



Secretariat for Political Affairs – SAP
Department for Effective Public Management – DEPM

INTER-AMERICAN COOPERATION MECHANISM
FOR EFFECTIVE PUBLIC MANAGEMENT – MECIGEP

REPORT ON PARAGUAY:

“COLLECTIVE LABOR RELATIONS
AND SALARY POLICIES”

2014



Collaborating countries:
– Argentina and Chile



Foreign Affairs, Trade and
Development Canada

Affaires étrangères, Commerce
et Développement Canada

**Report on Paraguay: “Collective Labor Relations
and Salary Policies”**

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Washington, D.C., December 2014

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I. Background

About the MECIGEP

1. The Inter-American Cooperation Mechanism for Effective Public Management (MECIGEP) is an institutional tool the purpose of which is to facilitate peer dialogue, the exchange of experiences, and technical cooperation strategies to support the pursuit of national goals and priorities set by each OAS member state.

2. It was established by resolutions AG/RES. 2788 (XLIII-O/13) and AG/RES. 2838 (XLIV-O/14), “Assistance to Member States: Effective Public Management Strengthening and Innovation Initiative in the Americas,” adopted on June 5, 2013, in Antigua, Guatemala, and on June 4, 2014, in Asunción, Paraguay, respectively.

3. Among its main features are its formal, permanent, and voluntary nature, its openness to all OAS member countries, and its uniqueness, as there is no other similar tool in the Hemisphere that allows for peer dialogue on public management issues.

4. The MECIGEP is based on thematic “rounds” held to examine a variety of public management issues, such as: open government, planning, public budget, civil service, coordination mechanisms, policy and program evaluation, transparency and accountability, information and communication technologies, decentralization, quality of public services, and civil society participation in public management, among others. The topics to be discussed are decided on by the participating countries.

5. It uses analytical frameworks agreed on by all participants, to make it possible to identify positive elements that every public management process must take into consideration if it is to be effective. For example, incorporating long-term vision coupled with participatory planning, a professionalized civil service, or a system that promotes quality public services—all worthwhile elements that any public administration might have.

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6. As a strictly technical process, it involves high-level specialists and experts from different countries of the region who, with support from the Department for Effective Public Management (DEPM/OAS), which acts as the technical secretariat, engage in a process of dialogue among member states. This dialogue is conducted in various ways, for example, visits of experts to states, videoconferences, and document sharing.

7. Once the process has been completed, the DEPM/OAS prepares reports outlining, in general terms, the findings of the peer dialogue, cooperation needs, and challenges for reform, innovation, and modernization in public management.

8. Based on these reports, the DEPM/OAS, as well as the donor community and other multilateral organizations, can direct their cooperation activities toward specific projects to implement those recommendations.

About the round

9. On May 16, 2014, Minister Humberto R. Peralta Beaufort, Executive Secretary of the Civil Service Secretariat of Paraguay, asked the Department for Effective Public Management (DEPM) of the OAS to hold a working round on the topic “Collective Labor Relations and Salary Policies,” requesting that the working team be made up of experts from Argentina and Chile, in view of their experience and advances in the area.

In response to that request, the DEPM established a group of experts made up of Mr. Eduardo Salas, Director of the National Public Employment Office in the Office of the Chief of the Cabinet of Ministers of the Presidency of the Republic of Argentina; Miss Gloria Uribe, a professional in the Institutional Labor Department of the Budget Office of the Ministry of Finance of Chile; and Mr. Franz Chevarria, a specialist in the Department for Effective Public Management (DEPM) of the OAS.

10. Between July and September, the Civil Service Secretariat (SFP) sent necessary documentation on the matter under consideration to the DEPM to enable the preliminary

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instruments needed for the working meetings in Paraguay to be prepared. These documents, which were made available to the Group of Experts, consisted of the following:

- Provisions governing the operations of the governing bodies
- Provisions governing collective labor relations
- Provisions on remuneration and occupational groups
- Rules on the civil service
- Constitutional references to the civil service

11. The Self-Assessment Questionnaire for Paraguay on collective labor relations and salary policies was drawn up, on the basis of consensus and with important inputs from the Group of Experts, taking into account the documents provided by the SFP and the procedural criteria of the MECIGEP.

12. This questionnaire was sent to the SFP authorities for completion and constituted a basic input for the preparation of a preliminary report on the matter. It also served as a basis for the on-site technical visit held from October 29 to 31 in Asunción, Paraguay. The completed questionnaire was returned by the group of civil servants¹ of the Civil Service Secretariat of Paraguay.

13. The on-site visit provided the necessary inputs for preparing this Final Report.

About the visit

14. In keeping with the schedule of activities, the Group of Experts made the on-site technical visit to Asunción, Paraguay, from October 29 to 31.

1. It should be noted that, for purposes of this report, the term “civil servant” has been used in a general sense to refer to anyone working for or making up part of any public entity of the state.

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15. The purpose of the visit was to gather information and to allow for an exchange of ideas and experiences between the visiting government experts and Paraguayan civil servants, in order to supplement the responses to the Self-Assessment Questionnaire and obtain additional information and inputs on the topics under consideration, with a view to preparation of the Final Report.

16. On the first working day, the head of the Civil Service Secretariat (SFP) of Paraguay, Mr. Humberto R. Peralta Beaufort, received the Group of Experts and initiated a social dialogue panel, with the participation of labor union organizations, business organizations, ministers of state, and civil servants representing government entities. This was followed by working meetings held over the three days of the technical on-site visit at the main office of the Civil Service Secretariat (SFP) and by a general meeting in which various labor unions took part in the Executive Room of the Hotel Granados Park.

Findings

17. Considering the scope of the topics considered and with a view to systematizing this report, the findings have been organized into two (2) areas: *1. Collective Labor Relations Management* and *2. Compensation Management*. The first area has four specific sections: a. Regulatory Design; b. Actors; c. Bargaining Process; and d. Content of Agreements. The second area consists of just one section.

Collective Labor Relations Management

A. Regulatory Design

18. Several provisions govern collective labor relations in Panama. The most important of all is the National Constitution, which, in Article 97, *On Collective Agreements*, reads:

“Labor unions have the right to promote collective actions and to conclude agreements on working conditions. The State shall favor conciliatory solutions to labor conflicts and social agreements. Arbitration will be optional.”

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In addition, Paraguay has ratified various international conventions, noteworthy among which are the following:

- C87 Convention concerning Freedom of Association and Protection of the Right to Organise
- C98 Right to Organise and Collective Bargaining Convention

According to the information obtained from the Self-Assessment Questionnaire transmitted to and completed by Paraguay, Convention C87 served as the basis for the principal ideas set out in the Labor Code, which guarantees the rights and establishes the obligations of both the public and private sectors with respect to unionization. Likewise, Convention C98 served as an essential regulatory instrument for drawing up Law No. 508/94, “*On Collective Bargaining in the Public Sector.*”

It bears mentioning that Paraguay has not yet ratified Convention 151, the Labour Relations (Civil Service) Convention, or Convention 154, the Collective Bargaining Convention. Efforts must therefore be made to draw attention to these international instruments and to make members of Congress more aware of their importance, with a view to their respective ratifications.

