

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Tenth Meeting of the Committee of Experts
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REPUBLIC OF ARGENTINA

FINAL REPORT

(Adopted at the December 15, 2006 plenary session)

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

**FINAL REPORT ON IMPLEMENTATION IN THE REPUBLIC OF ARGENTINA OF THE
CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN THE FIRST ROUND¹**

INTRODUCTION

1. Content of the Report

This report will refer, first, to the review of the implementation, in the Republic of Argentina, of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism of the Convention (MESICIC) in the context of the Second Round of Review. Those provisions are as follows: Article III, paragraphs 5 and 8; and Article VI.

Secondly, it will address monitoring of the implementation of the recommendations made to the Republic of Argentina by the Committee of Experts of the MESICIC in the First Round of Review contained in the report on Argentina adopted by the Committee at its Third Meeting, which is published at the following Internet page: http://www.oas.org/juridico/english/mec_rep_arg.pdf

2. Ratification of the Convention and adherence to the Mechanism

According to the official records of the OAS General Secretariat, the Republic of Argentina deposited the instrument of ratification of the Inter-American Convention against Corruption on October 9, 1997.

In addition, the Republic of Argentina signed the Declaration on the Mechanism for Follow-up on Implementation of the Inter-American Convention against Corruption on June 4, 2001.

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Argentina

The Committee wishes to note the cooperation that it has received from the Republic of Argentina throughout the review process, and, in particular, from the Anticorruption Office of the Ministry of Justice and Human Rights, which was evident, among other things, in its response to the questionnaire and in its willingness at all times to clarify or complete its contents. The Republic of Argentina noted in its response, the electronic addresses where the laws and related regulations can be consulted.

For its review, the Committee took into account the information supplied by the Republic of Argentina up to July 17, 2006, and that which was requested by the Secretariat and by the members

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on December 15, 2006, at its tenth meeting, held at OAS Headquarters in Washington D.C., United States, December 11-16, 2006.

of the review subgroup for performing their functions in keeping with the Rules of Procedure and Other Provisions.

2. Documents received from civil society organizations

The Committee also received, within the deadline established in the Schedule for the Second Round, adopted at its Ninth Meeting,² documents from the civil society organizations *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International), with the collaboration of the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC); and from the Inter-American Bar Association (IABA) in conjunction with the Committee for Follow-up on Implementation of the Inter-American Convention against Corruption (Follow-up Committee). These documents were submitted in electronic format by those organizations.³

II. REVIEW OF THE IMPLEMENTATION BY THE STATE PARTY OF THE PROVISIONS OF THE CONVENTION SELECTED FOR THE SECOND ROUND

A. SCOPE OF THIS REPORT

The Republic of Argentina answered the sections of the questionnaire regarding government hiring and procurement of goods and services, describing those which it considered the principal systems at the federal level, and referring to all the specific aspects on which the questionnaire requested particular information. In addition, it attached information on these issues with respect to the Provincial States, of varying extent, scope, and content.

This report will focus on a review of the federal government, while acknowledging the efforts of the Republic of Argentina to undertake, with the provincial states, joint actions aimed at obtaining information on the implementation of the Convention and the adoption of a plan to provide technical assistance to that end to those States as well as municipalities, as noted in Part A of Chapter IV of this report. In this regard, the Committee encourages Argentina to continue developing these types of actions and to strengthen cooperation and coordination between the federal government and the provincial and municipal governments for the effective implementation of the Convention, and to provide them with the technical assistance they may need to this end. The Committee will formulate a recommendation in this regard (see recommendation in part A, chapter III of this report).

² This meeting was held at OAS headquarters in Washington DC, from March 27 to 31, 2006.

³ These documents were received by email July 17, 2006, and may be consulted at the following Internet addresses:

http://www.oas.org/juridico/spanish/mesicic2_arg_inf_ti_sp.doc

http://www.oas.org/juridico/spanish/mesicic2_arg_inf_fia_sp.doc

B. REVIEW OF THE IMPLEMENTATION IN THE FEDERAL GOVERNMENT OF THE REPUBLIC OF ARGENTINA OF THE PROVISIONS OF THE CONVENTION SELECTED FOR THE SECOND ROUND

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

1.1. GOVERNMENT HIRING SYSTEMS

1.1.1. Existence and provisions of a legal framework and/or other measures

At the federal level, the Republic of Argentina has provisions regarding government hiring systems, of which special mention should be made of the following, which refer to the principal systems:

- Article 14 bis of the national Constitution, which apply to public-sector positions generally. Article 14 enshrines, among workers' rights, stability for public employees; Article 16 provides that all inhabitants are equal before the law, and eligible for employment without any condition other than suitability; and Article 36 defines the act of engaging in a grave fraudulent offense against the state that entails enrichment, as a crime against democracy and notes as a consequence of such conduct, disqualification from holding public positions or employment for the period of time stipulated by law.

- Statutory and other legal provisions applicable to the majority of public-sector jobs under the federal Executive Branch, of which special mention is made of the following:

- Article 1 of the Framework Law Regulating Federal Public Employment, No. 25,164, which provides that the rights and guarantees granted by the law to those workers who make up the federal civil service, will constitute minimums that cannot be set aside to their detriment in the collective bargaining agreements entered into in the context of Law 24,185; Article 3 indicates the exceptions to its application;

ⁱ Article 4 sets out the conditions for entering the federal public administration;ⁱⁱ Article 5 establishes the impediments to entry;ⁱⁱⁱ Article 7 provides, as regards the nature of the employment relationship, the Stability Regime,^{iv} the Hiring Regime,^v the Executive Personnel Regime,^{vi} and the Ad Honorem Personnel Regime;^{vii} and Article 6 orders that designations made in violation of the provisions of Articles 4 and 5, cited above, or of any other legal provisions may be declared void, irrespective of the time that has elapsed.

- Article 2 of Decree No. 1421/02, which regulates Law 25,164, notes that the Office of the Assistant Secretary for Public Administration of the Office of the Chief of Staff of the Cabinet of Ministers is the lead organ in respect of public employment and the authority for enforcing and interpreting the provisions of Law 25,164, the ancillary regime, and its regulatory provisions, with powers to issue the corresponding interpretive, complementary, and clarifying provisions;^{viii} Article 4, indicates how it will be shown that the conditions for entering the federal public administration have been met;^{ix} Article 8, refers to the general mechanisms for selection to ensure that the principle of suitability is used as the basis for entry and promotion in the administrative career service, as well as for the assignment of supervisory functions;^x Article 9 establishes the provisions to which the Hiring Regime is subject; this regime encompasses fixed-term contracts and designation in temporary staff positions;^{xi} and Article 10 establishes the provisions that govern the Executive Personnel Regime.

- Law No. 24,185 governs collective bargaining between the federal public administration and its employees;^{xiii} such bargaining system may be adopted by the provincial governments and the local government of the city of Buenos Aires,⁴ pursuant to the regulations that their competent organs may issue. Article 6 indicates that collective bargaining may be general or by sector; and Article 8 provides that such bargaining shall extend to all labor issues in the employment relationship, encompassing both wages or working conditions, but not the basic organizational structure of the federal public administration, the powers of conducting the affairs of the state, and the principle of suitability as the basis for entry to and promotion in the administrative career service.

- The General Bargaining Agreement for the Federal Public Administration,^{xiii} ratified by Decree No. 214/2006, Article 11 of which sets the minimal conditions that must be shown prior to entry into the agencies covered in this Agreement;^{xiv} Article 18 establishes the categories of Permanent and Not permanent for the personnel covered by it;^{xv} Article 24 lays out the conditions for stability within the scope of application of Framework Law No. 25,164, which includes showing suitability during the test period by having satisfactory evaluations and by passing trainings; Article 51 indicates the principles that guide the career service;^{xvi} Article 56 provides that personnel shall be selected using systems that ensure a clear and convincing showing of suitability, merits, skills, and attitude towards work that are adequate for performing the functions; Article 57 states that one must respect the principles of equal opportunity, openness, and transparency, and specifically equal treatment in respect of gender or disability, as well as genuine competition among the candidates; Article 58 deals with establishing profiles for covering vacancies;^{xvii} Article 60 refers to selection procedures;^{xviii} Article 61 provides that personnel shall be designated in keeping with the order of merit approved;^{xix} Article 62, which refers to the types of job announcements;^{xx} Article 63 refers to the oversight of the selection processes;^{xxi} and Article 64 provides for the composition of the selection bodies.^{xxii}

Article 59 of the above Agreement also specifies, with respect to dissemination of the job announcements, that in order to guarantee the principle of openness, the employer government shall inform those interested of all available offers, indicating that the unions will undertake to publicize job announcements in all areas of their activity. This provision is supplemented by those in Resolution SFP No. 481/94.^{xxiii}

- Decree No. 993/1991 (amended text approved by Resolution SFP No. 299/95), on the National System of the Administrative Profession (*Sistema Nacional de la Profesión Administrativa*, SINAPA), which at Titles I and II (Article 1 to 17) establishes three groupings for that system, namely the General, Scientific-Technical, and Specialized Groups, which are in turn subdivided into personnel “levels” based on complexity, responsibility, and training requirements for the job, and which break down in different “grades”, also organized based on complexity.^{xxiv} Title III,^{xxv} regarding selection systems, sets the general guidelines on the procedures aimed at assessing the knowledge, skills, and aptitudes of applicants, in keeping with the description of the function in question, and at establishing the corresponding merit to cover the vacancies at the different levels or to access “executive” functions (Article 18); establishes the general or open systems (Article 21);^{xxvi} notes that the job announcement shall be ordered by the President of the Jurisdictional Delegation of the Permanent Commission on Career Service (Article 22); provides that the selection will be done by a collegial organ, whose characteristics will be set by Resolution of the Secretary of Public Service of the Presidency of the Nation (Article 23);⁵ provides that the members of the selection body shall be

⁴ The official name is the Government of the City of Buenos Aires.

⁵ Those characteristics are set by Resolution ex-SFP 481/94.

designated by the authority who orders the job announcement, with the prior agreement of the chief officer of the area, in the case of personnel coming from another jurisdiction) (Article 24); spells out the powers of the selection body (Article 26);^{xxvii} and states that with respect to the members of the selection body, only recusals and recusals *sua sponte* for cause will be accepted; in such cases, Articles 17 and 30 of the Code of Civil and Commercial Procedure of the Nation shall apply, and the provisions mentioned should be publicized along with the terms of the job announcement (Article 27).^{xxviii}

The foregoing decree also includes provisions regarding the preparation of a provisional order of merit that can be challenged by the applicants before the selection body (Article 30), the adoption of a definitive order of merit (Article 31), and challenge thereto (Article 32); and expressly provides that the designations and promotions may not be formalized until there is a final resolution of any appeals filed. These provisions are supplemented by the provisions on remedies for challenging administrative acts in general, as contained in the Law on Administrative Procedures, No. 19,549, and the Regulation of Administrative Procedures (Decree No. 1759/71), which establish the appeals known in Spanish as *de Reconsideración* (Articles 84 to 88), *Jerárquico* (Articles 89 and 90), and *Alzada* (Articles 94 to 96).

- Resolution ex-SFP No. 481/94, Annex I, which at Articles 5 and 6 provides for setting the basic requirements for the vacancies to be filled;^{xxix} Article 15, which states that the selection process may be made up of the stages of Background Evaluation, Work-experience Evaluation, Technical Evaluation, and Personality Evaluation. It provides that the Background Evaluation will be performed in every process, but that the selection body will determine whether it is necessary to perform the Work-experience Evaluation and/or the Technical Evaluation; Article 16, which indicates that said organ will establish, in each case, the order of the stages of evaluation, and that each of the stages shall be considered passed or failed, these being exclusionary in successive order; the selection body must in such cases set forth in writing the grounds for failing applicants; Article 17, which notes that during the compulsory stage of Background Evaluation, an evaluation will be done of the information from the registration forms and the curriculum vitae, as appropriate; Article 18, which establishes that during the Work-experience evaluation at least one interview will be done to assess the adequacy of the applicant's education and training and the work experience in relation to the requirements of the position, and that the interviews will be conducted with at least two interviewers; Article 19, which provides for the Technical Evaluation stage, in which technical tests will be used to analyze the knowledge, skills, and ability of the applicant to apply them to specific situations as per the typical requirements of the post; and Article 20, which provides, in relation to the Personality Evaluation, that the selection body may, when it considers it necessary, administer tests that make it possible to determine whether the applicant's personal characteristics are consistent with the requirements of the position.

- Resolution SGP No. 48/02, which sets the guidelines for applying the hiring regime provided for in Framework Law 25,164. Article 1 of this Resolution refers to the authority that must make the request for hiring, its justification therefor, the description of the requirements that must be met by the person to be hired, and the name of the function to be performed as well as remuneration therefor based on the corresponding personnel category; Article 3, which orders that the Human Resources Unit or the upper-level authority that holds the highest authority over the technical-administrative services of each jurisdiction or decentralized agency should certify that the hiring proposed does not go beyond the percentage established, as provided for in the second paragraph of Article 9 of the Annex to Law No. 25,164;^{xxx} Article 4, which requires that the persons proposed for hire must also meet the requirements of the tasks or services to be developed as established in Article 1 above, the

prerequisites for acceding to the level or category of the corresponding personnel regime, and the corresponding remuneration.

- Decree 491/02, which at Article 1 establishes that any designation, assignment of functions, promotion, and reincorporation or personnel in the Public Administration, centralized and decentralized – in the terms of Article 2, Decree No. 23 of December 23, 2001 – in permanent and non-permanent positions, including in the latter temporary and contracted personnel, whatever their modality and source of financing -- shall be carried out by the federal Executive, at the proposal of the corresponding jurisdiction or agency. This Decree supplements Decree 577/03, which at Article 1 establishes, in turn, that every hiring under the terms of the earlier Decree and its regulation shall be approved by the Chief of Staff of the Cabinet of Ministers in those situations in which it is agreed that monthly pay or fees will be equal to or greater than the sum of TWO THOUSAND PESOS (\$ 2,000.00), and it adds that the personal services contracts entered into pursuant to the provisions of Decree No. 1184/01, personal performance contracts for intellectual products under Decrees 1023/01 and 436/00, and the contracts governed by Law No. 25,164, as well as those agreed to for technical cooperation projects or programs with bilateral or multilateral financing, whether their financing is national or international, are also covered by Decree 491/02.

- Law No. 24,156, on Financial Administration and Control Systems of the Federal Public Sector, which provides that the lead agencies of the internal and external controls systems are the *Sindicatura General de la Nación* (SIGEN) and the Office of the Auditor General of the Nation (*Auditoría General de la Nación*, AGN), respectively.

- Decree No. 1184/01, which contains an exceptional hiring regime for contracts whose purpose is the delivery of professional services on a personal basis.⁶ Annex I: provides that the contracts entered into shall have as their purpose the provision of specialized technical or professional services (Article 1); indicates which public official will be in charge of administering and overseeing this hiring regime, which should ensure that the payroll of the persons contracted is available at the web page of the jurisdiction or agency (Article 2);^{xxxii} establishes the conditions for approving the contract (Article 3);^{xxxiii} indicates that the official initiating the hiring shall be responsible for its implementation and for attaining its objectives (Article 4), determining the content of the contract (Article 5),^{xxxiiii} and adopting a model for its design (Article 6). Annex 2 sets forth the description and the specific requirements for the function; and Annex 3 sets the scale of remuneration.

Decree No. 1184/01 is complemented by Decree No. 707/05, which at Article 7 provides that the jurisdictions and agencies included within the scope of Law No. 25,164 may not contract persons under the regime of Decree No. 1184/01 for monthly fees less than ONE THOUSAND FIVE HUNDRED TWELVE PESOS (\$1,512) for full-time employment.

- In addition, there are exceptional hiring regimes⁷ in Law No. 23,316, on the Cooperation Agreement with the United Nations Development Program (UNDP); Law No. 23,283 and others, on the Technical and Financial Cooperation Systems; and Law No. 25,520, on the National Intelligence Systems.

⁶ As noted in Argentina's response to the Questionnaire (pp. 34-35), the regime regulated in this Decree is considered an important exception, in the terms set out at Chapter I, section 1 of the Questionnaire.

⁷ As noted in Argentina's response to the Questionnaire (pp. 34-38), these regimes are considered important exceptions, in the terms provided for in Chapter I, section 1 of the Questionnaire.

- Statutory and other legal provisions applicable to a majority group of public jobs of the federal Legislative Branch, of which special mention should be made of the following:

- Law 24,600, on the “Statute and Career Service for the Personnel of the Congress of the Nation,” applicable to those individuals who, pursuant to an administrative act issued by the authority, render paid services in the federal Legislative Branch (Article 1), excluding the federal legislators, secretaries, and deputy secretaries of each of the Chambers of the Honorable Congress of the Nation and of the personnel of the Office of the Auditor General of the Nation (Article 2). This statute indicates, at Article 3, that the personnel encompassed by it are called legislative employees, and shall be part of either the permanent staff^{xxxiv} or the temporary staff,^{xxxv} as provided for in the respective administrative act making the designation; Article 5 sets out the requirements for entry to the permanent staff, of which suitability for the function or position, shown by way of the selection criteria established by regulation for each case (section e.), providing also that the staff member will enter at the lowest position of the career service, except for those positions that require a qualifying trade or degree, in which case priority shall be accorded to the permanent staff members who show that they have sufficient conditions to perform it (section f.). This article also provides that the requirements indicated must be shown prior to the administrative act of designation, which must be expressly certified as a condition for the validity of that act.

Law 24,600 also indicates, at Article 7, who cannot become part of the permanent staff of the federal Legislative Branch;^{xxxvi} it provides at Article 8 that permanent legislative employees have, among others, the rights to stability in employment (subsection a.) and to the administrative career service (subsection b.); it notes at Article 53 that the provisions of Title II of this statute shall apply to the employees of the temporary staff, except for those having to do with stability in employment and the administrative career service; and at Article 56 it establishes the Permanent Parity Commission, which is to apply, regulate, and interpret the statute on legislative employees.

- Parliamentary Decree DP-43/97, which, inter-alia, regulates Article 5 of Law 24,600, providing in this regard: “Among the selection criteria, in order to determine the suitability for joining the permanent staff, preference is to be accorded to workers who are part of the temporary staff of the Honorable Congress of the Nation.”

- The Rules of Procedure of the Honorable Chamber of Deputies of the Nation (amended text as per Resolution No. 2019/96), Article 39(12) of which provides, among the powers and duties of its President, the appointment of all employees of the Chamber, except for the secretaries and deputy secretaries, providing in this respect that the vacancies that occur among the personnel whose designation is to be made by the President, pursuant to the provisions of this section, shall be provided for, insofar as possible, by promotion within the respective categories, based on competence, skills shown, and seniority, and indicating that in the event that new positions are established, these shall be filled after a competitive hiring process, the terms and conditions of which are to be established by the authorities of the Chamber.

The aforementioned Rules of Procedure also provide, at Article 213, that the employees of the Office of Parliamentary Information are to enter the Secretariat of the Chamber by competitive hiring process, the terms and conditions of which shall be regulated by the Presidency of the Chamber, and that they must also know two foreign languages, one of which must be English or German.

- The Rules of Procedure of the Senate (text approved by Resolution DR-1388/02), which at Article 32(j) provides among the powers and duties of its President, in keeping with the provisions in force,

that of appointing all the employees. In this respect it provides that the vacancies that arise shall be filled by promotion, in the respective categories, based on competence, demonstrated skills, and seniority, and provides further that when new positions are created, these shall be filled after a competitive selection process, the terms and conditions of which shall be established by the Chamber.

The foregoing Rules of Procedure also provide, at Article 229, that all the powers of the president and secretaries related to the appointment, promotion, or removal of personnel, as well as to the creation of new positions, shall be in line with the provisions of Law 24,600.

- Constitutional, statutory, and other legal provisions, applicable to a majority group of public employees of the federal Judicial Branch, of which special mention should be made of the following:

- The Constitution of Argentina, Article 99(4) of which grants the President of the Nation the power to appoint the members of the Supreme Court, with the consent of the Senate, and to appoint all other judges of the lower federal courts, based on a binding proposal from a short-list of three, from the Council of the Judiciary, with the consent of the Senate, in a public session in which the suitability of the candidates shall be taken into account. Article 108 of the Constitution indicates that the federal Judiciary Branch shall vest in a Supreme Court of Justice, and all other lower federal courts that the Congress may establish in the national territory; Article 113, which provides that the Supreme Court of Justice shall establish its own rules of procedure and shall appoint its employees; and Article 114, places the responsibility on the Council of the Judiciary to select judges (*magistrados*) and administer the Judicial Branch. Its powers include selecting, by public competitive hiring, those who apply for the lower judgeships (section 1), and issuing proposals in the form of binding short-lists with three names for appointing the judges to the lower courts (section 2).

