the Committee considers that the country under review would be well advised to consider conducting an analysis of the application of Articles 73 and 78.d of the Annex to Decree 1030/2016, to determine if the imposition of a bond inappropriately limits challenges of bid appraisals, and, if it is found to do so, consider taking appropriate steps to eliminate that limitation. (see Recommendation 1.2.3.10 of Section 1.2.3 of Chapter II of this report.)

[301] Worth adding, with regard to the aforementioned provision, is the opinion of a representative of the Argentine State Suppliers Union, who stated that the requirement was not advisable and unfair to those wishing to contest a bid evaluation appraisal. He read out and provided a quotation from a publication by an academic, Agustín Gordillo, entitled the "Challenge Bond" or "Tariff on Challenges" which points out, inter alia, that: "(...) One way to restrict challenges by bidders who lose is to establish a hefty bond in the bidding conditions which is lost if an appeal challenging the appraisal is rejected and returned if the

<sup>64</sup> Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/265949/norma.htm>

appeal prospers. A bidder that has just lost a tender will be disinclined to risk money on seeing whether it can reverse the administrative appraisal; which means that the administration achieves impunity for its acts if the justice system does not annul or declare such provisions nonexistent. (...)."

[302] Fourth, the Committee notes that Articles 103 and 109, regarding prescription, of the Annex to Decree 1030/2016, containing the "Procedures Manual for the Federal Administration Procurement Rules", provide, respectively, that "penalties may not be imposed after TWO (2) years have elapsed since the date of the act that could have prompted them" and "sanctions may not be imposed after TWO (2) years have elapsed since the administrative authority ruled definitively on the act that could have prompted them."

[303] Regarding the above, the Committee considers that, guided by one of the principles set forth in the Convention on procurement of goods and service, such as the efficiency principle, the State under review would be well advised to consider amending the above-mentioned provisions in such a way as to do adjust the two-year prescription period contemplated therein, whenever its application demonstrates the advisability of doing so, bearing in mind the average time it takes the administration to detect and investigate the facts giving rise to the imposition of penalties and the time it takes to render procurement sanctions effective. (see Recommendation 1.2.3.11 of Section 1.2.3 of Chapter II of this report).

[304] In formulating the above recommendation, the Committee takes into account information provided by the National Procurement Office (ONC), according to which the two-year limitation period for the imposition of penalties was added when Decree 1030 was issued, in September 2016. Given that this is, therefore, a very recent provision that could have a major impact on the effectiveness of the regulations governing penalties applicable to contractual activities, the Committee believes that it would be appropriate for the State under review to take care to consider making any adjustments that might be needed to ensure that that the time period does not lead to an increase in the limitation period.

- With respect to the provisions applicable to the Federal Legislative Branch of government, the Committee has the following to say:

[305] First, the Committee notes that Article 6 of Annex I to Resolution 1145/12, containing the "Rules of Procedure for the Procurement of Goods, Works, and Services of the Honorable Federal Chamber of Deputies" (HCDN), provides that the competent authority shall draw up the following year's procurement schedule, based on the area's activities, and submit it in good time to the Administrative Secretary, and that the section of the reply to the questionnaire regarding the HCDN<sup>65</sup> states: "...the current administration is engaged in establishing and programming an annual procurement plan, which did not exist in previous administrations."

[306] In light of the above and of the information gathered during the on-site visit from representatives of the HCDN, to the effect that the aforementioned annual purchase plan does not yet exist and that the 2018 plan is expected to be drawn up in 2017, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.12 in Section 1.2.3 of Chapter II of this report.)

[307] Second, the Committee notes that Article 117 of Annex I to Resolution 1145/12, containing the "Rules of Procedure for the Procurement of Goods, Works, and Services of the Honorable Federal Chamber of Deputies" (HCDN), provides that in order to examine procurement-related proceedings legitimate interest must be accredited, while Article 118 establishes the manner and specific cases in which third parties shall satisfy the foregoing Article's accreditation requirement.

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<sup>65</sup> Response of Argentina to the questionnaire, p. 26.

[308] Regarding the above, the Committee considers that, guided by one of the principles set forth in the Convention on procurement of goods and services, such as the openness principle, the country under review would be well advised to consider amending the above-mentioned provisions in such a way as to do away with the requirement to accredit interest as a prerequisite for examining procurement-related proceedings (see Recommendation 1.2.3.13 of Section 1.2.3 of Chapter II of this report).

[309] In addition, with respect to the aforementioned provisions, it is worth noting that the civil society organization Poder Ciudadano stated during the on-site visit that that requirement constitutes an obstacle to third parties being able to access information on State contracts that should be in the public domain and makes civil society oversight more difficult.

[310] Third, the Committee notes that Article 122 of the Annex to Resolution 1145/12, containing the "Rules of Procedure for the Procurement of Goods, Works, and Services of the Honorable Federal Chamber of Deputies" (HCDN), provides that "in cases in which it proves necessary to establish special or general clauses for specific types of procurement that differ from the clauses set forth in these Rules of Procedure, the amendment must be authorized by the President of the HCDN, who shall take into consideration prior findings by the Office of the Director General for Legal Affairs and the Internal Audit Directorate. Said authorization shall be noted in the Special Clauses section of the respective contracts."

[311] Regarding the above, the Committee considers that, guided by the principles of transparency in procedures, openness and dissemination of proceedings, and equal treatment of interested parties and bidders referred to in Article 4 of the aforementioned Rules of Procedure, which are in keeping with the principles of openness, equity, and efficiency upheld in the Convention, the country under review would be well advised to consider adopting criteria to govern the application of said provision. (see Recommendation 1.2.3.14 of Section 1.2.3. of Chapter II of this report).

[312] Fourth, bearing in mind a reference in the section of the reply to the questionnaire relating to the HCDN <sup>66</sup> to the start of meetings with the Federal Ministry of Modernization to evaluate the possible implementation in the Chamber of Deputies of the electronic file module and an additional comment in the reply to that effect that, if said initiative prospers, it will help render procurement procedures more open and transparent, the Committee will make a recommendation in that regard to the country under review.(see recommendation 1.2.3.15 in Section 1.2.3 of Chapter II of this report.)

[313] Fifth, the Committee notes that Article 6 of Annex I to Resolution 318/12, containing the "Rules of Procedure for the Procurement of Goods, Works, and Services of the Honorable Federal Senate", provides that anyone accrediting legitimate interest may, at any time, examine the proceedings relating to the awarding of a contract, while Article 7 contemplated, to that end, specific cases in which third parties may accredit their interest.

[314] Regarding the above, the Committee considers that, guided by one of the principles set forth in the Convention on procurement of goods and service, such as the openness principle, the country under review would be well advised to consider amending the above-mentioned provisions in such a way as to do away with the requirement to accredit legitimate interest as a prerequisite for examining procurement-related proceedings (see Recommendation 1.2.3.16 of Section 1.2.3 of Chapter II of this report).

[315] Sixth, the Committee notes that Article 77 of the Annex to Decree 318/12, containing the "Rules of Procedure for the Procurement of Goods, Works, and Services of the Honorable Federal Senate", provides, concurrently with Article 85.d thereof, that in order for bidders or others that do not qualify as bidders to be able to challenge the bid evaluation decision they shall put up a guarantee or bond equivalent

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<sup>66</sup> Response of Argentina to the questionnaire, p. 26.

to three percent (3%) of the amount of the bid shown in the item or items in respect of which the bid appraisal recommended awarding the contract, up to a ceiling of 20 modules.

[316] Regarding the above, the Committee considers that the country under review would be well advised to consider conducting an analysis of Articles 77 and 85.d of Annex I to Resolution 318/12, to determine if the imposition of a bond required inappropriately limits challenges of bid appraisals, and, if it is found to do so, to take appropriate steps to eliminate that limitation. (see Recommendation 1.2.3.17 in Section 1.2.3 of Chapter II of this report.)

[317] Seventh, bearing in mind that, during the on-site visit, a representative of the Senate told the Committee that, as in the Chamber of Deputies, consideration was being given to adopting something similar to the electronic file system for procurement, and given the importance of such a move for implementation of Article 182 of Resolution 318/12, which deals with electronic public procurement in the Senate, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.18 in Section 1.2.3 of Chapter II of this report.)

[318] Regarding the above, it is worth recalling that the need for the Senate to have a comprehensive I.T. system for procurement transpires from an observation made in a University of Buenos Aires audit commissioned by the Senate to examine, inter alia, purchase and procurement processes, and attached to the reply to the questionnaire.<sup>67</sup> The observation states, among other things, that: The Office of the Deputy Director for Purchases uses several separate I.T. systems (COMDOC, GAFFP, GIASEN, SYSTEM). At the same time, there is one shared hard disk called PIERRE, used to store database and monitoring files (administered by the I.T. Office), plus personal files kept on users' own computers, and hard-copy records (a book of minutes and file-tracking materials). The lack of homogeneity and of interaction between the different systems and records leads to duplication of tasks and the creation of numerous Excel spreadsheets to put the information together. There is a marked lack of user trust in the systems. For lack of a comprehensive and reliable I.T. system, files are sent and re-sent several times via the various areas for them to take note of actions taken, or else whole folders are created just to send a single copy of a given document to a particular area."

- With respect to the provisions applicable to the Federal Judiciary, the Committee has the following to say:

[319] First, the Committee notes that Article 14 of Annex I to Decree 254/15 containing the "Rules of Procedure for Procurement by the Judicial Council of the Federal Judiciary" provides that anyone who accredits some form of interest may examine the file used in a selection process, except in respect of documents covered by confidentiality rules or that have been declared restricted or secret by an authority referred to in said Article.

[320] Regarding the above, the Committee considers that, guided by one of the principles set forth in the Convention on procurement of goods and service, such as the openness principle, the country under review would be well advised to consider amending the above-mentioned provision in such a way as to do away with the requirement to accredit interest as a prerequisite for examining a selection procedure case file (see Recommendation 1.2.3.19 of Section 1.2.3 of Chapter II of this report).

[321] Second, the Committee observes that the third paragraph of Article 23 of Annex I to Decree 254/15, containing the "Rules of Procedure for Procurement by the Judicial Council of the Federal Judiciary", states -- when referring to the general rule on selection by public tender or public bidding set forth in said Article -- that "notwithstanding the general rule, in all cases the procedure to be followed shall be that

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<sup>67</sup> Available at: ([http://www.oas.org/juridico/spanish/mesicic5\\_arg.htm](http://www.oas.org/juridico/spanish/mesicic5_arg.htm)) together with the other documents constituting Argentina's response.

which best contributes to achievement of the objective established in Article 1 of these Rules of Procedure and that which is most cost effective, efficient, and effective in the use of public funds and thus best suits the public interest."

[322] Regarding the above, the Committee considers that, guided by the principles of cost effectiveness and efficiency referred to in the provision transcribed above and by the principles of equity and openness upheld in the Convention, the country under review would be well advised to consider adopting criteria to govern the application of said provision. (see Recommendation 1.2.3.20 of Section 1.2.3. of Chapter II of this report).

[323] Third, the Committee observes that Article 115 of Annex I to Resolution No. 254/15, containing the "Rules of Procedure for Procurement by the Judicial Council of the Federal Judiciary", states, in keeping with Articles 116 and 126.4, that a bidder that has challenged a bid evaluation decision more than twice in any given calendar year, may be required to put up a challenge guarantee or bond equivalent to one percent (1%) of the challenger's bid.

[324] Regarding the above, the Committee considers that the country under review would be well advised to consider conducting an analysis of the application of Articles 115, 116, and 126.4 of Annex I to Resolution No. 254/15, to determine if the imposition of a bond inappropriately limits challenges of bid appraisals, and, if it is found to do so, to take appropriate steps to eliminate that limitation. (see Recommendation 1.2.3.21 in Section 1.2.3 of Chapter II of this report.)

[325] Fourth, bearing in mind that, during the on-site visit, a representative of the Judicial Council told the Committee that the Register of Suppliers had still to be implemented and required a new software, and given the importance of that Register for openness, equity, and efficiency in procurement, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.22 in Section 1.2.3 of Chapter II of this report.)

- With respect to the provisions applicable to the Federal Public Prosecutors' Office, the Committee has the following to say:

[326] First, the Committee notes that Article 70.b of Annex I to Resolution PGN No. 1107/14, containing the "Rules of Procedure for Purchases and Procurement by the Federal Public Prosecutors' Office," provides that a bidder that has challenged a bid evaluation decision more than twice in any given calendar year must put up a challenge guarantee or bond equivalent to one percent (1%) of the challenger's bid.

[327] Regarding the above, the Committee considers that the country under review would be well advised to consider conducting an analysis of Article 70.b of Annex I to Resolution PGN No. 1107/14, to determine if the imposition of a bond inappropriately limits challenges of bid appraisals, and, if it is found to do so, to take appropriate steps to eliminate that limitation. (see Recommendation 1.2.3.23 in Section 1.2.3 of Chapter II of this report.)

[328] Second, bearing in mind that the section of the reply to the questionnaire concerning the Federal Public Prosecutors' Office (MPFN)<sup>68</sup> mentions "current efforts to modernize the Rules of Procedure for Administrative Leasing of MPFN Buildings" and that during the on-site visit representatives of that Office pointed to the need to update and expedite the procedures contemplated in the aforementioned Rules of Procedure contained in Resolution ADM No. 173/06, and mentioned that they were even evaluating aspects of a European Directive on the subject that could be included, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.24 in Section 1.2.3 of Chapter II of this report.)

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<sup>68</sup> Response of Argentina to the questionnaire, p. 30.

[329] Third, the Committee notes the comment in the section of the reply to the questionnaire dealing with the Public Prosecutors' Office<sup>69</sup> stating that "The difficulties encountered with implementation of the recommendation were those typically triggered by any change in regulations, such as those encountered by the areas involved in the process and the need to get up to date and trained with respect to the requirements for requesting goods and services, and with the various stages and times required for each type of procurement."

[330] With regard to the above and bearing in mind, moreover, that during the on-site visit representatives of the Public Prosecutors' Office pointed to the need to continue interacting with the different areas within the Office and providing training for public servants on the practical aspects involved in applying the Office's new procurement rules, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.25 in Section 1.2.3 of Chapter II of this report.)

- With respect to the provisions applicable to the Federal Public Defenders' Office, the Committee has the following to say:

[331] First, the Committee notes that Article 17 of Annex I to Resolution DGN No. 230/11, containing the "Procedures Manual for the Purchase, Disposal, and Procurement/Hiring of Goods and Services of the Public Defenders' Office" provides that, after reliably accrediting interest, anyone may examine the proceedings relating to procurement, with the exception of information officially rated confidential, regardless of the fact that Article 1 of Law 27,275 on the Right of Access to Public Information,<sup>70</sup> which is planned to come into force in September 2017, establishes the principle of transparency and maximum disclosure, which means that all the information in the power, custody, and under the control of the obliged subject must be accessible to all persons. Bearing this in mind, the Committee will formulate a recommendation for the State under review (see Recommendation 1.2.3.26 in section 1.2.3 of Chapter II of this Report).

[332] Second, during the on-site visit, representatives of the Public Defenders' Office (MPD) pointed to the need for systematic implementation of the MPD's own Register of Suppliers, provided for in Article 52 of Annex I to Resolution DGN No. 230/11, and further indicated that, through various bodies, the MPD had been in touch on several occasions with the National Procurement Office on the MPD's being able to use the data contained therein in MPD selection procedures, but that no agreement had yet been reached." In light of the foregoing, the Committee will make a recommendation to the country under review. (see recommendation 1.2.3.27 in Section 1.2.3 of Chapter II of this report.)

[333] Third, the Committee notes that Article 134 of Annex I to Resolution DGN No. 230/11, containing the "Procedures Manual for the Purchase, Disposal, and Procurement/Hiring of Goods and Services of the Public Defenders' Office" provides that the Public Defenders' Office may waive application of the penalties envisaged in these Rules of Procedure or order that a provider be warned in advance of their application, when there are substantiated grounds for doing so.

[334] Regarding the above, the Committee considers that, guided by the principles of equity and efficiency set forth in the Convention, the country under review would be well advised to consider amending the above-mentioned provision in such a way as to preclude the Public Defenders' Office from waiving imposition of the penalties provided for in Resolution DGN No. 230/11, for reasons of convenience, because that could impair the equitable imposition of penalties and the effectiveness of the MPD's procurement system rules. The Committee will make a recommendation to the country under review regarding this matter. (see Recommendation 1.2.3.28 in Section 1.2.3 of Chapter II of this report.)

<sup>69</sup> Response of Argentina to the questionnaire, p. 31.

<sup>70</sup> Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/265949/norma.htm>

[335] Fourth, bearing in mind that, during the on-site visit, representatives of the Public Defenders' Office pointed to the need to provide ongoing training for its personnel on practical aspects of the Office's procurement regulations, such as the preparation of bidding terms and conditions, as well as for its internal auditors, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.29 in Section 1.2.3 of Chapter II of this report.)

### 1.2.2.2. New developments with respect to technological aspects

[336] Under this heading, in its response to the questionnaire the country under review lists the following developments:

[337] - With regard to the Federal Executive Branch:<sup>71</sup>

[338] - "One technological development area is the I.T. Management System of the Secretariat for Public Works, which is designed to integrate the information on public works handled by the under-secretariats reporting to the Secretariat for Public Works. The system yields the reliable information needed to enhance effectiveness and transparency in resource administration, while those responsible for the various areas are instructed to upload data and consolidate internal circuits."

[339] - "On this matter, it is to be noted that, as part of the Modernization Plan (Decree 434/2016) and the Technology and Digital Government Plan, the Federal Government and the Government of the Autonomous City of Buenos Aires signed the Framework Agreement on Cooperation and Technical Assistance (Agreement No. 3/2016), the purpose of which is to promote and introduce new information and communication technologies into administrative managements with a view to responding more expeditiously and effectively to social demands. Under this Agreement, the Government of the City of Buenos Aires grants the Federal Government the right to use its I.T. systems for document management and procurement."

[340] In addition, during the on-site visit information was culled regarding new technological development in the Executive, in the form of a new portal for e-procurement called COMPR.AR, which replaced the old portal called ARGENTINACOMPRA. According to a representative of the Federal Procurement Office, this constitutes a major change because, unlike the old portal which was just informative, the new one is a very complete technological tool for handling procurement-related activities.

[341] Supplementing the above, the Federal Procurement Office subsequently provided information on the new COMPR.AR portal in the form of Provision (*Disposición*) ONC 65/2016, which contains the COMPR.AR Procedures Manual, Article 1 of which: "Hereby authorizes the Electronic System for Federal Administration Procurement, hereinafter "COMPR.AR", at <https://www.comprar.gob.ar>, as a medium for completing electronically all the procedures prescribed in the Rules of Procedure governing Federal Administration Procurement, adopted by Decree N° 1030 of September 15, 2016, which shall be gradually implemented in accordance with a schedule to be established by the NATIONAL PROCUREMENT OFFICE."

[342] Bearing in mind the major change represented by the implementation of the new Electronic System for Federal Administration Procurement ("COMPR.AR"), the Committee believes it would be useful for the State under review to consider strengthening its training program for public officials with contracting responsibilities and to provide training in the use of that system for the State's suppliers of goods and services. (See Recommendation 1.2.3.30 in Section 1.2.3 of Chapter II of this report.)

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<sup>71</sup> Response of Argentina to the questionnaire, pp. 38, 64, and 65

[343] With regard to the above, it is worth noting that, during the on-site visit, representatives of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption" and of the civil society organization Poder Ciudadano, said that there was some confusion as to how the new COMPR.AR portal would start operating, while a representative of the Argentine Government Suppliers Union (*Unión Argentina de Proveedores del Estado*) pointed to the need for precautions to be taken with regard to the change of portal, to ensure that suppliers were aware of its implications.

[344] - With regard to the Federal Judiciary:<sup>72</sup>

[345] "To date, progress has been made with the publication of all administrative acts involved in the procurement of supplies and services and the hiring of human resources. On the one hand, Law 26.856 of May 2013 provided that the Federal Supreme Court and the second instance courts making up the Federal Judiciary shall publish all the rulings and resolutions they issue, in full, and on the same day they are issued.

[346] Then, through ruling 15/2013, the Federal Supreme Court established that the Federal or Federal Chambers, as well as the Oral Hearings Courts (*Tribunales Orales*) shall, without exception and exclusively, publish all the judgments, rulings, and administrative resolutions they hand down through the Center for Judicial Information. The Supreme Court declared that transparency and openness in government affairs are fundamental pillars of a democratic society and recognized that the very heart of access to information in the power of the State is every person's right to know how his or her governors and public servants perform their duties.

[347] Publishing the resolutions and rulings issued means posting online all acts of government supervision relating to procurement, services, and human resources."

[348] "For its part the Federal Judicial Council has ordered all its dependencies and jurisdictions to publish the resolutions they issue in day-to-day administration."

[349] "Thus, currently the General Administration is posting on the Judiciary's website all resolutions relating to every stage of the processes for procuring goods and services. Those stages range from authorizations, calls for tenders or bids, awards of contract, purchase orders, and sanctions."

[350] The Committee takes note of the technological developments relating to systems for the procurement of goods and services in the Federal Executive Branch of government and the Judiciary that the country under reviews lists in its response.

### **1.2.2.3. Results of the legal framework and/or other measures**

[351] First, in its reply to the questionnaire regarding outcomes relating to the Federal Executive Branch, the country under review noted the following: "the electronic procurement system will be implemented gradually in accordance with the timetable set by the NATIONAL PROCUREMENT OFFICE through General Communications, with initial deployment scheduled for end-June of this year."<sup>73</sup>

[352] In addition, during the on-site visit the country under review reported that the aforementioned timetable, which it later provided, was being carried out as planned. Later on, it provided information on

<sup>72</sup> Response of Argentina to the questionnaire, pp. 28 and 29.

<sup>73</sup> Response of Argentina to the questionnaire, p. 65.

sanctions imposed on suppliers,<sup>74</sup> noting, inter alia, that "as regards management of the procedures for imposing sanctions on government suppliers, it is worth pointing out that in 2015 EIGHTY-FIVE (85) administrative acts were drawn up to impose sanctions on government providers in addition to proceedings resolving appeals filed against sanctions imposed by the Federal Procurement Office (ONC)." A breakdown of those administrative acts was provided along with a comparative table of equivalent administrative acts adopted in 2015 [Tr. sic ].