19. As concerns domestic law, the principal legal norms governing collective labor relations are:

- Law No. 213/1993, Labor Code, Third Book, On Collective Labor Relations, Sections II, III, and IV, Articles 283 to 411 (not transcribed because of their length)
- Law No. 508/1994 on Collective Bargaining in the Public Sector
- Law No. 1626/2000 on the Civil Service, Chapter XVI
- Law No. 1.542/2000, which establishes the procedure for calling a strike

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Moreover, several legal and budgetary norms exist that have a greater impact on collective agreements, the most important among which are:

- Law No. 1.535/99 on financial administration of the state
- Law No. 5142/14, which approves the General Budget of the Nation for the fiscal year and its corresponding regulatory decree

20. It was apparent from the analysis of the collective labor contracts and the talks with the Paraguayan civil servants and union representatives that there is not any precision or uniform standard concerning the legal nature of the *Collective Contracts on Working Conditions* and their validity in relation to special laws, in particular budgetary laws and laws under the Labor Statute. Thus, one point that should be mentioned is that there is no law that can restrict the subject of collective bargaining: agreements can be concluded that go beyond legal prescriptions. Another point is that the agreements are limited to legal norms, its being impossible in all cases to reach agreements that go beyond what is provided for by law. A third point—which is more doctrinal in nature—is that the subject of collective bargaining is open but may in no case restrict or undermine the rights already recognized by law or in previous collective agreements. In this connection, significant progress can be made by defining this aspect through criteria based on doctrine and international legislation, which would doubtless help define the subject of collective bargaining processes and prevent possible conflicts between public entities and labor unions.

21. It bears noting that in Paraguay, according to the responses to the Self-Assessment Questionnaire, no specific norms govern collective relations in specific public administration sectors. Rather, only one general rule applies to any type of entity.

22. It should be pointed out that, as observed during the on-site visit, there is a great diversity of institutions in Paraguayan public administration, each with its different labor regimes, purposes, and spheres of competence. This situation, similar to that in any other public administration, may create difficulties in collective bargaining processes if there is a general norm that, as mentioned above, needs to be complemented and reinforced,

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especially given that, to date, there is no general collective agreement applicable to all public entities. Accordingly, one means of improving the institutional system and legislation on collective bargaining in Paraguay could be through the design of framework agreements that consider different institutional realities, for example: national public entities, municipalities, businesses, regulatory agencies, etc.

23. Another important matter to consider is that gaps in the law, the existence of diverse norms, and the weak law-enforcement capacity specifically mentioned by those interviewed leave a wide margin for interpretation, which efforts are made to address through collective agreements on, for example, labor regimes, the working day, leave rules, and salary schedules, among other areas, when it would be more advisable to have minimum legal norms for these matters established by law and therefore not be the subject of collective bargaining.

24. An analysis of the different norms, and especially of Law No. 508/1994 on Collective Bargaining in the Public Sector, points up the need for greater precision on the prospects and scope of a general agreement and a sectoral agreement. This absence creates uncertainty during the bargaining process, especially about the content of the agreements, given that, in practice, the agreements cover various matters that are governed by other norms, involve aspects that go beyond the bargaining context, or often include subjects that do not correspond to specific sectoral negotiations but rather to broader agreements.

25. Another important area in which improvements can be made is related to operators' strict compliance with laws. Thus, for example, during the on-site visit, inconsistencies were noted in implementation of the law. A concrete case has to do with the Ministry of Finance. Article 6 of Law No. 508/1994 on Collective Bargaining in the Public Sector provides that the state is to be represented by a committee appointed, as appropriate, by the executive branch, the legislative branch, the judicial branch, or pertinent organs of the decentralized entities, public enterprises, official banks, districts, or municipalities. However, in some cases, the government was simply represented by a minister of state appointed by decree or by a government resolution.

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26. An important omission in the text of the law concerns the administrative act that gives practical effect to the collective agreement. In accordance with Article 10 of Law No. 508/1994 on Collective Bargaining in the Public Sector,² the collective agreement is to be “given effect” through the pertinent administrative act.³ However, there is no clear indication of which act actually gives effect to the agreement, whether registration, adoption, certification, etc. In this connection, account should be taken of Article 96.m of Law No. 1626/00, “On the Civil Service,” which establishes as a duty of the Civil Service Secretariat: certifying and registering internal regulations and collective contracts on working conditions, within state agencies and entities when said contracts meet the substantive and formal requirements for validity.

27. In short, there is still much room for improvement with respect to the legislation on collective labor agreements. Other administrative aspects may be added to complement it, for example, the content of general and sectoral agreements, harmonization of collective agreements with national laws, consideration of mediation as a step in the bargaining process, union regulation and union representation in the bargaining process, etc.

B. Actors

28. Various institutions are responsible for managing collective labor relations in Paraguay. One of them is the Ministry of Labor, Employment, and Social Security (MTESS), which has been responsible since January 2014 for recognition of labor unions, pursuant to Law No. 5.115/13, which established said ministry. In that regard, and for purposes of this report, its objectives include implementing and enforcing national legislation, collective contracts, and the international treaties, conventions, and agreements adopted and ratified by Paraguay on labor, employment, and social security;

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2. Article 10. – The agreement concluded in the context of the Public Administration shall be given effect by means of the pertinent administrative act.
Once the agreement has been given effect, the complete text thereof shall be transmitted within five days to the Ministry of Justice and Labor, for its registration and publication within 10 days following its receipt.
 3. It bears mentioning that the term “given effect” cannot necessarily be interpreted as “certified.”

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monitoring their application and implementation; and fostering labor relations based on dialogue and cooperation among the actors and at their different levels.⁴

29. Another important entity is the Civil Service Secretariat, which, for purposes of this report, is responsible, inter alia, for certifying and registering internal regulations and collective contracts on working conditions, within state agencies and entities when said contracts meet the substantive and formal requirements for validity.⁵ In carrying out this function, the Civil Service Secretariat has in recent years been lending technical assistance to public entities and labor unions, among other entities, that have requested its participation in drafting, preparing, and verifying collective labor agreements for subsequent certification.

30. The Civil Service Secretariat is responsible for the process of analysis, review, and certification of the instrument (collective contract) in all instances related to state institutions, pursuant to existing legislation (Art. 96.h of Law No. 1626/2000 on the Civil Service).⁶ Moreover, the Civil Service Secretariat has a specific mandate, established by

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4. Law No. 5.115/13, which created the Ministry of Labor, Employment, and Social Security. Article 3: OBJECTIVES. The principal objectives of the Ministry within its sphere of competence are, inter alia, the following:
 1. To ensure that workers are protected in their diverse aspects, guaranteeing respect for workers' rights, especially the rights of those in vulnerable situations.
 2. To comply with and enforce national legislation; collective contracts; and the international treaties, conventions, and agreements adopted and ratified by our country with respect to labor, employment, and social security and to monitor their application and implementation.
 3. To foster labor relations based on dialogue and cooperation among the actors and at their different levels.
 4. To formulate, plan, manage, coordinate, execute, supervise, and evaluate national and sectoral policies on social-labor matters, basic rights in the labor area mainstreaming the gender perspective, workplace safety and health, dissemination of information on labor and labor market legislation and information, social dialogue in labor conflicts and relations, social security, labor inspection, promotion of employment, labor mediation, professional and job training, standardization and certification of job competencies, self-employment, retraining, and labor migration.
 5. Law No. 1.626/00 on the Civil Service
Article 96.- The Civil Service Secretariat shall be responsible for: (m) Certifying and registering internal regulations and collective contracts on working conditions, in state agencies and entities when said contracts meet the substantive and formal requirements for validity;
 6. Article 96.- The Civil Service Secretariat shall be responsible for: h) Proposing a job classification and description system for positions in state agencies and entities and keeping it updated, along with the roster of civil servants;

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Decree No. 1100/14 regulating the 2014 Budget Law, which provides for the preparation of a Model Framework Contract for a Collective Contract on Working Conditions.⁷

31. It bears noting that, as concerns these responsibilities, the Civil Service Secretariat discharges its mandate in all entities of the central public administration, decentralized bodies, departmental governments and municipalities, the Ombudsman’s Office, the Office of the Comptroller General of the Republic, the public bank, and other state agencies and entities. Nonetheless, in some cases decentralized entities, like the Municipality of Asunción, have filed actions of unconstitutionality against Law No. 1626/2000 on grounds that the law was inapplicable, with the Supreme Court of Justice handing down judgments that are now being executed.