- Decree-Law 1285/58, which at Articles 4, 5, 6, and 12, refers to the requirements to serve as member of the Supreme Court of Justice and Attorney General of the Nation (*Procurador General de la Nación*); the requirements to serve as a judge on the Federal Court of Appeals for Criminal Cassation (*Cámara Nacional de Casación Penal*), and of the Federal Courts of Appeals and Oral Tribunals; the requirements to serve as a federal judge of first instance or as clerk or deputy clerk of the federal courts, respectively. Article 13 provides that the appointment and removal of the officers and employees of the federal judicial system shall be carried out by the judicial authority, and in the manner provided for by the rules of the Supreme Court. In addition, Article 15 indicates that the officers and employees shall have the rights, duties, responsibilities, and incompatibilities that the law or regulations may establish; and it provides that the Supreme Court shall adopt a personnel regime that ensures stability and promotions in the career service, based above all on the grade levels and effectiveness of the officers and employees, and taking into consideration their qualifications and seniority.

- Decree 588/2003, which adopts the procedure for the appointment of judges to the lower federal courts, and which also provides for the dissemination of the three-person slates of candidates, their résumés, the scores obtained by the professional proposed in the stages of evaluation completed, and of the post to be filled (Article 4); and designates a period for private persons, professional societies, associations, and organizations interested in the work of the judiciary to forward their observations, objections, positions, and any other circumstances that they consider of interest in relation to the candidates (Article 6).

- The Ruling of the Supreme Court of Justice of December 17, 1952, containing the General Regulation for the Federal Justice System. Article 11 refers to the requirements for the appointment of officials and employees; Article 12 notes those who may not be appointed; and Article 13 remits to the March 3, 1958 Ruling, for the purposes of the designation and promotion of personnel by the Court of Appeals

- The Ruling of the Supreme Court of Justice of March 3, 1958, which provides that the Courts of Appeals shall designate and promote the personnel of their respective jurisdictions, establishing with respect to promotions, general rules, without prejudice to the special rules that may be established by each Chamber, and expressing with respect to the proposals for designating the personnel to which each must refer in fulfillment of the nationality and age requirements, and accompanying the certificate of health.

- Statutory and other legal provisions applicable to a majority of public jobs of the Public Ministry of the Nation, among which special mention should be made of the following:

- Law No. 24,946 – Organic Law of the Public Ministry, Article 2 of which indicates that the Public Ministry is made up of the Prosecutorial Public Ministry (*Ministerio Público Fiscal*) and the Public Ministry of Defense (*Ministerio Público de la Defensa*); Article 3, which notes the judges who make up the Prosecutorial Public Ministry, which is headed up by the Attorney General of the Nation; Article 4, which indicates the judges who make up the Public Ministry of Defense, which is headed up by the Defender General of the Nation (*Defensor General de la Nación*); Article 5, which indicates that the aforementioned Attorney General and Defender General shall be designated by the federal Executive with the consent of the Senate, by vote of two-thirds of the members present. It indicates further that for the designation of the remaining judges referred to in the preceding articles, the Attorney General and Defender General, as the case may be, shall submit to the Executive a slate of three candidates, from which the Executive will choose one, whose appointment shall require the consent of a simple majority of the members of the Senate present; Article 6 states that the slate will be based on a competitive public hiring procedure, which will be substantiated before a panel convened by the Attorney General or the Defender General, as the case may be, and it provides for the process whereby that tribunal is to be constituted; and Article 7, which establishes the requirements for the designations.

The foregoing Organic Law also provides at Article 65(e) that the designation and promotion of Public Ministry personnel shall be by the Attorney General or the Defender General, as the case may be, upon proposal from the chief officer of the office in which the vacancy exists, and as provided for by the relevant regulation; moreover, the judges mentioned may delegate this authority.

- Decree 588/2003, the provisions of which are related to the procedure for appointing the judges of the lower federal courts extend to the judges of the Public Ministry mentioned in Articles 3 and 4 of Law No. 24,946 (except for the Attorney General of the Nation and the Defender General of the Nation), which provides for dissemination of the slates of three candidates, their résumés, the scores obtained by the professionals proposed in the evaluation stages and the position to be filled (Article 4); and a term is provided for private persons, professional societies, associations, and organizations interested in the work of the judiciary to make known their observations, objections, positions, and any other circumstances they consider of interest to express in relation to the candidates (Article 6)(see page 8 *ante*).

- Resolution No. PGN 2/06, which contains the Basic Regime of Officers and Employees of the Prosecutorial Public Ministry of the Nation, which at Article 2 indicates who are considered “officers” (“*funcionarios*”) and who are considered “employees” (“*empleados*”);^{xxxvii} Article 3 provides that the personnel who are permanent shall be organized in accordance with the principles of stability, training, and administrative career service, while non-permanent employees shall be organized based on the characteristics of their service;⁸ Article 4 states that the career service regime shall apply to the permanent personnel, which is made up of the “technical-judicial,” “technical-administrative, and “auxiliary services” groupings;⁹ Article 9 refers to the personnel made up of the Corps of Advisers to the Attorney General of the Nation and of law clerks known as *Relatores* and *Secretarios Privados*, who are excluded from the groupings of the career service, and for whom only the general requirements for entry apply;^{xxxviii} Article 35, which provides that the Attorney General of the Nation shall make the designation, promotion, and contracting of all the officers and agents of the Prosecutorial Public Ministry;^{xxxix} Article 38, which establishes the requirements for entry;^{xl} Article 39, which determines how such requirements are shown;^{xli} and Article 40, which refers to the requirements for entering the Technical-Judicial grouping.

Said Resolution also provides, at Article 41, that upon forwarding the proposal of the candidate for entry to the Prosecutorial Public Ministry in any of the groupings, the proposing judge (*magistrado*) or officer shall attach the documentation that shows, in keeping with Article 39, the conditions demanded in Article 38; and it adds that the exam on competence, provided for at Article 39, shall be administered by the authorities determined by the Office of the Attorney General of the Nation, once the proposal is received. The proposals that do not meet the requirements established shall not be processed; rather, they shall be returned without any further action.

1.1.2. Adequacy of the legal framework and/or other measures

Together, the constitutional and statutory provisions that refer to the main systems for hiring public officials in Argentina, at the federal level, that the Committee has examined based on the information available to it, constitute a set of measures relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers it appropriate to make some observations on the advisability for Argentina to consider supplementing, developing, and adapting certain provisions that refer to those systems.

- As regards the federal Executive Branch, the Committee offers the following considerations:

First, the Committee observes that Articles 3, 5, and 6 of Annex I of Resolution ex-SFP No. 481/94 provide for setting the basic requirements of the profiles required for the vacant positions to be filled in the merit-based selection system, such that those requirements are determined by the personnel selection body convened when a vacancy is to be filled, for each selection process or competitive hiring in particular, based on a proposal by the political authority (Minister, Secretary or Deputy Secretary of State), or the highest-level authority in the case of decentralized agencies) or the chief officer of the National Bureau, the General Bureau, or equivalent to which the vacancy belongs.

Furthermore, the Committee notes that Article 58 of the General Collective Labor Agreement for the National Public Administration, ratified by Decree 214/2006, provides that the State, as employer,

⁸ Article 98 of this Resolution describes who is permanent and who is not permanent.

⁹ Articles 5, 6, and 7 of this Resolution spell out the jobs included in each of these groupings.

shall establish common profiles containing the minimum requirements, and designed to demonstrate a basic set of knowledge, skills and aptitudes, to cover vacancies of a similar or equivalent functional nature, which ensures that such profiles are established before competitions are held and in relation to the positions of employment in the various public sector entities, which the Civil Service Secretariat has indeed done in the case of positions in the Administration and Finance, Personnel, and Legal areas, as noted in Chapter II, Section 1.1.3 of this report.

With regard to the foregoing, the Committee considers that in order to underscore the principles of equity and efficiency contained in the Convention, it would be advisable for the Republic of Argentina to consider moving forward even further with the design of job description manuals (see recommendation 1.1.1 (a) in Chapter III, Section 1.1 of this report).

It should be noted that the document submitted by the *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad (CIPPEC)*¹⁰ refers to an exploratory study of transparency in Argentina's public administration prepared in 2000 by the Anticorruption Office through surveys of public employees which notes the following among the most significant irregularities: *"Irregularity in the preparation of job descriptions and criteria for meeting needs. Job descriptions are drawn up to fit a particular person (more than half of those consulted point to pressures from public officials as a factor facilitating the design of made-to-fit job descriptions). In other cases, the opposite happens: an appeal is made to define job profiles vaguely to allow for greater discretion."*

Second, the Committee observes that Article 15 of Annex I to Resolution ex-SFP No. 481/94, provides that the selection process may be constituted by the stages of Background Evaluation, Work-experience Evaluation, Technical Evaluation, and Personality Evaluation, and further provides that a Background Evaluation will be performed in every case, but the selection body will determine whether it is necessary to perform the Work-experience Evaluation and/or Technical Evaluation. In the view of the Committee, these two evaluations, considering the purposes assigned to them in Articles 18 and 19 of that Resolution, are essential to ensure the objectivity of the selection process.

The Committee is of the view that in order to provide for additional guarantees in relation to the inherent objectivity of the merit-based selection system, and which is embraced in leading provisions such as Decree No. 1421/02 (Article 8), it would be advisable for the Republic of Argentina to consider modifying Article 15 of Annex I of Resolution ex-SFP No. 481/94, so as to make the Work-experience Evaluation and the Technical Evaluation provided for at Articles 18 and 19 of that Resolution, compulsory, respectively. The Committee will make a recommendation in this regard (see recommendation 1.1.1(b), section 1.1, chapter III of this report).

On this point, the document submitted by the *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad (CIPPEC)*¹¹ notes as follows: *"Article 5 of Resolution 481/94 regulates the selection procedures, establishing four stages of evaluation: background, work-experience, technical, and personal. It should be emphasized that the only compulsory evaluation is that on background; whether to pursue the others is left to the discretion of the members of the selection body."*

¹⁰ Document of the *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad (CIPPEC)*, p. 63

¹¹ Document of the *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad (CIPPEC)*, p. 17

Third, the Committee observes similarities between the forms of hiring provided for in the hiring regime established in Article 9 of Law 25,164 for fixed-term staff (regulated in Resolution SGP No. 48/02) and the hiring regime regulated by Decree No. 1184/01, with regard to those contracts whose purpose is to provide professional services on a personal basis, which could lead to the hiring of persons, under this regime, who, based on their characteristics and the nature of the functions they perform, should be contracted through the hiring regime established in Article 9 of Law 25,164.

The Committee recognizes the efforts that have been made by the Republic of Argentina to ensure observance of the differences between the two modes of employment noted above, which are made clear in its Response to the Questionnaire.¹² Nonetheless, the Committee considers it advisable to continue adopting measures to prevent the use of the hiring regime regulated by Decree No. 1184/01 – for contracts whose purpose is to provide professional services on a personal basis – to hire persons who, given their characteristics and the nature of the functions to be performed, should be contracted through a regime, more appropriate for a relationship of full-time employment, other than that provided for in Decree No. 1184/01, which, as indicated by Argentina in its Response, is used for independent professionals (“consulting contracts”). The Committee will make a recommendation in this regard (see recommendation 1.1.1(c) of section 1.1, chapter III of this report).

On this point, while a report published on the web page of the National Office of Public Employment (*Oficina Nacional de Empleo Público: ONEP*)¹³ notes among the “significant characteristics and situations particular to the 14,992 persons contracted under the regime established by Decree No. 1184/01 in 2003” that “*the data show that only one in three persons contracted is employed to perform strictly professional tasks (consultancies A, B, and C, and General Coordinators), and in the specific categories provided for to this end, in this Decree,*” adding that “*only 50% have university or other higher-education degrees.*” The will of the Republic of Argentina to overcome situations such as the one described should be acknowledged, and is reflected in Decree 707/2005. Decree 707/2005, in one of the clauses of the Preamble, states that “*... it has been considered advisable and timely to promote hiring under the regime established by Article 9 of the Annex to Law No. 25,164, of those who were hired under the regime regulated by Decree No. 1184/01....*” In addition, Article 7 provides that the jurisdictions and agencies within the scope of Law No. 25,164 may not hire persons under the regime of Decree No. 1184/01 for monthly fees less than ONE THOUSAND FIVE HUNDRED TWELVE PESOS (\$1,512) for full-time work.

The document by the Inter-American Bar Association (IABA) and the Committee for Follow-up on Implementation of the Inter-American Convention against Corruption (Follow-up Committee)¹⁴ states: ... “*In this regard, while Law No. 25,164 and its regulation have provisions that place limits on arbitrariness in relation to the personnel subject to the regime of stability, this becomes very lax in relation to temporary personnel. It is precisely the temporary personnel who find themselves in a situation of maximum vulnerability and dependency on their political leaders, who are the ones who decide whether they will continue or cease to be employed.*”

- With respect to the federal legislature and the federal Legislative Branch, the Committee offers the following considerations:

¹² Argentina’s Response to the Questionnaire, p. 17, footnote 8.

¹³ <http://www.sgp.gov.ar/sitio/onep/empleo/informes/main.html>. See “Regímenes de Contratación” – “Decreto No. 1184/01. Informe sobre los contratados bajo este Régimen durante el año 2003.”

¹⁴ Document of the Inter-American Bar Association (IABA) and the Committee for Follow-up on Implementation of the Inter-American Convention against Corruption (Follow-up Committee), p. 23.

First, the Committee observes that while Parliamentary Decree DP-43/97 regulates Article 5 of Law 24,600 (Statute and Regime for the Personnel of the National Congress), that regulation, by establishing among the selection criteria, “preference for the status of temporary worker of the Honorable Congress of the Nation of the applicant,” “in order to determine the suitability for entry to the permanent staff,” gives undue precedence to temporary staff who apply for positions as permanent staff, insofar as joining the permanent staff entails rights of stability in employment and the administrative career service, from which the temporary staff members are expressly excluded, and permanent staff members carry out tasks which in no case can be attributed to the temporary staff, as arises clearly from the Articles 4 and 49 of the aforementioned Law.

In that light, the Committee considers it advisable for the country under review to consider amending, through the competent authority, Parliamentary Decree DP-43/97, in order to adopt a rule on Article 5(e) of Law 24,600 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 for in the Convention. The Committee will formulate a recommendation in this regard (see recommendation 1.1.2(a) of section 1.1, chapter III, of this report).

It should be noted with respect to this point, that the document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC)¹⁵ notes as follows:

*“The regulation of the **permanent personnel** is found beginning at Article 4 of Law 24,600, which establishes that these staff members will address the permanent needs of the chambers, and will enjoy stability and the right to the administrative career service.*

To enter this category of staff, Article 5(e) of Law 24,600 requires: ‘Suitability for the function or post, shown by the selection criteria established by the regulation for each case.’

Parliamentary Decree DP-43/97, which regulated Article 5, established that ‘Within the selection criteria, in order to determine the suitability for entering the permanent staff, preference is to be accorded to the applicant’s status as temporary staff of the Honorable Congress of the Nation.’

*The **temporary personnel** is regulated by Article 49 of Law 24,600, which is defined as assigned to a particular legislator, a legislative grouping, or a chairmanship or vice-chairmanship of a committee (permanent or temporary). In no case is a selection procedure required for such a designation.”*

Second, the Committee observes that both the Rules of Procedure of the Honorable Chamber of Deputies of the Nation (Article 39(12) and the Rules of Procedure of the national Senate (Article 32(j)), provide for filling vacancies by promotion, and also provide that in the event that new posts are created, they shall be filled after a competitive selection process, the terms of which will be established by the authorities of each of those Chambers. The first of those rules of procedure also provides (Article 213) that the employees of the Office of Parliamentary Information shall enter the Secretariat of the Chamber by competitive selection process, whose terms shall be regulated by the Presidency of the Chamber.

¹⁵ Document of the *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), p. 40.

The Committee is of the view that establishing the terms for the competitive selection processes referred to in those rules is essential to ensure that those selection processes abide by the principles of openness, equity, and efficiency provided for in the Convention, and shall proceed, accordingly, to formulate a recommendation to Argentina to the effect that the respective authorities should consider establishing such terms in keeping with the principles cited (see recommendation 1.1.2(b) of section 1.1, chapter III of this report).

With respect to the foregoing, the document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC)¹⁶ notes as follows:

“The Fundación Poder Ciudadano sent notes to both the Chamber of Deputies and the Senate requesting information on the rules for hiring personnel. Neither chamber sent a response. In addition, based on the search for information performed on various official web sites (www.infoleg.gov.ar, www.senado.gov.ar, and www.diputados.gov.ar), and on the interviews of legislators, it has not been possible to detect any regulation that indicates that the permanent staff positions in the chambers of the National Congress are covered by any merit-based mechanism.”

- With respect to the federal Judiciary, the Committee offers the following considerations:

Mindful that the Supreme Court of Justice, by Agreement of March 3, 1958, delegated to the Courts of Appeals the designation and promotion of the personnel of their respective jurisdictions, the Committee considers it useful for Argentina to consider setting, by that authority, guidelines that are more fully developed than those contained in the Agreement, to ensure that the selection processes that the Courts of Appeals engage in, pursuant to that delegation, are inspired by the principles of openness, equity, and efficiency set out in the Convention. The Committee considers further that Argentina should consider adopting the measures needed to verify the adequate development of those guidelines and unification of criteria in this respect (see recommendation 1.1.3 of section 1.1, chapter III of this report).

With respect to the foregoing, the document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC)¹⁷ states: *“With respect to the **directing or administrative authorities** of the system, the **designation of employees and officers** of the Judicial Branch of the Nation is delegated by the Supreme Court of Justice to the various Courts of Appeals.¹⁸ Each of the Courts of Appeals has its own Rules of Procedure establishing the regime for entry and promotions of employees and officers.”* After providing some examples of provisions on the subject contained in the rules of procedure of some jurisdictions it notes: *“As one can see, the requirements for entry as an employee or officer to the Judicial Branch vary by jurisdiction.”*

- With respect to the Public Ministry of the Nation, the Committee offers the following considerations:

¹⁶ Document of the *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), p. 40.

¹⁷ Document of the *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), pp. 46 to 48.

¹⁸ Courts of Appeals for Civil, Commercial, Criminal and Correctional, Labor, Social Security, Federal Criminal Correctional, Federal Contentious-Administrative, Federal Civil and Commercial, Economic-Criminal, and Electoral Matters, Court of Criminal Cassation, plus all the Federal Courts of Appeals with jurisdiction in the interior.

Organic Law No. 24,966 provides at Article 65(e) that the designation and promotion of the officers and staff of the Public Ministry shall be decided upon by the Attorney General or by the Defender General, as the case may be, at the proposal of the head of the office where the vacancy exists, and in keeping with the terms of the relevant regulations.

With respect to the Prosecutorial Public Ministry of the Nation, the Committee observes that the regulation alluded to in the above-mentioned Law already exists, through Resolution No. PGN 2/06, issued by the Attorney General, pursuant to the powers vested in him or her by Article 21(b) of that Law. As for its contents, the Committee suggests that Argentina consider adopting a merit-based selection procedure prior to the nomination of candidates for those permanent jobs in the career service corresponding to the Technical-Juridical, Technical-Administrative, and Auxiliary Services groupings, bearing in mind the eminently technical nature of those jobs (see recommendation 1.1.4(a) of section 1.1, chapter III of this report).

With respect to the Office of the Defender General of the Nation, the Committee observes that the regulation corresponding to Article 65(e) of Organic Law 24,966 has not been adopted. Accordingly, it will recommend to the country under review that it be adopted by the Defender General, observing the principles of openness, equity, and efficiency provided for in the Convention (see recommendation 1.1.4, section 1.1(b), chapter III, of this report).

1.1.3. Results of the legal framework and/or other measures

The Republic of Argentina, in its response to the questionnaire,¹⁹ provided information on results obtained in the federal Executive Branch by the Enforcement Authority (Secretariat for Public Management) with respect to certain of its objectives, described in the response, and which refer, in summary, to the following:

- Contribution to the updating and modernization of implementation of the hiring regimes and attending to consultations in this regard.
- Issuing directives and opinions on the incompatibilities regime.
- Preparation of model job descriptions in the areas of Administration and Finance, Personnel, and Legal; their dissemination; and training and assistance in this area for the agencies and their personnel areas.
- Design of a proposed Directory of Labor Competencies for the federal public administration; and training and technical assistance for agencies in using the directory of competencies and preparing technical tests aimed at evaluating competencies.
- Preparation of a report entitled "Hiring Procedures in the National System of the Administrative Profession, Decree No. 993/91 as amended 1995 (SINAPA). Significant characteristics of job announcements made from January 1, 1993, to December 31, 2005." Included in that report is information indicating that in the context of that System, and during that period, 8,820 job

¹⁹ Argentina's Response to the Questionnaire, pp. 38-40.

announcements went out, i.e. about one-third of the positions budgeted. The greatest percentage of hirings was in the first four six-month periods (1993 and 1994).²⁰

- Creation of the Central Personnel Registry to update the operational regime for the previous registry, and adding to the information by incorporating other variables. This Registry, as stated in the response to the Questionnaire, will facilitate access for the agencies involved to the information in it, ensuring their transparency and proper control.

- Redesign of the new system for the Personnel Registry of the National System of the Administrative Profession (REPER-SINAPA), created by Resolution SGP No. 15/2005, which is being implemented (50% of the agencies, i.e. 26, have 80% of the variables registered).