[353] Regarding the foregoing information, the Committee considers that it is useful for determining that the electronic procurement system is being implemented in the Executive Branch and that during the period covered by the information sanctions were imposed for violations of procurement rules. That notwithstanding, in light of the lack of additional information that would enable it to make a comprehensive assessment of outcomes in this area -- such as information on the procurement procedures used and, say, the percentage of contracts awarded through public tender --, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.31 in Section 1.2.3 of Chapter II of this report.)

[354] Second, as a result of the on-site visit, the country under review did provide information on outcomes in the Judiciary, with respect to the Judicial Council. These are shown in the following Table:

	YEAR	YEAR	YEAR	YEAR	YEAR	YEAR
	2011	2012	2013	2014	2015	2016
DIRECT PROCUREMENT	106	98	97	69	110	85
DIRECT PROCUREMENT "ON-SITE"	54	53	44	59	34	14
SIMPLIFIED PROCEDURE	24	12	13	24	5	36
COMPETITIVE BIDDING BASED ON PRICE					20	
DECENTRALIZED PURCHASES						320
PRIVATE TENDER	52	72	112	113	132	97
PRIVATE TENDER "ON SITE"	36	62	106	85	88	59
PUBLIC TENDER	18	34	29	22	30	28
PUBLIC TENDER "ON SITE"	10	7	9	4	13	8

[355] Regarding the foregoing information, the Committee considers that it is useful for determining that, within the Judiciary, as far as the Judicial Council is concerned, procurement procedures other than public tenders were much more numerous in the period covered by said information. Given that Article 23 of Annex I of Resolution No. 254/15, which contains the "Rules of Procedure for Procurement of the Judicial Council of the Judiciary, establishes that, as a general rule, public tender or competitive bidding processes may validly be used regardless of the estimated amount of the contract, the Committee will

<sup>74</sup> This information is available at: ([http://www.oas.org/juridico/spanish/mesicic5\\_arg.htm](http://www.oas.org/juridico/spanish/mesicic5_arg.htm))

make a recommendation in that regard to the country under review. (see recommendation 1.2.3.32 in Section 1.2.3 of Chapter II of this report.)

[356] At the same time, bearing in mind that no information is provided regarding the imposition of sanctions for violating procurement rules in the Judiciary, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.33 in Section 1.2.3 of Chapter II of this report.)

[357] Third, as a result of the on-site visit, the country under review provided information regarding outcomes in connection with the Public Prosecutors' Office, including the following data that the Committee would like to highlight:

TYPE OF PROCEDURE	2012			
	Value of procedures completed	%	Number of procedures completed	%
<b>DPs (*) DUE TO URGENCY</b>				
<b>DPs DUE TO SCARCITY</b>				
<b>DPs DUE TO EXCLUSIVENESS</b>	<b>\$ 2,322,383.68</b>	8.36%	3	5.88%
<b>DPs USING SIMPLIFIED PROCEDURE</b>	<b>\$ 86,775.72</b>	0.31%	5	9.80%
<b>DPs DUE TO AMOUNT</b>	<b>\$ 391,606.70</b>	1.41%	9	17.65%
<b>DPs DUE TO SPECIALTY</b>				
<b>DPs FROM SOCIAL SERVICE PROVIDERS</b> <i>(efectores sociales)</i>				
<b>DPs BETWEEN AGENCIES WITHIN THE ADMINISTRATION</b>	<b>\$ 1,168,822.00</b>	4.21%	6	11.76%
<b>PRIVATE TENDERS</b>	<b>\$ 2,343,979.67</b>	8.44%	13	25.49%
<b>PUBLIC TENDERS</b>	<b>\$ 21,459,611.09</b>	77.27%	15	29.41%
<b>TOTALS</b>	<b>\$ 27,773,178.86</b>	<b>1</b>	<b>51</b>	<b>1</b>

(\*) DPs: Direct Procurement

TYPE OF PROCEDURE	2013			
	Value of procedures completed	%	Number of procedures completed	%
<b>DPs DUE TO URGENCY</b>	<b>\$ 579,360.00</b>	0.77%	2	3.92%
<b>DPs DUE TO SCARCITY</b>				
<b>DPs DUE TO EXCLUSIVENESS</b>	<b>\$ 3,274,086.14</b>	4.37%	2	3.92%
<b>DPs USING SIMPLIFIED PROCEDURE</b>	<b>\$ 48,599.50</b>	0.06%	2	3.92%
<b>DPs DUE TO AMOUNT</b>	<b>\$ 465,217.90</b>	0.62%	4	7.84%

<b>DPs DUE TO SPECIALTY</b>	<b>\$ 1,476,526.70</b>	1.97%	1	1.96%
<b>DPs FROM SOCIAL SERVICE PROVIDERS</b> <i>(efectores sociales)</i>				
<b>DPs BETWEEN AGENCIES WITHIN THE ADMINISTRATION</b>	<b>\$ 2,304,531.32</b>	3.07%	6	11.76%
<b>PRIVATE TENDERS</b>	<b>\$ 4,630,142.73</b>	6.17%	19	37.25%
<b>PUBLIC TENDERS</b>	<b>\$ 62,226,087.67</b>	82.96%	15	29.41%
<b>TOTALS</b>	<b>\$ 75,004,551.96</b>	<b>1</b>	<b>51</b>	<b>1</b>

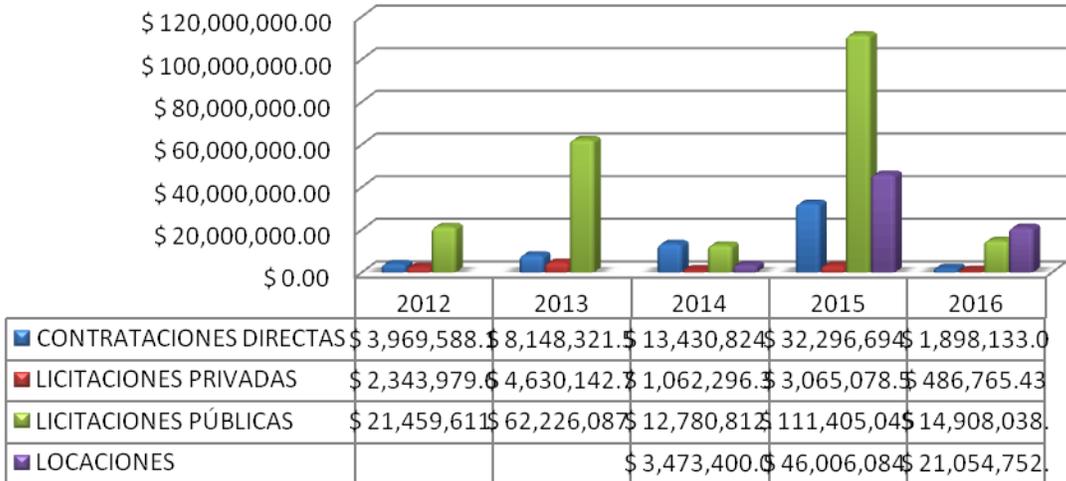
TYPE OF PROCEDURE	2014			
	Value of procedures completed	%	Number of procedures completed	%
<b>DPs DUE TO URGENCY</b>	<b>\$ 815,640.00</b>	2.99%	1	1.64%
<b>DPs DUE TO SCARCITY</b>				
<b>DPs DUE TO EXCLUSIVENESS</b>	<b>\$ 4,590,426.73</b>	16.83%	7	11.48%
<b>DPs USING SIMPLIFIED PROCEDURE</b>	<b>\$ 1,597,534.80</b>	5.86%	33	54.10%
<b>DPs DUE TO AMOUNT</b>	<b>\$ 1,604,097.13</b>	5.88%	7	11.48%
<b>DPs DUE TO SPECIALTY</b>				
<b>DPs FROM SOCIAL SERVICE PROVIDERS</b> <i>(efectores sociales)</i>				
<b>DPs BETWEEN AGENCIES WITHIN THE ADMINISTRATION</b>	<b>\$ 4,823,126.00</b>	17.68%	1	1.64%
<b>PRIVATE TENDERS</b>	<b>\$ 1,062,296.33</b>	3.89%	6	9.84%
<b>PUBLIC TENDERS</b>	<b>\$ 12,780,812.14</b>	46.86%	6	9.84%
<b>TOTALS</b>	<b>\$ 27,273,933.13</b>	<b>1</b>	<b>61</b>	<b>1</b>

TYPE OF PROCEDURE	2015			
	Value of procedures completed	%	Number of procedures completed	%
<b>DPs DUE TO URGENCY</b>	<b>\$ 398,930.00</b>	0.27%	1	1.01%
<b>DPs DUE TO SCARCITY</b>	<b>\$ 492,346.80</b>		1	
<b>DPs DUE TO EXCLUSIVENESS</b>	<b>\$ 7,777,455.60</b>	5.30%	18	18.18%
<b>DPs USING SIMPLIFIED PROCEDURE</b>	<b>\$ 731,143.62</b>	0.50%	13	13.13%
<b>DPs DUE TO AMOUNT</b>	<b>\$ 1,360,780.15</b>	0.93%	15	15.15%
<b>DPs DUE TO SPECIALTY</b>	<b>\$ 679,460.10</b>		4	
<b>DPs FROM SOCIAL</b>	<b>\$ 100,000.00</b>		1	

<b>SERVICE PROVIDERS</b> <i>(efectores sociales)</i>				
<b>DPS BETWEEN AGENCIES WITHIN THE ADMINISTRATION</b>	<b>\$ 20,756,578.51</b>	14.14%	7	7.07%
<b>PRIVATE TENDERS</b>	<b>\$ 3,065,078.59</b>	2.09%	12	12.12%
<b>PUBLIC TENDERS</b>	<b>\$ 111,405,045.05</b>	75.91%	27	27.27%
<b>TOTALS</b>	<b>\$ 146,766,818.42</b>	<b>1</b>	<b>99</b>	<b>1</b>

TYPE OF PROCEDURE	AT 7/6/2016			
	Value of procedures completed	%	Number of procedures completed	%
<b>DPS DUE TO URGENCY</b>				
<b>DPS DUE TO SCARCITY</b>				
<b>DPS DUE TO EXCLUSIVENESS</b>	<b>\$ 39,004.00</b>	0.23%	2	4.88%
<b>DPS USING SIMPLIFIED PROCEDURE</b>	<b>\$ 83,850.00</b>	0.48%	2	4.88%
<b>DPS DUE TO AMOUNT</b>	<b>\$ 315,879.00</b>	1.83%	15	36.59%
<b>DPS DUE TO SPECIALTY</b>	<b>\$ 32,000.04</b>	0.19%	2	4.88%
<b>DPS FROM SOCIAL SERVICE PROVIDERS</b> <i>(efectores sociales)</i>				
<b>DPS BETWEEN AGENCIES WITHIN THE ADMINISTRATION</b>	<b>\$ 1,427,400.00</b>	8.25%	1	2.44%
<b>PRIVATE TENDERS</b>	<b>\$ 486,765.43</b>	2.81%	9	21.95%
<b>PUBLIC TENDERS</b>	<b>\$ 14,908,038.04</b>	86.21%	10	24.39%
<b>TOTALS</b>	<b>\$ 17,292,936.51</b>	<b>1</b>	<b>41</b>	<b>1</b>

## PROCUREMENT MANAGEMENT FROM 2012 TO JULY 6, 2016



Fines and penalties	Amount (value)	Quantity
2012	\$ 368,447.05	12
2013	\$ 352,568.82	10
2014	\$ 368,447.05	12
2015	\$ 352,568.82	10
AT 9/30/2016	\$ 368,447.05	12

[358] Regarding the foregoing information, the Committee considers that it is useful for determining that, in connection with the Public Prosecutors' Office, sanctions were imposed for violations of procurement rules in the period covered by the information and that, even though the volume of funds used for procurement via public bidding processes greatly exceeded the amounts involved in other procurement procedures, such as direct procurements and private tenders, in terms of quantity, these latter procedures far outnumber the public tenders. Bearing in mind that, pursuant to Article 23 of Annex I of Resolution DGN No. 1107/14, containing the "Rules of Procedure Governing Purchases and Procurement of the Public Prosecutors' Office", selection of the other contracting party for executing the contracts contemplated in those Rules is, as a general rule, accomplished through public tender or competitive public bidding, the Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.34 in Section 1.2.3 of Chapter II of this report.)

[359] Fourth, as a result of the on-site visit, the country under review provided information regarding outcomes in connection with the Public Defenders' Office, including the following data that the Committee would like to highlight:

Procedimientos de contratación en el Ministerio Público de la Defensa por año							
Modalidad / Año		2011	2012	2013	2014	2015	Total
Licitación Pública	Cantidad	14	21	11	12	15	73
	%	21,54	17,36	13,25	12,24	14,02	15,40
	Importe	\$ 25.946.157,55	\$ 50.733.743,61	\$ 39.412.480,46	\$ 42.916.425,23	\$ 63.121.516,35	\$ 222.130.323,20
	%	84,13	82,44	78,14	69,93	49,75	67,09
Concurso Público	Cantidad	0	0	0	1	0	1
	%	0,00	0,00	0,00	1,02	0,00	0,21
	Importe	\$ -	\$ -	\$ -	\$ 1.200.000,00	\$ -	\$ 1.200.000,00
	%	0,00	0,00	0,00	1,96	0,00	0,36
Licitación Privada	Cantidad	4	9	15	20	17	65
	%	6,15	7,44	18,07	20,41	15,89	13,71
	Importe	\$ 756.852,00	\$ 3.616.145,82	\$ 7.006.734,40	\$ 10.993.419,14	\$ 8.616.108,00	\$ 30.989.259,36
	%	2,45	5,88	13,89	17,91	6,79	9,36
Contratación Directa (1)	Cantidad	17	40	20	36	58	171
	%	26,15	33,06	24,10	36,73	54,21	36,08
	Importe	\$ 3.395.977,49	\$ 6.144.915,82	\$ 3.173.493,10	\$ 5.472.047,83	\$ 54.765.236,71	\$ 72.951.670,95
	%	11,01	9,98	6,29	8,92	43,17	22,04
Trámite Simplificado	Cantidad	30	51	37	29	17	164
	%	46,15	42,15	44,58	29,59	15,89	34,60
	Importe	\$ 743.179,21	\$ 1.048.249,16	\$ 847.283,14	\$ 790.718,18	\$ 369.359,60	\$ 3.798.789,29
	%	2,41	1,70	1,68	1,29	0,29	1,15
Total	Cantidad	65	121	83	98	107	474
	Importe	\$ 30.842.166,25	\$ 61.543.054,41	\$ 50.439.991,10	\$ 61.372.610,38	\$ 126.872.220,66	\$ 331.070.042,80

## Aclaraciones:

(1) Cabe señalar que conforme los preceptos normativos vigentes, la contratación directa constituye una modalidad de proceso licitatorio, que difiere de la licitación (o concurso) pública y privada, en aspectos tales como plazos de publicación, montos involucrados y autoridades competentes para efectuar convocatorias y adjudicaciones.

## Apertura por tipo de Contratación Directa

Tipos de Contrataciones Directas por año							
Cont. Directas/ Año	2011	2012	2013	2014	2015	Total	
Por monto	Cantidad	12	36	16	31	35	130
	%	70,59	90,00	80,00	86,11	60,34	76,02
	Importe	\$ 1.246.251,68	\$ 4.830.058,31	\$ 1.705.105,55	\$ 3.047.683,05	\$ 3.388.873,74	\$ 14.217.972,33
	%	36,70	78,60	53,73	55,70	6,19	19,49
Por especialidad	Cantidad	0	0	0	1	0	1
	%	0,00	0,00	0,00	2,78	0,00	0,58
	Importe	\$ -	\$ -	\$ -	\$ 50.000,00	\$ -	\$ 50.000,00
	%	0,00	0,00	0,00	0,91	0,00	0,07
Por exclusividad	Cantidad	3	2	2	2	2	11
	%	17,65	5,00	10,00	5,56	3,45	6,43
	Importe	\$ 555.977,81	\$ 532.455,51	\$ 661.435,55	\$ 979.646,78	\$ 39.090,59	\$ 2.768.606,24
	%	16,37	8,66	20,84	17,90	0,07	3,80
Con Org. / Emp. Públicos	Cantidad	2	2	2	2	1	9
	%	11,76	5,00	10,00	5,56	1,72	5,26
	Importe	\$ 1.593.748,00	\$ 782.402,00	\$ 806.952,00	\$ 1.394.718,00	\$ 30.760,00	\$ 4.608.580,00
	%	46,93	12,73	25,43	25,49	0,06	6,32
Cond. Esp. Ley N° 27150	Cantidad	0	0	0	0	20	20
	%	0,00	0,00	0,00	0,00	34,48	11,70
	Importe	\$ -	\$ -	\$ -	\$ -	\$ 51.306.512,38	\$ 51.306.512,38
	%	0,00	0,00	0,00	0,00	93,68	70,33
Total	Cantidad	17	40	20	36	58	171
	Importe	\$ 3.395.977,49	\$ 6.144.915,82	\$ 3.173.493,10	\$ 5.472.047,83	\$ 54.765.236,71	\$ 72.951.670,95

Sancciones por tipo de contratación por año							
Modalidad / Año		2011	2012	2013	2014	2015	Total
Licitación Pública	Cantidad	5	10	9	4	18	46
	Importe (pesos)	\$ 65.750,08	\$ 68.149,73	\$ 34.657,62	\$ 178.913,41	\$ 1.211.610,59	\$ 1.559.081,43
	Importe (dólares)	\$ -	\$ -	\$ -	\$ -	\$ 7.345,28	\$ 7.345,28
Concurso Público	Cantidad	0	0	0	0	0	0
	Importe (pesos)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Licitación Privada	Cantidad	3	2	1	5	8	19
	Importe (pesos)	\$ 16.267,55	\$ 790,82	\$ 2.640,03	\$ 191.863,10	\$ 16.662,10	\$ 228.223,60
	Importe (dólares)	\$ -	\$ -	\$ -	\$ -	\$ 5.679,00	\$ 5.679,00
Contratación Directa	Cantidad	8	9	2	5	7	31
	Importe	\$ 8.832,41	\$ 11.916,33	\$ 10.244,48	\$ 81.491,96	\$ 25.545,84	\$ 138.031,02
Trámite Simplificado	Cantidad	0	4	0	0	2	6
	Importe	\$ -	\$ 1.182,89	\$ -	\$ -	\$ 1.508,00	\$ 2.690,89
Total	Cantidad	16	25	12	14	40	107
	Importe (pesos)	\$ 90.850,04	\$ 82.039,77	\$ 47.542,13	\$ 452.268,47	\$ 1.255.326,53	\$ 1.928.026,94
	Importe (dólares)	\$ -	\$ -	\$ -	\$ -	\$ 13.024,28	\$ 13.024,28

[360] Regarding the foregoing information, the Committee considers that it is useful for determining that, in connection with the Public Defenders' Office, sanctions were imposed for violations of procurement rules in the period covered by the information and that, even though the volume of funds used for procurement via public bidding processes greatly exceeded the amounts involved in other procurement procedures, such as direct procurements and private tenders, in terms of quantity, these latter procedures far outnumber the public tenders. Bearing in mind that, pursuant to Article 26 of Annex I of Resolution DGN No. 230/11, containing the "Rules Governing the Purchase, Disposal, and Procurement of Goods and Services of the Public Defenders' Office", selection of the other contracting party for executing the contracts contemplated in said Rules of Procedure is, as a general rule, accomplished through public tender or competitive public bidding, Committee will make a recommendation in that regard to the country under review. (see recommendation 1.2.3.35 in Section 1.2.3 of Chapter II of this report.)

[361] Fifth, bearing in mind that the country under review did not present information regarding outcomes in relation to procurement systems for the Federal Legislature or the Supreme Court of Justice of the Judiciary and that the Committee believes that in order to identify challenges and, if necessary, recommend corrective measures, it would be useful if the country under review could consider compiling detailed annual statistics on the outcomes of those systems, with respect to such aspects as sanctions imposed for violations of procurement rules and the types of procurement procedures used, the Committee will make a recommendation in that regard (see Recommendation 1.1.3.36 of section 1.1.3 [Tr. sic] of Chapter II of this Report).

### 1.2.3. Recommendations

[362] In light of the comments made in Sections 1.2.1 and 1.2.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

1.2.3.1. Adopt, by the appropriate authority of the Federal Executive Branch, the measures to ensure that the use of direct contracting is a result of the strict application of the exceptions provided by law. (see paragraph 204 in Section 1.2.1 of Chapter II of this report).

1.2.3.2. Consider adopting, through the appropriate authorities of the federal Judicial Branch, the regulation of Delegated Decree No. 1023/01, as directed by Article 39 of this Decree, so as to apply its regime in its jurisdiction, observing the principles established by the Decree, as well as those of openness, equity, and efficiency provided for in the Convention. (see paragraph 212 in Section 1.2.1 of Chapter II of this report).