32. Law No. 1626/2000, “*On the Civil Service,*” has a special chapter on labor unions: Chapter XVI, “*On Unionization,*” Article 111 of which establishes a set of procedures for creating and registering labor union organizations.⁸ On the one hand, public entities are able to have (non-unionized) personnel representatives who, in keeping with the Labor Code (Arts. 336 to 350), are intermediaries for any type of negotiation, including collective contracts on working conditions.

33. The creation of labor unions is free and voluntary and does not require prior authorization of any type, as reflected in Article 108 of Law No. 1626/00 and Article 283

7. Law No. 1.626/00 on the Civil Service

Article 73. – The Civil Service Secretariat shall during the present fiscal year establish a model Framework Collective Contract on Working Conditions (CCCT), which shall serve as a guide for certification requests from the state agencies and entities.

8. Article 111 of Law No. 1626/00. – For purposes of their registration, labor unions shall provide the competent national authority with the following documents, either original versions or true and certified copies:

- a) Constituent document, original and true and certified copy;
- b) Copy of the bylaws adopted by the Assembly;
- c) List of founding members and their respective signatures; and
- d) List of the members of the board of directors and of the electoral and the oversight body.

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of the Labor Code.⁹ The exceptions to the right to organize are expressly laid out in the National Constitution and relate to the Armed Forces and the police.¹⁰

34. It bears mentioning that Paraguay does not have a labor union confederation that brings all unions together.¹¹ Accordingly, the entities in each institution have one or more unions although some institutions do not have any. For example, the National Cement Industry has 14 unions. There are also union groupings by sector of activity (Union of Engineers, Union of University Students, Unions of Paraguayan Journalists, etc.). In this connection, consideration should be given to a possible legislative change in the legal concept of “party” to refer to unified representation of the various unions in the country.

35. According to responses to the Self-Assessment Questionnaire, labor union activities in Paraguay revolve primarily around collective bargaining processes although they may also touch on other promotional activities for their members.

36. Union membership in Paraguay is free and voluntary. It ranges from between 70 and 80 percent of the total number of personnel in each entity and dues are expressly established in each union’s bylaws. Most labor unions in Paraguay are in the public sector. A member’s resignation from the union is also covered by the union’s bylaws and, once a member has resigned, he or she may join another union. According to the

9. Article 108 of Law No. 1626/00. – Civil servants are entitled, without prior authorization, to form labor unions.

Article 283 of the Labor Code: The law grants workers and employers, without distinction as to sex or nationality and without requiring prior authorization, the right to freely establish organizations whose purpose is the study, defense, promotion, and protection of professional interests, as well as the social, economic, cultural, and moral enhancement of their members.

Freedom of association applies to public sector officials and workers, in keeping with Article 2 of this Code.

10. Article 96: FREEDOM OF ASSOCIATION

“ . . . All public and private workers are entitled, without prior authorization, to form labor unions, with the exception of the Armed Forces and the police. Employers enjoy the same freedom of association. No one may be compelled to belong to a labor union.

For a labor union to be recognized, it need only be registered with the competent administrative body.

The election of officers and the operations of labor unions shall be governed by democratic practices established by law, which shall also guarantee the stability of the union leadership”

11. The National Confederation of State Officials and Employees (CONFEE) sought to be the cohesive force behind public sector unions but it lacks this power and leadership.

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responses to the Self-Assessment Questionnaire, civil servants might also belong to more than one union, given that historically that has been little monitoring by the Ministry of Justice and Labor.

37. It is important to note that, in accordance with legislation, the benefits obtained in collective contracts on working conditions also accrue to non-union members. By way of reference, mention is made of Law No. 508/94, Article 11 of which reads: “. . . The content of a collective contract on working conditions benefits equally those officials and employees of the institution in question who are not members of the negotiating union”

38. It was apparent from the normative review, the collective contracts on working conditions, and the talks with Paraguayan Government civil servants during the on-site visit to the country that there was some lack of clarity about the powers of the Ministry of Labor, Employment, and Social Security (MTESS) and the Civil Service Secretariat (SFP), mainly concerning their authority to review and certify the collective labor agreements. It was noted that those charged with implementing legislation do not necessarily comply with it as there is a certain legal vagueness about the role of the two entities. In this regard, much remains to be done concerning the dissemination of information and the provision of training on the scope of Law No. 1626/2000, which clearly grants the power to analyze, review, and certify the public entities’ collective contracts on working conditions to the Civil Service Secretariat.

39. Along the same lines and in order to comply with the normative mandate and draw up a framework agreement applicable to all entities, the role of the two entities must be precisely determined at both the general and the sectoral level so as to avoid any confusion that might jeopardize the validity and implementation of the collective contracts on labor conditions.

40. An important point noted during the on-site visit is the lack of involvement of the Ministry of Finance in the processes of negotiation and certification of the collective

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contracts on working conditions. During the negotiation of these collective contracts, several matters are discussed that are related to changes in working conditions (overtime, salaries, bonuses, etc.) which by their very nature result in budgetary changes or have budgetary implications that would require active participation by the governing body on budgetary matters.

Moreover, participation by the Ministry of Finance could provide the Civil Service Secretariat with additional information for its review, analysis, and certification of the collective contracts on working conditions, which would doubtless result in their enhanced implementation and be of further benefit to workers within the budgetary frameworks of the Paraguayan State.

41. Obviously, channels of institutional coordination between entities would be stronger if the powers of the Civil Service Secretariat and the Ministry of Labor, Employment, and Social Security were more clearly defined and if the Ministry of Finance participated. To this end, the role of the Civil Service Secretariat as the governing entity and the public sector leader must be strengthened and legislative changes must be made to ensure the participation of these entities along with any others deemed appropriate.

42. Another piece of information acquired during the on-site visit is that only forty-four (44) public sector collective contracts on working conditions have been duly registered with the Civil Service Secretariat whereas there are over one hundred (100) entities throughout the sector under the SFP. This suggests that a large number of collective contracts on working conditions have not been registered or simply that they were concluded within public entities without being the subject of review, consultation, or certification by the Civil Service Secretariat. In that context, the entity must obviously be shored up to enable it to better discharge its responsibilities in public sector collective bargaining processes. This necessarily entails guaranteeing good working conditions for personnel, ensuring their ongoing training, resources, the dissemination of and training in norms, etc.

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43. In conclusion with regard to this area of analysis, there is room for action designed to make the actors involved—primarily state and labor union actors—more knowledgeable about legal provisions and about negotiation and other strategies, in order to generate collective contracts on working conditions that are satisfactory to all parties and are smoothly implemented in a climate of cooperation. This situation became apparent after the experts took part in a meeting organized by the Civil Service Secretariat with representatives of the various Paraguayan labor unions, which pointed up the existence of diverse views and opinions on the role of the authorities in the collective bargaining processes, the scope of the law, and the representation of labor unions, among other topics.

44. Finally, according to the general view of the actors, the Civil Service Secretariat is prepared to maintain harmonious and constructive relations with the labor union sectors, as noted during the working panel held during the on-site visit. This can help resolve conflicts that always arise in any collective bargaining process, especially in a scenario where there is natural suspicion on the part of union representatives, owing to the mistrust created as a result of non-compliance with earlier collective contracts on working conditions by previous administrations and to political interference, among other reasons.

C. Bargaining Process

45. According to the responses to the Self-Assessment Questionnaire and the normative review, the collective bargaining process begins with an express request by a labor union that may be arguing against a legal opinion or a violation of some right or calling for an improvement in the quality of the service; the consolidation of social benefits, whether financial or not; or an improvement in the decisions taken by public entities, among other matters.