The Committee recognizes the gains made by the Secretariat for Public Management, which are noted by Argentina in its response, with respect to the aspects mentioned above.

The report titled “Hiring procedures in the National System of the Administrative Profession, Decree No. 993/91 as amended 1995 (SINAPA). Significant characteristics of the job announcements issued from January 1, 1993 to December 31, 2005,” drawn up by the General Secretariat for Public Management – National Office of Public Employment (ONEP), in February 2006, to which reference has been made in one of the aspects mentioned, notes as follows:²¹

“One should note the marked fall in the number of job announcements as of the second half of 1999. This coincided with the change of administration management in the National Government in December 1999, to which was added the application of various measures that called for freezing vacancies in light of the profound fiscal crisis Argentina experienced as of 2000, and which had a profoundly impact on the career service personnel of the federal Public Administration.

In that context, an economic emergency was decreed, resulting in a prohibition on filling vacancies in the federal public administration (Law No. 25,237 of December 28, 1999; Law No. 25,401 of December 29, 2000; Law No. 25,565 of March 6, 2002; Law No. 25,725 of January 10, 2003; Law No. 25,827 of November 26, 2003; Law No. 25,967 of November 24, 2004; and Law No. 26,078 of January 12, 2006).²²

In the face of this restrictive outlook, vacancies are filled through temporary designations, thereby putting off any structural solution, and aggravating the problem.”

The Committee considers it appropriate to accord recognition to Argentina for the frank and transparent manner with which it poses the above-noted problem, and is respectful of the causes invoked to freeze the vacancies. Nonetheless, given its implications for the federal public administration, which includes filling such vacancies through temporary designations and is detrimental to the use of the merit-based selection processes which should ideally be applied, the Committee will formulate a recommendation for the country under review to consider continuing to move forward with the regularization of the position of public-sector employees, as the economic

²⁰ Available at:

http://www.sgp.gov.ar/contenidos/onep/informes_estadisticas/docs/Informe_Final_Seleccion_31-3-06.pdf

²¹ See page 9 of this Report, which is available at the web site indicated in the previous footnote.

²² Law No. 26,078 at Article 7, provides: “Unless there is a well-founded decision by the CHIEF OF STAFF OF THE CABINET OF MINISTERS, the jurisdictions and agencies of the federal administration may not fill the existing vacancies financed as of the date of the adoption of this Law, nor those that open up subsequently.”

crisis that gave rise to the prohibition against filling vacancies in the public administration passes adopting the measures needed to guarantee the effective use of those procedures (see recommendation 1.1.1(d) of section 1.1, chapter III of this report).

The Committee also recognizes Argentina's will to go forward along the lines indicated, which is expressed in the Report mentioned above in the following terms:²³

"It is to be expected, with the institutional and socioeconomic normalization of the country, which has been more accentuated as of 2003, that selection procedures that ensure transparency and objectivity in the procedures, and equal opportunity for recruitment and for developing the careers of the staff in the labor groupings who make up the federal public administration."

Finally, the Committee, considering it does not have information on the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation, processed in such a way as to allow for a comprehensive evaluation of the results of those entities in this field, will formulate a recommendation to those entities in this regard (see general recommendation 4.2. of chapter III of this report).

1.2. SYSTEMS OF GOVERNMENT PROCUREMENT OF GOODS AND SERVICES

1.2.1. Existence and provisions of a legal framework and/or other measures

The Republic of Argentina has a set of provisions regarding systems for government procurement of goods and services, among which the following, related to the principal systems, should be highlighted:

- Statutory and other legal provisions applicable to agencies of the federal executive, of which the following are noted:

- Delegated Decree 1023/2001, which contains the National Administrative Procurement Regime, and applies in contracting procedures in which the federal administration, both central and decentralized,²⁴ is a party. Article 3 enshrines the general principles governing the management of contracts, including publicity, competition among bidders, and equality.^{xlii} Article 4^{xliii} spells out the contracts to which it applies, expressly providing that it holds for all those not expressly excluded, which it lists in Article 5.^{xliiv} Article 15 on selection criteria, provides that the award should be made to the bid that is most advisable for the procuring agency, bearing in mind price, quality, suitability of the bidder, and all other conditions of the bid, and adds that in the case of the purchase of a good or the procurement of a standardized or commonly used service whose technical characteristics can be unequivocally specified and identified, the one with the lowest price will be understood, in principle, to be the most advisable. In addition, Article 23 refers to the organs of the system, indicating that the National Procurement Office (*Oficina Nacional de Contrataciones*) is the lead agency, and that the operational procurement units in the jurisdictions and agencies are in charge of managing procurement.^{xliv}

The aforementioned Delegated Decree also regulates, at Article 24, selection of the co-contractor, providing that this will be carried out, as a general rule, by public tender or public competitive bidding, as the case may be, by application of section (a), subsections 1 and 2, of Article 25;^{xlvi} and

²³ See page 10 of this Report, which is available at the web site indicated above.

²⁴ In keeping with Article 8(a) of Law No. 24,156 and its amendments.

noting that selection by public auction,^{xlvii} tender, or private competitive bidding,^{xlviii} or direct contracting,^{xlix} shall only be allowed in those cases expressly provided for by sections (b), (c), and (d) of Article 25, respectively.

- Decree No. 436/2000, which contains the Rules of Procedure for the Purchase, Sale, and Procurement of Goods and Services by the Federal Government, which at Articles 10, 11, 12, and 13, calls for publicity and dissemination of the draft bidding terms and conditions, the processing of any observations related thereto, the preparation of the final bidding terms, and their publication and dissemination. At Articles 14, 15, and 16, it provides that tenders and private competitive biddings, and the auctions (*remate* or *subasta*) shall be publicized and disseminated. Article 17 sets the requirements for public and private tenders or calls for bids.^l Article 18 refers to the invitations to suppliers in direct procurement procedures.^{li} Article 19 orders publicity subsequent to the procurement. Articles 20 and 21 refer to the selection of the supplier or co-contractor, and the criteria for choosing the selection procedure. Article 39 refers to computerized purchasing.^{lii} Articles 44 and 45 provide that the Minister of Economy shall approve the Single General Bidding Terms and Conditions, which shall be prepared by the National Procurement Office, with the participation of the *Procuración del Tesoro de la Nación*, and that Private Bidding Terms and Conditions shall be prepared and approved by the government agencies for each selection procedure, which must contain the minimum requirements provided for those Bidding Terms, and shall include the technical specifications. Article 47 refers to the evaluation criteria.^{liii} Article 48 provides for processing the observations and challenges.^{liv}

The above-mentioned Decree also creates, at Article 137, the Supplier Information System (*Sistema de Información de Proveedores*, SIPRO), under the responsibility of the National Procurement Office, setting the guidelines for its operation, indicating that prior to the award, the contracting agencies should turn to this System in order to obtain information on the bidders who come forward in the selection procedures in their respective areas. However, being included in that system previously is not an absolute requirement for submitting bids or entering into a contract with the federal government. Articles 138 to 143 address aspects related to information from that System and its use. Article 144 establishes the different types of sanctions that result from awards being revoked, contracts being rescinded, or the failure to provide the information to which this article refers.

- Law 13,064 on Public Works,^{lv} which at Article 1 considers as federal public works all construction or work or industry service carried out with funds from the national treasury, except for those mentioned by this provision.^{lvi} Article 3 establishes the prerequisites for putting a public works project up for public bidding or direct procurement.^{lvii} Article 5 provides for the systems for effectuating the bidding and/or contracting of public works.^{lviii} Article 7 states that one may not issue a call for bids for any work, or make any investments that do not have a legal basis except as provided for therein.^{lix} Article 9 provides that federal public works may only be adjudicated in public biddings. In addition, exceptions wherein private bidding or direct procurement is allowed are spelled out in that article.^{lx} Article 10 orders that public biddings will be announced in the official gazette (*Boletín Oficial de la Nación*) and in the analogous organ of the provincial government or territory where the work is to be built, without prejudice to them being announced in private outlets or by any other means, in Argentina or abroad, were it deemed advisable to do so, and that the compulsory announcements should be published in advance and for the duration specified therein.^{lxi}

Law 13,064 also provides that once the contract is signed, the contractor may not assign or delegate it, in full or in part, to another person or entity, nor enter into a partnership to carry it out, without the authorization and approval of the competent agency (Article 23). It further provides that once the

contract is signed, the start-up and performance of the work shall be subject to the general and special bidding terms that were the basis for the call for bids or direct adjudication of the works. It regulates suspensions and delays, which may or may not give rise to fines and/or sanctions (Articles 34 and 35). It provides for the liability of the contractor with regard to: the proper interpretation of the technical drawings and their defects (Article 26); for the improper use of materials, construction systems, and patented tools (Article 27); for follow-through on the prices quoted, which may not be modified due to error or omission of the contractor (Article 37); for the prohibition on claiming losses, physical damages, or monetary damages arising from the contractor's own negligence (Article 39); for maintenance of the bond posted to the Administration until approval of the definitive receipt of the works and the repair of any damages caused (Article 44); and for the prohibition on making claims for interest due to delays caused by the contractor (Article 48).

- Law No. 24,156 on Financial Administration and Oversight Systems of the Federal Public Sector, which provides that the lead agencies of the internal and external oversight system are the *Sindicatura General de la Nación* (SIGEN) and the Office of the Auditor General of the Nation (*Auditoría General de la Nación*, AGN), respectively. This law is supplemented by Law 25,233, which at Article 13 creates the Anticorruption Office of the Ministry of Justice and Human Rights. The powers and authority of that Office, which acts as inspector in procedures for the procurement of goods and services, arise from Law No. 24,946 and Decree 102/99.

- Statutory and other legal provisions applicable to the entities of the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation, among which the following should be noted:

- Delegated Decree 1023/2001, described above, applicable to the Senate in keeping with the provisions of DP No. 632/02 (which contains the Rules of Procedure for the Procurement of Goods, Works, and Services of the Senate, issued by the Office of the President of the Senate pursuant to Article 39 of Delegated Decree 1023/2001), which states: "*The Legislative and Judicial Branches and the Public Ministry shall regulate this Regime for its application in their respective jurisdictions, and shall determine the officers who will authorize and approve the procurement operations. The federal Executive Branch shall do so within no more than SIXTY (60) calendar days counted from its publication in the Boletín Oficial. The other branches of government and the Public Ministry are invited to do so in a similar time frame. Until then, the regulations now in force shall apply.*"^{lxii}

- Law 13,064, on Public Works, described above, which is applicable to the Senate and the Chamber of Deputies of the federal Legislative Branch, the federal Judicial Branch and the Public Ministry of the Nation.

- Decree No. 5720/72, the provisions of which contain the Regulation of Chapter VI (Articles 55 to 64) of the Law on Accounting (Decree Law No. 23,354/56, Articles 55 to 63 of which were derogated by Article 38 of Delegated Decree 1023/2001, replaced by Article 14 of Decree No. 666/2003), applicable to the Chamber of Deputies of the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation.

1.2.2. Adequacy of the legal framework and/or other measures

The statutory and other legal provisions that refer to the main systems for government procurement of goods and services in Argentina, at the federal level, which the Committee has examined based on

the information available to it, constitute a set of relevant measures for promoting the purposes of the Convention.

Nonetheless, the Committee considers it appropriate to formulate certain observations regarding the advisability for Argentina to consider supplementing, developing, and adapting certain provisions that refer to those systems.

- With respect to the federal Executive Branch, the Committee offers the following considerations:

First, the Committee observes that in 2001, Delegated Decree No. 1023/01 was issued, with rank equal to that of a statute since it was promulgated pursuant to the exercise of legislative powers conferred by the federal Legislative Branch on the federal Executive Branch. However, its regulation has yet to be issued.

The importance of Delegated Decree No. 1023/01, for the procurement system of the federal public administration, must be highlighted. In addition to containing the General Procurement Regime for that administration, both central and decentralized, the Decree was the result of a participatory rule-making process, organized jointly by the Office of the Assistant Secretary for Public Management of the Office of the Chief of Staff of the Cabinet of Ministers and the Anticorruption Office, as noted in Argentina's response.²⁵

One should also note, with respect to the importance of having the regulation of Delegated Decree No. 1023/01, that at Article 39, a deadline was set for the federal Executive Branch to issue that regulation, which, though extended by Decree No. 666/2003, has already lapsed. Pursuant to the provisions of said Article 39, until the regulation is issued, the regulations in force shall apply, which means that Decree 436/2000, promulgated before Delegated Decree 1023/01, applies.

The Committee, taking the foregoing into account, in addition to what was noted by Argentina in its response to the effect that Delegated Decree No. 1023/01 constitutes important progress towards transparency in government procurement,²⁶ will make a recommendation to the Republic of Argentina to consider issuing the regulation of that Decree through the respective authority (federal Executive Branch), observing the principles established by the Decree, as well as those of publicity, equity, and efficiency provided for in the Convention (see recommendation 1.2.1(a), section 1.2, chapter III, of this report).

It should be added, in this regard, that the document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC)²⁷ states as follows:

“In the federal public administration, Decree 1023/01 is pending regulation. Accordingly, Regulatory decree 436/2000, approved the previous year, is still in force; this was the means the Executive Branch found to modernize the old procurement law of 1956 and its old regulation (Decrees 5720/1972 and 826/1988).”

²⁵ Argentina's response to the questionnaire, p. 72.

²⁶ Argentina's response to the questionnaire, p. 72.

²⁷ Document from the *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), p. 74.

Second, the Committee observes that although Decree 436/2000 refers, at Article 39, to computerized purchasing and that Articles 118 to 133 develop aspects related thereto, Article 22 of Delegated Decree No. 1023/01 expressly provides that the regulation will establish the “comprehensive regulation” of electronic government procurement, in particular the regime of publicity and dissemination, the aspects related to the electronic process of procurement management, electronic payment procedures, electronic notices, automated procedures, the digitalizing of documentation, and the digital record. Taking into account the importance of having this comprehensive regulation on electronic government procurement, the Committee will formulate a recommendation in this regard (see recommendation 1.2.1(b), section 1.2, chapter III of this report).

In addition, the document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC)²⁸ states as follows:

*“The major issue pending is the failure to implement an electronic procurement regime that would make it possible for public agencies and suppliers to communicate, and to make bids electronically, similar to the experiences of Mexico and Chile. While it is provided for in the legal framework, it has not been implemented, even though the National Procurement Office reports that there is a draft Decree awaiting the signature of the Executive Branch.”*²⁹

- With respect to the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation, the Committee offers the following considerations:

First, the Committee observes with respect to the federal Legislative Branch, as regards the Chamber of Deputies, and with regard to the federal Judicial Branch and the Public Ministry of the Nation, that although Article 39 of Delegated Decree 1023/2001 provides expressly that these entities will regulate the regime contained therein for its application in their respective jurisdictions, and will determine which officials will authorize and approve procurement operations, and calls on them to do so in a time frame similar to that set for the federal Executive Branch, they have yet to do so, and they continue to be governed by a Regulatory Decree issued in 1972. That Decree, No. 5720/72, is based on Chapter VI (Articles 55 to 64) of the Law on Accounting (Decree Law No. 23,354/56), Articles 55 to 63 which were derogated by Article 38 of Delegated Decree 1023/2001, which was replaced by Article 14 of Decree No. 666/2003.

The Committee highlights the importance, for the procurement system, of those entities responsible for the regulation of Delegated Decree No. 1023/01 and its application in their respective jurisdictions, based on the considerations already stated in relation to the federal Executive Branch, and taking into account the advantages that would derive from harmonization of those entities’ systems with that of the federal Executive Branch, and for their development based on a common legal framework, which, as already noted, was the result of a participatory process of developing regulations, and which constitutes important progress towards transparency in government procurement. This would undoubtedly contribute to greater clarity and understanding of the system, and would simplify and facilitate its application.

²⁸ Document from the *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), p. 133.

²⁹ This information was provided during the activity known as the *Primeras Jornadas sobre Organismos de Control frente al Crimen Económico y la Corrupción* (First Meeting on Oversight Bodies in the face of Economic Crime and Corruption), organized by CIPCE, with the sponsorship of the Anticorruption Office and the Office of the Auditor General of the Nation, June 6, 2006.

In this regard, one should also bear in mind that the federal Senate already regulated Delegated Decree No. 1023/01, to be applied in its own jurisdiction, by Decree DP No. 632/02, issued by the Office of the President of the Senate, which states as follows, in its considering paragraphs:

“That it makes it possible to use more efficient competitive methods, thereby making the procurement regime more transparent, incorporating consolidated procurement and informatics, all in accord with the scientific and technological developments that have taken place in this area;

That this Honorable Senate of the Nation is applying provisions that have lost relevance.”

The Committee, mindful of what is stated in the foregoing paragraphs, will formulate a recommendation to the appropriate authorities of the Chamber of Deputies of the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation, to consider issuing the regulation of Delegated Decree No. 1023/01 so that it can be implemented 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 (see recommendation 1.2.2(a), section 1.2, chapter III of this report).

In addition, the document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC)³⁰ indicates as follows:

“Decree 1023/01 derogated a regime in place since 1956 (Decree-law 23,354/1956), which, though it continues to be applied in some branches of government that do not feel bound by Decree 1023/01, even though at Article 39 it provides that ‘the Legislative and Judicial Branches and the Public Ministry shall regulate this regime for its application in their respective jurisdictions....’”

Second, the Committee, taking into account what is noted in the document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC),³¹ to the effect that in September 2005, the federal Judicial Branch (Judicial Council) signed an agreement with the Office of the Auditor General of the Nation to begin audits of that Branch, “with a detailed Work Plan with 16 points to be audited,” which, “supposedly should have begun to be implemented in early 2006,” and “almost seven months later, nothing has happened”; and considering that it would be useful, for the purposes of the Convention, to strengthen the mechanisms for oversight of the federal Judicial Branch in the area of procurement, which is among the objectives of that agreement, will make a recommendation for the appropriate authorities to consider developing it (see recommendation 1.2.2(b), section 1.2, chapter III of this report).

In this regard, it should be added that one of the sections of that agreement³² refers to establishing an annual Work Plan, the objectives of which will be: “(a) to analyze the efficiency, in economic terms and in terms of contracting and procurement by the federal Judiciary; (b) to verify the existence and efficacy of the internal controls; (c) to verify compliance with the legal provisions in force; (d) to suggest legal or practical reforms that reinforce the controls and enhance the transparency and competitiveness of management; (e) to develop indicators and mechanisms that make it possible to

³⁰ Document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), p. 74.

³¹ Document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), p. 124.

³² SECOND clause of the Agreement.

verify whether the objectives proposed have been met; (f) to control concomitantly procurement provided for in the Work Plan.”

The 2005 Work Plan provides, among the 16 aspects subject to auditing, the following:³³ “1. *Taking stock of the provisions governing procurement, contracts, and public works: detecting overlap and gaps in the provisions, proposed reforms*”; “2. *Taking stock of the preparation of the annual budget and the annual plan for procurement and contracting (efficiency and efficacy in assessing needs, budgeting technique).*”

- With respect to the systems of procurement of public works in the federal Executive Branch, the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation, the Committee offers the following considerations:

The Committee observes that with respect to public works, the same provisions apply to the federal Executive, Legislature, and Judiciary, as well as the Public Ministry of the Nation (contained in Law 13,064 on Public Works, supplemented by the provisions of Title I of Delegated Decree No. 1023/01), which helps to better understand the system and to facilitate its application in each of the entities mentioned.

Although the Committee believes it appropriate to additionally recognize the efforts of the Republic of Argentina to modernize its provisions on procurement of public works, as reflected in the addition to the Law on Public Works of important and novel precepts contained in Delegated Decree No. 1023/01, it is of the view that it would be useful for Argentina to consider supplementing that statute with the following measure:

- Consider the implementation of control systems in each branch of government for each public works contract which, taking into account its size: provides for the exercise of the tasks of intervention (*interventoria*) or direct supervision of execution of the contract by the contracting entity or whoever it designates; makes it possible to have citizen review bodies or citizen watchdog activities; imposes the duty to render accounts periodically on the development of the contract; and makes it possible to determine whether the anticipated cost-benefit ratio was actually obtained and whether the quality of the works was in line with what was agreed upon.

Taking the foregoing into account, the Committee will formulate a recommendation (see recommendation 1.2.3, section 1.2, chapter III of this report).

1.2.3. Results of the legal framework and/or other measures

In Argentina’s response to the questionnaire,³⁴ the following information is provided regarding procurement carried out by the federal Executive Branch within the system of Delegated Decree No. 1023/01:

³³ Paragraphs 1 and 2 of the Purpose of the audit, from the 2005 Work Plan.

³⁴ Argentina’s response to the questionnaire, p. 79.