- 1.2.3.3. Implement, through the appropriate authorities, the agreement entered into in 2005 by the federal Judiciary (Judicial Council) and the Office of the Auditor General of the Nation, to perform audits of the Judicial Branch in areas that entail procurement operations. (see paragraph 217 in Section 1.2.1 of Chapter II of this report).
- 1.2.3.4. Adopt, by the appropriate authority of the Federal Executive Branch, the measures to ensure that the use of direct contracting is a result of the strict application of the exceptions provided by law. (see paragraph 222 in Section 1.2.1 of Chapter II of this report).
- 1.2.3.5. Consider the implementation of control systems particular to each public works contract which, taking into account its size, provide for intervention (interventoria) or direct supervision of the execution of the contract by the contracting entity or whoever it designates; make it possible to put civic oversight or citizen watchdog activities in place; impose the duty to render accounts periodically as the contract unfolds; and make it possible to determine whether the anticipated cost-benefit ratio was actually attained and whether the quality of the works was as agreed (see paragraph 251 in Section 1.2.1 of Chapter II of this report).
- 1.2.3.6. Adopt pertinent measures, in the Federal Executive Branch, to ensure that the Federal Register of Public Works Contractors contributes to increased competence and speed in the handling of public works tenders, being guided to that end by the principles of openness, equity, and efficiency upheld in the Convention (see paragraph 260 in Section 1.2.2 of Chapter II of this report).
- 1.2.3.7. Consider adopting rules governing price adjustments in public works contracts in connection with the Judiciary, based on the principles of openness, equity, and efficiency envisaged in the Convention. (See paragraph 260 in Section 1.2.2 of Chapter II of this report).
- 1.2.3.8. Ensure that all persons have access to the information held in the files used in process selection procedures, without the provisions of Article 4 of the Annex to Decree 1030/26 posing an obstacle thereto, until the entry into force in September 2017 of Law 27.275 on Access to Public Information, and taking guidance in this from the standards of the Open Contracting Partnership and the principle of disclosure enshrined in the Convention. (see paragraph 295 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.9. Based on the principles of openness, equity, and efficiency upheld in the Convention, consider adopting criteria for applying the third paragraph of Article 10 of the Annex to Decree 1030/2016, which, when referring to the general rule, envisaged in Article 24 of Decree 1023/01, that the other party to a contract is to be selected by public tender or public competitive bidding also adds that, notwithstanding that general rule, in all cases the procedure to be used is that which contributes most to achievement of the purpose established in Article 1 of said Decree. (see paragraph 298 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.10. Conduct an analysis of Articles 73 and 78.d of the Annex to Decree 1030/2016, to determine if the imposition of a bond inappropriately limits challenges of bid appraisals, and, if it is found to do so, to take appropriate steps to eliminate that limitation. (see paragraph 300 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.11. Consider the need to amend, based on the principle of efficiency upheld in the Convention, Articles 103 and 109 of the Annex to Decree 1030/2016, in such a way as to adjust the two-year prescription period envisaged therein, whenever its application demonstrates the advisability of doing so, taking into account the average time it takes the administration to detect and investigate that facts giving rise to the imposition of penalties and effective application of sanctions with respect to procurement. (see paragraph 303 in Section 1.2.2 of Chapter II of this report.)

- 1.2.3.12. Adopt pertinent measures to ensure that the Chamber of Deputies of the Federal Legislature draws up the annual procurement plan pursuant to Article 6 of Annex I to Resolution 1145/12, containing the "Rules of Procedure for the Procurement of Goods, Works, and Services of the Honorable Federal Chamber of Deputies." (see paragraph 306 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.13. Based on the principle of openness upheld in the Convention, consider amending Articles 117 and 118 of the Annex to Resolution 1145/12, containing the "Rules of Procedure for the Procurement of Goods, Works, and Services of the Honorable Federal Chamber of Deputies", in such a way as to eliminate the requirement to accredit legitimate interest in order to be able to examine procurement-related proceedings. (see paragraph 308 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.14. Based on the principles of openness, equity, and efficiency upheld in the Convention, consider adopting criteria for applying Article 121 of Annex I to Resolution 1145/12, which provides that, in cases in which it proves necessary to establish clauses of a specific or general nature that differ from those established in the Rules of Procedure contained in said Resolution, the modification(s) must be authorized by the President of the Chamber of Deputies. (see paragraph 311 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.15. Adopt pertinent measures to be able to implement the electronic file module for procurement activities of the Federal Chamber of Deputies. (See paragraph 312 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.16. Based on the principle of openness upheld in the Convention, consider amending Articles 6 and 7 of Annex I to Resolution 318/16, containing the "Rules of Procedure for the Procurement of Goods, Works, and Services of the Honorable Federal Senate", in such a way as to eliminate the requirement to accredit legitimate interest in order to be able to examine procurement-related proceedings. (see paragraph 314 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.17. Conduct an analysis of Articles 77 and 85.d of Annex I to Resolution 318/12, containing the "Rules of Procedure for the Procurement of Goods, Works, and Services of the Honorable Federal Senate," to determine if the imposition of a bond inappropriately limits challenges of bid appraisals, and if it is found to do so to take appropriate steps to eliminate that limitation. (see paragraph 316 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.18. Adopt pertinent measures in order to be able to implement, in the Senate, the comprehensive I.T. system needed to apply Article 182 of Resolution 318/12, which refers to that body' electronic procurement activities. (see paragraph 317 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.19. Consider amending article 14 of Annex I to Decree 254/15, containing the "Rules of Procedure Governing Procurement by the Judicial Council of the Federal Judiciary", in such a way as to do away with the requirement to accredit a particular interest in order to be able to examine a file used to conduct a selection procedure, taking as a basis for such an amendment the principle of openness upheld in the Convention. (see paragraph 320 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.20. Based on the principles of openness, equity, and efficiency upheld in the Convention, consider adopting criteria for applying the third paragraph of Article 23 of Annex I to Decree 254/15, containing the "Rules of Procedure for Procurement by the Judicial Council of the Federal Judiciary", which states -- when referring to the general rule on selection by public tender or public competitive bidding -- that notwithstanding the general rule, in all cases the procedure to be followed shall be that which best contributes to achievement of the objective established in Article 1 of the aforementioned

Rules of Procedure and that which is most cost effective and efficient in the use of public funds and thus best suits the public interest. (see paragraph 322 in Section 1.2.2 of Chapter II of this report.)

- 1.2.3.21. Conduct an analysis of Articles 115, 116, and 126.4 of Annex I to Resolution No. 254/15, containing the “Rules of Procedure for Procurement of the Judicial Council of the Federal Judiciary,” to determine if the imposition of a bond inappropriately limits challenges of bid appraisals, and if it is found to do so to take appropriate steps to eliminate that limitation. (see paragraph 324 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.22. Adopt rules governing price adjustments in public works contracts in connection with the Judiciary, based on the principles of openness, equity, and efficiency envisaged in the Convention. (see paragraph 259 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.23. Conduct an analysis of Article 70.b of Annex I to Resolution PGN No. 1107/14, containing the “Rules of Procedure for Purchases and Procurement of the Federal Public Prosecutors' Office,” to determine if the imposition of a bond inappropriately limits challenges of bid appraisals, and if it is found to do so to take appropriate steps to eliminate that limitation. (see paragraph 327 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.24. Based on the principles of openness, equity, and efficiency upheld in the Convention, consider updating the Rules of Procedure for Administrative Leasing of Buildings by the Federal Public Prosecutors' Office contained in Resolution ADM No. 173/06, with a view to expediting the procedures envisaged therein. (see paragraph 328 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.25. Strengthen the training given to officials of the Federal Public Prosecutors' Office on practical issues related to the implementation of the new regulations governing that agency's contracting operations (see paragraph 330 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.26. Consider adjusting Article 17 of Annex I to Resolution 230/11, containing the "Rules for the Purchase, Disposal, and Procurement of Goods and Services of the Public Defenders' Office", in such a way as to bring it into line with the principles of transparency and maximum dissemination established in the Law on Access to Public Information, Law N° 27.275, published in the Official Gazette on 09-29-2016, which is expected to come into effect in September 2017. (see paragraph 331 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.27. Based on the principles of openness, equity, and efficiency upheld in the Convention, adopt pertinent measures to systematically implement the Register of Suppliers of the National Public Defenders' Office (MPD) contemplated in Article 52 of Annex I to Resolution DGN No. 230/11 and to continue the contacts and negotiations being undertaken with the National Procurement Office with a view to being able to use the data uploaded by said Office, in accordance with Article 51 of the aforementioned Resolution. (see paragraph 332 in Section 1.2.1 of Chapter II of this report.)
- 1.2.3.28. Based on the principles of equity and efficiency upheld in the Convention, consider amending Article 134 of Annex I to Resolution DGN No. 230/11, containing the "Rules for the Purchase, Disposal, and Procurement of Goods and Services of the Public Defenders' Office", in such a way as to preclude the Public Defenders' Office from waiving imposition of the penalties established in Resolution DGN No. 230/11, citing reasons of expediency. (see paragraph 334 in Section 1.2.2 of Chapter II of this report.)
- 1.2.3.29. Develop a training program for staff of the Public Defenders' Office on practical aspects of that Office's procurement regulations, such as the drawing up of sets of terms and conditions, as well as

training for the Office's internal auditors. (see paragraph 335 in Section 1.2.2 of Chapter II of this report.)

- 1.2.3.30. Strengthen the training program that the National Procurement Office has been giving to public officials from the federal executive branch with contracting responsibilities, and provide training for the State's suppliers of goods and services in the use of the Electronic System for Federal Administration Procurement ("COMPR.AR"). (see paragraph 342 in Section 1.2.2.2 of Chapter II of this report.)
  - 1.2.3.31. Compile detailed annual statistics on the outcomes of the Federal Executive Branch's procurement systems as a basis for a comprehensive assessment of those systems, in respect of such aspects as the procurement systems used, with an indication, for instance, of the percentage of contracts awarded through public tender, so that challenges can be identified and, where necessary, corrective measures recommended. (see paragraph 353 in section 1.2.2.3 of Chapter II of this report).
  - 1.2.3.32. Have the appropriate authorities within the Judicial Council of the Federal Judiciary adopt pertinent measures to ensure that, within their jurisdiction, the use of public tender or public competitive bidding procurement procedures is the norm, as envisaged in Article 23 of Annex I to Resolution No. 254/15, containing the "Rules of Procedure for Procurement by the Judicial Council of the Federal Judiciary." (see paragraph 355 in section 1.2.2.3 of Chapter II of this report).
  - 1.2.3.33. Compile detailed annual statistics on the sanctions imposed by the Judicial Council of the Federal Judiciary due to violations of its procurement rules, as a basis for a comprehensive assessment of outcomes in this area, so that challenges can be identified and, where necessary, corrective measures recommended. (see paragraph 356 in section 1.2.2.3 of Chapter II of this report).
  - 1.2.3.34. Have the appropriate authority within the Federal Public Prosecutors' Office adopt pertinent measures to ensure that, within its jurisdiction, the use of public tender or public competitive bidding procurement procedures is the norm, as envisaged in Article 23 of Annex I to Resolution PGN No. 1107/14, containing the "Rules of Procedure for Purchases and Procurement by the Federal Public Prosecutors' Office." (see paragraph 358 in section 1.2.2.3 of Chapter II of this report).
  - 1.2.3.35. Have the appropriate authority within the Federal Public Defenders' Office adopt pertinent measures to ensure that, within its jurisdiction, the use of public tender or public competitive bidding procurement procedures is the norm, as envisaged in Article 26 of Annex I to Resolution DGN No. 230/11, containing the "Rules of Procedure for the Purchase, Disposal, and Procurement of Goods and Services by the Federal Public Defenders' Office." (see paragraph 360 in section 1.2.2.3 of Chapter II of this report).
  - 1.2.3.36. Compile detailed annual statistics on the outcomes of the Federal Legislative Branch's procurement systems and those of the Supreme Court of the Federal Judiciary, in respect of such aspects as sanctions imposed for violation of procurement rules and the procurement procedures used, with an indication, for instance, of the percentage of contracts awarded through public tender, as a basis for a comprehensive assessment of those systems and so that challenges can be identified and, where necessary, corrective measures recommended. (see paragraph 361 in section 1.2.2.3 of Chapter II of this report).
- 2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)**

## 2.1. Follow-Up to the Implementation of the Recommendations Formulated in the Second Round

### Recommendation:

*Strengthen the systems for protecting public servants and private citizens who in good faith report acts of corruption*

Sole measure suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Adopt, through the respective authority, a comprehensive regulation on protection of public servants and private citizens who in good faith report acts of corruption, including protecting their identity, in accordance with the provisions of the Constitution of Argentina and the fundamental principles of its domestic legal order, which could include, among others, the following aspects:*

- *Protection for those who report acts of corruption that may or may not be defined as criminal offenses, but which may be subject to judicial or administrative investigation.*
- *Protective measures aimed not only at protecting the physical integrity of the informant and his or her family, but also at protecting their employment situation, especially in the case of public servants, especially in cases where the acts of corruption may involve his or her hierarchical superior or colleagues.*
- *Mechanisms to report the threats or reprisals to which the informant may be subjected, indicating the authorities that are competent to process the requests for protection and the offices or entities responsible for providing it.*
- *Mechanisms that facilitate international cooperation in the foregoing areas, when appropriate.*
- *Simplify the whistleblower protection application process*

[363] In its response to the questionnaire,<sup>75</sup> the country under review presented the following information on the above recommendation:

[364] - "The Argentine Republic is developing several new laws to implement the recommendation made by MESICIC. Following are the bills before Parliament/"

[365] With regard to the above, it is to be noted that, in its response to the questionnaire,<sup>76</sup> the country under review provided electronic links to the six bills on the subject and, during the on-site visit, reported that four or five of them were being debated in the legislature.

[366] The Committee takes note of the steps taken by the country under review to move ahead with implementation of the recommendation contained in section 2.1 of Chapter II of this report and reiterates the need for it to continue to heed the recommendation, taking into consideration for that purpose the criteria established in the Model law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistle-blowers and Witnesses, adopted by the Committee.<sup>77</sup> (See Recommendation 2.3.1 of Section 2.3 of Chapter II of this report.)

<sup>75</sup> Response of Argentina to the questionnaire, p. 45

<sup>76</sup> Response of Argentina to the questionnaire, pp. 45 and 46.

<sup>77</sup> Available at: [http://www.oas.org/juridico/PDFs/ley\\_modelo\\_proteccion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_proteccion.pdf)

[367] It is worth pointing out that, with regard to the foregoing recommendation, the document of the civil society Organization Poder Ciudadano<sup>78</sup> notes, among other things, that: To this day no comprehensive regulations have been implemented (...). The Anti-Corruption Office has drafted a bill for corruption cases but, as of the date this report was being written, Congress was reportedly not working on the passing of a law of that nature."

[368] Also with respect to the foregoing recommendation, the document of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption," presented by the Inter-American Bar Association (IABA),<sup>79</sup> states, inter alia, that: "Over the years, bills have been submitted seeking to implement the Committee's recommendations. Perhaps the most important of these was the one drafted by the Anti-Corruption Office (OA) after promoting discussion and debate of the subject in connection with the "Participatory Preparation of Regulations" procedure. That procedure, which was devised and put into practice by the OA several years ago, consists of a series of civil society actors, be they specialists or nongovernmental organizations (NGOs) participating in discussions of initiatives relating to their functions and objectives. One of the initiatives discussed was a draft document on protection of whistleblowers, informants, and witnesses of acts of corruption."

[369] In addition, during the on-site visit, representatives of the Federal Program to Protect Witnesses and Defendants mentioned, in connection with the protection measures within their sphere of competence, established in Article 5 of Law 25.764 (which established the aforementioned Program in 2003), that the six-month deadline set in subparagraph d) of that Article for providing witnesses and defendants with the financial assistance measures contemplated therein was too short and that it would be best to make it longer or allow for it to be extended if necessary. In light of the foregoing, the Committee will make a recommendation (see recommendation 2.3.2 in Section 1.1.3 of Chapter II of this report).

## **2.2. New developments regarding the provision in the Convention on systems for protecting public servants and private citizens who, in good faith, report acts of corruption**

### **2.2.1. New developments in the regulatory framework**

[370] The country under review did not provide information regarding these kinds of developments.

### **2.2.2. New developments with respect to technological aspects**

[371] The country under review did not provide information regarding these kinds of developments.

### **2.2.3. Results of the legal framework and/or other measures**

[372] Thanks to the on-site visit, the country under review revealed that the Federal Program to Protect Witnesses and Defendants, established by Law 25.764, had provided protection measures within its sphere of competence in 30 corruption cases since its inception (in 2003).

[373] The Committee takes note of the foregoing information, which serves to determine that the Federal Program to Protect Witnesses and Defendants, established by Law 25.764 and already analyzed by the

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<sup>78</sup> Document entitled "Civil Society Report," p. 90.

<sup>79</sup> Document of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption," Seventh Report, p. 45.

Committee in the Second Round Report,<sup>80</sup> has provided protection measures within its sphere of competence in corruption cases.<sup>81</sup>

### 2.3. Recommendations

[374] In light of the comments made in Section 2.1 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

2.3.1 Through the appropriate authority and bearing in mind the criteria established in the "Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistle-blowers and Witnesses" adopted by the Committee, adopt comprehensive regulations on the protection of public servants and private citizens who in good faith denounce acts of corruption, including protection of their identity, in accordance with the Constitution of the country under review and the fundamental principles upheld in its legal system. That could encompass, inter alia, the following aspects: (see paragraph 366 in section 2.1 of Chapter II of this report).

- i. Protection for those who report acts of corruption that may or may not be defined as criminal offenses, but which may be subject to judicial or administrative investigation.
- ii. Protective measures aimed not only at protecting the physical integrity of the informant and his or her family, but also at protecting their employment situation, especially in the case of public servants, especially in cases where the acts of corruption may involve his or her hierarchical superior or colleagues.
- iii. Mechanisms to report the threats or reprisals to which the informant may be subjected, indicating the authorities that are competent to process the requests for protection and the offices or entities responsible for providing it.
- iv. Mechanisms that facilitate international cooperation in the foregoing areas, when appropriate.
- v. Simplify the whistleblower protection application process

2.3.2 Consider lengthening the six-month deadline, established in Article 5.d of Law 25.764, for providing witnesses and defendants with the financial assistance measures envisaged therein, or provide for its being extended when necessary. (see paragraph 369 in Section 2.1 of Chapter II of this report.)

## 3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

### 3.1. Follow-up on implementation of the recommendations formulated in the Second Round

Recommendation suggested by the Committee, which requires further attention under the terms contemplated in the report from the Third Round:

*Modify and/or complement the following articles of the Criminal Code:*

<sup>80</sup> Report from the Second Round, pp. 28 to 32, available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_ecu\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_ecu_resp.pdf)

<sup>81</sup> On February 9, 2017, in Argentina's comments document on the preliminary draft of this report, the National Directorate of Argentina's Federal Program to Protect Witnesses and Defendants reported that since the passing of the so-called "Repentant Persons Law", Law 27.304 (*Ley del Arrepentido*), separate rules apply in the case of persons accused of acts of corruption who may be included in the Program.

- a) Article 256 of the Criminal Code, which is related to paragraph (a) Article VI(1) of the Convention, could be complemented by the inclusion of the elements “solicitation” and “acceptance”, as well as “favors” and “advantages”, provided for by that paragraph.
- b) Article 257 of the Criminal Code, amended by Article 33 of Law 25,188, which is related to paragraph (a) of Article VI(1) of the Convention, could be complemented by the inclusion of the elements “solicitation” and “acceptance”, as well as “favors” and “advantages” provided for by that paragraph.
- c) Article 258 of the Criminal Code, modified by Article 34 of Law 25,188, which is related to paragraph (b) of Article VI(1) of the Convention, could be complemented by the inclusion of the elements “favors”, “promises”, or “advantages” provided for by that paragraph.

[375] In its reply to the questionnaire,<sup>82</sup> the country under review provided information regarding the foregoing recommendation. The Committee wishes to highlight the following:

[376] "In order to achieve greater analytical clarity, we need to group together, on the one hand, the recommendations referring to the action characterized as criminal [*acción típica*] and, on the other, those relating to the material object of the crime [*objetos del delito*]."

[377] **"A.- Action characterized as criminal" [*acción típica*]**

[378] **"a.i.- Solicit"**

[379] "First we need a joint approach to the recommendations made in respect of Articles 256 and 257 of the Criminal Code, because they are identical and, moreover, both characterizations are intertwined given that Article 256 is the basic characterization of the crime of solicitation or acceptance of bribes (*cohecho pasivo*) and Article 257 is a defined offense derived from it that increases the punishment due to the special status of the criminal participant (as perpetrator, accomplice, or accessory; *sujeto activo*) in the offense (a magistrate in the Judiciary or Public Prosecutors' Office)."

[380] "Regarding the inclusion of this verb in the characterization of these crimes, it is to be stressed that forms of conduct associated with the term "require" are encompassed by various characterizations of criminal acts in our legal system, not just in the aforementioned articles; which is why the case law of our country's criminal courts contains records of different precedents with respect to said conduct."

[381] "The biggest problem in relation to this subject-matter is that posed by the conduct of a public servant who demands or requests a gift or money in order to do, delay, or not perform some acts relating to his functions."

[382] "Accordingly, let us recall that Article 256 of the Criminal Code provides for the characterization of *cohecho pasivo* (the solicitation or acceptance of bribes), which requires action by another participant (necessary partnership in crime) because the criminal participant or *sujeto activo* (the public servant) cannot receive or accept (himself or through a strawman) if there is no one giving, offering, or promising something."<sup>83</sup>

<sup>82</sup> Response of Argentina to the questionnaire, pp. 45 to 52.

<sup>83</sup> D'Alessio, Andrés José and Divito, Mauro, "Código Penal de la Nación, comentado y anotado", Volume II, La ley, Buenos Aires, 2011, 2nd. edition, p. 1274.

[383] "For that reason, when the public servant demands something, most case law and legal doctrine concludes that such conduct does not come under bribery, but rather under illegal exaction or extortion (*concusión*)."

[384] "Here, the following Articles of the Criminal Code apply:"

[385] "- Article 266 of the Criminal Code, amended by Article 33 of Law 25.188, which reads as follows:" "Any public servant, who, on his own account or through a third party, misuses his office to request, demand, or have himself paid or unlawfully delivered a contribution, fee, or gift, or who charges more than the correct fees (extortion [*exacciones*]) shall be punished with between one and four years' imprisonment and limited disqualification from office for between one and five years."

[386] "- Article 267 of the Criminal Code establishes:" "If intimidation is used or higher orders, instructions, a judicial mandate, or other legitimate authorization is invoked. the imprisonment term may be increased to four years and the disqualification to six (aggravated extortion)."

[387] "- Article 268 of the Criminal Code establishes:" "Any public servant who uses the products of extortion referred to in the foregoing paragraphs to his own advantage or that of a third party (extortion - *concusión*) shall be punished with imprisonment for between two and six years and complete and permanent disqualification" [from public office].

[388] "However, it needs pointing out that the distinctions between "*cohecho*," "*exacciones*," and "*concusión*" gave rise to conflicting positions."