The state then organizes itself into a committee appointed by the executive, legislative, or judicial branch, as appropriate, or by the relevant organs of the decentralized entities,

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public enterprises, official banks, districts, or municipalities. For their part, the personnel are represented by labor union organizations or federations with legal standing in this regard.¹²

If an agreement between the parties is reached, its details are set out in a document which is given legal effect through an administrative act and transmitted to the Ministry of Justice and Labor for registration and certification within 10 days following its receipt. As indicated above, in collective bargaining processes in the public sector the Civil Service Secretariat plays an important role as it is responsible for reviewing, analyzing, and certifying the collective contracts on working conditions. It bears noting that, according to Law No. 1626/00, an arbiter may be selected to settle any disagreements that arise in the bargaining process.

46. To settle any possible conflicts in the judicial sphere, the Court of Accounts is the decision-making body. However, extralegally, cases of mediation have taken place with external officials from other entities or from the Ministry of Labor, Employment, and Social Security. To that end, the Civil Service Secretariat has provided specific training exclusively for public officials, through INAPP, in alternative conflict mediation. On this specific point, it bears mentioning that mediation is not legally recognized. Thus, there is a window of opportunity to improve legislation so as to provide the collective bargaining system in Paraguay with greater opportunities for conflict resolution without the need for recourse to arbitration or judicial solutions.

47. A specific characteristic of collective labor relations in Paraguay is individual negotiation at the level of each entity, there being no processes involving general sectors or the public administration as a whole. Nonetheless, as indicated above, a presidential mandate was recently issued that resulted in the study of a Framework Convention for all public entities under the Civil Service Secretariat.

12. Article 6 of Law No. 1626/00.

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48. Pursuant to Decree No. 1100/14, the Civil Service Secretariat is empowered to certify a Framework Collective Contract on Working Conditions, to have it apply equitably to all public institutions and thus reduce inequities or differential treatment among public entities. Although the current administration has not certified any collective contracts, 44 were certified in the past, some only partially.

49. It should be mentioned that there is no explicit legal basis for recognizing the partial certifications; however, according to Paraguayan authorities, this is a practice followed by previous administrations in past years on grounds that it was necessary to make the agreements in collective contracts on labor conditions viable inasmuch as that were not initially tied to the budget.

50. An important characteristic of the bargaining process is that any negotiation on salary or financial matters must necessarily be subject to the Budget Law.¹³ In practice, most collective contracts on working condition focus on questions of this type. However, the Ministry of Finance does not get involved in the process, which often leads to requests or agreements that are not implemented or are difficult to implement for lack of budgetary resources. In this connection, and considering the information obtained from the on-site visit, it became apparent that the implementation of agreements frequently depends on the political capacity and influence of institutions and their directors, which leads in most cases to salary inequities among the state agencies and entities that do not necessarily comply with the General Budget of the Nation.

D. Content of Agreements

51. As mentioned in the first sections of this report, Article 4 of Law No. 508/94 establishes all matters that may not be discussed in a collective bargaining context:

13. Law No. 1626/00, Art. 5: “. . . Salary and financial negotiations shall be subject to the Budget Law.”

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Article 4 - Matters related to the following may not be the subject of collective bargaining:

- a) *Structure and organization of public administration agencies;*
- b) *Management, administrative, and monitoring powers of the state;*
- c) *The principle of suitability as a requirement for entry and promotion in the administrative service; and*
- d) *Objects of expenditure not provided for in the General Budget of the Nation.*

52. This draft opens up bargaining possibilities to broad areas, the most common of which are those related to human resource management; budget management; the safety, training, rights, and obligations of civil servants; and mechanisms for the use of resources or tools, among other matters.

53. In addition, given the diversity of labor unions in the various entities, a principle has been established that the benefits obtained in bargaining processes for the collective contracts on working conditions extend to all the personnel of the entity, whether or not they are union members, including permanent staff, contract staff, and even seconded personnel, in keeping with the legal principle of “*ergo omnes*.”¹⁴

54. As ascertained during the on-site visit, there are no unified criteria for determining the duration of the collective contracts on working conditions as there are disparities in this regard. Some collective contracts are for a specific term, others have renewal clauses, and others are open-ended. This situation not only poses problems for implementation of the agreements but it has also led to numerous controversies and interpretations concerning “rights acquired” through the collective contracts on working conditions and their validity, as there is not yet any criterion for settling them.

14. Article 11 of Law No. 508/94 establishes: “The content of a collective contract on working conditions benefits equally officials and employees of the institution in question who are not members of the negotiating union.”

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55. The analysis of the different collective contracts on working conditions revealed a lack of precision about the general contents of all said contracts applicable to the different sectors or branches and the contents of such contracts applicable to each of the specific entities.

56. This situation has led to huge disparities in forms, drafts, and contents, especially in relation to salaries and benefits, which in many cases go beyond aspects deemed to be negotiable under the law or that duplicate the requirements of special labor laws. This results in a disorderly bargaining process and in disparities in civil servants’ working conditions, which must be addressed urgently to ensure consistency throughout the Paraguayan public sector’s human resource system.

57. Moreover, the ambiguity and imprecision of these minimum contents introduces problems for certification—one of the Civil Service Secretariat’s tasks—to the extent that each of the entities has a different collective contract on working conditions, which offers different benefits to workers doing the same job. This situation is further exacerbated when some institutions have more budgetary leeway than others, which is the case for those that generate their own resources (Source of Financing 30: Institutional Resources).

58. According to information provided by the Civil Service Secretariat, this disparity has led to the use of different criteria regarding the concept of “Acquired Rights” and its application, thus resulting in inequities in salary policies and worker benefits.

59. A lack of precision has also been apparent with respect to the obligations and purpose of the collective contract on working conditions. Thus, for example, the Collective Agreement of the National Cement Industry (INC) expressly states that its purpose is to improve the enterprise’s productivity, and then it provides a list of agreements on better pay and working conditions, without any clear relationship between the two matters. However, it bears mentioning that the objective itself is positive to the extent that it establishes reciprocal relations between workers and public entities, which, through collective bargaining, can ensure the enhanced provision of public services and, at the

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same time, improved conditions for workers, primarily in terms of their economic well-being.

60. Another point noted in the texts of the collective contracts on working conditions is that they confuse negotiable and non-negotiable matters, for example, state organization or labor union organization, among others, which causes problems for implementation of the agreements. Thus, considering these two examples, it is not possible to alter state structure through collective bargaining since this is done through political decisions that take the form of positive law, for which full responsibility lies with the political authorities. Similarly, as a matter of principle, labor union organizations are independent from public authorities; therefore, it is not clear how the structure of a labor union or its operating rules could be the subject of an agreement or negotiation to which the state authorities are party.

61. Lastly, also apparent in terms of content is the amalgamation of agreements that deal with remuneration and those that do not, for which, generally speaking, no economic or budgetary analysis is conducted to ensure their implementation. This makes it all the more necessary for budget experts from other entities, like the Ministry of Finance, to participate so that they may help steer collective bargaining processes.

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Brief Description of the Collective Bargaining System for National Executive Branch Civilian Personnel in Argentina

The collective bargaining system for the civilian personnel of the National Public Administration (APN), which comes under the National Executive Branch (PEN), was established by Law No. 24.185 of 1992 and is governed by Decree No. 447/1993, in full compliance with Article 14 bis of the National Constitution (1994). Thus, it meets the recommendations of the International Labour Organization (ILO) formalized in Conventions Nos. 87, 98, 151, and 154, ratified by Argentina through respective laws.