Table: Use of the procurement procedures in 2003, 2004 and 2005 by number of procedures carried out:

Type of Procedure	2003		2004		2005	
	Number of procedures	%	Number of procedures	%	Number of procedures	%
Direct Procurement	5,918	67.11	18,410	71.45	22,054	71.50
Private Competitive Bidding	225	2.55	49	0.9	49	0.16
Public Competitive Bidding	33	0.37	6	0.02	13	0.04
Private Tender	1,578	17.89	4,210	16.34	5,518	17.89
Public Tender	1,064	12.06	3,092	12.00	3,209	10.40
Public Auction	1	0.01	0	0.00	1	0.00
Totals	8,819	100	18,567	100	30,844	100

Table: Use of the procurement procedures in 2003, 2004 and 2005 by expenditure:

Type of Procedure	2003		2004		2005	
	Billions of pesos	%	Billions of pesos	%	Billions of pesos	%
Direct Procurement	244	40.92	363.1	34.80	568.7	36.6
Private Competitive Bidding	2.4	0.42	1.1	0.11	2.1	0.13

Public Competitive Bidding	8	1.33	0.8	0.70	35.2	2.27
Private Tender	68	11.38	127.4	12.21	168.6	10.85
Public Tender	274	45.96	551.1	52.81	778.9	50.14
Public Auction	0	0.00	0	0.00	0.0	0.00
Totals	596.3	100	1,043.5	100	1,553.5	100

With respect to the foregoing information (especially the first table), the Committee observes that based on its review one can deduce that while the system of Delegated Decree No. 1023/01 expressly provides that the selection of the co-contractor shall be carried out, as a general rule, by public tender or competitive public bidding (Article 24), in practice, direct procurement and private tender have been the most widely used means of procurement during the three years to which the information refers (2003, 2004, and 2005). Bearing this observation in mind, the Committee will formulate a recommendation to Argentina to the effect that it consider having the appropriate authority of the Federal Executive Branch adopt the measures to ensure that the use of direct contracting is a result of the strict application of the exceptions provided for by law (see recommendation 1.2.1 (c) in Chapter III, Section 1.2 of this report).

Argentina's response to the questionnaire³⁵ also supplies the following information on the federal Executive:

Number of suppliers to the State:

	2003	2004	2005
Number of suppliers	3,667	4,716	5,890

³⁵ Argentina's response to the questionnaire, p. 79.

Number of suppliers sanctioned:

In the past	21
Suppliers whose sanctions are in force	18
Total	39

With respect to the foregoing information, the Committee observes that judging from the figures on the number of suppliers of the State corresponding to 2003, 2004, and 2005, the number of sanctions imposed on contractors could be considered low (21 in the past and only 18 with a sanction in force, for a total of 39). Nonetheless, the Committee does not have additional information that would allow it to interpret these figures in any way other than to recognize that sanctions have been applied to suppliers of the State in the context of contractual activities undertaken.

The document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad (CIPPEC)*³⁶ provides the following information on the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation:

- Federal Legislative Branch:

Senate:

Table No. 16 Number of Abbreviated Tenders, Public Tenders, Private Tenders, and Direct Procurement Operations in 2006

Public Tenders	Private Tenders	Abbreviated Tenders	Direct Procurement Operations
15	21	2	22

Source: Web site of the Senate.

³⁶ Document of *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad (CIPPEC)*, pp. 116, 122, 126, 127, and 128.

Chamber of Deputies:

Table No. 17 Number of Public Tenders, Private Tenders, and Direct Procurement Operations in 2006

Public Tenders	Private Tenders	Direct Procurement Operations
2	4	42

Source: Web site of the Chamber of Deputies.

- Federal Judicial Branch:

“The Fundación Poder Ciudadano sent a request for information to the Supreme Court of Justice and the Judicial Council, which have not been answered.

Nonetheless, based on a review of the information published on the web sites, it has been possible to verify a low number of public tenders, in contrast with a large number of direct purchases and private tenders.”

- Public Ministry of the Nation:

Office of the Attorney General of the Nation:

Table No. 18 Number of Public Tenders called in the last two years

	2004	2005
Public Tender	1	5

Source: Office of the Attorney General of the Nation.

Office of the Defender General of the Nation:

Table No. 19 Number of Public Tenders called in the last three years

	2004	2005	2006
Public Tender	None	1	2

Source: Office of the Defender General of the Nation.

With respect to the above information, the Committee notes that it could be deduced based on the information on the federal Legislative Branch, that in both the Senate and the Chamber of Deputies, there are many more procurement operations through direct procurement and private tender than through public tender, even though Delegated Decree No. 1023/01, applicable to the Senate, provides expressly that the selection of the co-contractor shall be carried out, as a general rule, by public tender or public competitive bidding (Article 24), and Article 55 of Decree No. 5720/72, applicable to the Chamber of Deputies, provides that any purchase or sale on account of the federal government, as well as any building contract, lease agreement, performance contract, or supply contract, shall be entered into, as a general rule, after a public tender.

Taking the foregoing into account, the Committee will formulate a recommendation to the country under review, suggesting that the appropriate authorities of the Senate and Chamber of Deputies adopt the measures to ensure that the use of direct contracting is a result of the strict application of the exceptions provided by law (see recommendation 1.2.2(c), section 1.2, chapter III of this report).

The Committee considers that the information on the federal Judicial Branch and the Public Ministry of the Nation does not allow it to make an objective and comprehensive assessment of the results of those entities in the matter being reviewed. Accordingly, the Committee will formulate a recommendation to those entities in this regard (see general recommendation 4.2. in chapter III of this report).

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III, PARAGRAPH 8 OF THE CONVENTION)

2.1. Existence and provisions of a legal framework and/or other measures

The Republic of Argentina has a set of provisions regarding the systems referred to above, among which the following should be highlighted:

- Decree 102/99, which at Article 3 provides that the preliminary investigations carried out by the Anticorruption Office of the Ministry of Justice and Human Rights,^{lxiii} pursuant to the powers conferred to it by sections (a) to (e) of Article 2,^{lxiv} shall be kept under seal. This provision is supplemented by Resolution No. 749/00, issued by that Ministry, which contains the Rules of Procedure of the Bureau of Investigation of the Anticorruption Office, which at Article 1(a) provides for reporting while keeping one's identity confidential, and anonymous reporting, among the mechanisms made available to private or legal persons, and public servants.

- The Criminal Code of the Nation, which at Article 149 bis and 149 ter establishes penalties for the use of threats to alarm or intimidate one or more persons, or for the purpose of obligating another to do, not do, or tolerate something against his or her will.
- The Code of Criminal Procedure, which at Article 79 provides that from the outset of a criminal proceeding until its conclusion, the federal state shall guarantee the victims of a crime and the witnesses called to the case by a judicial organ, full respect for the rights mentioned therein, including that provided for at section (c), regarding the protection of their physical and moral integrity, and that of their family members.
- Law 25,764, which creates the National Program for the Protection of Witnesses and Persons under Investigation, which at Article 1 states that the Program is intended to implement measures that ensure the safety of persons under investigation and witnesses whose lives or physical integrity is endangered, and who have cooperated in a significant and efficient manner in a federal judicial investigation of a crime, as provided for in Articles 142 bis and 170 of the Criminal Code of the Nation (aggravated deprivation of liberty and kidnapping), as well as those provided for by Laws 23,737 (drug-trafficking) and 25,241(terrorism).

The foregoing statute adds at the second paragraph of Article 1, that without prejudice to it, at the request of the judicial authorities, the Minister of Justice and Human Rights may include, with justification, other cases not provided for in the previous paragraph, when they deal with offenses related to organized crime or institutional violence, and when the importance and criminal policy interest of the investigation make it advisable.

That law also provides, at Article 5, for special measures of protection, which may consist of: (a) Bodyguards assigned to the individual or his or her home; (b) Temporary lodging in unrevealed locations; (c) Change of domicile; (d) Provision of the economic resources for lodging, transport, food, communication, health care, moving, reinsertion in the labor market, administrative procedures, security systems, adaptation of the home, and other essential expenditures, in or outside the country, so long as the beneficiary is unable to obtain them by his or her own means (in no case shall economic assistance be granted for more than six months); (e) Assistance with pursuing administrative procedures; (f) Assistance with labor reinsertion; and (g) The provision of documentation that shows one's identity under an assumed name for the purposes of keeping confidential the location of the person protected and those of his or her family group.

- Law No. 23,737, on narcotics trafficking, which at Articles 31 Bis; 31 Ter; 31 Quinques; 31 Sexies; 33 Bis; and 34 Bis refers to protection for informants, witnesses, persons under investigation, and covert agents involved in the investigation of crimes contemplated in that law, or in Article 866 of the Customs Code (narcotics smuggling).

- Law No. 25,241, on acts of terrorism, establishes at Article 7 that if it can be presumed that the personal integrity of a person who is under investigation and has cooperated with the authorities is at risk because of that cooperation, or that his or her family were at risk, the necessary protective measures will be taken, including the provision of essential resources for changing his or her employment and his or her identity.

2.2. Adequacy of the legal framework and/or other measures

With respect to the provisions on the systems for protecting public servants and private citizens who in good faith report acts of corruption that the Committee has examined, based on the information available to it, they constitute, as a whole, a set of relevant measures for promoting the purposes of the Convention.

Nonetheless, the Committee notes that while there are provisions for protective measures that could be applied to informants, such as those contained in Article 5 of Law 25,764, which establishes the National Program for the Protection of Witnesses and Persons under Investigation, those provisions are aimed essentially at those who intervene in a criminal proceeding related to the crimes of aggravated deprivation of liberty and kidnapping (Articles 142 bis and 170 of the Criminal Code of the Nation), drug-trafficking (Law 23,737), and terrorism (Law 25,241). They would not cover public servants or private citizens who report acts of corruption that constitute crimes other than those mentioned - unless, as indicated in the second paragraph of Article 1 of Law 25,764, at the request of the judicial authorities, the Minister of Justice and Human rights includes them, with justification, in the case of offenses related to organized crime or institutional violence, and when the importance and criminal policy interest of the investigation make it advisable to do so.

Bearing the above in mind, the Committee also finds that public servants or private citizens who report acts of corruption that are not defined as criminal offenses yet could be subject to an administrative investigation, would not be covered by the protective measures provided for in Article 5 of Law 25,764.

The Committee also observes that the protective measures provided for by Article 5 of Law 25,764 are aimed primarily at protecting the physical integrity of its beneficiaries, but do not contain provisions geared to protecting the employment situation of whistleblowers, which would contribute to achieving the purposes of the Convention, by encouraging public servants to comply with their duty to report acts of corruption, without the fear of detriment to the conditions of their employment.

Based on the foregoing, the Committee will formulate a recommendation to Argentina (see recommendation in section 2, chapter III of this report), to the effect that its relevant authorities consider the adoption of a comprehensive regulation on the protection of public servants and private citizens who in good faith report acts of corruption. In keeping with its Constitution and the fundamental principles of its domestic legal system, said regulation should also provide for the protection of their identities and include, among others, the following aspects:

- Protection for those who report acts of corruption which may or may not be defined as criminal offenses, but which could 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 whistleblowers and situations when the acts of corruption may involve their hierarchical superiors or colleagues.
- Mechanisms to report the threats or reprisals from those who may be reported for acts of corruption, 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 aforementioned matters, when appropriate.

- Simplify the whistleblower protection application process.

The Committee wishes to expressly recognize the efforts made by Argentina to have a comprehensive regulation on protection of persons who report acts of corruption, as evidenced by the existence of a “Draft Law on Protection of Whistleblowers, Informants, and Witnesses of Acts of Corruption,” which has resulted from a participatory drafting process carried out by the Anticorruption Office. In this regard, the response to the questionnaire notes as follows:³⁷

“This preliminary draft is aimed at offering protection from measures taken to the detriment of persons who report or offer relevant information on acts of corruption, or provide testimony in a criminal case related to an investigation into acts of corruption. Given the particular features of reprisals against whistleblowers, informants, or witnesses of this type of wrongful act, the draft regulates protective mechanisms not only with respect to the physical integrity of the person protected, but also as to the consequences that he or she could possibly suffer in the workplace environment, whether employed in the public administration or the private sector.”

In addition to the existence of the above-mentioned draft law, Argentina’s response also describes the submission to the Legislative branch of at least six bills related to the topic since 1998.

The document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC)³⁸ states as follows with respect to this point:

“In addition to the laws in force that have been outlined above, there are draft laws for the protection of the labor rights of informants, witnesses, and persons under investigation that specifically address cases of corruption..

*These bills are distinguished from the **National Program for the Protection of Witnesses and Persons Under Investigation (Law 25,764)** because they focus on preventing reprisals against witnesses and informants for reporting acts of corruption. Protection is based on maintaining the employment and working conditions of a person who reports or is a witness to an act of corruption within the organization in which he or she works. In common law systems such statutes are known as whistleblower protection laws.*

One of the bills, drafted by the Anticorruption Office in 2003, is aimed at securing more comprehensive protection, but it was never sent to the Congress. The other was drafted by a group of NGOs that have come together in the “Foro por la Transparencia” (Forum for Transparency) as part of a series of projects known as the “laws of May” (“leyes de mayo”). (The language prepared by the Foro por la Transparencia was introduced by various legislators in both houses of Congress, but all of them have lost their seats in the legislature. These are Bills 5952-D-03, 2081-S-02, and 3278-S-02).”

2.3. Results of the legal framework and/or other measures

The Republic of Argentina’s response to the questionnaire, on results in this area, provides the following information:³⁹

³⁷ Argentina’s response to the questionnaire, p. 105.

³⁸ Document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), p. 161.

“Anticorruption Office – Ministry of Justice and Human Rights:

At the Anticorruption Office, from January 2000 to 30 June 2006, a total of 5,696 allegations of corruption have been received. Of those, 1,439 have been anonymous and 122 have been lodged with a request to keep the informant’s identity under seal.

National Program for the Protection of Witnesses and Persons under Investigation:

With respect to the National Program for the Protection of Witnesses and Persons Under Investigation, at this time twenty-two (22) cases are being processed, involving thirty-one (31) protected persons – counting witnesses and persons under investigation – and their respective family groups.

Of those cases, nine (9) are for offenses related to the law on narcotics, seven (7) for kidnappings for extortion, two (2) for institutional violence, three (3) for organized crime, and one (1) for terrorism.”

With respect to the foregoing information, the Committee observes that the information regarding allegations received by the Anticorruption Office of the Ministry of Justice and Human Rights, which gives a breakdown showing the number of anonymous reports and the number of reports made on condition that the identity of the person filing it be kept under seal, is useful for showing that in effect these mechanisms are being made available to informants, and that they are being used by them, for which Argentina merits recognition.

Regarding the information that refers to persons protected by the National Program for the Protection of Witnesses and Persons under Investigation, the Committee is of the view that while the information establishes that that program is operative for the cases related to the offenses mentioned in it, it does not refer to persons who report acts of corruption and have been beneficiaries of its protective measures. Therefore it is not possible to verify whether it is being used for such cases.

3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)

3.1. Existence and provisions of a legal framework and/or other measures

The Republic of Argentina has a set of provisions regarding criminalization of the acts of corruption provided for in Article VI(1) of the Convention, among which special mention should be made of the following:

▪ As regards Article VI(1)(a):

- Article 256 of the Criminal Code, amended by Article 31 of Law 25,188, which states: “A public servant^{lxv} who, by him or herself or by an intervening person receives money or any other gift or accepts a direct or indirect promise, for doing, delaying, or not doing something in relation to his or her functions, shall be punished by reclusion or imprisonment of one to six years and special perpetual disqualification” (Passive bribery [*Cohecho Pasivo*]).

- Article 257 of the Criminal Code, amended by Article 33 of Law 25,188, which states: “A judge of the Judicial Branch or of the Public Ministry who, by him or herself or an intervening person,

³⁹ Argentina’s response to the questionnaire, p. 107.

receives money or any other gift or accepts a direct or indirect promise for issuing, handing down, delaying, or failing to issue an order, ruling, or opinion in matters subject to his or her jurisdiction, shall be punished by imprisonment or reclusion of four to twelve years and special perpetual disqualification” (Bribery of a Judge of the Judicial Branch or Public Ministry).

- Article 266 of the Criminal Code, modified by Article 33 of Law 25,188, which states: “a public servant who, abusing his or her position, solicits, demands, or makes a payment, or improperly delivers, by him or herself or an intervening person, a contribution, a benefit, or a gift or charges fees greater than those that apply, shall be punished by imprisonment of one to four years and special disqualification of one to five years” (Illegal exactions).

- Article 267 of the Criminal Code, which states: “If intimidation is used or a superior order, commission, judicial order, or other legitimate authorization is invoked, the period of imprisonment may be increased to four years, and the disqualification to six years” (Aggravated Exaction by the Means).

- Article 268 of the Criminal Code, which states: “A public servant who converts to his or her own benefit, or that of a third person, the exactions indicated in the previous articles, shall be punished by imprisonment of two to six years, and absolute perpetual disqualification” (Extortion by a public official or judge).

- Article 259 of the Criminal Code, which states: “A public servant who allows gifts, which were given in consideration of his office while he remains in the position, shall be punished by imprisonment of one month to two years, and absolute disqualification of one to six years. The person who presents or offers the gift shall be punished by imprisonment of one month to one year” (Non-aggravated Admission of Gifts).

▪ As regards Article VI(1)(b):

- Article 258 of the Criminal Code, which states: “One who directly or indirectly gives or offers gifts in an effort to procure any of the forms of conduct punished by Articles 256 and 256 bis, first paragraph, shall be punished by imprisonment of one to six years. If the gift is made or offered in order to obtain forms of conduct defined in Articles 256 bis, second paragraph, and 257, the penalty shall be two to six years reclusion or imprisonment. If the guilty person is a public servant, he or she shall also suffer special disqualification of two to six years, in the first case, and three to ten years in the second” (Active Bribery [*Cohecho activo*]).

▪ As regards Article VI(1)(c):

- Article 174, section 5, of the Criminal Code, which states: “A prison sentence of two to six years shall be imposed on... 5. One who commits fraud to the detriment of any public administration.... The guilty person, if a public employee, shall also suffer special perpetual disqualification” (Fraud to the Detriment of the Public Administration).

- Article 173, section 7, of the Criminal Code, which states: "... One who, by provision of the law, the authority, or by legal act, is in charge of the management, administration, or care of goods or pecuniary interests of others, and with the aim of procuring for him or herself or a third person an improper gain, or to cause harm, violating his duties prejudices the interests entrusted or who abusively obligates the holder of these...." (Unfaithful Administration).

- Article 265 of the Criminal Code, which states: "A public servant who directly, or through an intervening person or by simulated act, takes interest with a view to obtaining a benefit for him or herself or a third person, in any contract or operation in which he or she is involved because of his or her position, shall be punished by reclusion or imprisonment of one to six years and special perpetual disqualification. – This provision shall be applicable to arbitrators, mediators, expert witnesses, accountants, guardians, trustee, executors, receivers, and trustees in bankruptcy, with respect to the functions they perform in their capacity as such" (Transactions Incompatible with the Performance of Public Functions).

▪ In relation to Article VI(1)(c):

- Article 277 of the Criminal Code, amended by laws 25,246 and 26,087, which states: "(1) The punishment shall be six months to three years of imprisonment for one who, after a crime is committed that is carried out by another person: ...; (c) Acquires, receives, or hides money, things, or effects resulting from a criminal offense; (e) Secures or helps the perpetrator or participant to secure the proceeds or benefit of the crime. – (2) The scale of penalties shall be double the minimum and the maximum when: (a) The preceding acts were an especially grave crime such that its minimum penalty were greater than three years' imprisonment; (b) The perpetrator acts seeking to profit; (c) The perpetrator is habitually committing acts of aiding and abetting after the fact.

▪ As regards VI(1)(d):

- Article 45 of the Criminal Code, which states: "Those who take part in executing the act or providing assistance to or cooperate with the perpetrator or perpetrators, without which it would not have been possible to commit the crime, shall face the punishment established for the crime. Those who directly got another person to commit it will face the same punishment" (Criminal Participation).

- Article 46 of the Criminal Code, which states: "Those who cooperate in any other way in the execution of the act and those who provide assistance subsequently, by carrying out promises made prior to it, shall be punished with the penalty that corresponds to the crime, diminished by one-third to one-half...."(Secondary Complicity).

- Articles 277 and 278 of the Criminal Code, described above in relation to Articles VI(1)(c), which are also related to what is provided for in (d), in relation to aiding and abetting after the fact.

- Article 210 of the Criminal Code, which states: "One who takes part in an association or gang of three or more persons, with the aim of committing crimes for the mere fact of being members of the association, shall be punished by imprisonment or reclusion of three to ten years. – For the leaders or organizers of the association, the minimum penalty shall be five years of imprisonment or reclusion" (Criminal Association).

- Article 29 bis of Law 23,737 on Narcotics and Psychotropic Substances, which states: "One who participates in a conspiracy of two or more persons to commit any of the crimes provided for in

Articles 5, 6, 7, 8, 10, and 25 of this law, and in Article 866 of the Customs Code, shall be punished by reclusion or imprisonment of one to six years. – The conspiracy shall be punishable from the moment any of its members performs acts that manifestly reveal the common decision to execute the crime for which it was agreed. – One who reveals the conspiracy to the authorities before execution of the crime for which it was formed begins, as well as one who spontaneously hinders realization of the plan, shall be exempt from punishment.” (Conspiracy).