[389] "Thus, some authors and some case law see a difference between what happens in bribery, where the public servant and the individual reach an understanding, and "*exacciones*," and "*concusión*" in which the public servant makes an unlawful demand. Thus, in these last two (extortion) cases, money or a gift is handed over out of fear on the part of the crime victim inspired by the act of authority."<sup>84</sup>

[390] "According to this doctrine, the distinction is not based on who proposes the immoral agreement but rather on the freedom with which the private individual acts; thus bribery exists even when the agreement is proposed by the public servant if the will of the private individual is not impaired by fear of the authority."<sup>85</sup>

[391] "In this approach, the problem is what happens when the public servant requests [Tr. the bribe] without generating fear in the private individual and the latter does not accept the proposal. Here, while opinions differ, some positions in both legal doctrine and case law argue that such conduct shall not go

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<sup>84</sup> "The crime of passive bribery ( i.e., that committed by the official receiving the bribe) presupposes an explicit or implicit agreement proposed by a third part and accepted by the public servant, whereas in extortion there has to be a demand or move made by the official to be given a gift," Federal Chamber of Federal Criminal or Correctional Appeals, Division II, May 17, 1989, "Chumbita Ramón", LL 1989-E-320; along the same lines, see Federal Court of Criminal Cassation, Division III, 11/08/99 "M.,P. y otro" LL on-line. "What matters in proceedings, as Soler also recalls, is that in extortion both the demand or explicit or implicit requirement derived from the de facto situation count inasmuch as the will of the victim of the crime (*sujeto pasivo*) is constrained, regardless of whether the requirement was expressed as an imperious demand or a simple request..." Division VI, March 21, 2013, "Rivarola, Marcos Ismael s/recurso de casación", published in the Argentine Legal Information System (SAIJ- See Annex 9 to this reply to the questionnaire),"

<sup>85</sup> "D'Alessio, Andrés José, and Divito, Mauro, op. cit., p. 1319; De Luca, Javier, "Cohecho y Concusión", Law 1999-E, p. 331; See Annex 10 to this reply to the questionnaire). Ghezzi, Antonela and Degoumois, Martin "Los actos de corrupción en el Anteproyecto de Código Penal de la Nación", published in "Anteproyecto de Código Penal de la Nación", Revista de Derecho Penal (INFOJUS), Year III, N°9, Buenos Aires, April 2015."

unpunished, as it should be understood as an attempt to commit *cohecho pasivo* (the solicitation or acceptance of bribes).<sup>86</sup>

[392] "Nevertheless, it should be pointed out that some argue that such conduct would not count as a defined crime (*sería atípica*) or would simply amount to non-punishable preparatory acts.<sup>87</sup>"

[393] "At the same time, there is another position in legal doctrine and case law that maintains that in extortion (*exacciones ilegales*) it is always the public servant who requires or requests.<sup>88</sup> From this point of view, there are no major problems: in all cases in which the public servant takes the initiative and requests or demands a gift or money, Articles 266, 267, and 268 of the Criminal Code apply."

[394] "In conclusion, conducts covered by the verb "require" are to be found in various different criminal characterizations (not just in the articles commented on by the Committee of Experts); and while there are cases that pose problems, such as when a public servant unilaterally requests gifts or money and that request is not accepted by the victim of the crime (*sujeto pasivo*), a large body of opinion in federal doctrine and jurisprudence considers that such conduct is punishable."

[395] **"a.ii.- Accept"**

[396] "With respect to the recommendation to include the verb "accept", our understanding is that Articles 256 and 257 of the Criminal Code are in line with the spirit and meaning of Article VI.a of the Inter-American Convention against Corruption (IACC). Here it suffices to recall the description of the gist of Article 256 of the Criminal Code by D'Alessio as a "necessary partnership in crime," whereby D'Alessio stressed that the actions characterized are receiving, in the sense of taking material possession of the object delivered, and accepting, in the sense of agreeing to receive what is promised at some future point in time. He also stressed that the participant in the crime (*sujeto activo*) cannot receive or accept unless there is someone giving, offering, or promising something.<sup>89</sup>"

[397] "In short, from this brief summary of the case law and doctrinal positions taken with regard to the aforementioned criminal characterizations, it may be concluded that most of the conduct covered by the verbs whose inclusion was recommended by the Committee of Experts is encompassed by them."

[398] "Nevertheless, we should point out that after the recommendations discussed were made, the Argentine State has embarked on several initiatives aimed at resolving the interpretation issues associated with the aforementioned criminal characterizations. They, too, cite the above-mentioned rulings and authors."

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<sup>86</sup> The following argue in favor of attempted solicitation or acceptance of bribes: De Luca, Javier, op. cit., Point IV; Juzgado Nacional de Instrucción [Federal Court of Preliminary Criminal Proceedings] N° 20, case N° 27.616/96, "Wowe, Carlos", ruling of August 15, 1996; Division I of the Federal Chamber of Federal Criminal or Correctional Appeals, "Wowe, Carlos, ruling of September 15, 1996 (ED, 175-431)."

<sup>87</sup> "Rua, Gonzalo, comments on Articles 256/59 of the Criminal Code, in: "Código Penal y normas complementarias. Análisis doctrinal y jurisprudencial", Vol. 10, edited by Drs. Baigún, David and Zaffaroni Eugenio Raúl, Buenos Aires, 1st.edition, February 2011, pp. 553/546; Federal Court of Criminal Cassation, Division VI, August 29, 200X [Tr. number missing], "Varela Cid, Eduardo y otros" – See Annex 12 to this reply to the questionnaire."

<sup>88</sup> One of those taking this stance is, for example, Donna, Edgardo Alberto, "Delitos contra la administración Pública", Rubinzal-Culzoni, Publishers; Santa Fe, May 2002, p. 226, who, in note 56, cite a finding by the Criminal and Correctional Court of San Martín, Buenos Aires Province, Division I, of November 7, 1992, "Barrios J.A", published in *Jurisprudencia de Buenos Aires*, Volume 73, folio 9791."

<sup>89</sup> "D'Alessio, Andrés José and Divito, Mauro, op.cit., p.1274."

[399] "Thus, Decree 678/2012 of May 7, 2012<sup>90</sup> established a new "COMMISSION TO PREPARE THE BILL TO AMEND, UPDATE, AND CONSOLIDATE THE NATIONAL CRIMINAL CODE," with a view to embarking on a comprehensive reform of that body of law."

[400] "Some of our country's most distinguished criminal law experts were chosen to take part in the Commission. Moreover, in order to ensure as broad an approach as possible to this task, the jurists making up the Commission represented different segments of the political spectrum, since they included Supreme Court magistrates, members of the House of Deputies and the Senate, and well-known politicians."

[401] "To be members of that special Commission, representatives of all segments of Argentine politics were appointed ad honorem (Dr. Eugenio Raúl Zaffaroni, as President of the Commission, along with Drs. Ricardo Rodolfo Gil Lavedra, Federico Pinedo, María Elena Barbagelata, and León Carlos Arslanián)."

[402] "The 'Preliminary Draft Comprehensive Reform of the Criminal Code' drafted by the Commission established by Decree 678/2012 and presented in 2014 and containing -- in Book II, Title XIII, "Crimes against Public Administration," Chapter V, "Bribery and Influence-Peddling" -- Article 261 (bribery and extortion), which establishes:"

[403] "1. Any public servant who, personally or through a third person, **demands, requests, accepts, or receives**. for himself or a third party, money or any other gift, financial advantage, or the promise thereof, in return for doing, delaying, or not doing something relating to his functions shall be punished with imprisonment for between TWO (2) and EIGHT (8) years, a fine of between SIXTY (60) and TWO HUNDRED FORTY (240) days, and disqualification for up to TWENTY (20) years."

[404] "2. A maximum prison sentence of TWELVE (12) years shall be imposed on a judge in the Judiciary or Public Prosecutors' Office who, personally or through a third party, **demands, requests, accepts, or receives**. for himself or a third party, money. or any other gift, financial advantage, or the promise thereof, in return for issuing, handing down, delaying, or refraining from issuing a resolution, judgment, or ruling, on matters assigned to him within his sphere of competence."

[405] "As one can see, when committed by judges in the Judiciary or the Public Prosecutors' Office bribery and extortion are jointly included in both the basic characterization of the criminal act (first paragraph) and in the aggravated form of the offense."

[406] "Clearly, this wording resolves most of the problems posed, satisfies the queries raised by Dr. D'Alessio, and aligns our legislation in a more reasonable manner with the Inter-American Convention against Corruption and the United Nations Convention against Corruption.<sup>91</sup>"

[407] "Thus, with the proposal to include the verb "require"/"demand", the characterization of the offense would undoubtedly include a public servant who demands a gift or money to do, delay, or not do something relating to his functions; and with the proposal to include the verb "request" the characterization would encompass all conduct of the public servant exhibiting a unilateral (explicit or implicit) active role in this regard."

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<sup>90</sup>“Decree 678/12, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/196961/norma.htm>”

<sup>91</sup> “Ghezzi, Antonela and Degoumois, Martin, op. cit., p. 56.”

[408] "Furthermore, it is worth recalling that, as part of the discussion and debate prior to the final drafting of this bill, several universities and nongovernmental, as well as government organizations were consulted, including the Anti-Corruption Office.

[409] "In 2003, seizing that opportunity, the Anti-Corruption Office prepared a **report ("Draft Comprehensive Reform of the Federal Criminal Code. Considerations put forward by the Anti-Corruption office")**,<sup>92</sup> which proposed a series of amendments to the Criminal Code, including adjustments to the characterization of and that of aggravated bribery."

[410] "With respect to the first characterization, the following wording was proposed: "any public servant who, directly or indirectly, **receives, accepts, or requests**, for his own benefit or that of a third party, sums of money or any financially valuable object or other retribution, such as gifts, favors, or advantages, in return for that public servant carrying out, delaying, or omitting to carry out an act relating to the performance of his public functions, regardless of whether such actions or omissions are effected or not."

[411] "With respect to the characterization of the aggravated offense, the proposal envisages punishing a judge in the Judiciary or Public Prosecutors' Office, as well as anyone who intervenes as an arbiter or friendly mediator in a dispute or differendum between Parties, who, personally or through a third party, directly or indirectly, receives, accepts, or requests sums of money. or any object of financial value or other benefits, such as gifts, favors, or advantages, in return for issuing, handing down, delaying, or refraining from issuing a resolution, judgment, ruling, arbitral award, or referendum on matters assigned to him within his sphere of competence."

[412] "As is evident, this proposed wording of the characterizations of the offenses in question was also designed to settle the above-mentioned problems of interpretation."<sup>93</sup>

[413] **"b.- Material object of the crime" (Objeto del delito)**

[414] **"i.- Favors and advantages"**

[415] "Under this heading, we will group together the recommendations to include "favors" and "advantages" as the material object of the crimes addressed in Articles 256 (the solicitation or acceptance of bribes - *cohecho pasivo*), 257 (aggravated bribery), and 258 (offering a bribe - *cohecho activo*) of the Criminal Code, given that in our legal system they are related to the concept of "gift."<sup>94</sup>

[416] "While doctrinal experts are divided on the question of how the term "gift" is to be understood, we find that a good number of them support a broad interpretation of that term that includes any object or benefit even if no economic value can be assigned to it. A subjective approach is taken that takes into account the advantage or benefit that the gift brings to the agent."<sup>95</sup>

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<sup>92</sup>The Anti-Corruption Office's report can be found at:

[http://www.anticorruptcion.gov.ar/documentos/2013\\_REFORMA%20C%C3%93DIGO%20PENAL\\_OA.pdf](http://www.anticorruptcion.gov.ar/documentos/2013_REFORMA%20C%C3%93DIGO%20PENAL_OA.pdf)"

<sup>93</sup> "The report is posted at:

[http://www.anticorruptcion.gov.ar/documentos/2013\\_REFORMA%20C%C3%93DIGO%20PENAL\\_OA.pdf](http://www.anticorruptcion.gov.ar/documentos/2013_REFORMA%20C%C3%93DIGO%20PENAL_OA.pdf)"

<sup>94</sup> "In preparing this answer (as with the one relating to inclusion of the term "promises"), consideration was given to the Republic of Argentina's reply to the checklist in connection with the First Cycle of the Implementation Review Mechanism for the United Nations Convention against Corruption."

<sup>95</sup>"Donna, Edgardo Alberto, op.cit., p.217, with a quotation from Ramos Mejía, Enrique, "El delito de concusión", Depalma, Buenos Aires, 1963, p.54. This approach is also taken by Fontán Balestra, Carlos, Tratado de derecho Penal, Parte Especial, Abeledo Perrot, Buenos Aires, 1993, Volume.VII. p.274; and Rua, Gonzalo, op. cit., pp.547/548, as well as other authors."

[417] "From this point of view, the concept of gifts would include personal, pleasurable, sexual, aesthetic and other benefits; hence it would encompass the favors and advantages mentioned in the Committee of Experts' recommendation."

[418] "However, it should be noted that, within that approach, some authors maintain that a "gift" always requires the existence of something that can be given and received materially, so that the aforementioned criminal characterization would not encompass favors and advantages that do not constitute material objects."<sup>96</sup>

[419] "There are precedents for this position in case law, too. Thus, Division II of the Federal Court of Criminal Cassation took the view that a member of the Judiciary who accepted and enjoyed vacationing at a hotel paid for by a person being tried by a court headed by that member of the Judiciary committed the offense of illicit receipt of gifts, under Article 25p of the P.C."<sup>97</sup>

[420] "Nevertheless, we must recall that some authors maintain that a gift must consist of something that has economic value, that is to say something that enhances the recipient's net worth (*situación patrimonial*)."<sup>98</sup>

[421] "On this matter the preliminary draft of the comprehensive amendment to the Criminal Code referred to above does not resolve the issue raised because, as can be seen from Article 261 transcribed above, gifts are maintained as the material object of the crimes of extortion and bribery. What it adds is that the advantages that the public servant demands, asks for, accepts, or receives must be "of [financial/economic] worth" (*patrimonial*)."<sup>99</sup>

[422] "Bearing in mind the recommendations that have been analyzed and the advisability of ratifying the broad notion of gifts as the material object of the aforementioned crimes, the proposal put forward by the Anti-Corruption Office (OA) sought to include immaterial or intangible objects as elements in the characterization of the solicitation or acceptance of bribes (*cohecho pasivo*), aggravated solicitation or acceptance of bribes (*cohecho pasivo agravado*), and the offering of a bribe (*cohecho activo*), as transpires from the transcription above."<sup>100</sup>

<sup>96</sup>Creus, Carlos, "Delitos contra la administración pública", Astrea, Buenos Aires, 1981, p. 275; D'Alessio, Andrés José and Divito, Mauro, op.cit., p. 823."

<sup>97</sup>"Division II of the Federal Court of Criminal Cassation, case No. 1404, "Correa, Julio Fernando, in the matter of appeal for annulment", resolved on 11/26/1997. Likewise, the Federal Court of Appeals in Criminal and Correctional Cases of Buenos Aires city pointed out that "a gift is nothing other than a benefit of any kind, be it financial or not, that results in an advantage and profit, obtained thanks to *metus publicae potestates*." Bedetti, O, resolution of 06/29/1979, in SAIJ (the Argentine legal Information System).

<sup>98</sup>Nuñez Ricardo C., "Derecho Penal Argentino", 2nd Ed., Lerner, Córdoba, 1974, Volume VII, p. 99; Soler Sebastián, "Derecho Penal Argentino", 3rd Ed., 1970, Volume V, p. 212."

<sup>99</sup>"Accordingly, it has been argued that "the addendum does not denote the position taken on this matter by the Commission because, even though "advantage" is incorporated (in case of any doubt as to whether it was included in the concept of "gift"), it is restricted to advantages of financial/economic worth. Now, while it is true that that clarification was designed to exclude from the characterization of the criminal act any delivery designed to provide purely aesthetic, sensual, sensory, or sentimental satisfaction, in our opinion it falls short of definitively solving the issue, because , since the term gift is still used in the characterization, differences subsist as to the meaning and scope of the term." Ghezzi, Antonela and Degoumois, Martin, op.cit., p. 59."

<sup>100</sup>With respect to the offering of a bribe (*cohecho activo*), the OA suggested that the characterization of the offense be drafted as follows: "Any person who, directly or indirectly, promises, offers ,or grants a public servant, for his own benefit or that of a third party, sums of money or any financially valuable object or other retribution, such as gifts, favors, or advantages, in return for that public servant carrying out, delaying, or omitting to carry out

[423] **"ii.- Promises"**

[424] "With respect to the recommendation that "promises" be included in the material object of the crime of offering a bribe, it is worth explaining that legal doctrine and case law equate the concept of "offering", contemplated in Article 258 of the Criminal Code, with "promising." In a Federal Supreme Court of Justice (CSJN) precedent dating back to 1872, the action of promising was clearly admitted as characterizing the crime of bribery. Thus the ruling established that "Whoever promises a sum of money to a public servant in order to cooperate in contraband commits the crime of bribery and shall be punished with a fine equal to three times the value of the promise (Articles 75 and 78, Criminal Law)".<sup>101</sup>

[425] "At the same time, this position of accepting a promise as characterizing the crime of offering a bribe (*cohecho activo*) is unanimous in jurisprudence and is reflected in the rulings of the Federal Court of Criminal Cassation, the highest criminal court in the land."<sup>102</sup>

[426] "Accordingly, D'Alessio, too, when referring to the characterizations of Article 258 of the Criminal Code, pointed out that: "he who delivers gives, he who promises offers, meaning that there is an exact parallel with conducts contemplated in the forms taken by *cohecho pasivo*, i.e. the solicitation or acceptance of bribes."<sup>103</sup>

[427] **"III.- Conclusion"**

[428] In short, in light of the above, most of the forms of conduct contemplated in the terms that, according to the recommendations, should be included in Articles 256, 257, and 258 of the Criminal Code are provided for in the Argentina criminal law system, not just in those articles, but also in other criminal characterizations found in this study."

[429] "While it is true that, on this subject, there are scenarios that have given rise to issues of interpretation in national legal doctrine and case law, the Argentine State has taken steps to solve them and to optimize the characterizations of criminal offenses commented in relation to the provisions of the Inter-American Convention against Corruption (especially Article VI.1.a). As indicated above, those steps include drafting the 'Preliminary Draft Comprehensive Reform of the Criminal Code' drawn up by the Commission established by Decree 678/2012 and presented in 2014 and the report prepared to that effect by the Anti-Corruption Office."

[430] At the same time, during the on-site visit, the country under review pointed out that the Commission established by Decree 678/2012 submitted its preliminary draft comprehensive amendment to the Criminal Code in 2014,<sup>104</sup> which has been the subject of analyses and comments in connection with the very extensive draft reform of criminal justice currently under way, known as Justice 20 20, which goes beyond the adoption of new Criminal Codes and Codes of Criminal Procedure and includes

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an act relating to the performance of his public functions, regardless of whether such actions or omissions are effected or not."

<sup>101</sup> "Rulings of the CSJN 11:249 " "Criminal v. Cocqueteaux, Carlos et al."

<sup>102</sup> "Division II, case No. N° 3891, "TORRES, Jorge Horacio in the matter of cassation appeal", Record No. 5167.2, resolution of 09/23/02; Division IV, Case N° 1626, "VARELA CID, Eduardo in the matter of cassation appeal", Record No. 2763.4, of 08/29/00, accept promising as characterizing the offense of offering a bribe (*cohecho activo*), completely regardless of whether or not the promise is carried out and of whether the carrying out of the promise is before or after the act of authority or cessation of office. The form of the bribery consists of the acceptance of the promise and it is consummated (*se perfecciona*) by the agreement between the parties (*acuerdo de voluntades*)."

<sup>103</sup> "D'Alessio, Andrés José and Divito, Mauro, op.cit., p.1285."

<sup>104</sup> Available at: <http://www.oas.org/juridico/spanish/arg.htm>

discussion of the steps that will be needed to migrate from the inquisitory criminal system (in which the prosecutor is also the judge) to the accusatory system (in which the two are separate).

[431] Furthermore, during the on-site visit, various case law positions were explained with regard to Articles 256, 257, and 258 of the Criminal Code and more case law was provided, in addition to that described in the reply to the questionnaire.<sup>105</sup>

[432] With regard to the above information, the Committee takes note of the steps taken by the country under review to move ahead with implementation of the recommendation contained in section 3.1 of Chapter II of this report and reiterates the need for the country under review to continue to address it, bearing in mind that, first, as the reply to the questionnaire recognizes, there are interpretation issues in federal legal doctrine and case law with respect to the scope of Articles 256, 257 and 258 of the Criminal Code and, second, that although Decree 678/2012 established a Commission to amend the Criminal Code and there are now two preliminary bills relating to said amendments, the reform of the Criminal Code has not yet happened and the above-mentioned articles of the current Criminal Code which gave rise to the aforementioned recommendation, have not yet been amended in the manner recommended.

[433] At the same time, bearing in mind that it clearly transpires from both the information described above and from Decree 678/2012 that what the country under review has in mind with respect to the Criminal Code is a comprehensive reform of it, not just specific amendments to particular articles therein, the Committee deems it appropriate to rephrase its above-mentioned recommendation by adding the following final paragraph to it: "In the event that the country under review adopts a comprehensive reform of the Criminal Code, ensure that the characterizations of criminal offenses equivalent to those in Articles 256, 257, and 258 of the current Criminal Code that result from that reform include the elements of Article VI.1 of the Convention referred to in this recommendations and, in general, that the new characterizations in relation to the acts of corruption addressed in said Article contain the elements it envisages. (see Recommendation 3.3.1 of Section 3.3 of Chapter II of this report.)

[434] In addition, bearing in mind that during the on-site visit, representatives of the Federal Judiciary and the Federal Public Prosecutors' Office pointed out that the establishment of the Judicial Police was vital for the investigation of acts of corruption, above all considering that the country is in the process of shifting from an inquisitory criminal system to the accusatory system, and that Article 80 of Law 24.121 (the Implementation and Organization of the Criminal Justice Act) ordered the establishment of the Judicial Police within the Federal Court of Criminal Cassation, the Committee will make a recommendation in that regard. (see Recommendation 3.3.2 of Section 1.1.3 of Chapter II of this report.)

[435] With respect to the above, it should be pointed out that the document of the civil society organization Foro de Estudios sobre la Administración de Justicia (FORES),<sup>106</sup> states, inter alia, that: "The Judicial Police is vital for investigation, and particularly so when it comes to investigating government bodies (*los órganos de poder*), because otherwise the investigative authorities would be the security forces dependent on the body being investigated. The importance of this judicial institution was emphasized above all during the interviews granted to the Committee. In addition, it is worth pointing out that Congress had already established the Judicial Police in Article 80 of law 24.121, without it ever becoming operational."