It should be noted that national teachers have their own Collective Bargaining Law (No. 23.929/1991), as does the staff of the national universities (No. 24.447/1994) and the National Congress personnel (No. 24.600/1995).

The system under Law No. 24.185 covers all civilian personnel working under the National Public Administration (Article 1), prohibiting, since 1992, implementation of the private sector’s collective bargaining system, established in 1953 by Law No. 14.250.

Part of the national public employees are governed by the Labor Contract Law (No. 20.744) and part by the Law Governing National Public Employment (No. 25.164), with both laws establishing a minimum of nonnegotiable rights and obligations (enforcement of labor law requirements).

Noteworthy among the principal characteristics of the aforementioned system under Law No. 24.185 are the following:

- a) Bargaining takes place between only TWO (2) parties: the state, in its capacity as employer, and the labor union side, in its capacity as representative of organized workers.
- b) During the general negotiations, the state party consists of the head of the MINISTRY OF THE ECONOMY AND PUBLIC FINANCE and the SECRETARIAT FOR ADMINISTRATIVE MANAGEMENT AND COORDINATION (former Public Service/Management) of the CHIEF OF CABINET OFFICE. In the case of sectoral bargaining, the head of the ministry or decentralized agency whose staff is concerned also participates.
- c) The labor union party consists of ONE (1) person freely selected by the labor union entity or entities from their respective membership. Should they disagree, the decision of the entity or entities with the largest number of dues-paying members will prevail. To sign collective agreements, labor union entities must be registered with the MINISTRY OF LABOR, EMPLOYMENT, AND SOCIAL SECURITY and must also have labor union status in accordance with specific Law No. 23.551. The only entities allowed to participate in general negotiations are the UNION OF CIVILIAN PERSONNEL OF THE STATE (UPCN) and the ASSOCIATION OF STATE WORKERS (ATE) as these are the only two with national representation.
- d) The bargaining may cover the full range of personnel and institutional matters of the National Public Administration (general negotiations) or of a group of workers (sectoral negotiations). In each of these cases, a bargaining committee is established.
- e) All issues related to working conditions may be negotiated, including those with economic-financial implications, in which case they are subject to the provisions of the Law Approving the National Budget for the corresponding fiscal year. However, the organization and management powers of the state may not be negotiated, nor may the principle of suitability for entry and promotion in the civil service (which is rooted in the Constitution).
- f) The General Collective Labor Agreement or Framework Agreement takes precedence over any Sectoral Collective Labor Agreement. The latter is only valid and approved if it does not violate or contradict the aforementioned General Agreements.
- g) The MINISTRY OF LABOR, EMPLOYMENT, AND SOCIAL SECURITY serves as the law-enforcement body of the aforementioned law but is not a party to the negotiation. It chairs and convenes meetings, facilitates dialogue, may propose alternatives in the event of a serious impasse, and ensures that the principle of good faith is respected in all negotiations. This principle entails duties and obligations established in Article 9 under penalties that the MINISTRY OF LABOR, EMPLOYMENT, AND SOCIAL SECURITY can impose on the parties.
- h) Each party is free to invite the other to the bargaining table, proposing the agenda or subjects to be discussed. Once the invitation has been accepted, the Ministry of Labor formally constitutes the Negotiating Committee, which sets its own rules for dialogue and exchange.

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- i) The principle of extended validity [*ultra actividad*] is applied whereby an agreement remains in effect beyond its term until a new one is adopted.
- j) The provisions of an agreement are “*erga omnes*,” in other words, they apply to all workers in a sector, whether or not they are unionized.
- k) Once a text has been approved, the MINISTRY OF LABOR, EMPLOYMENT, AND SOCIAL SECURITY sends it to the NATIONAL EXECUTIVE BRANCH which, if the agreement is in order, will give it legal effect by decree within THIRTY (30) business days from its receipt. The agreement takes effect on the day following its publication in the OFFICIAL JOURNAL (*BOLETIN OFICIAL*).
- l) In the case of a conflict or lack of agreement between the parties, they may be encouraged to engage in binding conciliation, self-regulation, or mediation.

To date, TWO (2) General Collective Labor Agreements for the National Public Administration have been signed: the first in 1998 (Decree No. 66/99) and the one that is currently in effect in 2005 (Decree No. 214/2006). It covers 116,038 workers who are permanent staff, temporary staff, or fixed-term contract workers in all the ministries (including the OFFICE OF THE PRESIDENT OF THE NATION) and a large part of the decentralized entities. EIGHT (8) Sectoral Collective Labor Agreements, covering 73,223 employees, have been approved and are in effect, and another THREE (3) covering more than 25,000 workers are now being negotiated.

The General Collective Labor Agreement defines the personal, institutional, and geographic scope of application; its term; those matters that can be negotiated sectorally; conditions for and obstacles to entry in the civil service; the principles and ethical values governing the Agreement; conditions for obtaining job stability; the signatories’ obligations, rights, duties, and prohibitions; the grounds for resignation or termination; assignment of duties and personnel mobility; the working day and other working conditions; the regime for leave, excused absence, and reduced hours; principles governing permanent career staff (entry, competitions, performance evaluation, training); mechanisms for resolving collective labor conflicts; working conditions and environment; and the conditions and environment for ensuring the principle of equal opportunity and treatment.

Finally, FOUR (4) Joint Committees are set up and regulated, to interpret and monitor application of the Agreement as well as training and its financing, and to monitor the aforementioned working and equal opportunity and treatment conditions.

The Sectoral Collective Agreements determine the categories and hierarchical grouping of personnel, minimum requirements for entry and/or promotion, regulation of competition, the administrative career and horizontal and vertical movement within it (promotions) and access to director posts, the specific training and development system, annual personnel evaluation, and the compensation and salary system, as well as the provisions of the General Collective Labor Agreement adjusted to the specific provision of sectoral collective labor services. A Joint Committee is also established to interpret and monitor the Agreement.

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Compensation Management in the Paraguayan Public Sector¹⁵

62. There are no specific regulations governing compensation management as a whole in Paraguay (like a law on public salaries). Nonetheless, various provisions exist that set certain management parameters.

Among them, there is the National Constitution, Article 105 of which establishes a prohibition against double compensation in the public sector,¹⁶ regulated by Law No. 700/96; Law No. 1626/00 (Art. 61); the budget laws establishing various provisions on remuneration; various decrees like No. 1100/2014, which regulates Law No. 5142/14 on the General Budget of the Nation, where it is possible to find provisions for the exceptional reinstatement of retirees to posts in diverse institutions; Decree No. 1560/14, which establishes general guidelines and aggregate amounts for programming, formulating, and submitting preliminary proposed institutional budgets as a frame of reference for preparing the proposed General Budget of the Nation for fiscal year 2015 and for programming the 2014-2017 multi-year budget. Other legal norms authorizing the Civil Service Secretariat to make exceptions to the double-compensation provision are, for example, Decree No. 223/08, which establishes the conditions, procedures, and competence for making exceptions to the double-compensation rule for public-sector contract employees; SFP Resolution No. 13/14, which establishes internal requirements and procedures in the Civil Service Secretariat for inclusion in the table of double-compensation exceptions for public sector permanent and contract staff.

63. It should also be mentioned that guidelines were included in the proposed 2015 Budget Law for the establishment of a new salary schedule for the public sector

15. During the on-site visit, a presentation was made by the Civil Service Secretary, Minister Humberto Peralta, on the new 2015 salary scale, which addressed several of the observations and findings made in this report. Likewise, for scheduling reasons, it was impossible to hold meetings with other civil servants responsible for the matter. Consequently, the recommendations are limited to the responses to the Self-Assessment Questionnaire distributed for the preparation of this report.

16. National Constitution, Article 105. On the Prohibition against Double Compensation: “No individual may hold or receive simultaneously, as a public official or employee, more than one salary or remuneration, except for that he or she may obtain from a teaching job.”