3.2. Adequacy of the legal framework and/or other measures

The provisions criminalizing the acts of corruption provided for in Article VI(1) of the Convention, which the Committee has examined based on the information made available to it, constitute a set of measures relevant to promoting the purposes of the Convention.

Nonetheless, the Committee considers that in order to improve those provisions of the legal framework, the country under review could complement them, taking into account the observations made with respect to adapting them to what is provided for by Article VI(1) of the Convention, in the study prepared within the framework of a technical cooperation project for the ratification and implementation of the Convention. This study was prepared by the OAS with financial cooperation from the IADB and with the participation of the Anticorruption Office of the Republic of Argentina, which has been published in the book “Adapting Argentina’s Criminal Legislation to the Inter-American Convention against Corruption”.^{lxvi}

In light of the foregoing, the Committee takes note of the following:

- 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 (see recommendation 3 (a) in section 3 of chapter III of this report).
- 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 (see recommendation 3 (b) in section 3 of chapter III of this report).
- 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 (see recommendation 3 (c) in section 3 of chapter III of this report).

3.3. Results of the legal framework and/or other measures

Argentina’s response to the questionnaire,⁴⁰ provides information in relation to the number of cases, accused persons, and crimes corresponding to the criminal law definitions provided for by Criminal Code Articles 173(7); 174(5); 210; 256; 257; 258; 259; 260; 265; 266; 267; 268; and 277, corresponding to 2002, 2003, 2004, 2005, and part of 2006.

⁴⁰ Annex 4 – Chapter 3-1-b, included as a document attached to Argentina’s response to the questionnaire (electronic version at: http://www.oas.org/juridico/spanish/mesicic2_arg_sp.htm)

With respect to the foregoing information, the Committee considers that the available information shows that in the Republic of Argentina, criminal investigations have been undertaken with respect to the crimes defined by Argentina regarding the acts of corruption provided for at Article VI(1) of the Convention, which merits recognition.

Notwithstanding the foregoing, considering that the Committee does not have any information processed in such a way as to allow for a comprehensive evaluation of the results of the criminal investigations referred to, it will formulate a recommendation to the Judicial Branch in this regard (see general recommendation 4.2 in chapter III of this report).

III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION SELECTED FOR THE SECOND ROUND

Based on the review in chapter II of this report, the Committee formulates the following conclusions and recommendations with respect to the implementation, in the Republic of Argentina, of the provisions contained in Articles III(5) (systems for hiring public servants and for government procurement of goods and services); III(8) (systems to protect public servants and private citizens who in good faith report acts of corruption); and VI (acts of corruption) of the Convention, which were selected for review within the context of the second round.

A. COOPERATION WITH THE PROVINCIAL AND MUNICIPAL GOVERNMENTS

In keeping with what is stated at chapter II, part A of this report, the Committee encourages the Republic of Argentina, along with its provincial governments, to continue to undertake joint actions 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.

B. CONCLUSIONS AND RECOMMENDATIONS APPLICABLE TO THE FEDERAL GOVERNMENT

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

1.1. Systems for hiring public servants

The Republic of Argentina has considered and adopted measures to create, maintain, and strengthen systems for hiring public servants, in keeping with what is indicated at section 1.1, chapter II of this report.

In light of the comments made in this section, the Committee suggests that the Republic of Argentina consider the following recommendations:

1.1.1 Strengthen the systems for hiring public servants in the federal Executive Branch. To carry out this recommendation, the Republic of Argentina could take the following measures into account:

- a. Advance even further with the preparation of job description manuals (see Chapter II, Section 1.1.2. of this report).

- b. Modify Article 15 of Annex I, Resolution ex-SFP No. 481/94, and the relevant provisions, so as to make the stages of the selection procedures, known as Work-experience Evaluation and Technical Evaluation, provided for in Articles 18 and 19 of that Resolution, mandatory (see section 1.1.2, chapter II of this report).
- c. 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 (see section 1.1.2, chapter II of this report).
- d. 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 (see section 1.1.3, chapter II of this report).

1.1.2. Strengthen the systems for hiring public servants in the federal Legislative Branch. To carry out this recommendation, the Republic of Argentina could take the following measures into account:

- a. 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 (see Chapter II, Section 1.1.2. of this report).
- b. 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 section 1.1.2, chapter II of this report).

1.1.3 Strengthen the systems for hiring public servants in the federal Judicial Branch. To carry out this recommendation, the Republic of Argentina could take the following measure into account:

- 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 (see section 1.1.2, chapter II of this report).

1.1.4 Strengthen the systems for hiring public servants in the Public Ministry of the Nation. To carry out this recommendation, the Republic of Argentina could take the following measures into account:

- a. 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-Judicial, Technical-Administrative, and Auxiliary Services groupings of the Prosecutorial Public Ministry, bearing in mind the eminently technical nature of those positions (see section 1.1.2, chapter II of this report).

- b. 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 (see section 1.1.2, chapter II of this report).

1.2. Systems for government procurement of goods and services

The Republic of Argentina has considered and adopted measures aimed at creating, maintaining, and strengthening systems for government procurement of goods and services in keeping with what is stated in section 1.2, chapter II of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Argentina consider the following recommendations:

- 1.2.1 Strengthen the systems for government procurement of goods and services in the federal Executive Branch. To carry out this recommendation, the Republic of Argentina could take the following measures into account:
 - a. 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 (see section 1.2.2, chapter II of this report).
 - b. 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 (see section 1.2.2, chapter II of this report).
 - c. 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 section 1.2.3, chapter II of this report).
- 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. To carry out this recommendation, the Republic of Argentina could take the following measures into account:
 - a. 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 (see section 1.2.2, chapter II of this report).

- b. 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 (see section 1.2.2, chapter II of this report).
- c. 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. (see section 1.2.3, chapter II of this report).

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. To carry out this recommendation, the Republic of Argentina could take the following measure into account:

- 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.

2. SYSTEMS TO PROTECT PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III, PARAGRAPH 8 OF THE CONVENTION)

The Republic of Argentina has considered and adopted certain measures aimed at creating, maintaining, and strengthening systems to protect public servants and private citizens who in good faith report acts of corruption, as described in section 2, chapter II of this report.

In view of the comments made in that section, the Committee suggests that the Republic of Argentina consider the following recommendation:

- Strengthen the systems for protecting public servants and private citizens who in good faith report acts of corruption. To carry out this recommendation, the Republic of Argentina could take the following measure into account:
 - 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.

3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)

The Republic of Argentina has adopted measures aimed at defining as criminal offenses the acts of corruption provided for at Article VI(1) of the Convention, in keeping with section 3 of chapter II of this report.

In view of the comments made in that section, the Committee makes the following recommendations to the Republic of Argentina:

- Modify and/or complement the following articles of the Criminal Code, as follows:
 - 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 (see section 3.2 of chapter II of this report).
 - 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 (see section 3.2 of chapter II of this report).
 - 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 (see section 3.2 of chapter II of this report).

4. GENERAL RECOMMENDATIONS

Based on the review and comments made throughout this report, the Committee suggests that the Republic of Argentina consider the following recommendations:

- 4.1. Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that the said systems, provisions, measures and mechanisms are adequately known, managed, and implemented.

- 4.2. 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 (see sections 1.1.3.; 1.2.3.; and 3.3).

5. FOLLOW-UP

The Committee will consider the periodic updated Reports submitted by the Republic of Argentina on their progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions of Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress of the Republic of Argentina in implementing the recommendations made in this Report, in accordance with the provisions of Article 29 of the Rules of Procedure.

IV. OBSERVATIONS IN RELATION TO PROGRESS IN IMPLEMENTING THE RECOMMENDATIONS MADE IN THE FIRST ROUND

The Committee offers the following observations with respect to the implementation of the recommendations made to the Republic of Argentina in the report from the First Round of review, based on the information available to it:

A. ANTICORRUPTION ACTIVITIES AND PREVENTIVE MEASURES AT THE PROVINCIAL AND MUNICIPAL LEVELS

Recommendation 1

Consider promoting in the provinces and the autonomous city of Buenos Aires and municipalities, the relevant cooperation mechanisms to secure information under issues related to the Convention from those levels of governments and to provide technical assistance for the effective implementation of the Convention.

In its response, the Republic of Argentina presents information with respect to the above recommendation. In this regard, the Committee highlights the following steps noted by Argentina, and which led to its conclusion that the recommendation has been satisfactorily considered, such as the following:

- The Plan Provincias, the general objective of which is to provide assistance and technical cooperation for implementing the IACAC in the provincial and municipal governments.⁴¹

- The actions carried out to develop the pilot phase of the above-noted Plan in the provinces of Mendoza, Chubut, Corrientes, and Entre Ríos, and in the local government of the city of Córdoba.⁴²

⁴¹ Argentina's response to the questionnaire. Annex 1. Pp. 1 and 2. All the information related to the "Plan Provincias" can be found at the website of the Anticorruption Office at:

www.anticorrupcion.gov.ar/politicas_09.asp

⁴² Argentina's response to the questionnaire. Annex 1, pp. 2 and 3.

- The continuity in follow-up to the pilot phase, after its initial phase was evaluated and certain adjustments made, which is reflected in the agreements signed with the Secretariat for Security of the Government of the City of Buenos Aires and the municipality of Córdoba.^{lxvii}

- The Permanent Forum of Offices of Prosecutors for Administrative Investigations and Anticorruption Offices, which is an initiative with the purpose of sharing experiences and information aimed at improving the anticorruption policies that these national and provincial organizations are implementing in their respective jurisdictions.^{lxviii}

The Committee takes note of the satisfactory consideration by Argentina of the above recommendation, which by its very nature requires continuity in its implementation. It also takes note of the determinant circumstances to be considered in the working relationship between the national government and the local governments, in view of the autonomy of the provinces and municipalities;⁴³ and of the information provided on the internal agencies that have participated in its implementation.⁴⁴

B. RECOMMENDATIONS AT THE FEDERAL LEVEL

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct to prevent conflicts of interests and enforcement mechanisms

Recommendation 1.1.

Strengthen implementation of laws and regulatory systems concerning conflicts of interest so that they cover all government officials and employees so that they permit practical and effective application of the public ethics system.

Measures suggested by the Committee

- *Ensuring more effective enforcement of Law 25.188 for all government employees and officials, including those of the legislative and judicial branches and the Attorney General's office.*
- *Instituting appropriate post-employment restrictions (see section 1.1.2.1 of Chapter II).*
- *Resolving the discrepancy between the law establishing the National Commission on Public Ethics and the non-existence of this Commission; or restructuring the legal and regulatory system to provide for appropriate mechanisms to enforce standards of conduct, including conflict of interest restrictions, for all civil servants (see section 1.1.2.1 of Chapter II).*
- *Ensuring that officials appointed directly by the President are subject to appropriate, enforceable conflict of interest restrictions, as established by the specific conflict of interest regime contained in the Ministerial Law (see section 1.1.2.2 of Chapter II).*

⁴³ Argentina's response to the questionnaire. Annex 1, p. 4.

⁴⁴ Argentina's response to the questionnaire. Annex 1, p. 4 .

- *Expanding the coverage of sworn declarations of elected officials to include employment history.*
- *Designing and implementing mechanisms to publicize and provide training on the standards of conduct including those involving conflicts of interest, to all government officials and employees, and to provide further training or periodic updating regarding them.*

In its response, the Republic of Argentina presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The designation and dissemination of a preliminary draft law, by the Anticorruption Office, through a participatory process of drafting bills, in which a comprehensive amendment of the Law on Ethics in Public Service (Law No. 25,188) is proposed.⁴⁵

- The actions carried out by the federal Executive Branch to try to establish the National Commission on Public Ethics, reflected in the beginning of a procedure to select and designate a citizen as its representative to it, and in the preparation of a bill by the Anticorruption Office to address this designation.⁴⁶

The Committee takes note of the steps taken by Argentina to advance in its implementation of the foregoing recommendation and the need for it to continue paying attention thereto. In addition, the Committee takes note of the difficulties observed in the process of implementing this recommendation, as represented by Argentina,^{lxix} and of the information provided by the internal agencies that have participated in the process of implementing that recommendation.⁴⁷

1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

Recommendation 1.2.

Strengthen the internal and external control systems and utilize effectively the information generated during audits.

Measures suggested by the Committee

- *Ensuring that an effective control system exists for congressional oversight of the expenditure of public funds.*
- *Making public, where appropriate, the reports issued by control bodies.*
- *Establishing an effective enforcement system for violations of law or regulation found during the course of an audit.*

⁴⁵ Argentina's response to the questionnaire. Annex 1, pp. 6 and 7.

⁴⁶ Argentina's response to the questionnaire. Annex 1, pp. 7 and 8.

⁴⁷ Argentina's response to the questionnaire. Annex 1, p. 9.

- *Ensuring the highest degree of stability and independence of internal auditors.*

In its response, the Republic of Argentina presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The impetus of the Anticorruption Office in fostering the legislative proposals submitted to the National Congress that are mentioned in the response, in relation to the measure to ensure the existence of an oversight system, under the Congress, on public spending.⁴⁸
- The actions taken by the federal Executive Branch and the Office of the Auditor General of the Nation which contribute to giving a greater opportunity to the observations it makes in its reports regarding the spending and administration of public funds, and which “make oversight more effective.”⁴⁹
- The publicity via Internet of the reports by the *Sindicatura General de la Nación*; of the list of audits under way entrusted to the Office of the Auditor General of the Nation; and the optimization of the information disseminated by the Anticorruption Office.⁵⁰
- The ideas for implementing the measures recommended by the Committee as regards establishing an effective system of sanctions for violations of the statutory or regulatory provisions found in the course of the audits and the idea to guarantee greater stability and independence of the internal auditors, proposed in the Plan of Action for Implementing the Recommendations made to the Republic of Argentina by the Committee of Experts of the Mechanism to Monitor Implementation of the Inter-American Convention against Corruption (www.anticorrupcion.gov.ar/internacional_02.asp)⁵¹

The Committee takes note of the satisfactory consideration by Argentina of the measure, in the recommendation, referring to publicizing, when appropriate, the reports by the oversight agencies, particularly those of the *Sindicatura General de la Nación* and the Anticorruption Office.

The Committee also takes note of the steps taken by Argentina to implement the remaining measures in the recommendation, and the need for Argentina to continue paying attention to them. In addition, the Committee takes note of the information provided on the internal agencies that have participated in the process of implementing that recommendation.⁵²

1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation 1.3.

Strengthen the existing mechanisms for requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

⁴⁸ Argentina’s response to the questionnaire. Annex 1, p. 10.

⁴⁹ Argentina’s response to the questionnaire. Annex 1, p. 11.

⁵⁰ Argentina’s response to the questionnaire. Annex 1, pp. 11 and 12.

⁵¹ Argentina’s response to the questionnaire. Annex 1, p. 13.

⁵² Argentina’s response to the questionnaire. Annex 1, pp. 13 and 14.

Measure suggested by the Committee

- *Training public officials on the existence and purpose of their responsibility to report to appropriate authorities, acts of corruption of which they are aware in the performance of their public functions.*

In its response, the Republic of Argentina presents information with respect to the above recommendation. In this regard, the Committee notes, as a step which contributes to progress in implementation of the recommendation, the measures taken with respect to:

- *“As regards the actions to train public servants, the Anticorruption Office, with financial support from the Global Opportunities Fund of the British Embassy and the United Nations Development Program (“the UNDP”), is developing virtual training courses (e-learning) for public officials whose contents include, prominently, the ethical obligations of public servants and the filing of complaints alleging irregularities that they come to learn of. To access more information on this program, see the website of the Anticorruption Office (www.anticorruccion.gov.ar).”⁵³*

The Committee takes note of the satisfactory consideration given by Argentina to the foregoing recommendation, which, given its very nature, requires continuity, and of the information provided on the internal agencies that have participated in its implementation.⁵⁴

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE RECOMMENDATION)

Recommendation 2.

Improve the systems for the timely collection, use, and public release of the financial disclosure reports.

Measures suggested by the Committee

- *Resolving the discrepancy between the law establishing the National Commission on Public Ethics and the non-existence of this Commission; or restructuring the legal and regulatory systems to provide for mechanisms to enforce effectively the systems for registration of income, assets, and liabilities.*
- *Using the financial disclosure reports for counseling public officials on how to avoid conflicts of interest as well as for detecting illicit enrichment.*

In its response, the Republic of Argentina presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The actions carried out by the federal Executive Branch to try to establish the National Commission for Public Ethics, reflected in the initiation of a procedure to select and designate a citizen as its

⁵³ Argentina’s response to the questionnaire. Annex 1, p. 16.

⁵⁴ Argentina’s response to the questionnaire. Annex 1, p. 16.

representative to that body, and in the preparation of a proposal by the Anticorruption Office to cover his or her eventual designation.⁵⁵

- The IT tools implemented to optimize the system of sworn statements on net worth by public servants, and the actions taken by the Unit on Sworn Statements of the Anticorruption Office, reflected in the forwarding to the Bureau of Investigations of 164 cases of possible illicit enrichment based on the information from those statements.⁵⁶

In addition, the Committee takes note of the information provided with respect to this recommendation in the document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), which notes as follows:⁵⁷

“In October 1999, Law 25,188 on Ethics in Public Service was adopted.... The Law provides for the creation of the National Commission on Public Ethics, whose main functions include keeping these sworn statements and keeping tabs on the information in them. From the issuance of that law to the date of the preparation of this report, the Commission has not been created nor has a similar body. The lack of this body has been used by several offices to justify their failure to apply the provisions in force in their respective realms....”

“As can be observed, the application of the Law on Ethics in Public Service is uneven as among the various agencies. One example of this is the case of the Legislative Branch. This failure to apply and regulate also has other consequences. This Law regulates, along with the Regime of Sworn Statements, the Regime of Incompatibilities and Conflicts of Interest, and the Regime on gifts to public servants, among others. Accordingly, the failure to apply and regulate that law makes it extremely difficult to control illicit enrichment, i.e. the increase in the net worth of public servants – in this case federal legislators – that does not result from the exercise of a public charge or legal and lawful activities in the private sphere, but as a result of the exchange of favors, receipt of gifts, goods, services, and/or payment of bribes, while one is engaged in public service. Based on an analysis of the sworn statements on net worth of the legislators, one could keep tabs, to a great extent, on compliance with the Regime on gifts to public servants and the Regime of Incompatibilities and Conflicts of Interest, since one could observe whether there were significant changes, and whence they came.”

The Committee takes note of the satisfactory consideration by Argentina, of the measure in the recommendation that refers to using sworn statements on net worth to detect cases of illicit enrichment and conflicts of interest, as regards the actions carried out in this regard by the Anticorruption Office.

The Committee also takes note of the steps taken by Argentina to implement the remaining elements of the measures of this recommendation, and of the need for it to continue paying attention to them. In addition, the Committee notes the difficulties observed in the process of implementing this recommendation, which have been highlighted by the Republic of Argentina^{lxx} and civil society,⁵⁸ and

⁵⁵ Argentina's response to the questionnaire. Annex 1, pp. 7, 8, and 11.

⁵⁶ Argentina's response to the questionnaire. Annex 1, pp. 17 to 20.

⁵⁷ Document of *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), pp. 193 and 198.

⁵⁸ Document of the *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), pp. 194 to 196.

the information provided on the internal agencies that have participated in the process of implementing that recommendation.⁵⁹

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

Recommendation 3.

Examine the feasibility of implementing the proposals contained in the Management Report for 2001 of the Anticorruption Office.

Measures suggested by the Committee

- *Ensuring better coordination and cooperation among the Attorney General's Office, Administrative Investigations Office, Inspector General, Anticorruption Office, Auditor General and Congressional Committees.*
- *Reforming or strengthening the oversight bodies by such measures as transparent and public mechanisms for the selection, appointment, promotion and removal of career employees of such bodies; continuous evaluation and follow-up of actions; political and social support for actions of the oversight bodies; greater autonomy for internal auditors; and independent status for the Anticorruption Office.*

In its response, the Republic of Argentina presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The Permanent Forum of Offices of Prosecutors of Administrative Investigations and Anticorruption Offices, an initiative the purpose of which is the sharing of experiences and information geared to improving the anticorruption policies that these national and provincial agencies implement in their respective jurisdictions.^{lxxi}
- Plan 2006 of the *Sindicatura General de la Nación*, approved by Resolution 128/2005 SGN, which gives rise to several oversight activities planned by the SIGEN itself and by the Internal Audit Units that work in the various agencies and entities of the federal public sector, in relation to the systems for hiring public servants and the procurement of goods and services. This Plan also includes projects related to making optimal use of the management and control of the system in place in the organization.⁶⁰
- The Institutional Strengthening Project of the Anticorruption Office, whose main objective is to strengthen the preventive policies of that Office, which began to be implemented in November 2005.⁶¹
- The new judicial recognition of the capacity of the Anticorruption Office to bring cases, effectuated by the Supreme Court on May 30, 2006.⁶²

⁵⁹ Argentina's response to the questionnaire. Annex 1, p. 20.

⁶⁰ Argentina's response to the questionnaire. Annex 1, pp. 22 and 23 and website: www.siggen.gov.ar

⁶¹ Argentina's response to the questionnaire. Annex 1, pp. 23 and 24.