### **3.1. New developments in respect of the Convention provision on acts of corruption**

#### **3.1.1. New developments in the regulatory framework**

<sup>105</sup> Available at: <http://www.oas.org/juridico/spanish/arg.htm>

<sup>106</sup> Document REPORT TO MESICIC - FIFTH ROUND OF CONSULTATIONS 2016 -, p. 63.

[436] In its response to the questionnaire,<sup>107</sup> the country under review presented the following information regarding these kinds of developments:

[437] "As mentioned already, in recent years the Argentine State has embarked on initiatives aimed at resolving possible problems of interpretation associated with the characterizations of criminal offenses of the Inter-American Convention against Corruption in connection with the Argentina Criminal Code."

[438] "Thus, renewed mention is made of Decree 678/2012 of May 7, 2012,<sup>108</sup> which established the "COMMISSION TO PREPARE THE BILL TO AMEND, UPDATE, AND CONSOLIDATE THE FEDERAL CRIMINAL CODE," with a view to embarking on a comprehensive reform of that body of law."

[439] "Some of our country's most distinguished criminal law experts were chosen to take part in the Commission. Moreover, in order to ensure as broad an approach as possible to this task, the jurists making up the Commission represented different segments of the political spectrum, since they included Supreme Court magistrates, members of the House of Deputies and the Senate, and well-known politicians."

[440] "To be members of that special Commission, representatives of all segments of Argentine politics were appointed ad honorem (Dr. Eugenio Raúl Zaffaroni, as President of the Commission, along with Drs. Ricardo Rodolfo Gil Lavedra, Federico Pinedo, María Elena Barbagelata, and León Carlos Arslanián)."

[441] "The 'Preliminary Draft Law on the Comprehensive Amendment and Updating of the Federal Criminal Code of 2006' was submitted to the Ministry of Justice and Human Rights on August 31, 2006."

[442] "In 2003, seizing that opportunity, the Anti-Corruption Office prepared a **report ("Draft Comprehensive Reform of the Federal Criminal Code. Considerations put forward by the Anti-Corruption office")**,<sup>109</sup> which proposed a series of amendments to the Criminal Code, including adjustments to the characterization of the offense of offering a bribe (*cohecho activo*) and that of aggravated bribery."

[443] As it noted in Section 3.1 of Chapter II of this report, the Committee recognizes that the foregoing new developments undertaken by the Country under review constitute steps toward implementation of the recommendation analyzed in that section

### 3.1.2. New developments with respect to technological aspects

[444] The Country under review did not provide information regarding these kinds of developments.

### 3.1.3. Results of the legal framework and/or other measures

[445] In its reply, the country under review did not provide information on outcomes in respect of the acts of corruption referred to in Article VI of the Convention and during the on-site visit its representatives reported that they were not yet any statistics referring specifically to those acts.

<sup>107</sup> Argentina's reply to the questionnaire, p. 66.

<sup>108</sup> "Decree 678/12, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/196961/norma.htm>"

<sup>109</sup> "The Anti-Corruption Office's report can be found at:

[http://www.anticorruptcion.gov.ar/documentos/2013\\_REFORMA%20C%C3%93DIGO%20PENAL\\_OA.pdf](http://www.anticorruptcion.gov.ar/documentos/2013_REFORMA%20C%C3%93DIGO%20PENAL_OA.pdf)"

[446] In light of the above, the Committee deems it appropriate to refer to Recommendation 1.4.7 and 2.4.6 which it put to the country under review in Chapter II of the Fourth Round Report,<sup>110</sup> regarding the compilation of statistics on acts of corruption in the Public Prosecutor's Office for Administrative Investigations and the Federal Judiciary, respectively.

### **3.2. Recommendations**

[447] In light of the comments made in Sections 3.1 and 3.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

3.3.1 Modify and/or complement the following articles of the Criminal Code: (see paragraph 433 in Section 3.1 of Chapter II of this report.)

- i. Article 256 of the Criminal Code, which is related to paragraph (a) Article VI(1) of the Convention, could be complemented by the inclusion of the elements “solicitation” and “acceptance”, as well as “favors” and “advantages”, provided for by that paragraph.
- ii. Article 257 of the Criminal Code, amended by Article 33 of Law 25,188, which is related to paragraph (a) of Article VI(1) of the Convention, could be complemented by the inclusion of the elements “solicitation” and “acceptance”, as well as “favors” and “advantages” provided for by that paragraph.
- iii. Article 258 of the Criminal Code, modified by Article 34 of Law 25,188, which is related to paragraph (b) of Article VI(1) of the Convention, could be complemented by the inclusion of the elements “favors”, “promises”, or “advantages” provided for by that paragraph.

In the event that the State under review adopts a comprehensive reform of the Criminal Code, to promote that the characterizations of criminal offenses equivalent to those in Articles 256, 257, and 258 of the current Criminal Code that result from that reform include the elements of Article VI.1 of the Convention referred to in this recommendations and, in general, make arrangements to respond to the new characterizations in relation to the acts of corruption addressed in said Article contain the elements it envisages.

3.3.2 Establish the Judicial Police as required by Article 80 of Law 24.121, regarding the Implementation and Organization of Criminal Justice. (see paragraph 434 in Section 3.1 of Chapter II of this report.)

## **4. GENERAL RECOMMENDATIONS**

Recommendation 4.2 suggested by the Committee that requires additional attention within the Framework of the Third Round:

*Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and mechanisms considered in this report, and to follow-up on the recommendations made herein.*

[448] The Committee, bearing in mind that sections 1, 2, and 3 of Chapter II of this report contain an up-to-date, detailed analysis both of the follow-up on the recommendations made to the Argentine Republic in the Second Round and of the systems, standards, measures, and mechanisms to which the above recommendation

<sup>110</sup> Available at: <http://www.oas.org/juridico/spanish/arg.htm>

refers, the Committee, reaffirms the contents of those sections and, therefore, considers that this recommendation is redundant.

### **III. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE REPUBLIC OF ARGENTINA OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND**

#### **1. INSTRUCTIONS TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III, PARAGRAPH 3 OF THE CONVENTION)**

[449] In keeping with the *Methodology* agreed upon by the Committee for its analysis of the provision selected for the Fifth Round, which is contained in Article III (3) of the Convention and concerns measures to create, maintain, and strengthen “instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,” the country under review chose the personnel of the Federal Public Administration trained by the Anti-Corruption Office (OA) and the Ministry of Modernization; the personnel pertaining to the OA itself; and the personnel of the Federal Public Revenue Administration (AFIP), given the major powers vested in both the OA and the Ministry of Modernization in this field and the functions performed by AFIP personnel in highly sensitive and high-risk matters of public ethics and transparency.

[450] Following is a brief description of the three aforementioned public entities to be reviewed in this section, with respect to the activities they perform that relate to the Convention provision cited in the foregoing paragraph:

[451] - The Anti-Corruption Office (OA) was established by Congress, through Law No. 25.233 of 1999. Its overall purpose is to prepare and coordinate programs to combat corruption in the federal public sector. The powers vested in it, under Ministry of Justice and Human Rights resolution No. 17 of 2000 include authority to enforce the Civil Service Ethics Act (No. 25.188), Article 41 of which provides that the implementation authorities shall conduct ongoing training and outreach programs on the content of said Act and its enabling regulations, so that the personnel involved is properly informed. In addition, Decree No. 466/2007 widened the OA's spheres of competence by including (in Annex II.2 of that Decree), as one of its objectives, the monitoring of compliance with international conventions against corruption ratified by the Member States, such as the Inter-American Convention against Corruption and the United Nations Convention against Corruption.

[452] - The Ministry of Modernization was established by Decree 13 of 2015 (the Ministries Act), one of its purposes being to foster policies establishing hierarchies in government employment. One of its spheres of competence (provided for in Article 23 octies of the aforementioned Decree) is crafting and implementing training policies for personnel and staff members of the Centralized and Decentralized Public Administration, together with administering the Ongoing Training and Labor Reclassification Fund.

[453] - The Federal Public Revenue Administration Fund (AFIP), which was established through Decree 618 of 1997, is the body in charge of implementing, collecting, and monitoring the taxes imposed under legal provisions relating to economic transactions, social security revenue, and exports and imports. It exercises customs control of foreign trade and cross-border traffic, as well as various social-security related controls. AFIP comprises the Offices of the Directors General of Taxes, Customs, and Social Security Revenue.

#### **1.1. Existence of provisions in the legal framework and/or other measures.**

[454] Argentina has a set of provisions and/or measures on instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, the most notable of which are the following:

- Various types of legal provisions and other measures applicable to Federal Public Administration Personnel, through the Anti-Corruption Office (OA) and the Ministry of Modernizations, including, in particular:

[455] - The Civil Service Ethics Act (No. 25.188/99), Article 1 of which states that the Act establishes a set of duties, prohibitions and disqualifying factors (*incompatibilidades*) to be applied, without exception, to all those performing public functions at all levels and ranks, be it on a permanent or temporary basis, as a result of the popular vote, direct appointment, competition, or any other legal means. Article 41 provides that the authorities responsible for implementing the Act shall run ongoing training programs disseminating the contents of the Act and its implementing regulations so as to ensure that the persons covered by the Act are duly informed of its provisions. It adds that public ethics shall be taught in specific courses at all levels of the educational system.

[456] - Decree 164/99 (Regulations Implementing the Civil Service Ethics Act, No. 25.188), Article 1 of which provides that the Ministry of Justice and Human Rights is the authority responsible for enforcing the Civil Service Ethics Act in the Federal Public Administration and is empowered to issue the regulations, instructions, and expert opinions required for its implementation.

[457] - Decree 102/99, Article 1 of which provides that the Anti-Corruption Office shall operate in the Ministry of Justice and Human Rights, as the body responsible for ensuring the prevention and investigation into behavior that, pursuant to these regulations, are regarded as included in the Inter-American Convention against Corruption adopted by Law No. 24.759.

[458] - Resolution No. 17 of the Ministry of Justice and Human Rights, of January 17, 2000), which establishes that the Anti-Corruption Office exercises the power vested in that Ministry by virtue of Article 1 of Decree 164/99 to enforce Law 25.188 and that the Secretary for Public Ethics, Transparency, and the Fight against Corruption<sup>111</sup> may issue the resolutions, instructions, and expert opinions needed to exercise those powers.

[459] - Decree No. 466/2007, Annex II.2 of which establishes that one of the purposes of the Anti-Corruption Office (OA) is to ensure compliance with the international anti-corruption conventions ratified by the Federal State.

[460] - Decree 13/2015, Article 1 of which establishes the Ministry of Modernization. Article 23 octies.11 of the same Decree establishes that one of its spheres of competence is to formulate and implement training policies for employees and staff members of the Centralized and Decentralized Public Administration and to administer the Ongoing Training and Labor Reclassification Fund.

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<sup>111</sup> On February 9, 2017, in its comments document on the preliminary draft of this report, Argentina reported that, pursuant to Decree 226/2015 (B.O. 12/23/2015), the Anti-Corruption Office will be run by a Secretary for Public Ethics, Transparency, and the Fight against Corruption; that Article 3 of said Decree reads as follows: "It is hereby established that references in Decree N° 102 of December 23, 1999 to the Public Prosecutor for Administrative Oversight, and all other regulations referring to him, shall be understood to refer to the Secretary for Public Ethics, Transparency, and the Fight against Corruption." The full text of the provision can be consulted at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257228/norma.htm>; and that, accordingly, it is requested that the reference to the "Public Prosecutor for Administrative Oversight" be replaced in both paragraphs by "Secretary for Public Ethics, Transparency, and the Fight against Corruption."

[461] - Administrative Decision 232/2016 (BO 29/03/2016), which approves the Organizational Structure of the Ministry of Modernization and, along with it, the internal structure of the Undersecretariat for Labor Relations and Strengthening of the Civil Service, which is responsible, inter alia, for the Federal Institute of Public Administration (INAP).

[462] - Resolution No. 2/02 of the former Undersecretariat for Public Administration (*Gestión Pública*). Article 22 of the Appendix to that resolution establishes that the Federal Institute of Public Administration (INAP) is charged with designing and organizing training activities aimed at meeting the training needs of the personnel comprised by the Federal Government Employment System as well as those of the various areas of the Federal Public Administration.

[463] - The Framework Law for Regulating Federal Government Employment (No. 25.164/99). Article 3 of the Appendix to that resolution states that the resolution governs the rights and duties of the personnel making up the Federal Civil Service, while Article 17.a of the Appendix provides that one of the requirements for obtaining job security is accreditation of suitability via periodic performance evaluations, training, and the meeting of established performance goals over a full 12-month trial period, along with satisfactory approval ratings in any required vocational training activities.

[464] - The enabling regulation Decree for the aforementioned law (N° 1.421/2002), which establishes that, before the end of the test period, the head of the first tier (*de primera apertura*) organizational unit to which a civil servant pertains shall draw up an evaluation report on accreditation of the required level of suitability and its relevance for the job profile. Where applicable, that report shall certify compliance with pre-established performance targets and goals, as well as satisfactory approval ratings in any tests set, within the deadlines and using the procedures set by the enforcement authority.

[465] - The General Collective Bargaining Agreement for the Federal Public Administration, approved by Decree No. 214 of 2006 and the amendments thereto. Article 24.b thereof establishes that, within the scope of Law No. 25.164 and its amendments, job stability shall be granted when, among other requirements, the incoming public servant accredits her or his suitability for the job during the trial period with satisfactory evaluations and by passing training course tests, as required by the particular career service. Trade union bodies shall oversee the various evaluation processes.

[466] - The Sectoral Collective Bargaining Agreement of the Federal Government Employment System, approved by Decree No. 2,098 of 2008 and amendments thereto. Article 24 thereof establishes that newly appointed personnel shall be evaluated for the purposes contemplated in Article 24.b of the General Collective Bargaining Agreement and in Article 17.a of the Appendix to Law No. 25.164 and amendments thereto, in accordance with any Job Performance Evaluation System established pursuant to Article 67 thereof. The first evaluation shall be performed after SIX (6) full months of service from the time the employee took up his or her position and again between TEN (10) months and ELEVEN (11) months of service.

[467] - Resolution No. 384/14 of the Office of the Chief of Staff of the Ministerial Cabinet (*Jefatura de Gabinete de Ministros*), Article 1 of which establishes that newly appointed personnel, in the terms referred to in the second paragraph of Article 24 of the Sectoral Collective Bargaining Agreement for Personnel of the Federal Government Employment System, approved by Decree N° 2098 of 2008, shall meet the requirements established in said Article, in the ways prescribed in these regulations. Article 2 provides that personnel shall demonstrate that they possess the knowledge and other skills established in the General Program of Mandatory Training Activities for Incoming Personnel, approved as Appendix I to these regulations. Article 3 states that the induction activities envisaged in Module 1 of the Program approved by the foregoing Article must be carried out and certified within TWENTY (20) consecutive days from the date the incoming public servant takes up her or his position. Article 4 establishes that, for the purposes envisaged in the foregoing Articles, the section chiefs (*titulares*) referred to in the third

paragraph of Article 24 of the Collective Bargaining Agreement approved by Decree N° 2098/2008 shall coordinate and execute the activities, meetings, and presentations required under Module 1 in such a way as to meet the established deadline. Article 5 provides that the activities corresponding to the remaining Modules making up the Program approved by Article 2 of these regulations shall be carried out by INAP.

[468] - Article 7 of the foregoing Resolution states that, within the framework of the activities to be carried out, teachers shall go about their work in such a way as to ensure proper understanding of the subject matter and development of the specific skills needed to prepare newly appointed personnel for any exams or test carried out pursuant to Article 11 of these regulations. Article 8 specifies that the activities under the Program approved by Appendix I of this resolution shall be carried out continuously at the head office of INAP or the other authorities and entities concerned and that passing the module tests shall be mandatory. Article 10 requires that activities be carried out and accredited within ONE HUNDRED AND EIGHTY (180) consecutive days of the new arrival's taking up his or her position. Article 11 provides that the evaluations designed to accredit that a public servant has met training requirements may only be carried out by INAP personnel officially authorized by the Head of that Institute,

[469] - The Appendix to Resolution No. 384/14 of the Office of the Chief of Staff of the Ministerial Cabinet, which contains the General Program of Mandatory Training Activities for Incoming personnel. It states that its overall objective is to certify the training requirements to be met by the staff referred to in the second paragraph of Article 24 of the Sectoral Collective Bargaining Agreement approved by Decree N° 2.098/2008. The specific objectives it establishes are that: 1) Incoming personnel must demonstrate that they possess sufficient knowledge to list and distinguish precisely between the principal purposes, regulatory principles, and contents of the rules and regulations governing them as public servants; and 2) Incoming personnel must demonstrate that they are capable of explaining the principal purposes, regulatory principles, and contents of the rules and regulations governing them as public servants and of describing the behavior they must therefore conform to in connection with their work.

[470] In the foregoing Appendix, with respect to the curricular content of the Program, six modules are envisaged. One of them, the INDUCTION MODULE, deals, inter alia, with the actions and responsibilities assigned to the public servant. Another, the PUBLIC ETHICS MODULE, deals, inter alia, with the Civil Service Ethics Act (No. 25.188) and amendments thereto.

[471] In addition to referring to the rules and regulations listed above, in its reply to the questionnaire,<sup>112</sup> the country under review made specific reference to the following:

[472] As regards the way in which personnel are made aware of their responsibilities and functions, the country under review pointed to the job profile for the position and the induction activities contemplated in Resolution N° 384/2014, which contains the General Program of Mandatory Training Activities for Incoming Personnel and the INDUCTION MODULE referred to above.

[473] As regards when newly appointed civil servants are made aware of their responsibilities and functions, the country under review pointed out that the job profile is published at the start of the call for applications and that the knowledge of responsibilities and functions is reinforced during the first year of service through the induction activities described above.

[474] With respect to the existence of induction programs and courses and training or instructions to personnel on the appropriate performance of responsibilities and functions and, in particular, on the risks of corruption inherent in the performance of said functions, the country under review referred not only to the induction activities listed earlier on, but also to voluntary courses offered by the Ministry of Modernization to the whole of the Federal Public Administration. By attending those courses, which

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<sup>112</sup>Argentina's reply to the questionnaire, pp. 67 to 82.

address such issues as government employment and, in particular, public ethics, civil servants can earn credits toward promotion in their administrative career. The country under review provided the following link to INAP, which posts details on the courses offered: <http://www.inap.modernizacion.gob.ar/>. It also reported that refresher courses and training were offered by the Human Resources Department in each Federal Public Administration area or entity.

[475] On the use of modern communications technology to make public servants more aware of their responsibilities and functions and furnish them with guidelines for their proper performance, the country under review pointed to on-line or partly virtual/partly face-to-face training courses run by INAP that provide tools or methodologies for improving performance.

[476] As for the existence of bodies that public servants can turn to for information or to resolve doubts as to the best way to discharge their responsibilities and perform their functions, the country under review pointed to the hierarchical structure within each entity or area of the federal Public Administration and to the assistance provided by each area's or entity's Human Resources Directorate.

[477] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed about their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, reference was made to the Ministry of Modernization's supervision of job profiles and their public disclosure, as well as to the Human Resources Directorate in each area or entity of the Federal Public Administration.. Here, as already pointed out, it is worth noting, too, that Article 17.a of the Appendix to Law No. 25.164 requires, as one of the conditions for obtaining job stability, accreditation of suitability through periodic performance evaluations, training, and achievement of the performance targets set for a 12-months of service trial period, and through approval ratings for vocational training activities. According to the Appendix to Resolution No. 384/14, passing the induction and public ethics module test is mandatory.

[478] As regards the way in which personnel are made aware of the ethical standards governing their activities, the country under review pointed to the induction activities contemplated in Resolution N° 384/2014, which contains the General Program of Mandatory Training Activities for Incoming Personnel and the PUBLIC ETHICS MODULE referred to above.

[479] With respect to the existence of induction programs and courses, training, or instructions to personnel on the ethical rules governing their activities and, in particular, on the consequences resulting from failure to comply with those rules for public service and for those who break the rules, information is provided in the section of the questionnaire relating to the Anti-Corruption Office (OA). It points out that the OA "... fostered, designed, and implemented a public ethics training system for government employees (called "Public Ethics Training System - SICEP"), which is still operating and is an effective vehicle for running training activities for Federal Public Administration (APN) personnel." - SICEP operates at the following website: <https://capacitacion.jus.gov.ar/sicep/>

[480] In addition, during the on-site visit, representatives of the Anti-Corruption Office (OA), reported on a World Bank-funded project to be implemented as of March 2017,<sup>113</sup> aimed at putting in place a system for training Federal Public Administration staff and employees, which may be extended to encompass provincial public administration personnel. On the one hand, it will seek to train staff and employees of the APN and decentralized agencies on matters relating to integrity, public ethics, and the implementation of transparency policies in administration. On the other, it will attempt to establish and consolidate a sustainable training

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<sup>113</sup> On February 9, 2017, in its comments document on the preliminary draft of this report, Argentina reported that execution of the project supported by World Bank financing would, for reasons that have nothing to do with the Anti-Corruption Office, begin as of the fourth quarter of 2017.

strategy, by promoting a core set of trainers aimed at enhancing the impact and scope of the training system. According to the document provided on this project,<sup>114</sup> the training courses will focus on the following aspects: a) Enforcement of the Civil Service Ethics Regulations nationwide: Training government employees in ethical principles and standards, transparency, and public information; b) Administrative procedures, especially those relating to procurement and hiring, the implementation of transparency policies and respect for public ethics; c) The administering of sworn statements of interest and net worth in such a way as to support public ethics policies, transparency and the prevention of corruption and overcome the challenges associated with enforcing presentation of the sworn statements. According to representatives of the OA, this project will hopefully enable that Office to have 50 trainers and, within three years, to have provided face-to-face and partly face-to-face/partly virtual training to 15,000 public servants.

[481] With regard to the use of modern communication technology to make personnel aware of the ethical rules governing their activities and to counsel them as to their scope and meaning, the OA section in the response to the questionnaire contains the following information: "SICEP includes the construction of a virtual library or documentation center on subjects relating to transparency and efforts to combat corruption. It has three main focuses: Technology, Contents, and Cultural Management Each of these contains its own objective, which can be worked on exhaustively. At the same time, together they make up the OA's Educational Portal. The technological focus consisted of adapting and implementing an e-learning platform to disseminate and monitor OA activities. - The Contents focus derived from the development of a catalogue of on-line courses, based on the strategic partnerships and needs of government agencies. The Cultural Management focus consisted of devising and managing a communications, participation, and promotion plan that fill facilitate public servants' access to e-learning. - On the technological side, it was decided to use and develop free software tools, through a virtual platform called "e-moodle," which many well-known institutions have successfully adopted in recent months."