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applicable to institutions of the central administration of the executive branch. The Civil Service Secretariat and members of Congress were in the process of discussing this new salary schedule during the on-site visit.

64. From an institutional viewpoint, the Ministry of Finance (MH) is the body responsible for everything related to the management of government resources, including remuneration. Accordingly, it is responsible for preparing the proposed annual budget law and its regulatory decree, which includes various norms related to compensation management in the public administration. However, as concerns the public administration, the Civil Service Secretariat is responsible for proposing the job classification and description system for positions in state agencies and entities and for keeping it updated, along with the roster of civil servants, pursuant to Article 96 of Law No. 1626/00, and, as mandated by Article 36, it must issue a prior report on the proposal prepared by the MH.

65. With respect to sources of financing, the executive branch has budgets for institutions that come under the Office of the President of the Republic (the so-called Sub-Unit for Administration and Finance); other institutions whose financing depends on state transfers; and other entities that generate their own resources, such as the autonomous and decentralized entities, which must also report on budget execution through the Integrated Financial Management System (SIAF), administered by the Ministry of Finance.

66. Operationally speaking, the compensation system in Paraguay functions within each entity according to its budget, covering, in addition to other areas, the public officials appointed and contracted at seven hierarchical levels, ranging from higher to lower and classified with the prefixes A to G, a ranking that is adjusted according to the organic structure of each institution, with a number of internal and external inequities, as pointed out in the responses to the Self-Assessment Questionnaire. All of this makes up the so-called “Personnel Annex to the General Budget Law of the Nation.”

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67. Public sector remuneration in Paraguay is determined by taking the Personnel Annex to the budget, which is based on the duties performed as established in the organic structure of the institution. Accordingly, all civil servants have a base salary, which serves as the basis for accessory payments, which are determined according to criteria such as job performance, working hours, training, and effort and which consist of additional, special, complementary, and other forms of compensation. These additional payments are governed by Decree No. 1100/14, which regulates the General Budget of the Nation and expressly sets the percentage ceiling for bonuses, where the salary serves as the basis for these percentages and any other remunerations.

This notwithstanding, as expressed in the responses to the Self-Assessment Questionnaire, at least two thirds of total compensation corresponds to additional salary payments and only one third to the base salary, and there is significant inequality in salaries across institutions in comparative terms. Moreover, there is major interference by the legislative branch in discussions on ranking and salary distribution modifications, which results in considerable room for discretion that is reflected in disorder and inequities in the Paraguayan public administration.

68. It bears mentioning that there is no cost-of-living adjustment for salaries in Paraguay. However, it has become an informal practice in recent years to use the increase in the minimum private sector salary as a benchmark for preparing public-sector salary budgets for the following fiscal year.

69. At present, the remuneration and allowance schedule drawn up by the Ministry of Finance and the Personnel Annex include different budget categories with differing amounts for posts with the same responsibilities. This situation reveals inequities that became apparent when reconciling public payrolls, which were published thanks to the efforts of the Civil Service Secretariat to straighten up this aspect of human resource management pursuant to the mandate of Law No. 5189/14, “which makes it mandatory to provide data on the use of public resources for remuneration and other payments to civil servants in the Republic of Paraguay.”

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70. An important consideration is the relationship between job performance and remuneration, which is applied through performance evaluation, in keeping with Law No. 1626/00, which makes it possible to assess job performance and therefore to provide additional salary benefits (bonuses) or increased training to enhance the institution’s performance. On this point it should be mentioned that the on-site visit did not yield further information on the application of this norm and its implementation in practice.

71. Furthermore, Article 25 of Decree No. 1100/14 provides that it is possible to pay allowances for job responsibility, administrative management, and budget management, as well as occasional bonuses or allowances, all of which are given on a discretionary basis and in keeping with budgetary availability. According to the information collected during the on-site visit, given that budgetary resources have not been available to reward civil servants, other types of incentives or compensation have been provided, for example, public recognition, compensatory days off for work on non-business days, specific training courses, etc.

72. Finally, according to information obtained during the on-site visit, there are not any separate compensation systems for senior management that reflect performance or achievement of goals, among other things. Still, it is possible to identify differential remunerations for highly specialized work for the financial and administrative areas themselves, through administrative management bonuses and budget management bonuses, recognized in Article 25 of Decree No. 1100/14.

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Brief Description of the Remuneration System in Chile

The Remuneration System in Chile, which applies primarily to the public sector, is applicable to the ministries, regions, provinces, and centralized and decentralized public service created to perform administrative functions and is regulated by Article 94 of Decree with the Force of Law No. 29, of 2005, which “Reformulates, Coordinates, and Systematizes Law No. 18.834, on the Administrative Statute” and its complementary norms. The aforementioned Decree with the Force of Law No. 29 states that civil servants are entitled to receive remunerations and other additional allowances established by law, in a regular and complete fashion.

Accordingly, through Decree Law No. 249, of 1974, which “establishes a single salary scale for personnel,” 32 grades were created for the Chilean public service entities, each with its respective base salary. This law also provides that additional remuneration may be received for seniority, geographic area, mobilization expenses, cashier loss expenses, subsistence, meals, moving expenses, family allowances, night shifts or holiday work, and the mobilization allowance.

Moreover, Decree Law No. 1.770, of 1977, gives an increased responsibility allowance to officials who hold positions as government authorities, senior chiefs of service, and senior directors, equivalent to 40 percent of the base salary. Thus, Law No. 19.185, published in the Official Journal on December 12, 1992, replaces the professional allowance established by Decree Law No. 479, of 1974, and also grants an allowance known as the replacement allowance, both being fixed amounts whose level depends on the grade assigned to the civil servant on the single salary scale.

In turn, Decree Law No. 3.501, of 1980, and Laws No. 18.566 and No. 18.675, published on October 30, 1986, and December 7, 1987, respectively, grant increases and bonuses intended to keep the remunerations liquid.

Toward the end of the 1990s, with the enactment of Law No. 19.553, published on February 4, 1998, a “modernization allowance” was introduced, which established a new compensation system linked to performance. These norms have been amended and expanded by Laws No. 19.882 and No. 20.212. This allowance is paid every quarter and comprises the following components:

- a) Base component: An amount equivalent to 15 percent of the base salary; replacement allowance, increased responsibility allowance, and professional allowance, as appropriate.
- b) Increase for institutional performance: This is granted for efficient and effective execution by the services of the Management Improvement Programs (PMG). This entitles the respective service’s employees to a 7.6 percent increase in the remuneration indicated in the preceding paragraph, provided that the institution achieved an objective equal to or greater than 90 percent. If this achievement grade is equal to or greater than 75 percent and lower than 90 percent, the increase will be 3.8 percent.
- c) Collective performance increase: This is given to public servants who work in teams, units, or work areas, for the level of achievement of the annual goals set for each of them. It entitles workers to receive an 8 percent increase in the aforementioned remuneration when the achievement level of the pre-established management goals is equal to or greater than 90 percent, and a 4 percent increase if this level is equal to or greater than 75 percent but lower than 90 percent.

In 2003, Law No. 19.863 was published. Said law includes the senior management allowance, for the President of the Republic, ministers of state, assistant secretaries, regional administrators [*intendentes*], and senior heads of public services. It is referred to in Section II of Decree with the Force of Law No. 1, of 2001, which establishes the reformulated, coordinated, and systematized text of Law No. 18.575, the Constitutional Organic Law on the General Foundations of the State Administration. This allowance is up to 150 percent of the permanent remuneration, depending on performance in the aforementioned positions.