⁶² Argentina's response to the questionnaire. Annex 1, p. 24.

The Committee takes note of the satisfactory consideration by Argentina, of the measure in the recommendation that refers to ensuring better cooperation among the oversight organs cited in it, as regards the actions taken in this respect by the Anticorruption Office and the Office of Prosecutors for Administrative Investigations.

The Committee also takes note of the satisfactory consideration of the measure that refers to strengthening the upper-level oversight organs, as regards the new judicial recognition of the capacity of the Anticorruption Office to bring cases before the courts, effectuated by the Supreme Court on May 30, 2006.

In addition, the Committee takes note of the steps taken by Argentina to implement the remaining elements of the measures in the recommendation, and the need for it to continue giving attention to them, and of the information provided on the internal agencies that have participated in the process of implementing that recommendation.⁶³

4. MECHANISMS TO PROMOTE THE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

4.1. Mechanisms for access to information

Recommendation 4.1.1.

Institute legal norms supporting public access to government information.

Measure suggested by the Committee

- *Developing procedures for acceptance of requests, for response to requests in a timely fashion, for appeal procedures in the case of denials, and for penalties concerning failure to comply with obligations to provide information.*

In its response, the Republic of Argentina presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The issuance, in December 2003, by the President of Argentina, of Decree No. 1172/03 on Improving the Quality of Democracy. Its scope of application extends to the federal Executive Branch and contains, among other provisions, those for the approval of the “General Regulation of Access to Public Information for the Federal Executive Branch.”⁶⁴

- The draft laws on access to public information mentioned in Argentina’s response, which they report, are before the national Congress.⁶⁵

⁶³ Argentina’s response to the questionnaire. Annex 1, p. 24.

⁶⁴ Argentina’s response to the questionnaire. Annex 1, pp. 25 and 26. This decree can be seen at: <http://www.mejordemocracia.gov.ar/TextoDecreto1172-2003.php>

⁶⁵ Argentina’s response to the questionnaire. Annex 1, pp. 26 and 27.

In addition, the Committee takes note of the information provided with respect to this recommendation in the document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), which notes as follows⁶⁶:

“The right of access to public information is expressly guaranteed in the Constitution of Argentina through Article 75(22), which incorporates treaties and international human rights instruments. Beyond this constitutional recognition, from the submission of the first report to the Committee of Experts, there is still a need for a federal law that guarantees in all the branches of government (executive, legislative, and judicial) the conditions necessary for the effective exercise of this right by the citizens, and for the officials to be able to take cognizance, in a complete and specific manner, of their responsibilities in respect of providing information.

Beyond this pending challenge, several measures have been implemented in our country that should be mentioned and highlighted. One is the issuance of Decree 1172/03 and particularly the Regulation on Access to Public Information. The decree has been an important advance in improving institutional quality, though monitoring of the implementation of this initiative has detected some difficulties and hindrances that show that the issuance of a provision is just one step in turning the right of access to information into a public policy.”

The Committee takes note of the satisfactory consideration, by Argentina, of the measure in the recommendation that refers to instituting legal provisions that support access to public information, in relation to presidential decree No. 1172/03. Its scope of application extends to the federal Executive Branch, without getting into an analysis of its substance.

The Committee also takes note of the steps taken by Argentina to implement the other elements of the measure in the recommendation which are not covered in that presidential decree, as well as the need for Argentina to continue paying attention to them. It also takes note of the information provided on the internal agencies that have participated in the process of implementing that recommendation.⁶⁷

4.2. Mechanisms for consultation

Recommendation 4.2.1.

Institute procedures, where appropriate, that provide an opportunity for public consultation prior to the final approval of legal norms.

Measures suggested by the Committee

- *Publishing and disseminating the draft bills of legal norms, and elaboration of transparent processes in order to allow the consultation of interested sectors in relation to the drafting of laws, decrees or resolutions within the Executive branch.*
- *Holding public hearings to provide for public consultation in areas other than those concerning the public services framework, which have already been considered in the law.*

⁶⁶ Document of *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), p. 197. At pp. 179 to 181 reference is made to a monitoring of Decree 1172/03 by CIPPEC.

⁶⁷ Argentina's response to the questionnaire. Annex 1, p. 27.

In its response, Argentina submits information with respect to the foregoing recommendation, of which the Committee highlights, as steps that lead to the conclusion that the recommendation has been considered satisfactorily, the measures taken in relation to:

- The issuance, in December 2003, by the President of Argentina, of Decree No. 1172/03 on Improving the Quality of Democracy, which contains, among other provisions, those for the approval of the “General Regulation for the Participatory Drafting of Laws” and of the “General Regulation of Public Hearings for the Federal Executive Branch.”⁶⁸

- The draft laws on different subjects that have been prepared with broad citizen participation through consultative procedures for “participatory drafting of laws” furthered by the Anticorruption Office, which are mentioned in the response.⁶⁹

- Decrees 222/2003 and 588/2003, which regulate the powers of the federal Executive Branch to appoint members of the federal Supreme Court of Justice, the Attorney General, and the Defender General, and judges of the lower federal courts, as well as some officers of the Public Ministry. These Decrees also create mechanisms that enable citizens, individually or collectively, as well as the societies and associations that bring together professional, academic, and scientific sectors, non-governmental organizations interested and active in the issue, to make known their points of view, reasons, and objections they may have with respect to an appointment to be made.⁷⁰

In addition, the Committee takes note of the information provided in the document from *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), which indicates as follows⁷¹:

“... in December 2003, President Néstor Kirchner issued Decree 1172/03, which regulates, among other institutions, the right of access to public information in the federal Executive Branch. The decree was an important step not only for regulating the right, but also for establishing tools of citizen participation such as public hearings, open meetings of the regulatory agencies, and formalization of the mechanism of participatory drafting of legal provisions. These mechanisms, beyond making possible the participation of the citizenry in public affairs, make it possible in large measure to strengthen the quality of public policies by taking account of different perspectives and opinions when it comes to designing policies and strategies for intervention in the life of the community.”

The Committee takes note of the satisfactory consideration, by Argentina, of the recommendation transcribed above, which due to its very nature, requires continuity, without getting into an analysis of the legal provisions mentioned in the response. The Committee also takes note of the information provided by the internal agencies that have participated in its implementation.⁷²

⁶⁸ Argentina’s response to the questionnaire. Annex 1, p. 28.

⁶⁹ Argentina’s response to the questionnaire. Annex 1, pp. 28 and 29.

⁷⁰ Argentina’s response to the questionnaire. Annex 1, p. 30.

⁷¹ Document of *Fundación Poder Ciudadano* and the *Centro de Implementación de Políticas Públicas para la Equidad* (CIPPEC), p. 173.

⁷² Argentina’s response to the questionnaire. Annex 1, p. 30.

4.3. Mechanisms to encourage participation in public administration

Recommendation 4.3.1.

Strengthening and further implementing mechanisms that encourage civil society and nongovernmental organizations to participate in public administration.

Measures suggested by the Committee

- *Establishing mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption and to develop public awareness of the problem; and promoting awareness of the mechanisms established for participation and explaining their use.*

In its response, Argentina submits information with respect to the foregoing recommendation, of which the Committee highlights, as steps that make it possible to deem that the recommendation has been considered satisfactorily, the measures related to:

- The initiatives for citizen participation that have been developed based on the program “Letter of Commitment to the Citizens” established by Decree 229/2000. *“At present, 45 agencies of the federal public administration are included in the Program Letter of Commitment to the Citizens, all of which have incorporated at least one mechanism of citizen participation.”*⁷³

- The issuance, in December 2003, by the President of Argentina, of Decree No. 1172/03 on Improving the Quality of Democracy, which contains, among other provisions, those for the approval of the “Form for Submitting Opinions and Proposals in the Procedure for Participatory Drafting of Legal Provisions” and of the “Form for Registering for Public Hearings of the Federal Executive Branch.”⁷⁴

The Committee takes note of the satisfactory consideration, by Argentina, of the recommendation transcribed above, without getting into an analysis of the contents of the legal provisions mentioned in the response, in relation to its implementation, which by its very nature, requires continuity. The Committee also takes note of the information provided by Argentina on the internal agencies that have participated in its implementation.⁷⁵

4.4. Mechanisms to encourage participation in the follow-up of public administration

Recommendation 4.4.1.

Strengthening and further implementing mechanisms that encourage civil society and nongovernmental organizations to participate in monitoring public administration.

⁷³ Argentina’s response to the questionnaire. Annex 1, pp. 31 and 32.

⁷⁴ Argentina’s response to the questionnaire. Annex 1, p. 32. In Decree No. 1172/03, to which reference is made at this page of the response, approval of those forms appears at Article 1.

⁷⁵ Argentina’s response to the questionnaire. Annex 1, p. 32.

Measures suggested by the Committee

- *Promoting ways, where appropriate, for those who perform public functions to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities to monitor their public acts*
- *Designing and carrying out programs to publicize mechanisms for participation in monitoring public administration; and, where appropriate, training and enabling civil society and non-governmental organizations to have the necessary tools to use the mechanisms*

In its response, the Republic of Argentina presents information with respect to the above recommendation. In this regard, the Committee notes, as a step which contributes to progress in implementation of the recommendation, the measures taken with respect to:

- *“Since the approval of Decree 1172/2003 (see 4.1.1.) numerous actions have been taken to disseminate and provide training in the use of that tool, in both the public administration and the civil society organizations. For more details on those actions, go to the website of the Office of the Deputy Secretary for Institutional Reform and Strengthening of Democracy in the Office of the Chief of Staff of the Cabinet of Ministers, at: <http://www.mejordemocracia.gov.ar/AccionesdeImplementacion2.php>”⁷⁶*

The Committee takes note of the satisfactory consideration, by Argentina, of the second measure of the above-mentioned recommendation, which by its very nature, requires continuity, and of the information provided on the internal agencies that have participated in its implementation.⁷⁷

The Committee also takes note of the need for Argentina to give additional attention to that recommendation, especially as regards the first measure.

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendation 5.1.

Review comprehensively the specific areas in which Argentina might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit Argentina to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.

Recommendation 5.2.

Continuing the efforts of providing cooperation in areas where Argentina is already providing it.

In its response, Argentina presents information with respect to the foregoing recommendations, of which the Committee makes special mention, as steps that allow it to consider that those recommendations have been satisfactorily considered, the measures taken in relation to the following:

⁷⁶ Argentina’s response to the questionnaire. Annex 1, p. 33.

⁷⁷ Argentina’s response to the questionnaire. Annex 1, p. 33.

- *“The Draft Plan of Action is a proposal for State policies developed through a broad deliberation with the active participation of numerous social actors. In addition, it represents a specific and effective policy of cooperation of a State Party to the Convention (the Republic of Argentina) with a cooperation agency from another State Party (Canada) and with an international organization (the OAS).”*^{lxvii}

- The participation of the Republic of Argentina, through the Anticorruption Office, in the national workshop held in December 2005 in the Republic of Paraguay, on the presentation and consideration of the plan of action for advancing in the implementation of the recommendations made by the Committee of Experts of the MESICIC to that country.⁷⁸

- The participation of the Republic of Argentina in the process of negotiation and drafting of the United Nations Convention against Corruption, its signing in December 2003, and its ratification by the Senate on May 10, 2006.⁷⁹

- The Network of Government Institutions for Public Ethics in the Americas and its developments. *“This network is made up of persons in charge of the public ethics offices of Chile, Mexico, Uruguay, Puerto Rico, the United States, Canada, Brazil, and Argentina.- Its key objective is to provide a forum for technical dialogue among offices with similar functions in the area of public ethics, and to institutionalize and facilitate the exchange of information and assistance among ethics officials in the hemisphere. In this regard, the Anticorruption Office of the Republic of Argentina, in its capacity as lead Coordinator of the Network, has designed and implemented the website (<http://www.reddeetica.org>).”*⁸⁰

The Committee takes note of the satisfactory consideration, by the Republic of Argentina, of the recommendations recorded above, which by their very nature, require continuity, as well as of the information provided on the internal agencies that have participated in their implementation.⁸¹

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee did not formulate recommendations to the State under review on this provision of the Convention because it noted with satisfaction that the Republic of Argentina has complied with Article XVIII of the Convention, by appointing the Ministry of Foreign Affairs, International Trade and Worship as the central authority for the purposes of the assistance and international cooperation provided for in the Convention.

7. GENERAL RECOMMENDATIONS

Developing, where appropriate and where they do not already exist, procedures for assessing the effectiveness of systems and mechanisms mentioned in this report.

Argentina did not refer in its answer to the foregoing recommendation. In light of this fact, the Committee takes note of the need for Argentina to give additional attention to its implementation. To this end, Argentina might consider opportunities for technical assistance.

⁷⁸ Argentina’s response to the questionnaire. Annex 1, p. 40.

⁷⁹ Argentina’s response to the questionnaire. Annex 1, p. 40.

⁸⁰ Argentina’s response to the questionnaire. Annex 1, pp. 40 and 41.

⁸¹ Argentina’s response to the questionnaire. Annex 1, p. 41.

END NOTES

ⁱ Article 3. This provision regulates the duties and rights of the personnel who make up the Civil Service of the Nation. It is constituted by those persons who, having been designated in keeping with the provisions of this law, are employed in offices of the Executive Branch, including legally decentralized entities. The following are exceptions to what is established in the previous sentence: (a) The Chief of Staff of the Cabinet of Ministers, the Ministers, the Secretary General of the Presidency of the Nation, the Secretaries, Assistant Secretaries, the Chief of the Military House, the highest-level authorities of decentralized agencies and Social Security institutions, and the members of the collegial bodies. (b) Those persons who, by statutory or regulatory provisions perform functions which are of equivalent rank as those positions mentioned in the preceding section. (c) Active-duty and retired military personnel who render military service. (d) The personnel of the Security and Police Forces, both active-duty and retired who render services when called up. (e) The active-duty diplomatic personnel included in the Law on Foreign Service of the Nation. (f) The personnel covered in collective bargaining agreements approved in the context of Law 14,250 (as amended by Decree 198/88) or that issued in its place. (g) The clergy. The provisions contained in that normative regime shall apply to personnel employed in agencies of the federal public administration who are governed by the provisions of Collective Bargaining Agreement No. 20,744 (as amended 1976), and its amendments, or that which is issued in its place. In the situations considered in the previous sentence and in section (f), the parties, by mutual agreement, may become inserted in the public employment regime by signing collective bargaining agreements, as regulated by section (j) of Law 24,185 and in keeping with the provisions of that law.

ⁱⁱ Article 4. Entry to the federal public administration shall be subject to prior showing of the following conditions: (a) Being a native Argentine, by option or naturalized. The Chief of Staff of the Cabinet of Ministers may make an exception to this requirement by a specific and detailed justification by the requesting jurisdiction. (b) Conditions of conduct and suitability for the position, which shall be shown through the selection regimes established, guaranteeing the principle of equal access to public service. The collective bargaining agreement should provide for the mechanisms of participation and control of the trade unions in complying with the selection and evaluation criteria in order to ensure effective equal opportunity. (c) Psychological aptitude for the position.

ⁱⁱⁱ Article 5. Without prejudice to the provisions in the previous article, the following may not enter: (a) One who has been convicted of an offense involving fraud or deceit, until the term of deprivation of liberty has been served, or the term provided for prescription of the penalty. (b) One who has been convicted of an offense to the detriment of the federal, provincial, or municipal public administration. (c) One who has criminal proceedings pending that may give rise to a conviction of the offenses described in sections (a) and (b) of this article. (d) One who is disqualified from holding public office. (e) One who is sanctioned by discharge or dismissal in the federal, provincial, or municipal public administration, until rehabilitated pursuant to Articles 32 and 33 of this law. (f) One who is of the age provided for in the law on social security (*la ley previsional*) for acceding to the retirement benefit or who enjoys a social security benefit, except for those persons of recognized aptitude, who may not be incorporated to the stability regime. (g) One who is in violation of the electoral and military service laws, as provided for in Article 19 of Law 24,429. (h) One who has a debt to the National Treasury, so long as that situation persists. (i) Those who have committed acts of force against the institutional order and the democratic system, as provided for by Article 36 of the National Constitution and Title X of the Criminal Code, even if he or she has benefited from a pardon or clemency.

^{iv} According to Article 8 of this law, the stability regime includes personnel who enter, by way of the mechanisms put in place, positions that are part of the career-service regime whose financing is to be included, for each jurisdiction or decentralized agency, in the Budget Law. The basic administrative career service and the specific ones should consider applying criteria that incorporate the principles of transparency, openness, and merit in the selection procedures for determining the suitability of the function to be covered, for promotion or advancement in the career service based on the evaluation of efficiency, effectiveness, workplace performance, and training demands, in keeping with the tasks or functions to be undertaken, and to adopt merit-based systems and the capacity of the employees, so as to motivate their promotion in the career service.

^v According to Article 9 of this Law, the hiring system for fixed-term personnel shall only cover the provision of temporary or seasonal services not included in the functions particular to the career-service regimes, and that

cannot be covered by permanent staff. The personnel hired under this regime may in no case exceed the number established in the collective bargaining agreement, which shall be directly related to the number of workers who make up the agency's permanent staff. That staff will be accorded the same rank, at all levels and grades, as the permanent staff, and shall receive compensation corresponding to the respective level and grade. The Budget Law will set, annually, the percentages of the respective outlays that may be allocated by each jurisdiction or decentralized agency to implement that regime. / According to Article 156 of Decree No. 214/2006 (General Collective Bargaining Agreement for the General Public Administration), the proportion of personnel hired under this modality may not exceed 15%.

^{vi} Pursuant to Article 10 of this Law, the employment regime for executive personnel of the upper-level authorities, which will be regulated by the Executive Branch, includes only advisory and administrative assistance functions. The personnel shall be relinquished of their duties when the authority in whose office they work relinquishes his or her duties, and their designation may be cancelled at any time.

^{vii} According to Article 7 of Decree No. 1421/02, which regulates Law 25,164, the authority indicated in the provisions in force may designate ad honorem personnel to provide advisory services in the respective jurisdiction or decentralized agency, without any consideration in the form of compensation, except for the right to be reimbursed for expenses actually incurred upon a rendering of accounts, in the terms of the relevant provisions in this area, for the performance of the duties entrusted. In order for such personnel to be designated, the provisions of Articles 4 and 5 of this Decree must be carried out, except for section 5(f), given the characteristics particular to the nature of the relationship. The provisions referring to duties, in Article 23 of the Annex to the Law regulated hereby shall apply, except those contained in section (c), and as regards section (n), it shall only have force with respect to ethical and schedule-based incompatibilities. The prohibitions prescribed in Article 24 of the Annex to the Law regulated by this Decree also apply.

^{viii} This organ has the support of the National Office of Public Employment (Oficina Nacional de Empleo Público, ONEP) for the design and implementation of policies to modernize the state in relation to personnel management and the National Institute of Public Administration (Instituto Nacional de Administración Pública, INAP), for training public servants. The highest-level authorities of the jurisdictions of the federal Executive Branch (the office of the Chief of Staff of the Cabinet of Ministers, Ministers, and Ministries and State Secretariats) and those of their decentralized agencies are politically responsible for administering the System. To that end they have personnel or human resources areas or units, which have the administrative responsibility for personnel management.

^{ix} Article 4. Compliance with the conditions for entering the federal public administration must be shown in all cases prior to the designation to the corresponding position. The highest-level authority of the jurisdiction or decentralized agency in which the position to be occupied is situated shall be responsible for verifying compliance with those measures, and of the pertinent provisions of the rules on ethics in the performance of public service contained in the Code of Ethics approved by Decree No. 41 of January 27, 1999, and in Law No. 25,188 and its amendment, or those that may be issued to replace it. To that end, the heads of the Human Resources Units should attach to the respective draft designation the antecedents and certifications that make it possible to verify the applicant's compliance with the requirements for entry, and the showing that applicant is not affected by any of the impediments established in Article 5 of the Annex to the Law that is regulated hereby. Such compliance and showing should be certified in the justification section of said draft designation. In all cases, and on a supplemental basis, a sworn statement should be required to the effect that one is not reached by the incompatibilities or conflicts of interest provided for in Chapter V of Law No. 25,188 and its amendment, or by the impediments established in Article 5 of the Annex to the Law regulated hereby, or in other applicable regimes. As regards the above-noted provisions on Ethics in the Performance of Public Service, and their application with respect to this article, one must comply with the interpretive or clarifying provisions determined by the competent authority established therein, which, if there are any, should be issued within FIVE (5) days from the pertinent request by the jurisdictions or decentralized agencies.... The enforcement authority shall implement the CENTRAL REGISTRY OF PERSONNEL (Law No. 25,164) as an integral part of the INFORMATION SYSTEM FOR HUMAN RESOURCES MANAGEMENT included in the scope of application of Law No. 25,164, which is hereby created, and to which the heads of the Human Resources Units are obligated to provide the updated information they have. That System shall supply the

authorities with information tailored to the needs of planning, administration, and monitoring of the policies on personnel management....