[482] As for the existence of bodies that public servants can turn to for information or to resolve doubts as to the scope and best way to interpret the ethical standards governing their activities, the country under review pointed to the Anti-Corruption Office (OA), the hierarchical structure within each entity or area of the Federal Public Administration and to the assistance provided by each area's or entity's Human Resources Directorate.

[483] Finally, as regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, it is worth point out that, as mentioned already, Resolution No. 17 of the Ministry of Justice and Human Rights, of January 17, 2000), establishes that the Anti-Corruption Office exercises the power vested in that Ministry by virtue of Article 1 of Decree 164/99 to enforce Law 25.188 and that the Secretary for Public Ethics, Transparency, and the Fight against Corruption may issue the resolutions, instructions, and expert opinions needed to exercise those powers.

- Various legal and other provisions or measures applicable to Anti-Corruption Office (OA) personnel, including, in particular:

[484] - The above-mentioned provisions and measures relating to Federal Public Administration (APN) personnel that are applicable to OA personnel, given that the latter entity is part of the APN.

[485] - The internal annual and three-year training plans for OA personnel, which, as the Committee was told during the on-site visit, contain courses and workshops on matters relating to its staff's responsibilities and the ethical rules governing their activities. Moreover, those public servants also take part in training

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<sup>114</sup> Available at: <http://www.oas.org/juridico/spanish/arg.htm>

activities provided by the Ministry of Justice and Human Rights and by INAP.

- Various legal and other provisions or measures applicable to personnel of the Federal Public Revenue Administration (AFIP), including, in particular:

[486] - The above-mentioned provisions and measures relating to Federal Public Administration (APN) personnel that are applicable to AFIP personnel, given that the latter entity is part of the APN.

[487] - Provision No. 163/07 (AFIP) May 9, 2007, which adopts the Ethics Code for Personnel of the Federal Public Revenue Administration (AFIP), annexed thereto, which states that its purpose is to establish the values, basic principles, and guidelines needed to steer the conduct of AFIP personnel. Article XII thereof provides that public servants performing supervisory functions (*cargos de Jefatura*) at any level within the Institution shall: a) Support skills development among the staff they supervise, aligning their potential and abilities with the possibilities provided by the Institution; b) Inform co-workers of their rights and obligations and of the contents of the present CODE and familiarize them with the Institution's strategic guidelines, while establishing the bounds within which they should act; c) ...; d) Provide them with the skills-building needed for them to improve their performance and make available to them all the training opportunities provided by the Institution."

[488] - Collective Bargaining Agreements (CCT) that regulate labor relations for workers in both the tax and social security administrations (Resolution No 925/10, Ministry of Labor, Employment, and Social Security), as well as for those in customs (Res. No 924/10, MTESS) in turn establish duties, obligations, and prohibitions and require personnel to abide by the AFIP's Code of Ethics.

[489] General Instruction Rules issued by AFIP to show their staff how to perform their functions, such as, for instance, AFIP General Instruction No.7/2007, which contains the procedure for submitting queries and complying with technical and legal criteria established at the highest levels of the Institution. That Instruction specifies, inter alia, the procedures to be followed by AFIP personnel in the event of doubts they might have regarding how a rule is to be interpreted.

[490] - Apart from the reference to AFIP's own above-mentioned rules and regulation, in the section of the reply to the questionnaire dealing with this entity<sup>115</sup> and during the on-site visit, the country under review provided clarification regarding the following:

[491] With respect to the manner in which personnel are informed of their responsibilities and functions, the Committee was told that this was accomplished by issuing various types of rules (provisions, instructions, and so on). In some cases, these are delivered directly and in person. In others cases, they are posted on the AFIP web page. An example of such notification was when personnel received a copy of Provision No. 76/05 (AFIP), on Adoption of the Information Security Policies Handbook and the Form Liability for the Use of I.T. Systems.

[492] As for the occasions in which personnel are informed of their responsibilities and functions, the Committee was told that all personnel joining the Institution are informed of their working conditions upon entry and again whenever those conditions are changed or a regulation is issued on conduct within the organization.

[493] As to the existence of induction, training, or instruction programs and courses for personnel on the proper performance of their responsibilities and functions, and, in particular, to make them aware of the corruption risks inherent to their performance, the country under review mentioned the content of induction courses that mention the corruption risks inherent in the performance of public servants' responsibilities.

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<sup>115</sup> Argentina's reply to the questionnaire, pp. 82 to 93.

[494] On the use of modern communications technology to make public servants more aware of their responsibilities and functions and furnish them with guidelines for their proper performance, the country under review pointed to the following: 1. The sending out of institutional e-mails from different addresses (“AFIP COMUNICA/QUE SE SEPA” and “MAIL MASTER”) to disseminate various kinds of news/new developments; 2. The publication of news and new developments on different sections of the AFIP web page; and 3. Electronic Docket, which can be accessed via the AFIP website.

[495] As for the existence of bodies that public servants can turn to for information or to resolve doubts as to the best way to discharge their responsibilities and perform their functions, the country under review pointed out that the Offices of the Section Chiefs in each area are the bodies to which personnel can resort to clarify their responsibilities and tasks and it alluded to the responsibilities incumbent upon the Section Chiefs under Point XII of the AFIP Code of Ethics.

[496] As regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed about their responsibilities and functions, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, the Committee was told that in addition to the AFIP's own bodies (Offices of the Deputy Director-Generals for Human Resources and Technical-Institutional Coordination, depending on the matter at hand) there were also Anti-Corruption Office guidelines.

[497] With respect to the manner in which personnel are informed of the ethical rules governing their activities, the Committee was told that this was accomplished by issuing various types of rules (provisions, instructions, and so on). In some cases, these were delivered directly and in person. In others cases, they were posted on the AFIP web page. In addition, there were training activities relating to institutional ethics. An example of such notification was when personnel received a copy of the Code of Ethics.

[498] As for the moments at which public servants in AFIP are informed of the ethical rules governing their activities, the Committee was told that all personnel joining the Institution are given a copy of the Code of Ethics for them to read and abide by. In addition, the staff is informed each time a regulation on such matters is issued in the Institution.

[499] Regarding the existence of programs and induction or instruction courses for personnel on the ethical rules governing their activities and, particularly, on the consequences of failure to abide by them for public service and for wrongdoers, the Committee was told the induction courses on ethics and public office address the risks of corruption through case histories on real situations and other examples culled from workshops. The Committee was also told that AFIP organizes other training activities on institutional ethics. The reply to the questionnaire distinguishes between three current target audiences: volunteer trainers, AFIP personnel, and recent appointees. Information is provided on the numbers of each set of participants through to 2006 and since 2007, following issuance of the new, revised and updated "Code of Ethics for AFIP Personnel." These data are summarized in Section 1.3 of Chapter III of this report on outcomes.

[500] On the use of modern communications technology to make public servants more aware of the ethical rules governing their activities and provide guidance on their interpretation and scope, the country under review pointed to the following: 1) The sending out of institutional e-mails from different addresses (“AFIP COMUNICA/QUE SE SEPA” and “MAIL MASTER”) to disseminate various kinds of news/new developments; and 2. The publication of news and new developments on different sections of the AFIP web page.

[501] As regards the existence of bodies to which personnel can turn to obtain information or dispel doubts about the scope or correct interpretation of the ethical rules that govern their activities, the Committee was referred to what had already been said about the staff's responsibilities and functions. The

country under review also pointed to the Training Directorate in the Office of the Deputy Director-General for Human Resources, as a place to which queries could be channeled during the aforementioned courses and workshops.

[502] Finally, as regards the existence of a governing organ, authority or body responsible for defining, steering, giving guidance on, or supporting the manner in which personnel are to be informed of the ethical rules governing their activities, and for seeing that this task is fully carried out, and the measures or steps such bodies can adopt to enforce the norms and/or measures in force in this regard, the country under review reported in its reply to the questionnaire that the Office of the Deputy Director-General for Human Resources was the body within AFIP responsible for the manner in which the Institution's public servants are informed of the ethical rules and training activities in general. Later on, in a clarification provided as a result of the on-site visit, the Committee was told that, outside AFIP, there were also guidelines issued by the Anti-Corruption Office.

## **1.2. Adequacy of the legal framework and/or other measures in respect of the Convention**

[503] Based on its examination of the constitutional, legal and other provisions on measures for providing instruction to government personnel at the public-sector entities selected by the country under review in order to ensure proper understanding of their responsibilities and the ethical rules governing their activities, the Committee finds that they are relevant for the purposes of the Convention .

[504] However, the Committee believes it timely to make a number of observations in relation thereto:

- Regarding the various types of legal provisions and other measures applicable to Federal Public Administration Personnel, through the Anti-Corruption Office (OA) and the Ministry of Modernizations, the Committee's thoughts are as follows:

[505] First, the Committee observes that while the General Program of Mandatory Training Activities for Incoming Personnel, adopted by Resolution No. 384/14 of the Office of the Chief of Staff of the Ministerial Cabinet, is obligatory for personnel who, after being selected through a competitive process have to pass the training tests in order to qualify for job stability, it is not mandatory for public servants appointed through other selection procedures. That is not only inconsistent with Article 1 of the Ethics in Public Office Act (No. 25.188/99), which provides that established duties, prohibitions, and disqualifications are applicable to all public servants without exception; according to information provided by representatives of the country under review during the on-site visit, it also excludes numerous public servants from said training. For that reason, the training program must be made mandatory for everyone. In light of the foregoing, the Committee will make a recommendation on the subject. (see recommendation 1.4.1 in Chapter III of this report).

[506] Second, considering that the training given through the Public Ethic Training System (SICEP) is not obligatory according to the information provided by representatives of the country under review, and it would be better if it were mandatory so that more public servants could benefit from it, and bearing in mind the importance of the contents of said training for the purposes addressed in Article III.3 of the Convention, the Committee will make a recommendation on the subject. (see recommendation 1.4.2 in Chapter III of this report).

[507] Third, bearing in mind that, according to information provided by representatives of the country under review during the on-site visit, the training provided by INAP is being re-oriented with a view to it being more closely related to the public servants' spheres of competence, the Committee deems it advisable for the country under review to consider, for that same purpose, including in the induction training courses content relating to the risks of corruption inherent in the performance of the office. The Committee will formulate a recommendation in that regard. (see recommendation 1.4.3 in Chapter III of

this report.)

- In relation to various legal and other provisions or measures specifically applicable to Anti-Corruption Office (OA) personnel, the Committee considers the following:

[508] First, the Committee observes that, although the training provisions and measures in effect in general for Federal Public Administration personnel (APN) apply to OA personnel, as well, because the OA is part of the APN, and it also its own internal annual and three-year plans, it would be best if it had a comprehensive internal training program that would make it possible to detect and address the specific training needs of its employees, taking into account the particular nature of the functions they are called upon to perform. The Committee will formulate a recommendation in that regard. (see recommendation 1.4.4 in Chapter III of this report.)

[509] It is worth adding to the above that, during the on-site visit, representatives of the OA reported that they were working on a systematized internal training model that would make it possible, inter alia, to draw up a map of OA personnel's training needs, determine ways in which said personnel could fit in hours of training while performing their day-to-day functions, and develop indicators for monitoring and evaluating training activities. They also provided the Committee with a document on the structuring of the aforementioned model.<sup>116</sup>

[510] Second, bearing in mind that, during the on-site visit, representatives of the Anti-Corruption Office (OA) informed the Committee that the OA does not have a budget of its own for training its employees; that the money is allocated via the Ministry of Justice and Human Rights; and that it has not been enough to implement the OA's internal training plans, although hopefully this would improve in 2017, the Committee, in order to strengthen the institutional role of the Anti-Corruption Office (OA) and to ensure that within the available resources, it has the budget necessary to perform its functions with autonomy and the capacity to cover the internal training of its personnel, will formulate a recommendation on this point (See recommendation 1.4.5 in Chapter III of this report.)

- In relation to various legal and other provisions or measures specifically applicable to Federal Public Revenue Administration(AFIP) personnel, the Committee's thoughts are as follows:

[511] The Committee observes that, although the training provisions and measures in effect in general for Federal Public Administration personnel (APN) apply to AFIP personnel, as well, because the AFIP is part of the APN, and it has, moreover its own induction courses for incoming personnel, it would be useful for the purposes envisaged in Article III.3 of the Convention to make the courses dealing with the AFIP Code of Ethics mandatory for all AFIP personnel, not just incoming personnel. The Committee will formulate a recommendation in that regard. (See recommendation 1.4.6 in Chapter III of this report.)

[512] It is worth adding to the above that, during the on-site visit, representatives of the AFIP told the Committee that it would be best for the training on the Code of Ethics to be mandatory for all its public servants. The section on AFIP in the reply to the questionnaire<sup>117</sup> also states the following: "The importance of internal controls and the standards of conduct expected within the Institution are documented and transmitted to personnel through AFIP's whole set of rules, processes, and structures. In order to achieve greater understanding of the responsibilities and functions assigned to staff, as well as observance of the ethical standards governing its activities, it is deemed advisable, as a first step, that all personnel be obliged to take the Internal Controls and Code of Ethics induction courses that AFIP posts on its on-line platform.

<sup>116</sup> Available at: <http://www.oas.org/juridico/spanish/arg.htm>

<sup>117</sup> Argentina's reply to the questionnaire, p. 90.

### 1.3. Results of the legal framework and/or other measures

[513] First, in its response to the questionnaire,<sup>118</sup> the country under review submitted information on results achieved with respect to the training provided to Federal Public Administration staff through the Anti-Corruption Office (OA). With regard to said results, the Committee notes the following, in particular:

[514] - The courses taught through the Distance Training System (SICEP) on matters relating to the staff's responsibilities and the ethical standards governing their activities, such as the course on "Transparent Procurement and Hiring" and the courses entitled "Ethics, Transparency, and Efforts to Combat Corruption in Public Administration"; "Ethics, Transparency, and Controls to Detect Corruption"; and "The Punitive Approach in the Fight against Corruption.. The Role of the Investigations Office in the Anti-Corruption Office."

[515] - The OA has developed and used SICEP as a teaching/learning tool for training APN personnel in public ethics, while at the same time it has coordinated e-learning with traditional training options, such as face-to-face programs and courses, seminars, workshops, discussion groups, and so on..." In addition, the response to the questionnaire mentions some examples of these practices and points out that more extensive information about them can be found in the OA's half-yearly and annual Management Reports, available at the Office's website ([www.anticorruccion.gov.ar](http://www.anticorruccion.gov.ar)), under "Management Reports" or directly via the following link: <https://www.argentina.gob.ar/informes-de-gestion>

[516] Examples particularly worth noting are the courses on "Obligations and Responsibilities of Public Servants"; the course on "Ethics and Transparency in Government Procurement"; and the training courses on public ethics taught by professionals from the Anti-Corruption Office as part of the "**General** Program of Mandatory Training Activities for Incoming Personnel." (Resolution SGyCA No. 384 – 19/08/2014), coordinated by the Federal Institute of Public Administration ((INAP) and directed at all public servants joining the State's full time staff."

[517] - The Anti-Corruption Office's publications for training in and dissemination of public ethics, numerous examples of which are cited in the reply to the questionnaire, along with electronic links to them. It is worth mentioning that those publications address such topics as international conventions against corruption, sworn statements by public servants, conflicts of interest, pedagogical tools for crosscutting content on ethics and civic training, and government procurement/hiring.

[518] - The information bulletins issued by the Anti-Corruption Office (OA), along with guidelines on public ethics issues, such as the newsletters on "Tools for Transparency in Administration. Guideline No. 1: Conflicts of Interest," "Tools for Transparency in Administration. Guideline No.2: Sworn Statements," "Tools for Transparency in Administration. Guideline No. 3: Citizen Participation."

[519] In addition, thanks to the on-site visit, the country under review provided a Table containing annual statistics relating to the Anti-Corruption Office (OA),<sup>119</sup> on the following on-line courses conducted using the SICEP platform: 1) "Ethics, Transparency, and Efforts to Combat Corruption in Public Administration" and 2) "Punitive Approach in the Fight against Corruption (2001/2015) - Criminal Law and Corruption (2016)." According to those data, in 2015-2016, 356 public servants registered to take part in the first of the aforementioned courses and 223 passed it. For the second, there were 189 registered participants, 108 of whom passed the course. All in all (in the two courses), there were 454 participants, 331 of whom passed.

<sup>118</sup> Argentina's reply to the questionnaire, pp. 72 to 79.

<sup>119</sup> Available at: <http://www.oas.org/juridico/spanish/arg.htm>

[520] Second, in its response to the questionnaire,<sup>120</sup> the country under review submitted information on results achieved with respect to the training provided to Federal Public Administration staff through the Ministry of Modernization. With regard to said results, the Committee notes the following, in particular:

[521] - Voluntary courses taught by the MINISTRY OF MODERNIZATION for all Federal Public Administration personnel, used to obtain credits for promotion in the administrative career. Topics taught include government employment and, especially, public ethics." In its reply to the questionnaire, the country under review mentioned the link to said courses: <http://www.inap.modernizacion.gob.ar/>

[522] - "Online or semi-virtual/semi face-to-face training courses taught by INAP, providing tools or methodologies for improving performance in office." The electronic link to them is: <http://www.inap.modernizacion.gob.ar/>.

[523] In addition, as a result of the on-site visit, the Country under review provided a statistical Table containing a "Report on Accredited Activities in INAP, in 2015-2016, in Programs Addressing Topics Relating to the Protection of Public Ethics Concepts and Public Servants' Obligations,"<sup>121</sup> which provides annual statistical data on the numbers of public servants who registered for the following courses and the numbers of those who passed them:

[524] A) Between 2006 and 2016:

[525] 1) Public Administration: Registered: 1,434; Passed: 791.

[526] 2) Legal Affairs: Registered: 2,877; Passed: 2,357.

[527] 3) Audits: Registered: 443; Passed: 374.

[528] 4) Procurement and Hiring: Registered: 4,219; Passed: 3,437.

[529] 5) Government Employment Registered: 955; Passed: 853.

[530] 6) Public Ethics: Registered: 584; Passed: 433.

[531] 7) Administrative Procedures: Registered: 5,338; Passed: 3,412.

[532] B) Between 2014 and 2016, in respect of courses in the Incoming Personnel Program: Registered: 2,309; Passed: 2,101.

[533] GRAND TOTAL (sum of all the aforementioned courses): Registered: 18,208; Passed: 13,758.

[534] Second, as a result of the on-site visit, the country under review provided a statistical Table<sup>122</sup> on in-house training provided by the Anti-Corruption Office (OA) for its personnel, in 2016, in the form of face-to-face training. Of particular note are the figures for the following activities:

[535] 1) 5th Public and Private Sector Meeting on Ethics and Compliance: Subject Matter: Compliance; OA personnel trained: 40.

[536] 2) Two Days of Training in Ethics and Compliance; Subject Matter: Compliance; OA personnel trained: 40.

<sup>120</sup> Argentina's reply to the questionnaire, p. 81.

<sup>121</sup> Available at: <http://www.oas.org/juridico/spanish/arg.htm>

<sup>122</sup> Available at: <http://www.oas.org/juridico/spanish/arg.htm>

[537] 3) Workshop on Sworn Statements of Interest and Net Worth: Subject Matter: Sworn Statements; OA personnel trained: 40.

[538] 4) 2<sup>nd</sup> International Day Course on Dialogue, on Public Registers of final beneficiaries of justice persons and their ties to money laundering and tax evasion. Subject Matter: Final Beneficiaries; OA personnel trained: 10.

[539] 5) Training in Assessment of Risks of Corruption and Private Sector Prevention Systems Applied to the Public Sector Agency: Subject Matter: Compliance; OA personnel trained: 35.

[540] 6) Electronic Document Management (EDM/GDE): Subject Matter: EDM/GDE; OA personnel trained: 12.

[541] 7) Electronic Document Management for Administrators: Subject Matter: EDM/GDE; OA personnel trained: 2.

[542] 8) Seminar with Experts on Corruption Offenses: Subject Matter: Investigation; OA personnel trained: 20.

[543] 9) Practices in connection with Tracking and Recovering Assets Abroad: Subject Matter: Assets Recovery; OA personnel trained: 20.

[544] At the end of the statistical Table containing the above data, there is a reference to 264 public servants attending 10 in-house training courses lasting 96 hours.

[545] Third, in its reply to the questionnaire,<sup>123</sup> the country under review provided the following information on results achieved in relation to the training given to Federal Public Revenue Administration (AFIP) personnel:

[546] "AFIP runs various training activities relating to institutional ethics. They are broken down under the three groups currently targeted: volunteer trainers, AFIP personnel, and Incoming Personnel. Information is provided on the numbers of each set of participants through to 2006 and then since 2007, following issuance of the new, revised and updated "Code of Ethics for AFIP Personnel."

[547] "**Train the Trainer Programs:** Ethics for Reporting Officers (*Referentes*), Levels I, II, and III: For volunteer ethics trainers country-wide. Since 2007: I: 74; II: 17; III: 24"

[548] "**AFIP Personnel**":

[549] "Face-to-Face Training":

[550] Ethics in Public Office. Functional Reorganization of Offices Program. - Carried out jointly by the Offices of the Deputy Directors-General of Human Resources and Services to Taxpayers. Mandatory module. 2005-2006: 3,074 participants. Since 2007: 40 participants."

[551] "Workshops to Reflect on Ethics. Implemented since 2002, on a voluntary basis for heads of section and employees, lasting one or two days. 2002 to 2006: 1025. Since 2007: 100."

[552] "Institutional Ethics Seminars for special groups: lasting one day: Since 2007: 50."

[553] "Ethics. One-day activity in AFIP training courses for special groups. 2006: 203. Since 2007: 73."

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<sup>123</sup> Argentina's reply to the questionnaire, pp. 88 to 90.

[554] "Ethics and Dilemmas. One-day workshop in several special groups at the request of Regional Directorates. Since 2007: 30."

[555] "Basic axiological concepts and Ethics in Public Office. Half-day. Since 2007: 208."

[556] "Discussion/Debate on Ethics. For section heads and employees, in the presence of a distinguished guest professional, one-day event. 2002 to 2006: 655."