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Another interesting point is the enactment of Law No. 19.882, published on June 23, 2003, which “governs the new personnel policy for civil servants and creates the National Civil Service Directorate, designed to coordinate, monitor, and improve personnel performance in the state’s civil administration services and at the same time incorporates the Public Senior Management System (SADP), whose objective is to provide central government institutions—through public, transparent competitions— with directors at the principal and assistant levels.

Said law gives an allowance for senior public management, for high-level public executives who hold positions under the aforementioned SADP, this being incompatible with the senior management allowance. In addition, there is an allowance for critical functions, with a ceiling on the number of beneficiaries, for personnel who perform functions deemed to be critical because of their relevance or their strategic contribution to management of the respective ministry or institution, in view of the responsibility they entail and their impact on products or services.

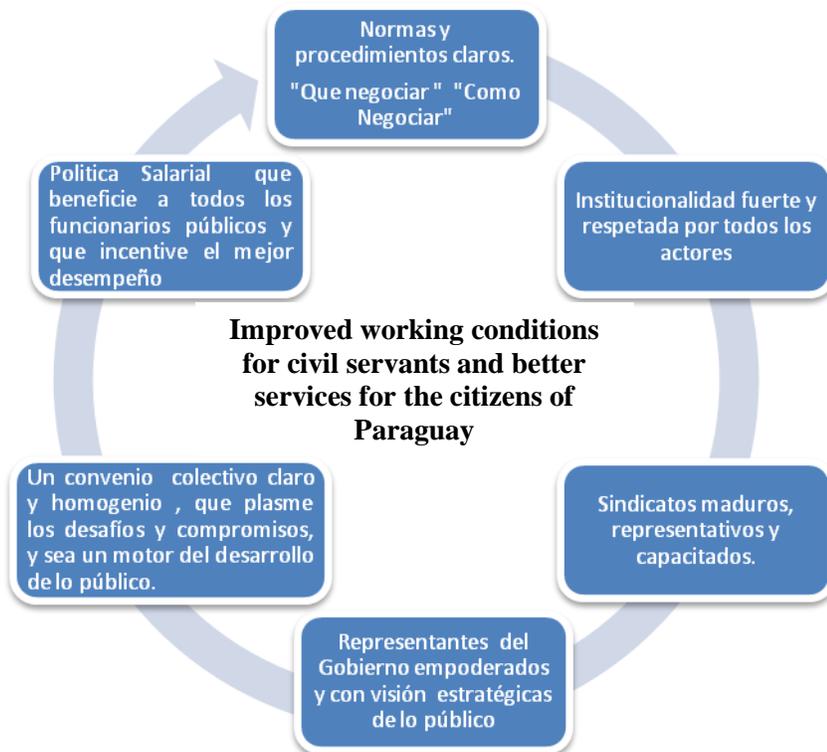
Both allowances, for senior executive positions and for critical functions, are permanent in nature. Their percentage is variable and, in any given calendar year, may not exceed 100 percent of the total of the gross permanent remuneration the public servant is entitled to receive. Nor in any calendar year may the percentage represent an amount higher than that received by the assistant secretary of the section.

In summary, it may be concluded in general that the remuneration system in Chile includes salaries, bonuses, and allowances of a permanent nature, those of a fixed amount, and those associated to a grade on the single salary scale, allowances dependent on the achievement of goals or required results, both of an institutional nature and by unit or work team, and other allowances for senior executive positions or for the performance of critical or strategic duties.

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Recommendations

In general terms, to move forward in clarifying and defining the content and scope of the Framework Agreements and the Sectoral Agreements; bringing the collective agreements into line with national laws; strengthening the different actors, especially the Civil Service Secretariat, the Ministry of Labor, and the Ministry of Finance, among others; incorporating alternative mechanisms for resolving potential conflicts, such as mediation during the bargaining process; improving the regulation of labor unions and their representation in the bargaining process; and strengthening the salary policy, among other things. These are complex and interrelated processes that can be summarized in the following flowchart:



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In this connection, the following recommendations may be made:

Improved legislation on collective bargaining in the public sector

1. In general, it is recommended that the legislation on collective labor relations be reformed, especially that dealing with collective bargaining in the public sector. This process should result from analysis and discussion among different sectors to help overcome structural and normative difficulties in collective bargaining in the public sector in Paraguay and should also bring about a better understanding of labor unions and public entities in the interests of the country’s public administration as a whole.

In this same spirit, it is likewise recommended that the possibility of considering a review of the Civil Service Statute be explored with a view to achieving uniform standards on civil servants’ rights, obligations, prohibitions, incompatibilities, and benefits, so that they may be enjoyed and complied with, as appropriate, with minimum legal standards set that would no longer be open for discussion in collective bargaining processes.

2. In the event legislation on collective labor relations is reformed, it is recommended that such matters as the following be included: adjustment of collective agreements to national laws; role of the different actors, especially the Civil Service Secretariat, the Ministry of Labor, and the Ministry of Finance, among others; content of the Framework Agreements and the Sectoral Agreements; alternative mechanisms for resolving potential conflicts, such as mediation, during the bargaining process; and regulation of labor unions and their representation in the bargaining process; among other things.

3. As part of the legislative revision on collective bargaining, it is recommended that the manner of constituting the negotiating committees with state and labor representatives be further specified. As concerns the state representatives, as indicated in the expository part of this report, it is recommended that the Civil Service Secretariat’s participation be reinforced as the governing body for the administrative management policies of all state entities. Likewise, it is recommended that consideration be given to the participation of

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representatives of the Ministry of Finance, in order to make the collective agreements sustainable and consistent from a budgetary point of view, as well as to the advisability of having representatives of other branches of government participate.

4. As for labor union representation, it is recommended that criteria or incentives be established to achieve greater and enhanced consolidation of the unions, thus avoiding their dispersal, which creates difficulties in the bargaining process. In this connection, experiences like Argentina’s are useful in that bargaining takes place only with the majority, legally recognized unions, although the results of the bargaining process are applicable to all workers.

In keeping with the foregoing and with regard to union organization, it is recommended that incentives be created to group them into federations that can represent more than one entity, in order to facilitate collective bargaining processes. As indicated in the expository part of this report, collective bargaining now takes place for each of the entities, some of which have more than one union. Civil servants may even belong to more than one union. Likewise, bargaining should be encouraged by staff structure, statute, or occupational group covering more than one entity, whose results or agreements would be applicable across the board. This would doubtless help to reduce the number of collective bargaining processes and make them smoother for more entities, thus resulting in improved administration and implementation of agreements.

5. Consideration should be given to the possibility of enacting into law alternative conflict resolution mechanisms, such as mediation. This would help settle possible conflicts without having to resort to arbitration or judicial decisions. In this connection, it is recommended that the possibility be explored of having this work done by the Civil Service Secretariat or another entity, considering also the various administrative levels at which public-sector collective bargaining processes can take place.

6. The regulatory framework of the “collective agreement” should be expressly established, in order to define its objective, parameters, and general scope of application;

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strengthen the certification process; and determine administrative features that give validity to each bargaining instance.

Thus, for example, as pointed out in the expository part of this report, partial certifications are not specifically governed by law. In this regard, it is recommended that a possible legislative reform be considered, in light of experiences such as Argentina’s, in which it is actually possible to opt for partial certifications as a means of moving forward in implementing collective agreements, postponing until later those on which there was serious disagreement or conflict.

7. Another matter to consider in a possible legislative reform of collective bargaining in the public sector is the precision of the administrative act giving legal effect to the collective agreement, which tends to be imprecise, as pointed out in the expository part of this report. In this connection, it is recommended that a single administrative act be established for all public-sector collective bargaining processes, which would provide certainty about their validity and guarantee that they are properly implemented. It is also recommended that the administrative act to renew collective agreements be clarified so that their duration and validity are expressly established, without prejudice to application of the principle of extended validity [*ultra actividad*].