^x Article 8. The general selection mechanisms for guaranteeing the principle of suitability as the basis for entry, promotion in the administrative career service, and the assignment of supervisory functions shall be established by the enforcement authority, and, jointly, with the heads of the decentralized agencies who have those powers assigned by the law establishing the respective agency. The general selection mechanisms should be in line with the principles of the competitive hiring system. In addition, it will establish the minimum requirements to be demanded for filling the positions that belong to the career service regime, of similar or equivalent functional nature, whose purpose is to verify a basic set of knowledge, skills, and aptitudes; it will determine the respective performance evaluation systems, as well as the guidelines for the design, certification, and evaluation of the training required for developing employees' careers. The provisions issued pursuant to the terms of the preceding sentences of this article shall guarantee the application of the principles of equal opportunity, transparency, and openness in the procedures, without prejudice to other requirements agreed upon in the context of collective bargaining, as appropriate. The designation of personnel entering the federal public administration in career positions without applying the selection systems provided for by the personnel regimes in force shall in no case be permanent, nor give rise to the right to joint the stability regime.

^{xi} Article 9. The hiring regime includes fixed-term contracts and the designation of temporary staff, and shall be subject to the following provisions: (a) The personnel shall be assigned exclusively to perform temporary or seasonal activities that are needed to supplement the actions and competencies assigned to each jurisdiction or decentralized agency. The temporary activities shall entail the provision of services, specialized technical advisory services, coordination and integral development of special work programs and/or projects, or to attend to non-permanent increases in tasks. In the case of special work programs or projects, a report and certification will be required of the officer initiating the hiring stating the justification of the objectives and timetable of the program or project, the amount and description of requirements to be demanded of the persons required, the total expenditure demanded, and the financing provided. The seasonal activities answer to tasks that are performed periodically and only during a given time of the year. In these cases, the personnel may be incorporated as temporary staff, with a fixed-term designation, whose characteristics shall be regulated by the enforcement authority. (b) Prior to the hiring, the profiles needed and the requirements that the persons to be hired must show for providing the service in question shall be established, in keeping with the regime established by the enforcement authority. In all cases, one must comply with the terms of Articles 4 and 5 of this regulation. (c) The contracts must contain at least: (I) The functions that are the purpose of the hiring, the results to be obtained or standards to be met, as applicable, and the manner and place for providing the services. (II) The applicable equivalent level on the salary scale based on the minimum requirements established for each level or position of the personnel regime. (III) The term of duration of the contract. (IV) The clause that refers to the patenting of the results of the studies or research in the name of the federal government, without prejudice to recognizing the person contracted as the author of the work performed, and where applicable, the possible economic compensation they may be agreed upon. (V) Rescission clause favorable to the federal public administration. (d) Contract personnel and personnel incorporated into the temporary staff do not have stability, and their contract may be rescinded, or the designation in the temporary staff cancelled at any time. (e) The contracting of personnel for a set time and the designations to temporary staff will be ordered by the competent authorities, in keeping with the provisions in force. (f) The Chief of Staff of the Cabinet of Ministers shall issue the complementary provisions that may be needed to enforce this regime. In addition, he may authorize exceptions to item II of section (c) above by well-founded decision and at the request of the head of the jurisdiction or decentralized agency in the case of those functions that are especially critical in the labor market.

^{xii} Article 3 of this law provides that the following fall outside its scope of application: (a) The President and Vice President of the Nation, and the Attorney General of the Nation; (b) the General Prosecutor for Administrative Investigations, and the Deputy Prosecutors; (c) the Ministers, Secretaries, and assistant secretaries of the federal Executive Branch, the Procurador del Tesoro de la Nación, and high-level officers and advisers; (d) those persons who, by statute or regulation issuing from the powers of government, perform functions similar to or of equivalent rank as the positions just mentioned; (e) the military and security personnel of the Armed Forces of the Nation, the National Constabulary, National Gendarmerie, the Naval Prefecture,

Federal Police, Federal Penitentiary Service or similar agencies; (f) the diplomatic personnel covered by the Foreign Service Law, at higher-level positions that require the consent of the Senate; (g) the official clergy; (h) the authorities and directing or upper-level officials of state entities or decentralized federal agencies; (i) the personnel required by a particular regime given the special characteristics of its activities when so determined by the federal Executive Branch by well-founded resolution; (j) the sectors of the federal public administration who as of the date of the adoption of this law are incorporated in the collective bargain agreements regime, unless by agreement of the parties the system established herein is elected.

^{xiii} As regards the scope of application of this Agreement, in some of the provisions of its Title I it provides as follows: Article 1. This General Collective Bargaining Agreement shall apply to all workers who are permanent staff of the jurisdictions and decentralized agencies listed in Annex I to this document. The personnel governed by the Employment Contract Law No. 20,744 (amended text 1976 and its amendments, hereinafter the Employment Contract Law) shall be subject to the provisions of this Agreement with the caveats set forth for each particular institution. Article 2. The personnel not included in Annex I who work in other jurisdictions and agencies established or to be established may be incorporated into the scope of this Agreement by the FEDERAL EXECUTIVE BRANCH, after consultation of the Negotiating Commission of the General Bargaining Agreement. In addition, the exclusion of the personnel by the FEDERAL EXECUTIVE BRANCH, pursuant to Article 3(i) of Law No. 24,185, should be ordered after consulting the Negotiating Commission of the General Bargaining Agreement.

^{xiv} Article 11. Entry to the jurisdiction and agencies encompassed hereby shall be subject to prior showing of the following minimal conditions: ... Conditions of conduct and suitability for the position, which will be shown through the regimes established for the selection or competitive hiring process, as the case may be, that ensure the principle of openness, transparency, and equality of opportunities and treatment in access to public service. Trade unions may, through the oversight mechanisms provided for in this agreement, participate and oversee compliance with the selection and evaluation criteria to guarantee that the aforementioned principles are put into practice.

^{xv} Article 19 of this same Agreement provides as follows: The permanent staff enters posts belonging to the career-service regime, whose financing shall be provided for each jurisdiction or agency in the Budget Law or in its staffing, through selection mechanisms that incorporate the principles of transparency, openness, equal opportunity and treatment, and merit for determining suitability for the position or function to be filled. The stability of the permanent staff included in Law No. 25,164 will only be lost for the reasons established in that law. The designation of personnel to career-service positions without applying the selection systems established in keeping with the principles agreed upon in this agreement are by no means permanent nor do they give rise to the right to be included in the corresponding stability regime.

^{xvi} Article 51. The career service of personnel shall be oriented according to the following principles: 1. Equal opportunity; 2. Transparency in the procedures; 3. Recruitment of personnel through selection systems; 4. Evaluation of capacities, merits, and performance for advancing in the career service based on the terms established in each sectoral agreement; 5. The responsibility of each employee in the development of his or her individual career; 6. The assignment of functions in keeping with the extent to which the employee has advanced in the career service.

^{xvii} Article 58. The employer State shall establish the common descriptions that contain the minimum requirements and whose purpose is to verify a basic set of knowledge, skills, and aptitudes, to cover vacant positions whose functional nature is similar or equivalent. The description of the vacancy to be filled should specify the psycho-physical skills and aptitudes requires for carrying out the work, so as to facilitate applications from workers with disabilities.

^{xviii} Article 60. Procedures. The procedures for selecting personnel approved by the employer state, after consulting with the trade unions that sign the collective bargaining agreements in the context of the operation of the parity organs for interpretation and implementation that may be established in them, and the effects of ensuring compliance with the guarantees enshrined in this Chapter will basically consist of objective evaluation systems of background, experience related to the position, knowledge, skills, and aptitudes. Modalities for training courses that qualify one for entry may also be adopted.

^{xix} This article also establishes that in the case of aspirants to positions involving directing, managerial, or high-level coordination functions, clauses may be agreed upon in the respective sectoral agreements that enable the competent authority to choose among the candidates on a three-person short-list.

^{xx} Article 62. Type of job announcement. No restrictions may be imposed by sectoral agreement on the provisions in force that establish open job announcements that go out to the public for certain categories or levels of the personnel regime. The job announcements that are not open shall encompass at least the personnel included in the respective sectoral agreement.

^{xxi} Article 63. Inspection. The union shall oversee the selection processes, certifying in writing all its observations. These observations shall be forwarded to the head of the jurisdiction or agency and considered prior to the final decision.

^{xxii} Article 64. Selection bodies. The involvement of the selection bodies will be guaranteed for the coverage of managerial positions or that require technical and/or professional degrees, with representatives from national academies, councils, secondary professional societies or associations, or specialized of renowned prestige, who may or may not belong to national or foreign universities or research centers related to the specialty required. In no case shall the selection bodies be made up exclusively of personnel from the jurisdiction of the position to be covered, understanding jurisdiction to refer to the OFFICE OF THE CHIEF OF STAFF OF THE CABINET OF MINISTERS, the Ministry, Secretariat of the PRESIDENCY OF THE NATION, or decentralized agency, nor shall more than SIXTY PERCENT (60%) of the members be persons of the same sex.”

^{xxiii} The relevant provisions of this Resolution state as follows:

Article 3°. ... In addition to the functions established in Article 26 of Annex I to Decree No. 993/91 (amended text, 1995), the Personnel Selection Body shall have as its mission: ... (g) Assuring adequate dissemination of the information on the selection processes for covering vacancies, and coordinating the organization of the receipt of applications. The aspects mentioned in sections (a), (b), (c), and (d) of this article shall be adopted by act of the Selection Body prior to dissemination of the call (fragment)..

Article 7. Content of the call. The call for applications should contain at least the following information. (a) Jurisdiction, agency, and office to which the vacancy belongs; (b) Number of positions to fill, broken down by name of the position, grade level, remuneration, number of hours, and domicile of the job, and basic requirements for filling it, with their relative weight; (c) Applicable selection system (general or open); (d) Order and modality of the stages of evaluation established; (e) Place and schedule of reports and applications, and closing date for applying; f) Place, time, and date on which the list of those admitted to the selection process will be notified. To this end, one may use Form A, which is Annex A to this Resolution, may be used. The Personnel Selection Body shall forward, within TWO (2) days, the information required above to the OFFICE OF THE ASSISTANT SECRETARY FOR PUBLIC MANAGEMENT for the purposes of complying with Article 4 (a) of this annex.

Article 8. Supplemental information. This resolution, all other supplemental provisions, and the acts drafted by the Selection Body shall be available for consultation at the Units on Human Resources and Organization, or their equivalents, and in the official notice board set aside for this purpose.

Article 9. Dissemination. Having complied with what is established at Article 6 above, public dissemination shall necessarily be effectuated with at least TEN (10) days anticipation prior to the date for receiving applications.

Article 10. The circuit of dissemination shall be initiated by the Human Resources and Organization unit, or its equivalent, informing all other jurisdictions, agencies, and offices of the job opening. In addition, it must necessarily be disseminated in: (a) the Official Bulletin; (b) Official signs and/or visible laces of the jurisdiction or agency. In the open selection systems, the announcement shall also be published in at least ONE (1) national circulation print medium, without prejudice to the use of other mass media outlets. In all cases, the trade unions active in the jurisdiction or agency issuing the announcement shall be informed.

In addition, as noted in the response from Argentina (pages 31 and 32 of the Spanish-language version), the job announcements are published on the Internet, at the following web page of the Secretariat for Public Management (SGP):

<http://www.sgp.gov.ar/contenidos/onep/concursos/concursos.html>

^{xxiv} Title I of this Decree also provides making a distinction between administrative career-service positions and those corresponding to “executive” functions, which entail tasks that involve managing sectors that impact on

the conduct of public policy, or essential services for the community, or that may have a major impact on the budgetary resources management of the jurisdiction or that involve the control of organizational units below or equivalent to the department level.

^{xxv} Various statutes and personnel regimes, without prejudice to the particulars of the jurisdictions or agencies in which they control, refer expressly to the selection systems of the SINAPA. This is without prejudice to the terms of Articles 8 and 11 of Decree 1669/03:

Article 8 – It is established that entry to permanent staff positions of the national public administration, in the case of personnel regimes approved by decree must, without exception, be by competitive hiring or selection systems.

Article 11. – When the provisions that regulate the various personnel statutes or regimes of the national public administration, centralized or decentralized, do not provide specific procedures for competitive hiring or selection to incorporate human resources, the regime set by Title III of the NATIONAL SYSTEM OF THE ADMINISTRATIVE PROFESSION approved by Decree No. 993/91, shall apply subsidiarily.

^{xxvi} Article 21. Depending on the status of the applicants, the selection systems shall be General or Open as follows: (a) General: All of the permanent staff of the FEDERAL, provincial or municipal administration may participate. In addition, the non-permanent staff in the jurisdiction in which the vacancy is to be filled who are contracted and temporary and who meet the conditions required may participate. This system shall be used to cover Levels A, B, D, E; it will also be applied for Level C when the job announcement does not require a university or higher-education degree. The vacancies freed up by staff who are part of the FEDERAL ADMINISTRATION shall be considered financed and ready for a job announcement to go out, so as to fill the vacancy. (b) Open: All applicants from the public and private sectors who meet the conditions required may participate. This system shall be applied for Level C coverage, in which the announcement requires a university or higher-education degree, for Level F, for entry to the Specialized Grouping, and when a general selection process is declared to be totally or partially without a qualified applicant.

In all cases, if there is equality of merit, preference shall be accorded to the staff member who belongs to the FEDERAL ADMINISTRATION....

^{xxvii} Article 26. The selection body shall have the following powers: (a) To determine the specific procedures of the selection system to be applied, which should be correlated to the requirements of the level to be filled; (b) To evaluate the background of the applicants and the results of the application of the selection instruments used, and to determine the total score of each of the applicants; (c) To prepare a provisional merit-based ranking and forward it, along with the respective documentation, to the authority that has the power to make the designation; (d) To rule on any challenges that may be filed.

^{xxviii} Federal Code of Civil and Commercial Procedure: Art. 17. Recusal stating cause. The following shall be legal causes of recusal: (1) Relationship within the fourth degree of consanguinity and the second of affinity with any of the parties, their agents or counsel; (2) If the judge or his or her relatives by consanguinity or affinity within the degree expressed in the previous section has any interest in the dispute or in a similar one, or undertaking or community with any of the litigants or attorneys, unless the undertaking is in the form of a joint-stock company; (3) If the judge has a legal dispute pending with the person seeking recusal; (4) If the judge is a creditor, debtor, or surety of any of the parties, except for the official banks; (5) If the judge is or has been the author of the complaint against the person seeking recusal, or has been the subject of a complaint by the person seeking recusal prior to the initiation of the lawsuit; (6) If the judge is or has been denounced by the person seeking recusal in the terms of the law on prosecution of judges, so long as the Supreme Court has decided to process the complaint; (7) If the judge has been defense counsel of any of the litigants or has issued an opinion or ruling or made recommendations concerning the dispute, before or after it has begun; (8) If the judge has received significant benefits from any of the parties; (9) If the judge has a friendship with any of the litigants that is manifested by great familiarity or frequent interaction; (10) If he or she has any enmity, hatred, or resentment against the person seeking recusal that is manifested by known facts. In no case shall the recusal go forward due to attacks or offenses directed against the judge after he or she has begun to take stock of the matter. Art. 30. Recusal sua sponte. Any judge covered by any of the grounds for recusal mentioned in Article 17 should recuse himself or herself. In addition, he or she may do so when there are other motives that require him or her to refrain from taking cognizance in the trial, based on grave considerations of decorum or

sensitivity. A family relationship with other officials who are involved in the performance of their duties shall never be grounds recusal sua sponte.

^{xxxix} These articles provide as follows: Article 3. In addition to the functions established at Article 26 of Annex I to Decree No. 993/91 (amended text 1995), the personnel selection body shall have as its mission: (a) To determine the requirements that must be demanded for each position to be filled, in terms of knowledge, work experience, skills, aptitudes, personality profile, and other specific conditions.... Article 5. On the profiles to be required. The political authority (Minister, Secretary or Assistant Secretary of State, or highest-level authority in the case of decentralized agencies), or the head of the National Bureau, General Bureau, or equivalent to which the vacancy belongs shall request the President of the Jurisdictional Delegation of the Permanent Commission of Career Service, or, his or her alternate, that it be covered, proposing a specification of basic knowledge, skills, and aptitudes that the person selected must satisfy, in keeping with the description of requirements for the post to be filled.

Article 6. Based on the foregoing, the Personnel Selection Body shall proceed to comply with what is established in sections (a), (b), (c), and (d) of Article 3, above, and shall determine the mechanisms of dissemination and of making the job announcement. The Selection Body shall determine the basic requirements and the minimum content of the technical evaluation established by the *Procuración del Tesoro de la Nación* for filling the positions that correspond to the Corps of Attorneys of the State.

^{xxx} Article 156 of Decree 214/2006 provides that the non-permanent staff of the jurisdictions and decentralized entities shall not exceed 15% of the permanent staff, and adds that the same shall apply to the agencies whose staff is regulated by the Employment Contract Law.

^{xxxii} Article 2. The political-level staff person who exercises the highest-level responsibility over the technical-administrative services of each Ministry, Secretariat of the PRESIDENCY OF THE NATION or decentralized agency, and national Trust Fund, shall be entrusted with the administration and control of the present hiring regime, and shall ensure that the payroll of persons hired be available at the web site of the jurisdiction or agency. That information shall be forwarded to the OFFICE OF THE ASSISTANT SECRETARY OF PUBLIC MANAGEMENT of the SECRETARIAT FOR THE MODERNIZATION OF THE STATE of the OFFICE OF THE CHIEF OF STAFF OF THE CABINET OF MINISTERS for publication at the corresponding web site.

^{xxxiii} Article 3. Approval of the contracting shall require a report from the official proposing the hiring whose rank is not less than assistant secretary or head of the decentralized agency that contains: (a) The reasons that make the hiring advisable; (b) The partial and final objectives and/or results sought to be obtained or attained; (c) A timetable of the work program and the estimated times for its implementation; (d) The fees proposed; (e) The financing. The report with all its background shall be kept in the personnel management area of the jurisdiction or agency.

^{xxxiiii} Article 5. The contracts shall set forth: (a) The purpose of the contracting, with a definition of the results to be attained; (b) The fees proposed by job description and form of payment; (c) The modality and place for providing the services; (d) The duration of the contract; (e) A renewal and rescission clause on behalf of the federal public administration.

^{xxxv} Article 4. Those employees hired to meet the permanent needs of the federal Legislative Branch and who, consequently, enjoy the rights to stability in employment and to advancement in the administrative career service shall be considered permanent staff. Inclusion in the permanent staff should be expressly indicated in the administrative act making the designation.

^{xxxvi} Article 49. Those employees hired to perform functions under the orders of a federal legislator, in a party bloc or as political advisers in a standing or special committee, unicameral or bicameral, shall be considered temporary staff. In no case may temporary staff be assigned tasks particular to permanent staff.

^{xxxvii} Article 7. The following may not enter the permanent staff of the federal Legislative Branch: (a) One who has been discharged from the federal, provincial, or municipal public administration so long as he or she has not been re-qualified; (b) Those who have declared bankruptcy judicially, when the bankruptcy has been determined to be fraudulent; (c) One who has criminal proceedings pending; (d) One who is disqualified to hold public office, so long of that disqualification persists; (e) One who has been sanctioned by dismissal in any of the branches of government, federal, provincial, or municipal, after a summary proceeding with a final decision, until two years after the date of his or her dismissal; (f) One affected by disqualification or

incompatibility, in keeping with the provisions of this statute; (g) Contractors or suppliers of the federal, provincial, and/or municipal state.

^{xxxvii} Article 2. The term "funcionarios" shall refer to the assistant law clerks known as subsecretarios letrados of the Office of the Attorney General (Procuración General de la Nación) and the Office of the Prosecutor for Administrative Investigations, the law clerks known as pro secretarios and secretarios letrados of the prosecutorial authorities of first instance; and all other agents who are expressly designated as such. All other personnel are known as "empleados ."

^{xxxviii} According to this article, this class of personnel includes: (a) advisers to the Attorney General of the Nation: They shall have advisory or research functions in the area or scientific specialty shown by their university degree; (b) law clerks known as relatores and secretarios privados) They shall perform functions of support and direct assistance to the judge under whom they work, and shall have the following categories: Pro secretario Administrativo-Relator; Oficial Mayor-Relator, and Oficial-Relator.

^{xxxix} This article also provides that the Attorney General of the Nation may delegate that authority to the authorities known as Procuradores Fiscales before the Supreme Court of Justice of the Nation, the National Prosecutor for Administrative Investigations, or the General Prosecutor as he deems necessary.

^{xl} Article 38: Persons to seeking to enter as employees of the Prosecutorial Public Ministry must: (a) Be Argentine citizens, over 18 years of age. An exception to these two requirements must be ordered by the Attorney General of the Nation in each case. (Text in agreement Res. PGN 81/01); (b) Not have a judicial record that is incompatible with working in the Prosecutorial Public Ministry; (c) Have the appropriate conditions in terms of physical aptitude, which should be shown by obtaining the corresponding health certificate; (d) Have completed secondary school, for all those entering the Technical-Administrative grouping and the Corps of Relatores and Secretarios Privados, and show knowledge and practice of typing, writing, spelling, and also basic knowledge of computers, without prejudice to other requirements that may be demanded of those who are to perform tasks for which special knowledge is needed; (e) The requirements established in the preceding section shall not be required of those entering in the auxiliary services grouping, for whom it will suffice to have completed the primary cycle, or basic general education.