[557] "Totals: Until 2006: 4,957. Since 2007: 501."

[558] "E-learning":

[559] "Public Ethics and Enhancing Transparency in Tax Administration. Activity conducted jointly with the Anti-Corruption Office. 2007: 204."

[560] "New Code of Ethics course for AFIP personnel. Since 2008: 3,193."

[561] "**Induction Activities for Incoming Personnel.**"

[562] "Face-to-Face Training":

[563] "As regards new personnel joining AFIP, ethics modules were crafted in the various training programs based on their profile."

[564] "Training Program for Incoming Professionals. Ethics 2002 to 2006: 838."

[565] "Initial Training for new personnel joining offices. Module 15: Ethics in Public Office. 2006: 64 Since 2007: 70."

[566] "Initial training for new personnel joining AFIP. Ethics in Public Office. Since 2007: 169."

[567] "Initial training for new personnel joining AFIP. Ethical factors. Since 2007: 333."

[568] "E-learning":

[569] Course on the New Code of Ethics. Since 2008: 2,508. Of whom: 570 regular incoming personnel; 1,938 retrofitted from the Pension and Retirement Fund Administrators (AFJP)."

[570] In addition, during the on-site visit, AFIP representatives explained that the decline in participants at face-to-face training courses since 2007 was due to the implementation of the "e-learning" training option in AFIP.

[571] AFIP likewise stated that, as of 2016, workshops and face-to-face courses on the subject have resumed, adjusting the guidelines in Resolution 384/14 and the OAS to the institutional realities of AFIP. At the same time, the institution is working on an Institutional Ethics Training Program, which incorporates face-to-face workshops and e-learning activities, as well as some newly designed activities, into an integrated whole, with a view to unifying training criteria and proceeding to improve them in a coordinated manner. Implementation is scheduled for 2017.

[572] The Committee finds that the above information serves to establish that personnel in the Federal Public Administration (APN) in general, as well as personnel in the Anti-Corruption Office (OA) and the Federal Public Revenue Administration (AFIP), in particular, have received training to enable them to

have an adequate grasp of their responsibilities and of the ethical standards governing their activities, as indicated in the data provided.

[573] With respect to the foregoing, it is worth noting that the document of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, presented by the Inter-American Bar Association (IABA),<sup>124</sup> states, inter alia, that: "The OA has provided training to public servants in the Federal Public Administration through various activities and initiatives, including the "General Program of Mandatory Training Activities for Incoming Personnel" organized by OA professional staff and conducted by the Federal Institute of Public Administration (INAP). It was developed in 2015 and targeted all public servants entering the full-time State payroll, providing courses on public ethics and conflicts of interest. - The contents of the modules were related above all to the Public Ethics Act (Law 25.188) and the amendments to it, as well as to the study of the case law in both areas."

#### 1.4. Conclusions and recommendations

[574] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III (3) of the Convention:

**[575] Argentina has considered and adopted certain measures intended to establish, maintain, and strengthen in the selected public-sector entities instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities, as indicated in Chapter III, Section 1 of this report.**

[576] In view of the comments made in that section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1. Have the appropriate authority take steps to ensure that the training provided through the General Program of Mandatory Training Activities for Incoming Personnel, adopted by Resolution No. 384/14 of the Office of the Chief of Staff of the Ministerial Cabinet, is obligatory not only for Federal Public Administration (APN) personnel selected via competitive processes but also for APN personnel selected via other procedures. (see paragraph 505 in Section 1.2 of Chapter III of this report.)
- 1.4.2. Have the appropriate authority take steps to ensure that the training provided through the Public Ethics Training System (SICEP) is mandatory for Federal Public Administration personnel. (see paragraph 506 in Section 1.2 of Chapter III of this report.)
- 1.4.3. Have the appropriate authority take steps to ensure that the training provided to Federal Public Administration personnel includes material relating to the risks of corruption inherent in the performance of the office. (see paragraph 507 in Section 1.2 of Chapter III of this report.)
- 1.4.4. Have the appropriate authority take steps to ensure that the Anti-Corruption Office (OA) has a comprehensive in-house training program that can detect and address the specific training needs of its employees, taking into account the particular nature of the functions they are called upon to perform. (see paragraph 508 in Section 1.2 of Chapter III of this report.)
- 1.4.5. Have the appropriate authority take pertinent steps to strengthen the institutional role of the Anti-Corruption Office (OA), ensuring that, within the available resources, it has the budget necessary to

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<sup>124</sup> Document of the "Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption," Seventh Report, p. 60.

perform its functions autonomously and to provide in-house training to its personnel. (see paragraph 510 in Section 1.2 of Chapter III of this report.)

- 1.4.6. Have the appropriate authority take steps to ensure that the training provided by AFIP in its induction courses, regarding AFIP's Code of Ethics, is mandatory for all its public servants, not just for incoming personnel. (see paragraph 511 in Section 1.2 of Chapter III of this report.)

## **2. THE STUDY OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE III, PARAGRAPH 12 OF THE CONVENTION)**

### **2.1. STUDIES OF PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE**

[577] The country under review did not present studies regarding preventive measures that take into account the relationship between equitable compensation and probity in public service.

### **2.2. ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT GUIDELINES FOR DETERMINING CIVIL SERVANT REMUNERATIONS**

#### **2.2.1. Existence of provisions in the legal framework and/or other measures.**

[578] Argentina has a set of provisions on establishing objective and transparent guidelines for determining civil servant remunerations, in particular:

[579] - Decree 13/2015 (Ministries Act), Article 1 of which establishes the Ministry of Modernization within the Federal Executive Branch, while Article 23 octies states that one of its powers is to act as the policy-making body on government employment and as the authority responsible for enforcing and interpreting the provisions in those regulations (numbered paragraph 9); another of its powers being to intervene in enforcement of public sector wage policy, in coordination with the ministries and agencies involved (numbered paragraph 12).

[580] - Decree 838 of 1994, establishing the basic salary of the Senior Authorities in the federal Executive Branch, Article 1 of which establishes the amounts shown in Appendix I as the basic salaries (and total remuneration) of the Senior Authorities of the Federal Executive Branch. Article 2 authorizes Ministers in the Federal Executive Branch of Government to allocate a monthly sum to the Senior Authorities in the various areas of the Federal Executive Branch, with the exception of the President and Vice President of the Republic, as a refund of the protocolary expenses they may incur in the performance of their functions.

[581] -Decree 782/06, Article 1 of which states that the Senior Authorities in the Federal Executive Branch mentioned in Appendix II thereto, along with those of the same rank and hierarchy, shall receive, as compensation for the responsibilities that go with their office, the sums established in said Appendix, which shall not count as remuneration and shall not count for bonus purposes.

[582] -Decree 799/10, which approves the Minutes of the Agreement and Appendix of the Negotiating Commission for the Collective Bargaining Agreement for the Federal Public Administration (APN), Article 4 of which extends its applicability to the remunerations of the Senior Authorities provided for by Decree 838/94 and reads as follows: "As of the dates established in Article 2 of this Decree, the percentages set in the Minutes ratified by Article 1 shall be extended to include the remuneration of the personnel encompassed by Decree N° 838/94 and its amendments; in the rules establishes in Decree N°

1716/92 and its enabling regulations; and in Decree N° 140/07. - For the Senior Authorities referred to in Decree N° 838/94, the percentages established in the adopted Minutes shall be applied to the amount resulting from payment of an increase equivalent to that of a top-level federal Director effectively covered by the FEDERAL GOVERNMENT EMPLOYMENT SYSTEM (SINEP), due to implementation of the Collective Bargaining Agreement and its enabling regulations, adopted by Decree N° 2098/08. In order to determine the remuneration to be assigned to an Undersecretary level position, the aforementioned amount to be used as the basis of the calculation should match the remuneration that, pursuant to Decree N° 665/09, corresponds to such a position, under the aforementioned FEDERAL GOVERNMENT EMPLOYMENT SYSTEM (SINEP), plus FIVE PERCENT (5%). The remuneration of the other authorities covered by Decree N° 838/94 shall show similar increases over the levels in effect prior to the signature of this Decree. - The TECHNICAL COMMITTEE ADVISING ON PUBLIC SECTOR WAGE POLICY is hereby authorized to issue any provisions needed to explain, interpret, supplement this Article for the purposes of its implementation."

[583] - Decree 2098/08, which established the Federal Government Employment System (SINEP). It applies to workers appointed in accordance with its provisions, to those appointed at the time under job stability rules to serve in permanent payroll positions in the federal Administrative Profession System established by Decree No. 993 of May 27, 1991 (*t.o.*1995) and amendments thereto, and to those appointed to the respective temporary staff positions. It also turns out to apply to personnel governed by hiring rules pursuant to Article 9 of the Appendix to Law No. 25.164, whose wages were adjusted to match the pay scale established by the present Decree, subject to the scope and provisos of their employment type (Article 1).

[584] As envisaged in a previous Decree, wage levels shall be based on personnel grades, steps, levels and categories, as well as on access to executive and management functions. They shall also be determined by a given number of "remunerative units," the value of which is updated whenever wage parities are negotiated. These wage scales are established in Articles 80 to 88 of the aforementioned Decree.

[585] Article 80 of the aforementioned Decree provides that the Basic Wage Scale Allocations shall be determined by the number of Remunerative Units established for each case in the Table shown in that article; that FORTY PERCENT (40%) of those allocations shall correspond to wages, while the remaining SIXTY PERCENT (60%) shall reflect the function performed; and that the amount corresponding to the function performed constitutes reimbursement of the higher transportation and per diem outlays and other similar expenses incurred as a result of performing the function concerned.

[586] Article 83 of the aforementioned Decree establishes a supplement for professional, technical/scientific, and specialized categories, while Articles 84, 85, and 87 establish supplements for executive, managerial, and specialized functions, respectively. Article 87 specifies that the supplement payable for specific functions shall consist of an amount equivalent to between FIFTEEN PERCENT (15%) and SEVENTY PERCENT (70%) of the Basic Wage Scale Allocation for a particular category of worker, and that said supplement shall be paid to personnel selected to occupy a position or perform a function classified according to the difficulty of recruiting such personnel in the labor market and according to other critical labor-related factors or need for the service or specific technical services, to be accredited by the State employer, following consultations through the Co.P.I.C. with the trade union entities signing the Agreement. Article 87 also states that the Classification must establish the percentage corresponding to each function it covers.

[587] Finally, Article 83 of the aforementioned decree establishes a "tertiary qualification supplement" for personnel included in the General Group with an official, nationally recognized degree in studies lasting at least TWO (2) years, who, at levels A, B, C, or D, perform functions proper to or inherent in the

competences of the degree. It states that said supplement shall consist of a sum equal to TWENTY-FIVE PERCENT (25%) of the Basic Allocation in the worker's wage scale.

[588] -Law 22.994 of 1983, Article 1 of which establishes that the monthly remuneration for members of the Federal Legislature, as of November 25, 1983, shall be equal to the gross amount received by a judge of the Supreme Court, forty percent (40%) of which shall count as the member's basic salary (*dieta*) and the remaining sixty percent (60%) as reimbursement of expenses and representation costs. Article 2 authorizes the Presidents of both congressional chambers to determine, thereafter, the percentage of the legislators' remuneration that shall be considered salary and the percentage corresponding to expenses and representation costs, and to periodically update those remunerations.

[589] - The Rules of Procedure of the Senate, Article 32 of which establishes the powers vested in its President, including that of "submitting for the Senate's approval that chamber's budgets for outlays and salaries" (subparagraph i). Article 48 provide that "The Administrative Secretary shall organize and forward to the President the Secretariat's and the Senate's budget for expenses and salaries."

[590] - The Rules of procedure of the Chamber of Deputies, Article 28 of which states that ""Deputies shall be entitled to a salary from the day they join the House." Article 52 includes as one of the duties of the Administrative Secretary of the Chamber that of "receiving and distributing the salaries of the members of the Chamber."

[591] - Joint Resolution 13/11 of the Presidents of the Chamber of Deputies and of the Senate, Article 1 of which establishes that, as of January 1, 2012, the amounts to be received by federal lawmakers as salary, and by the Secretaries and Assistant Secretaries of both Chambers as basic salary and remuneration for special functions (*Dedicación Funcional*) shall be based on the remuneration paid to a Director of the Federal Congress, with its various components for seniority (10 years), university degree, position performed and length of time in that position. Article 4 establishes that, as of January 1, 2012, the salaries of federal lawmakers shall be the amounts resulting from Article 1 of the aforementioned resolution, plus twenty percent (20%)."

[592] In Article 2, amended by Joint Resolution 14/11, the aforementioned Resolution, provided for an increase, as of January 1, 2012, in the basic salaries for the Assistant Secretaries of both Chambers equal to five percent (5%) on top of the amounts resulting from Article 1 and set the special functions component at an amount equal to that established for reimbursement of the representation expenses of federal lawmakers. In Article 3, amended by Joint Resolution 14/11, it provided for an increase, as of January 1, 2012, in the basic salaries for Secretaries of both Chambers, equal to ten percent (10%) on top of the amounts resulting from Article 1 and set the special functions component at an amount equal to that established for reimbursement of the representation expenses of federal lawmakers.

[593] -Law 24.660 (Statute and Pay Scale for employees of the Federal Congress), which applies to all those rendering paid services in the Federal Legislature (Article 1) other than the Federal Lawmakers and the Secretaries and Assistant Secretaries of each of the congressional chambers (Article 2).

[594] Article 18 of the aforementioned law provides that employees in the Legislature shall receive by way of remuneration the amount that derives from multiplying the number of modules established in Article 24.a of the same law by the value of each module unit, plus, where applicable, the supplements and bonuses contemplated in Articles 24.b and c, 25, 26, and 29. Article 19 states that the value of each module unit shall be determined by a written agreement between the representatives of the employees in the legislature and the representatives of the Federal Legislative Branch who together shall make up the Negotiating Commission.

[595] Article 24 of the aforementioned law establishes the monthly remunerations for employees of the Legislature, corresponding to: a) remuneration for the category, set at the amount that derives from multiplying the value established for each module unit, as per Articles 19ff by the number of modules established in this Article, whereby thirty percent (30%) shall be the basic salary and the remaining seventy percent (70) shall correspond to the special function; b) seniority bonus, on the terms agreed upon; and c) the bonus for possessing a degree, on the terms agreed upon.

[596] Article 24 of the aforementioned law provides that personnel in categories 1 to 3 shall receive a specialty supplement (*adicional por función*) equivalent to 10% of the remuneration for the category in question in the cases listed in this provision. Article 26 establishes that personnel in categories 1 to 8 of the administrative and technical subset and categories 3 to 8 of the service personnel subset shall receive each month, as a supplement for length of time in the category, the amounts derived from applying the percentages indicated in this provision to the remuneration for the respective category. Article 27 provides that personnel in categories 9 to 14 shall automatically be promoted to the next category above their current one once they have spent two (2) full years in the category and that said promotion shall not be granted to personnel who have had any disciplinary sanctions during that period, as per the regulations.

[597] Finally, Article 29 of the aforementioned law provides that any amounts paid to personnel to cover food costs, per diems, payments for extra shifts and all other income shall be considered remuneration, as per the regulations.

[598] - Decree 1285/58, on the Federal Judiciary, Article 2 of which establishes that federal judges shall be appointed by the President with the consent of the Senate and during the Congressional recess, shall be considered on commission pending the next legislature. It also establishes that all judges at the same level in the Judiciary shall receive the same remuneration, regardless of place of duty. This provision further points out that this principle shall apply to civil servants and employees in the Federal Judiciary.

[599] - Law No. 23.853, article 7 of which (replaced by Article 24 of Law 26.855) provides that the remunerations of magistrates, staff and employees of the Federal Judiciary shall be established by the Federal Supreme Court of Justice, which shall ensure that a balance is struck between efficient use of resources and respect for the dignity of workers.

[600] - Agreement 9/05, through which the Supreme Court approved the career ladder and pay scale for magistrates, staff and other personnel of the Federal Judiciary, which are established in this provision for each position.

[601] It is to be noted that, in its reply to the questionnaire, the country under review wrote: "Thus, every year, by virtue of the specific powers vested in it, the Court establishes through an Agreement (*Acordada*) the wage increase to be granted to all members of the Federal Judiciary." It also gave the Committee a copy of Agreement 7/16 ordering payment of a 15% wage/salary increase, effective June 1, 2016, applicable to basic wages and bonuses (*remunerativo y bonificable*) for all categories in the Federal Judicial career ladder.

[602] Agreement 24/04, through which the Supreme Court delegated to the Judicial Council the exercise of its powers in respect of the rules governing bonuses for university degrees, except as regards the Supreme Court's own public servants and other personnel.

[603] Law 27.148 (Organic Law of the Federal Public Prosecutor's Office), Article 61 of which establishes: "The remunerations of the members of the Federal Public Prosecutors' Office shall be paid as follows: a) The Federal Procurator-General shall earn the same as a Judge of the Federal Supreme Court of Justice; b) Procurators (*procuradores fiscales*) shall receive twenty percent (20%) more than the remuneration paid to appeal court judges (whereby the calculation shall be based only on the basic salary,

supplementary allowance, Supreme Court Agreement No. 71/93, payment for rank in the hierarchy, and payment for special function components); c) Prosecuting attorneys (*fiscales generales*) working in the Federal Court of Criminal Cassation and the Federal Court of Criminal Cassation and prosecuting attorneys acting as district attorneys shall earn the same as a judge in a court of cassation; d) The Administrative Investigations Attorney and prosecuting attorneys shall earn the same as an appeals court judge (*juez de cámara*); e) Public prosecutors (*fiscales*) shall earn the same as a (first instance) trial court judge; f) The remaining members of the Federal Public Prosecutors' Office shall earn the same as, or more than, the public servants and other personnel in the Federal Judiciary.

### **2.2.2. Adequacy of the legal framework and/or other measures**

[604] With respect to the provisions on the establishment of objective and transparent guidelines for determining civil servant remunerations, the Committee notes that, on the basis of the information available to it, they are pertinent for the purposes of the Convention.

[605] However, the Committee believes it timely to make a number of observations in relation thereto:

[606] First, the Committee notes that Article 80 of Decree 2098/08, which established the Federal Government Employment System (SINEP), provides that the Basic Wage Scale Allocations shall be determined by the number of Remunerative Units established for each case in the Table shown in that article; that FORTY PERCENT (40%) of those allocations shall correspond to wages, while the remaining SIXTY PERCENT (60%) shall reflect the function performed; and that the amount corresponding to the function performed constitutes reimbursement of the higher transportation and per diem outlays and other similar expenses incurred as a result of performing the function concerned.

[607] With respect to the above, during the on-site visit it was established that, although the items in remuneration that reflect the particular function performed are listed, due to the lack of a centralized and systematized information system, it is not easy to discern what each public servant is charging and on what basis, making it not easy to exercise oversight in this regard. In light of the foregoing, the Committee will make a recommendation (see recommendation 2.2.3.1 in Section 2.2.3 of Chapter III of this report).

[608] It is also worth noting with respect to the above, that during the on-site visit representatives of the country under review pointed to the advisability of establishing the aforementioned information system and stated that this was going to be easier now thanks to the establishment of the Ministry of Modernization, as the policy-making body for government employment, because studies would be conducted into the modernization of, inter alia, remuneration.

[609] Second, the Committee notes that Article 87 of Decree 2098/08 (SINEP) specifies that the supplement payable for specific functions shall consist of an amount equivalent to between FIFTEEN PERCENT (15%) and SEVENTY PERCENT (70%) of the Basic Wage Scale Allocation for a given category of worker, and that said supplement shall be paid to personnel selected to occupy a position or perform a function classified according to the difficulty of recruiting such personnel in the labor market and according to other critical labor-related factors or need for the service or specific technical services, to be accredited by the State employer, following consultations through the Co.P.I.C. with the trade union entities signing the Agreement. Article 87 also states that the Classification must establish the percentage corresponding to each function it covers.

[610] With respect to the above, during the on-site visit it was established that there are no criteria for determining the amount between 15% and 70% [Tr. sic] to be paid to personnel as a specific function supplement in the circumstances envisaged in the aforementioned provision. The Committee deems it advisable to establish those criteria, given the wide range of discretionary authority allowed in that provision. The Committee will make a recommendation in that regard. (See recommendation 2.2.3.2 in

Section 2.2.3 of Chapter III of this report).

[611] It is worth noting too, with respect to the above, that during the on-site visit representatives of the country under review pointed out the advisability of establishing uniform and objective criteria regarding the provision referred to, in order to reduce the arbitrariness that could arise in its application.

### **2.2.3. Conclusions and recommendations**

[612] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III (12) of the Convention:

**[613] Argentina has considered and adopted measures aimed at establishing objective and transparent criteria to determine compensation for public servants in keeping with what is stated in section 2 of Chapter III of this report.**

[614] In view of the comments made in that section, the Committee suggests that the country under review consider the following recommendations:

- 2.2.3.1 Establish, in the Federal Judiciary, a centralized and systematized information system that makes it possible to discern, in relation to Article 80 of Decree 2098/08, which established the Federal Government Employment System (SINEP), what each public servant is charging and on what basis, thereby facilitating oversight. (see paragraph 607 in Section 1.2 of Chapter III of this report.)
- 2.2.3.2 Adopt criteria to determine the amount between 15% and 70% to be paid to personnel in the Federal Executive Branch, which is governed by SINEP, as a supplement to their basic salary on account of the specific function performed, under the circumstances envisaged in Article 87 of Decree 2098/08. (see paragraph 610 in Section 1.2 of Chapter III of this report.)