Respect for Framework and Sectoral Agreements

8. As indicated in previous paragraphs, this instrument, i.e., the act recording the agreements and scope of the general bargaining process, plays a major role at the time of their implementation.

Accordingly, it is recommended that efforts be made to move toward a consensus-based Framework Convention model that can contain provisions common to all agreements and serve as a basis for all other possible agreements. Such a model would address general topics applicable to all collective agreements, leaving very specific matters to be dealt

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with in subsequent collective bargaining processes, whether at the branch, staff, or entity level.

9. It is recommended that consideration be given to the possibility of concluding framework agreements that would take account of differences in the sectors of implementation and the nature of the entities. These sectoral agreements would be part of the General Framework Agreement and would consider specific aspects. For example, working conditions in the mining or the energy sector are not the same as those in the agricultural or the services sector and, in light of the nature of the entities, certain areas must be considered, such as jurisdiction, size, and nature of the service provided. With regard to jurisdiction, it is recommended that sectoral agreements be considered for national and subnational government entities; as concerns size, it is recommended that such matters as the number of workers in an entity and the budget amount administered be considered; and with respect to the service provided, it is recommended that differences among governing and regulatory agencies, public service entities, and public enterprises be considered.

In keeping with this suggested classification, it is recommended that homogeneities be established among public entities to facilitate the adoption of specific framework agreements that could address the different types of civil servants and afford opportunities for genuine collective bargaining between the parties involved.

10. To determine the content of the Framework Agreement, it is recommended that account be taken of the minimum legal requirements established in other laws, for example, the Civil Service Statute, whose regulations are not subject to renegotiation unless they are to be improved upon. Moreover, consideration must be given to existing normative gaps and to areas subject to negotiation that must be expressed in a general norm, as well as to differences in negotiable matters of a remunerative and non-remunerative nature. Without entering into a substantive analysis of Paraguay’s current legislation, it is recommended that a future framework agreement could contain such subject matters as: administrative career structures, salary-related aspects, evaluation

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criteria, bipartite interpretation committees (Finance, SFP, institution, and unions), and thematic areas (work environment, climate, etc.), some topics dealing with the organization of work in feasible areas (working day, excused absences, leave, vacations, bonuses, etc.), conflict resolution procedures, training, promotion procedures in those areas not regulated by law, mechanisms for well-being (internment, life insurance, lodging, etc.), and conditions required of workers to improve the quality of public services provided by public entities, among other areas

Other measures to promote the collective bargaining process in the public sector

11. It is recommended that the Civil Service Secretariat be strengthened as the governing body for public management policies. To date, it has also been responsible for certifying collective agreements in the public sector. To this end, efforts should be made inasmuch as possible to improve its public-sector collective bargaining skills, guaranteeing the staff working conditions that ensure their ongoing training, resources, dissemination of and training in legislation, etc.

12. It is recommended that institutional coordination among participants in collective bargaining processes be reinforced in order to harmonize roles and procedures. This coordination would necessarily have to be consistent with legal norms, which recognize the governing role of the executive branch in the process, exercised through the participation and leadership of the Civil Service Secretariat in collective bargaining processes in the public sector, as well as the participation of the Ministry of Finance and the authorities of the Ministry of Labor.

13. To shore up and enhance participation by actors in the public sector’s collective bargaining process, it is recommended that training programs in collective bargaining be carried out for all parties. The Civil Service Secretariat could play an important role in this regard that would strengthen its leadership and stewardship and would also help improve relations between public entities and labor unions as well as collective agreement bargaining processes.

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14. It is recommended that the practice of open meetings between officials of the Civil Service Secretariat and other entities, on the one hand, and labor union representatives, on the other, be continued, as an opportunity for discussing policies and helping to resolve situations of conflict that may originate in collective bargaining processes.

15. With a view to developing a strategy for reforming the public sector’s collective bargaining system, it is recommended that priority be attached to intervention sectors in which the fewest conflicts and the greatest clarity exist on matters such as the term of prior agreements, acquired rights, and more coherent specific labor regulations, among other sectors. To the extent concrete results are achieved, this will over time have a type of “snowball effect” that will extend to reform in other sectors or entities experiencing greater difficulties.

Salary considerations in Paraguay’s public sector

16. The Paraguayan Government and the Civil Service Secretariat deserve recognition and encouragement for their efforts to develop a new salary schedule for the public sector, which reorganizes public sector salaries, making the entire system more coherent and solving problems related to existing inequities and inequalities in the Paraguayan public administration, for example, the preponderance of additions to the base salary, among other things.

17. It is recommended that publicly known, calculable parameters be established for the payment of increased responsibility bonuses, administrative management bonuses, budget management bonuses, and occasional bonuses or other compensation, ensuring that budgetary funds are available for those payments and eliminating their discretionary component. These matters were considered as an initiative for the new salary schedule in the 2015 Personnel Annex.

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18. It is recommended that a closer relationship be established between personnel evaluation processes and remuneration, in order to create positive incentives for achieving institutional and state goals of the Paraguayan public administration. Accordingly, it is suggested that account be taken of the experiences of other countries, like Chile, where significant progress has been made on the matter resulting in the improved provision of public services.

19. It is recommended that consideration be given to the possibility of establishing separate salary systems for senior government management, which would reflect performance and achievement of goals, among other matters, and would also establish parity with private-sector personnel.

20. It is recommended that coordination be improved between the Ministry of Finance, which is responsible for the government’s budget cycle, and the Civil Service Secretariat, which is responsible for national public management policies. To this end, it is recommended that regular channels of coordination be established in the budget preparation process and in the budget’s negotiation in the Congress of this Republic. On the latter point, mention should be made of the experiences of other countries, like Chile and Peru, in which, by constitutional mandate, legislators are not able to approve additional funding for the General Budget of the Republic, as a result of which they are unable to make specific changes that would alter the meaning and coherence of the budget as a whole, especially the section on remuneration.

21. It is recommended that the respective definitions used in the different administrative and budgetary acts be based on a consistent normative framework and be widely known to the public and provide legal certainty when used in a variable context, during the respective collective bargaining processes of public institutions.

22. It is recommended that diverse types of incentives, not necessarily related to remuneration, be created and widely used, to improve the performance of public servants and public administrations in general. For example, public recognition, compensatory

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days off for work on non-business days, specific training courses, among other incentives, are forms of recognition that can help improve job performance.

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ANNEX

Agenda of the On-site Visit to the City of Asunción, Paraguay

DAY and DATE	MEETING	Time and place
Wednesday 10/29/2014	Protocolary welcome in the OAS offices Emilse Serafini and Gloria Benítez.	9:00–10:00 a.m.
	Presentation by the Mission – MECIGEP Minister Humberto Peralta, OAS Mission	11:30 a.m.–2:00 p.m. INAPP
	Social dialogue panel with union organizations OAS – SFP Minister, with Álvaro García Hurtado PRESS: PARAGUAYAN TV	2:30–5:00 p.m. Executive Room Hotel Granados Park
	Evaluation of the panel and programming OAS – SFP Minister, with Alvaro García Hurtado	5:00–6:00 p.m. Executive Room Hotel Granados Park
Thursday 10/30/2014	Analysis and assessment of CCCTs in the public sector OAS Mission – Carolina Lebrón and Virginia Ayala of the Office of the Director General for Legal Affairs of the SFP	8:00 a.m.–5:00 p.m. INAPP
Friday 10/31/2014	Analysis and conclusions of the Mission OAS Mission	8:00 a.m.–1:00 p.m. INAPP
	Meeting with the Executive Board OAS Mission – SFP Mission – SFP Executive Board	2:30–5:00 p.m.