^{xli} Article 39: The conditions required in section (a) of the preceding article shall be shown by authenticated photocopy of the birth certificate and/or National Identity Document; those specified in section (b) by report of the National Registry of Recidivism and Criminal Statistics; those mentioned in section (c) by the report of an official medical service of the Nation or of the medical service contracted by the Prosecutorial Public Ministry to that end; those required in sections (d) and (e) by certification of primary or secondary studies; and the other sections, by competitive examination of competence, taking account of education and experience, that the authority will receive as determined in each case, with knowledge of the respective trade union organization.

^{xlii} Article 3. GENERAL PRINCIPLES. The general principles to which the management of procurement must adhere, mindful of the particularities of each contract, shall be: (a) Reasonability of the project and efficiency of the contract for carrying out the public interest engaged and the expected result; (b) Fostering the participation of interested persons and competition among bidders; (c) Transparency in the procedures; (d) Publicity and dissemination of the process; (e) Accountability of the public agents and officers who authorize, approve, or manage the contracts; (f) Equal treatment for interested persons and for bidders. - From the outset of the process until complete execution of the contract, all issues related to the contracting should be interpreted based on rigorous observance of the foregoing principles.

^{xliii} Article 4. CONTRACTS COVERED. This regime shall apply to the following contracts: (a) Purchase, supplies, works, consulting, lease with option to buy, barter agreements, concessions for the use of the assets of the public and private domain of the federal government that may be entered into by the jurisdictions and agencies included in its scope of application, and all those contracts not expressly excluded. (b) Public works, concessions for public works, concessions for public services, and licenses.

^{xliiv} Article 5. CONTRACTS EXCLUDED. The following contracts shall be excluded: (a) Public employment contracts; (b) Purchases with petty cash; (c) Those entered into with foreign states, entities of public international law, multilateral lending institutions, those financed in full or in part with resources from those organizations, without prejudice to the application of the provisions of this Regime when so established by mutual agreement by the parties in the respective instrument that embodies the contractual relationship, and the powers of oversight of such contracts that Law No. 24,156 and its amendments confers on the Oversight

Bodies. (Section replaced by Article 2 of Decree No. 666/2003 Boletín Oficial 25 March 2003. Enters into force: from the day after its publication in the Boletín Oficial, and it shall apply to the contracts for which, though authorized previously, the call has not yet been issued.); (d) Those included in public credit operations.

^{xlv} Article 23. **ORGANS OF THE SYSTEM.** The procurement system shall be organized in light of the criterion of centralization of the policies and of the rules and regulations, and decentralization of operational management. The organs of the system and their respective functions shall be: (a) The lead agency shall be the National Procurement Office or the agency which in the future replaces it, which shall have the function of proposing procurement policies and organizing the system, designing statutory and regulatory provisions, issuing clarifying, interpretive, and complementary regulations, preparing the single general bidding terms and conditions, designing and implementing an information system, exercising supervision and evaluation of the design and operation of the procurement system, and enforcing the sanctions provided for in Article 29(b) of the present regime; and (b) The operating units for procurement shall exist in the jurisdictions and agencies referred to in Article 2 herein, and shall be entrusted with managing procurement.

^{xlvi} Article 25(a): **PUBLIC TENDER OR CALL FOR BIDS.** A tender or call for bids shall be public when the call to participate is aimed at an indeterminate number of possible bidders with the capacity to commit themselves and shall be applicable when the estimated amount of the procurement is greater than the minimum determined by the regulation for that purpose, without prejudice to complying with the other requirements demanded by the bidding terms. - 1. The procedure for public tender shall be carried out in keeping with the amount set by the regulation, and when the criterion for selecting the co-contractor is based primarily on economic factors. - 2. The procedure for public competitive bidding shall be carried out based on the amount set by the regulation and when the criterion for selecting the co-contractor is based primarily on non-economic factors, such as technical-scientific, artistic, or other capability, as the case may be.

^{xlvii} Article 2(b): **PUBLIC AUCTION.** This procedure may be applied in the following cases: 1. Purchase of movables, real property, livestock, including in the first objects of art or historical interest, both in the country and abroad. – This procedure shall be applied preferably to the direct procurement provided for by section (d)(2) of this article, in the cases in which an auction is viable, in the conditions set by the regulations. - 2. Sale of assets owned by the federal government.

^{xlviii} Article 25(c): **ABBREVIATED TENDER OR COMPETITIVE BIDDING.** The tender or competitive bidding shall be abbreviated when the call to participate is directed exclusively at suppliers who are entered in the data base that will be designed, implemented, and administered by the lead agency, in keeping with the regulation, and shall be applicable when the estimated amount of the procurement is not greater than that set for this purpose. In addition, consideration will be given to the bids of those who were not invited to participate.

^{xlix} Article 25(d): **DIRECT PROCUREMENT.** Selection by direct procurement shall be used in the following cases: 1. When, based on the regulation, it is not possible to apply another selection procedure and the presumed amount of the contract is not greater than the maximum set by the regulation; 2. The production or procurement of scientific, technical, or artistic works whose execution should be entrusted to firms, artists, or specialists who will be the only ones who can carry them out. One must justify the need to specifically request the services of the respective natural or juridical person. These procurement operations should establish the sole and exclusive liability of the co-contractor, who will act, with no exceptions, as a contractor independent of the federal government; 3. The procurement of goods and services whose sale is exclusive of those who have a privilege to that end, or that is possessed only by a given natural or juridical person, so long as there is no suitable substitute. When the procurement is based on this provision, the certification of such exclusivity must be documented in the record by means of the respective technical report that so indicates. In the case of goods, the exclusive manufacturer must submit the documentation that verifies the privilege of the sale of the good it produces. – The trademark does not in itself constitute grounds for exclusivity, unless the non-existence of suitable replacements is shown; 4. When a tender or competitive bidding has not produced an award, or fails, a second call should be issued, modifying the particular bidding terms and conditions. If it also produces no award or fails, one may use the direct procurement procedure provided for in this section. (Section replaced by Article 6 of Decree No. 666/2003 Boletín Oficial 25 March 2003. Enters into force: from the day following its publication in the Boletín Oficial, and it shall apply to the contracts for which, though previously authorized, the call has yet to be issued.); 5. When proven urgent or emergency considerations that respond to objective circumstances impede carrying out any other selection procedure in timely fashion, which should be duly

shown in the respective records, and it must be approved by the highest-level authority of each jurisdiction or agency; 6. When the FEDERAL EXECUTIVE BRANCH has declared the contractual operation secret on grounds of national security or defense, a power that is exceptional and non-delegable; 7. In the case of the repair of machinery, vehicles, equipment or motors whose dismantling, transfer, or prior examination is essential to determine the repair needed, and it would be more costly if one were to adopt another procurement procedure. Direct contracting may not be used for common maintenance repairs of such elements; 8. The contracts entered into by the jurisdictions and agencies of the FEDERAL GOVERNMENT among themselves or with provincial or municipal agencies, or agencies of the Government of the Autonomous City of Buenos Aires, as well as with those firms and corporations in which the State is majority shareholder, so long as their purpose is to provide security, logistics, or health services. In these cases, subcontracting of the purpose of the contract shall be expressly prohibited. (Section incorporated by Article 1 of Decree No. 204/2004 Boletín Oficial 23 February 2004. Entered into force: as of the day following its publication in the Boletín Oficial, for those contracts authorized from that date on.); 9. The contracts entered into by the jurisdictions and agencies of the FEDERAL GOVERNMENT with the National Universities. Enters into force: as of the day after its publication in the Boletín Oficial, for those contracts authorized as of that date. (Section incorporated by Article 1 of Decree No. 204/2004 Boletín Oficial 23 February 2004. Entry into force: as of the day following its publication in the Boletín Oficial, for the contracts authorized as of that date.); 10. Those contracts which, after a report to the MINISTRY OF SOCIAL DEVELOPMENT, are entered into with natural or juridical persons who are entered in the National Registry of Agents of Local Development Social Economy, independent of whether they receive government financing. Entry into force: as of the day after its publication in the Boletín Oficial, for the contracts authorized as of that date. (Section incorporated by Article 1 of Decree No. 204/2004 Boletín Oficial 23 February 2004. Entry into force: as of the day following its publication in the Boletín Oficial, for contracts authorized as of that date.)

ⁱ Article 17. REQUIREMENTS OF THE ANNOUNCEMENTS. The announcements of the calls for public and private tenders and competitive public biddings must mention the following data: (a) Name of the contracting agency; (b) Type, purpose, and number of the procurement; (c) File number; (d) Basis of the procurement, if any; (e) Place, date, and time where one may pick up or examine the bidding terms; (f) Cost of printing the bidding terms, if this applies; (g) Place, date, and time of submission of bids and of the opening of bids.

ⁱⁱ Article 18. INVITATIONS IN THE DIRECT PROCUREMENT PROCEDURES. In the direct procurement procedures provided for section 3, subsections (a), (d), and (e) of Article 56 of the Law on Accounting (Decree Law No. 23,354, of December 31, 1956, ratified by Law No. 14,467), in force pursuant to the provisions of Article 137(a) of Law No. 24,156, invitations should be sent out by reliable means to at least THREE (3) regular suppliers, providers, producers, manufacturers, merchants or suppliers in the category. The invitations shall be sent out simultaneously to all invitees, with at least FIVE (5) days lead time in the case of subsections (a) and (e) of section 3, Article 56 of the Law on Accounting (Decree Law No. 23,354 of December 31, 1956, ratified by Law No. 14,467), in force pursuant to the provisions of Article 137(a) of Law No. 24,156.

ⁱⁱⁱ Article 39. COMPUTERIZED PURCHASING. Computerized purchasing shall be used for the procurement of homogeneous goods, of low unit cost, of those generally used in considerable quantities, which in addition have a permanent market, by the submission of bids in standard magnetic medium. – The NATIONAL PROCUREMENT OFFICE under the OFFICE OF ASSISTANT SECRETARY OF BUDGET of the SECRETARIAT OF FINANCE, MINISTRY OF ECONOMY, on the basis of what is provided for in the previous sentence, shall determine which of the goods in the Catalog that is part of the System for the Identification of Commonly Used Goods and Services established by Administrative Decision No. 344 of June 11, 1997, will be susceptible to purchase by this means. – In addition to what is provided for in Article 39 above, Articles 118 to 133 regulate aspects of computerized purchases.

ⁱⁱⁱⁱ Article 47. EVALUATION STANDARDS. The Particular Bidding Terms and Conditions should establish the criterion for evaluation and selection of the bids, whether by inclusion of polynomial formulas or the clear determination of standards that will be taken into account for those purposes, considering the degree of complexity, the amount, and the type of procurement to be done.

^{lv} Article 48. OBSERVATIONS AND CHALLENGES. Any observation, challenge, claim, or similar submission made, apart from those provided for in this Regulation, shall be processed apart from the file of the procurement, in keeping with the provisions of Law No. 19,549 amended by Law No. 21,686 and the

Regulation of Administrative Procedures, Decree No. 1759/72 as amended 1991 and its amendments. (NOTE: These provisions provide for the types of appeals known in Spanish as Consideración, Jerárquico, and Alzada).

^{lv} The provisions of Title I (Articles 1 to 28) of Delegated Decree No. 1023/01 also apply to public works contracts, to the extent that they are not contrary to the provisions of this Law.

^{lvi} This same provision mentions as an exception those carried out with subsidies, which will be governed by a special law, and military construction projects, which will be governed by Law 12,737 and its regulations, and on a supplemental basis, by the provisions of this Law. In this respect, Argentina explains: "Here one should note what should be understood by subsidies, which are an exception to its scope of application, in light of the frequent use, at present, of external sources of financing, and also of funds put into trust by the "special laws" that were originally indicated by that text. – Military construction projects today lack a special contractual regime."

^{lvii} Article 4 – Before taking a public work to public tender or directly contracting its realization, the approval of the respective design and budget by the legally authorized agencies will be required, which should be accompanied by the list of conditions of its execution, and by the terms of the call to tender that must be respected by the bidders and the successful bidder, and by the draft contract, in the event of direct procurement. Responsibility for the project and the studies that have been its basis correspond to the agency that carried them out. – In exceptional cases, and when special circumstances so require, the Executive Branch may authorize the award on the basis of the preliminary drafts and total budgets, which shall be provisional for the time necessary for the definitive documents to be prepared and approved. – A competitive bidding may be called for the design of projects and premiums may be agreed upon that are considered fair and as providing incentives, and one may contract projects directly in special cases. – When it is advisable to accelerate the completion of the work, bonuses or premiums may be established, which shall be set forth in the terms and conditions of the tender. - (Terms "remate" (auction) and "subasta" (auction) replaced by the expression "licitación pública" (public tender) by Article 34 of Decree No. 1023/2001 Boletín Oficial 16 August 2001.)

^{lviii} Article 5 – The tendering and/or procurement of public works shall be done on the basis of one of the following systems: (a) By unit of measure; (b) By fixed price; (c) By rate of profit to be applied to costs plus general expenses, in the event of justified urgency or verified advisability; (d) By other exceptional systems that may be established.- In all cases, the procurement may be done with or without supply of materials by the State.

^{lix} Article 7 – ... - Excepted from this requirement shall be new constructions or repairs declared to be of recognized urgency, subject to requesting that the Honorable Congress grant the respective credit. If it has not issued a pronouncement within the regular period, it shall be considered that the credit requested has been granted, and that the authorization to finance it has been given (Law on Accounting, Article 19).

^{lx} Article 9 – ... - (a) When the cost of the work does not exceed the amount established by the federal Executive Branch; (b) When the tasks essential to a work being executed have not been anticipated in the project, and could not have been included in the respective contract. The amount of the aforementioned supplementary work shall not exceed the limits set by the federal Executive Branch; (c) When the work of recognized urgency or unforeseen circumstances requires prompt execution that does not give rise to the procedures of the public tender, or to satisfy social services that cannot be postponed; (d) When state security requires a special guarantee or great reserve; (e) When for making the award the artistic or technical-scientific capacity, skill or ability or particular experience of the executor of the work is determinant, or when it is protected by patent or privileges or the knowledge for execution is possessed by a single person or entity; (f) When once the public tender is made, there has not been a proponent or no admissible bid has been made; (g) All other cases provided for in Chapter I of Title II of the procurement regime of the federal administration, to the extent they are not at odds with the provisions herein. - (Article replaced by Article 33 of Decree No. 1023/2001 Boletín Oficial 16 August 2001.)

^{lxi} Article 10 – ... The mandatory announcements shall be published with the lead time and for the duration indicated in the following:

Budgetary Amounts	Days anticipation	Days of publications
Up to \$ 110,000	5	5
From \$ 110,001 to \$ 260,000	15	10

More than \$ 260,000	20	15
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When it is advisable for the success of the tender, the terms established may be extended, and they may be reduced in urgent situations. - (increased amounts Article 2 of Resolution No. 814/96 of the Ministry of Economy and Public Works and Services Boletín Oficial 3 July 1996)

^{lxii} This term was extended by THREE HUNDRED SIXTY (360) working days, counted from 15 October 2001, by Article 10 of Decree No. 666/2003 Boletín Oficial 25 March 2003. Entry into force: from the day following its publication in the Boletín Oficial, and it shall apply to the contracts for which the call to bid has yet to be issued, even though they have already been authorized.

^{lxiii} Decree 102/99 – Article 1: The ANTICORRUPTION OFFICE shall operate under the MINISTRY OF JUSTICE AND HUMAN RIGHTS, as an agency entrusted with seeing to the prevention and investigation of such conduct which, within the ambit determined by this regulation, is considered to fall under the Inter-American Convention on Corruption, approved by Law No. 24,759. – Its scope of application includes the centralized and decentralized federal public administration, companies, corporations, and any other public entity or private entity with state participation, or whose main source of resources is the state contribution.

^{lxiv} Decree 102/99 – Article 2: The ANTICORRUPTION OFFICE has the authority to: (a) receive reports made by private persons or public servants related to its purpose; (b) investigate on a preliminary basis those agents accused of committing any of the acts indicated in the previous section. In all circumstances, the investigations shall be carried out upon the mere impetus of the ANTICORRUPTION OFFICE and without the need for any other state authority to order it; (c) investigate on a preliminary basis any institution or association whose main source of resources is the state contribution, whether provided directly or indirectly, in case of reasonable suspicion of irregularities in the administration of those resources; (d) report to the competent justice authorities the facts which, as a result of the investigations undertaken, could constitute criminal offenses; (e) serve as accuser in the proceedings in which the property of the state is affected, within the scope of its authority; (f) ...;

(g)

^{lxv} Article 77 of the Criminal Code: “For [the] understanding [of] the text of this Code, the following rules shall be taken into account: ... The terms “public servant” [“funcionario público”] and “public employee” [“empleado público”], used in this Code, designate every person who participates temporarily or permanently in the exercise of public functions, either by popular election or by appointment of a competent authority....”

^{lxvi} The analysis was carried out by Mr. Andrés José D’Alessio, in his capacity as a national consultant, and is published in the book “Adapting Argentina’s Criminal Legislation to the Inter-American Convention against Corruption,” Office of Assistant Secretary for Legal Affairs, Department of Legal Cooperation and Dissemination of the OAS, 2001 (JL969.5.C6 A3 2001 -Arg- /// OEA/Ser.D/XIX.3 Add.6). This publication contains the reports of the workshop held in Buenos Aires, October 10 and 11, 2000, in the context of the “Project of Support for Ratification and Implementation of the IACAC” (which emerged from the cooperation agreement signed by the OAS and the IDB on March 26, 1999). The workshop was organized by the OAS, the IDB, and the Anticorruption Office of the Republic of Argentina. The complete reports of this workshop can be at the website of the Anticorruption Office, www.anticorruptcion.gov.ar, by entering “actuación internacional” / “OEA”. The book cited may be consulted at the following page of the Technical Secretariat of the MESICIC: http://www.oas.org/juridico/spanish/mesicic2_arg_sp.htm

^{lxvii} Argentina’s response to the questionnaire. Annex 1, p. 3. Here information is also provided on a process under way to sign an agreement with the Ministry of Interior of the Province of Santa Fe, and on the incorporation of a national autarchic agency as the Instituto Nacional Vitivinicultura, “to which the methodology of Plan Provincias will be applied due to its significant presence in the regional economy of Cuyo.”

^{lxviii} Argentina’s response to the questionnaire. Annex 1, p. 4. Here it is also reported that this forum is made up of representatives of the Anticorruption Offices of the Nation, of the Provinces of Chubut and Entre Ríos, and the Offices of the Prosecutors for Administrative Investigations of the Nation, of the Provinces of Río Negro, La Pampa, Mendoza, Catamarca, and Chaco, and the Office of the State Prosecutor of Tierra del Fuego. For more detailed information on the objectives, members, legal provisions in force, and actions of the Forum, see its website, created by the Anticorruption Office of the Nation: www.foro-oas-fiscalias.org.ar.

^{lxix} Argentina’s response to the questionnaire. Annex 1, p. 8. The response indicates: “Two difficulties observed for the establishment of the CNEP is that the Legislative Branch has not yet implemented it, and the decision adopted by the federal Supreme Court of Justice by Judgment 1/2000, which considers that it is not obligated to designate a

representative to the CNEP, in the understanding that otherwise one would violate the separation of powers established by the National Constitution.”

^{lxx} Argentina’s response to the questionnaire. Annex 1, p. 20. Here the response indicates: “With respect to the difficulties in implementation, it was observed that some aspects of the OANET application require adjustments or modifications to have more information, and so that it may be set forth so as to facilitate control over the sworn statements. The work that is being developed at present in the IT area of the Ministry of Justice and Human Rights is oriented in this direction. – In the area of warnings to public servants in noncompliance, while progress has been made over time, one still observes some difficulties in getting those in charge of personnel to effectively use the notices, and to do so in keeping with the provisions in force, in terms of the text and form of the notice. In addition, when the public servant leaves office, frequently the domicile recorded in the personnel file is not up-to-date, and consequently notice cannot be served.”

^{lxxi} Argentina’s response to the questionnaire. Annex 1, p. 4. Here the response indicates that this forum is made up of representatives of the Anticorruption Offices of the Nation, of the Provinces of Chubut and Entre Ríos, and the Offices of the Prosecutors for Administrative Investigations of the Nation, of the Provinces of Río Negro, La Pampa, Mendoza, Catamarca, and Chaco, and the Office of the State Prosecutor of Tierra del Fuego. For more detail on the objectives, members, legal provisions in force, and actions of the Forum, see its website, created by the Anticorruption Office of the Nation: www.foro-oas-fiscalias.org.ar

^{lxxii} Argentina’s response to the questionnaire. Annex 1, p. 34. From this page to page 40 of its response, Argentina refers to the methodology for drafting this bill, its components, and the national workshop held in this regard. The corresponding information can be seen at the following link: http://www.anticorrupcion.gov.ar/internacional_02.asp. (website of the Anticorruption Office)