## APPENDIX

## AGENDA FOR THE ON-SITE VISIT TO ARGENTINA

<b><u>Monday, October 3, 2016</u></b>	
4:30 p.m. – 5:00 p.m. <i>El Conquistador Hotel</i>	<b>Coordination meeting between the representatives of the member states of the Subgroup and the Technical Secretariat.</b>
5:00 p.m. – 5:30 p.m. <i>El Conquistador Hotel</i>	<b>Coordination meeting of representatives of the country under review, the member states of the Subgroup, and the Technical Secretariat.</b>
<b><u>Tuesday, October 4, 2016</u></b>	
8:30 a.m. – 12:30 p.m. <i>Ministry of Foreign Affairs (Palacio San Martín ) Arenales 761, Buenos Aires).</i>	<b>Meetings with civil society organizations and/or, inter alia, private sector organizations, professional organizations, academics or researchers.</b>
<b>First meeting</b> 8:30 a.m. – 9:50 a.m.	<p><b><u>Topic:</u></b></p> <p>Government hiring systems</p> <p><b><u>Participants:</u></b></p> <p><i>Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption (CICC) (Report prepared by this Committee, presented by the Inter-American Bar Association (IABA):</i></p> <p><b>Angel Bruno</b></p> <p><b>Agustín Carrara</b></p> <p><b>Martina Cirimele</b></p> <p><b>Edgardo Strupeni</b></p> <p><b>Lorena Schiariti</b></p> <p><i>Fundación Poder Ciudadano (The Argentine Chapter of Transparency International):</i></p> <p><b>Pablo Secchi</b> – Executive Director</p> <p><b>Germán Emanuele</b> – Director of the Justice and Citizen Action Area</p>

	<p><b>María Emilia Berazategui</b> – Coordinator of the Justice and Citizen Action Area</p> <p><i>Fundación Directorio Legislativo</i></p> <p><b>Maria Barón</b></p>
<p><b>Second meeting</b></p> <p>9:50 a.m. – 11:10 a.m.</p>	<p><b><u>Topics:</u></b></p> <p>Systems for government procurement of goods and services</p> <p><b><u>Participants:</u></b></p> <p><i>Fundación Poder Ciudadano (The Argentine Chapter of Transparency International):</i></p> <p><b>Pablo Secchi</b> – Executive Director</p> <p><b>Germán Emanuele</b> – Director of the Justice and Citizen Action Area</p> <p><b>María Emilia Berazategui</b> – Coordinator of the Justice and Citizen Action Area</p> <p><i>Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption (CICC) (Report prepared by this Committee, presented by the Inter-American Bar Association (IABA):</i></p> <p><b>Angel Bruno</b></p> <p><b>Agustín Carrara</b></p> <p><b>Martina Cirimele</b></p> <p><b>Edgardo Strupeni</b></p> <p><b>Lorena Schiariti</b></p> <p><i>Centro de implementación de Políticas Publicas (CIPPEC)</i></p> <p><b>Gonzalo Dieguez</b></p> <p><i>Directorio Legislativo</i></p> <p><b>Maria Barón</b></p> <p><i>Unión Argentina de Proveedores del Estado (UAPE)</i></p> <p><b>Daniel Arguello</b></p>
<p><b>Third meeting</b></p> <p>11:10 a.m. – 12:30 p.m.</p>	<p><b><u>Topic:</u></b></p> <p>Legal characterization of acts of corruption and whistleblower protection systems</p> <p><b><u>Participants:</u></b></p>

	<p><b><i>Fundación Poder Ciudadano (The Argentine Chapter of Transparency International):</i></b></p> <p><b>Pablo Secchi</b> – Executive Director</p> <p><b>Germán Emanuele</b> – Director of the Justice and Citizen Action Area</p> <p><b>María Emilia Berazategui</b> – Coordinator of the Justice and Citizen Action Area</p> <p><b><i>Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption (CICC) (Report prepared by this Committee, presented by the Inter-American Bar Association (IABA):</i></b></p> <p><b>Angel Bruno</b></p> <p><b>Agustín Carrara</b></p> <p><b>Martina Cirimele</b></p> <p><b>Edgardo Strupeni</b></p> <p><b>Lorena Schiariti</b></p> <p><b><i>Centro de implementación de Políticas Públicas (CIPPEC)</i></b></p> <p><b>Gonzalo Dieguez</b></p> <p><b><i>Fundación Directorio Legislativo</i></b></p> <p><b>Maria Barón</b></p> <p><b><i>Unión Argentina de Proveedores del Estado (UAPE)</i></b></p> <p><b>Daniel Arguello</b></p>
12:30 p.m. – 2:00 p.m.	Lunch
2:00 p.m. – 5:30 p.m. <i>Ministry of Foreign Affairs</i>	<b>Meetings with public officials on government hiring and remuneration systems</b>
2:00 p.m. – 4:30 p.m.	<p><b><u>Panel 1:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Government hiring systems:</b></li> </ul> <p>- Progress with implementing the recommendations formulated in the Second Round, challenges, new developments, and results.</p> <p><b><u>Participants:</u></b></p> <p><b><u>Federal Executive Branch</u></b></p> <p><b><u>Ministry of Modernization:</u></b></p> <p><b>Pedro Pourthe</b> - Federal Director of the Federal Government Employment Office</p>

	<p><u><i>Anti-Corruption Office</i></u></p> <p><b>Laura Geler</b> – Deputy Director, Transparency Policy Planning (Expert, MESICIC)</p> <p><b>Carina Larocca</b> - Coordinator, Disqualifying Factors and Conflicts of Interest</p> <p><u><i>Federal Legislative Branch</i></u></p> <p><u><i>Chamber of Deputies:</i></u></p> <p><b>Maria Dolores Martínez</b> – Coordinating Director, Modernization Program, Federal Chamber of Deputies-</p> <p><b>Martin Loigo</b> – Administrative Secretariat, Federal Chamber of Deputies--</p> <p><b>Daniel Agustin Rizzo</b> – Administrative Secretariat, Federal Chamber of Deputies-</p> <p><i>Senate:</i></p> <p><b>Pablo Casals</b> - Director General of Human Resources</p>
4:30 p.m. – 5:30 p.m.	<p><b><u>Panel 2:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Study of prevention measures that give due consideration to the relationship between equitable remuneration and probity in public service</b></li> </ul> <ul style="list-style-type: none"> <li>- Study or studies carried out</li> <li>- Objective and transparent guidelines for determining civil servant remunerations</li> </ul> <p><b><u>Participants:</u></b></p> <p><u><i>Federal Executive Branch</i></u></p> <p><u><i>Ministry of Modernization:</i></u></p> <p><b>Lucia Pettis</b> - Chief of Staff of Advisors to the Secretariat of Government Employment</p> <p><u><i>Anti-Corruption Office</i></u></p> <p><b>Laura Geler</b> – Deputy Director, Transparency Policy Planning (Expert, MESICIC)</p> <p><u><i>Federal Legislative Branch</i></u></p> <p><u><i>Chamber of Deputies:</i></u></p> <p><b>Maria Dolores Martínez</b> – Coordinating Director, Modernization Program, Federal Chamber of Deputies-</p> <p><b>Martin Loigo</b> – Administrative Secretariat, Federal Chamber of</p>

	<p><i>Deputies--</i></p> <p><b>Daniel Agustin Rizzo</b> – Administrative Secretariat, Federal Chamber of Deputies-</p> <p><i>Senate:</i></p> <p><b>Pablo Casals</b> - Director General of Human Resources</p>
<p>6:00 p.m. – 7:00 p.m.</p> <p><i>Hotel:</i></p>	<p><b>Informal meeting</b> of the representatives of the member states of the Subgroup and the Technical Secretariat</p>
<p><b><u>Wednesday, October 5, 2016</u></b></p>	
<p>8:30 a.m. – 12:30 p.m.</p> <p><i>Ministry of Foreign Affairs</i></p>	<p><b>Meetings with public officials; continuation of the panels on government hiring and remuneration systems</b></p>
<p>8:30 a.m. – 11:30 a.m.</p>	<p><b><u>Continuation of Panel 1</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Government hiring systems:</b> <ul style="list-style-type: none"> <li>- Progress with implementing the recommendations formulated in the Second Round, challenges, new developments, and results.</li> </ul> </li> </ul> <p><b><u>Participants:</u></b></p> <p><b><u>The Federal Judiciary</u></b></p> <p><i>Federal Judicial Council:</i></p> <p><b>Marcelo Bee Sellares</b> –Secretariat of the Office of the President, Judicial Council-</p> <p><b>Federico Vincent</b> - Director General of Human Resources, Judicial Council-</p> <p><b>Alexis N. Tinirello</b>- Legal Affairs, Judicial Council-</p>

	<p><b><u>Federal Public Prosecutors' Office (Ministerio Público de la Nación)</u></b></p> <p><b><u>Public Prosecutors' Office:</u></b></p> <p><b>José Ipohorski</b> – Administrative Investigations Attorney</p> <p><b>Maria Andrea Garmendia Orueta</b> – Administrative Investigations Attorney</p> <p><b>Elpido Portocarrero</b> – Coordinator General, Office of the Procurator for Administrative Investigations</p> <p><b>Guillermo Valls</b> – Acting Director General, Disciplinary, Technical, and Human Resources Secretariat</p> <p><b>Diego Solernó</b> – Director General, Regional and International Cooperation</p> <p><b>Rodrigo Coto Araujo</b>- Coordination Secretariat-</p> <p><b><u>Public Defenders' Office (Ministerio Público de la Defensa):</u></b></p> <p><b>Patricia Schuvaks</b> – Director-General of Audit and Management Oversight</p> <p><b>Jorge Raúl Causse</b> – Director-General</p> <p><b>Carlos Tavares</b> – Department Chief</p>
11:30 a.m. – 12:30 p.m.	<p><b><u>Continuation of Panel 2</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Study of prevention measures that give due consideration to the relationship between equitable remuneration and probity in public service</b></li> <li>- Study or studies carried out</li> <li>- Objective and transparent criteria for determining civil servant remunerations</li> </ul> <p><b><u>Participants:</u></b></p> <p><b><u>The Federal Judiciary</u></b></p> <p><b><u>Federal Judicial Council:</u></b></p> <p><b>Marcelo Bee Sellares</b> –Secretariat of the Office of the President, Judicial Council-</p> <p><b>Federico Vincent</b> - Director General of Human Resources, Judicial Council-</p> <p><b>Alexis N. Tinirello</b>- Legal Affairs, Judicial Council-</p> <p><b><u>Federal Public Prosecutors' Office (Ministerio Público de la Nación)</u></b></p> <p><b>José Ipohorski</b> – Administrative Investigations Attorney</p>

	<p><b>Maria Andrea Garmendia Orueta</b> – Administrative Investigations Attorney</p> <p><b>Elpido Portocarrero</b> – Coordinator General, Office of the Procurator for Administrative Investigations</p> <p><b>Guillermo Valls</b> – Acting Director General, Disciplinary, Technical, and Human Resources Secretariat</p> <p><b>Javier Alvarez</b> – Disciplinary, Technical, and Human Resources Secretariat</p> <p><b>Diego Solernó</b> – Director General, Regional and International Cooperation</p> <p><b>Rodrigo Coto Araujo</b>- Coordination Secretariat-</p> <p><b><u>Public Defenders' Office (Ministerio Público de la Defensa):</u></b></p> <p><b>Patricia Schuvaks</b> – Director-General of Audit and Management Oversight</p> <p><b>Jorge Raúl Causse</b> – Director-General</p> <p><b>Carlos Tavares</b> – Department Chief</p>
12:30 p.m. – 2:00 p.m.	Lunch
2:00 p.m. – 5:30 p.m. <i>Ministry of Foreign Affairs</i>	<b>Meetings with public officials on systems for government procurement of goods and services</b>
2:00 p.m. – 5:30 p.m.	<p><b><u>Panel 3:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Systems for government procurement of goods and services</b></li> </ul> <p>- Progress with implementing the recommendations formulated in the Second Round, challenges, new developments, and results.</p> <p><b><u>Participants:</u></b></p> <p><b><u>Federal Executive Branch</u></b></p> <p><i>Federal Procurement Office:</i></p> <p><b>Maria José Martelo</b> -Undersecretariat for Administrative Management</p> <p><b>Nestor Diaz</b> - Federal Director of the Federal Procurement Office</p> <p><i>Undersecretariat for Public Works:</i></p> <p><b>Ismael Malis</b> – Federal Director for Formulating Federal Public Works Projects</p> <p><b>Gabriela Stortoni</b> - Legal Services Area of the Undersecretariat for Coordinating Federal Public Works</p> <p><b>Regina Yodice</b> – Coordinator, Legal Services – Secretariat for Public</p>

	<p>Works</p> <p><u>Anti-Corruption Office</u></p> <p><b>Laura Geler</b> – Deputy Director, Transparency Policy Planning (Expert, MESICIC)</p> <p><b>Diego Martinez</b> – Head of the Federal Road Construction Transparency Unit</p> <p><b>Ornela Mazza Gigena</b> – Head of the Procurement and Hiring Area</p> <p><b>Vanesa del Boca</b> – Anti-Corruption Office</p> <p><u>Federal Legislative Branch</u></p> <p><u>Chamber of Deputies:</u></p> <p><b>Martin Loigo</b> – Administrative Secretariat, Federal Chamber of Deputies-</p> <p><b>German Kirschner</b>- Deputy Director of Procurement and Insurance, Federal Chamber of Deputies-</p> <p><b>Andrea Paula Loigo</b>- Attorney, Office of the Director-General, Administrative Coordination, Federal Chamber of Deputies-</p> <p><b>Carolina Loigo</b> – Department Chief. Office of the Director-General, Administrative Coordination, Federal Chamber of Deputies-</p> <p><b>Pablo Jose Rodriguez Peña</b> - Attorney, Office of the Director-General, Administrative Coordination, Federal Chamber of Deputies-</p> <p><u>Senate:</u></p> <p><b>Mariana Rodriguez Alvarez</b> – Chief of Staff, Office of the Director-General of Administration</p> <p><b>Leandro Musri</b> – Technical Advisor, Office of the Director-General of Administration</p>
<p>6:00 p.m. – 7:00 p.m.</p> <p><i>Hotel:</i></p>	<p><b>Informal meeting</b> of the representatives of the member states of the Subgroup and the Technical Secretariat</p>
<p><b><u>Thursday, October 6, 2016</u></b></p>	
<p>8:30 a.m. – 12:30 p.m.</p> <p><i>Ministry of Foreign Affairs</i></p>	<p><b>Meetings with government officials: continuation of the panel on systems for government procurement of goods and services; start of the panel discussion on instructions to personnel in government institutions to ensure that they understand their responsibilities and the ethical rules governing their activities</b></p>
<p>8:30 a.m. – 10:30 a.m.</p>	<p><b><u>Continuation of Panel 3</u></b></p>

	<ul style="list-style-type: none"> <li>▪ <b>Systems for government procurement of goods and services</b></li> <li>- Progress with implementing the recommendations formulated in the Second Round, challenges, new developments, and results.</li> </ul> <p><b><u>Participants:</u></b></p> <p><b><u>The Federal Judiciary</u></b></p> <p><i>Federal Judicial Council:</i></p> <p><b>Alexis N. Tinirello</b>- Legal Affairs, Judicial Council-</p> <p><b>Gisela Etchebarne</b> - Office of the President, Judicial Council-</p> <p><b><u>Federal Public Prosecutors' Office (Ministerio Público de la Nación)</u></b></p> <p><i>Public Prosecutors' Office:</i></p> <p><b>Sergio Rodriguez</b> – Attorney General, Administrative Investigations</p> <p><b>José Ipohorski</b> – Prosecutor, Administrative Investigations</p> <p><b>Elpido Portocarrero</b> – Coordinator General, Office of the Procurator for Administrative Investigations</p> <p><b>Miguel Angel Aguerre</b> – Assistant Deputy Director in charge of the Procurement Operations Unit</p> <p><i>Public Defenders' Office (Ministerio Público de la Defensa):</i></p> <p><b>Dr. Patricia Schuvaks</b> – Director-General of Audit and Management Oversight</p> <p><b>Jorge Raúl Causse</b> – Director-General</p> <p><b>Carlos Tavares</b> – Department Chief</p>
<p>10:30 a.m. – 12:30 p.m.</p>	<p><b><u>Panel 4:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities:</b></li> <li>- Legal framework, programs, competent bodies, and technology use</li> <li>- Outcomes/results</li> <li>- Challenges</li> </ul> <p><b><u>Participants:</u></b></p> <p><b><u>Anti-Corruption Office</u></b></p> <p><b>Laura Geler</b> – Deputy Director, Transparency Policy Planning (Expert, MESICIC)</p> <p><b>Julieta Arias</b> – Cabinet Advisor, Secretariat of Public Ethics,</p>

	<p>Transparency, and Efforts to Combat Corruption</p> <p><b>Deborah Hafford</b> – Coordinator, Transparency Policies Planning Directorate (DPPT)</p> <p><b>Eric Winer</b> – Head of Training</p> <p><b><u>Ministry of Modernization:</u></b></p> <p><b>Eduardo Salas</b> - Federal Director of the Federal Institute of Public Administration</p>
12:30 p.m. – 2:00 p.m.	Lunch
2:00 p.m. – 5: 30 p.m. <i>Ministry of Foreign Affairs</i>	<p><b>Meetings with government officials: continuation of the panel discussion on instructions to personnel in government institutions to ensure that they understand their responsibilities and the ethical rules governing their activities; panel discussions on the legal characterization of acts of corruption and whistleblower protection systems.</b></p>
2:00 p.m. – 3: 00 p.m.	<p><b><u>Continuation of Panel 4</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities:</b> <ul style="list-style-type: none"> <li>- Legal framework, programs, competent bodies, and technology use</li> <li>- Outcomes/results</li> <li>- Challenges</li> </ul> </li> </ul> <p><b><u>Participants:</u></b></p> <p><b><u>Federal Public Revenue Administration (AFIP):</u></b></p> <p><b>Pablo Brula</b> – Director of the Personnel Department in the Office of the Deputy Director-General of Human Resources-</p> <p><b>Ezequiel Luque</b> – Instructor, Training-</p>
3:00 p.m. – 4:30 p.m.	<p><b><u>Panel 5:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Legal characterization of acts of corruption</b> <ul style="list-style-type: none"> <li>- Progress with implementing the recommendations formulated in the Second Round, challenges, new developments, and results.</li> </ul> </li> </ul> <p><b><u>Participants:</u></b></p> <p><b><u>Anti-Corruption Office</u></b></p> <p><b>Mirna Goransky</b> –Investigations Director-</p>

	<p><b>Omar Sosa</b> – Investigations Directorate</p> <p><b>Ignacio Irigaray</b> – Investigations Directorate</p> <p><b>Juan Carlos Dure</b>- Investigations Coordinator-</p> <p><b>Luis Arocena</b> – Investigations Directorate</p> <p><b>Diego Martinez</b> – Head of the Ethics and Transparency Unit of the Anti-Corruption Office for Road Construction-</p> <p><b>Laura Geler</b> – Deputy Director, Transparency Policy Planning (Expert, MESICIC)</p> <p><b><u>The Federal Judiciary</u></b></p> <p><b>Patricia Llerena</b> – Judge in the Oral Hearings Court for the Federal Capital</p> <p><b>Esteban Cosentino</b> – Secretary of the Fourth Federal Court for Federal Criminal and Correctional Cases</p> <p><b>Ezequiel Castro</b>- Assistant Secretary of the Fourth Federal Court, Section 8-</p> <p><b>Agustina Belén Dugo</b> – Assistant Secretary of the Fourth Federal and Correctional Court, Section 7-</p> <p><b>Mabel Castelnuovo</b> – Secretary of the Twelfth Federal Criminal and Correctional Court</p> <p><b>María del Pilar Cavallero</b> – Twelfth Criminal and Correctional Court-</p> <p><b><u>Public Prosecutors' Office:</u></b></p> <p><b>Sergio Rodriguez</b> – Attorney General, Administrative Investigations</p> <p><b>José Ipohorski</b> – Prosecutor, Administrative Investigations</p>
4:30 p.m. – 5:30 p.m.	<p><b><u>Panel 6:</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Whistleblower protection systems:</b></li> <li>- Progress with implementing the recommendations formulated in the Second Round, challenges, new developments, and results.</li> </ul> <p><b><u>Participants:</u></b></p> <p><b><u>Federal Program to Protect Witnesses and Defendants:</u></b></p> <p><b>Francisco Lagos</b> – Director of the Witness Protection Program, Ministry of Justice and Human Rights.</p> <p><b>Mariano Ungar</b> – Director of the Witness Protection Program, Ministry of Justice and Human Rights.</p> <p><b>Florencio Aquino</b> – Director of the Witness Protection Program, Ministry of</p>

	Justice and Human Rights. <b><u>Anti-Corruption Office</u></b> <b>Laura Geler</b> – Deputy Director, Transparency Policy Planning (Expert, MESICIC) <b><u>Federal Legislative Branch</u></b>
5:30 p.m. – 6:00 p.m.	<b>Informal meeting</b> between the representatives of the member states of the Subgroup and the Technical Secretariat.
6:00 p.m. – 7:00 p.m.	<b>Final meeting</b> <sup>125/</sup> between the representatives of the country under review, the member states of the Subgroup, and the Technical Secretariat.

<sup>125</sup>. The third paragraph of provision 20 of the Methodology for Conducting On-Site Visits states: : “At the end of the on-site visit, a meeting shall be held, to be attended by the Subgroup experts, the Technical Secretariat, and the Lead Expert of the country under review and/or the official appointed in his place in accordance with provision 10, second paragraph, of this Methodology. That meeting shall identify, if necessary, the information that, exceptionally, the country under review is still to submit through the Technical Secretariat and the deadline within which it is to do so, and it shall also coordinate any other pending matters arising from the on-site visit.”

**OFFICIALS WHO ACTED AS CONTACTS IN THE COUNTRY UNDER REVIEW IN  
COORDINATING THE ON-SITE VISIT, AS WELL AS REPRESENTATIVES OF THE  
MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP AND OF THE MESICIC  
TECHNICAL SECRETARIAT WHO TOOK PART IN THE VISIT**

**COUNTRY UNDER REVIEW:**

**ARGENTINA**

**Laura Geler**

Lead Expert on the Committee of Experts of the MESICIC  
Deputy Director in the Transparency Policies Planning Directorate  
Anti-Corruption Office (OA)

**MEMBER STATES OF THE REVIEW SUBGROUP:**

**BRAZIL**

**Elizabeth Cosmo**

Alternate Expert on the Committee of Experts of the MESICIC  
Federal Finance and Control Auditor  
Secretariat for Transparency and Prevention of Corruption  
Office of the Comptroller General of the Union

**TECHNICAL SECRETARIAT OF THE MESICIC**

**Enrique Martínez**

Principal Legal Officer of the Department of Legal Cooperation  
OAS Secretariat for Legal Affairs.

**Indira Fernandes**

Legal Officer, Department of Legal Cooperation  
OAS Secretariat for Legal Affairs.