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PILOT REVIEW PROGRAMME: ARGENTINA

Review of the Implementation of Articles 5, 15, 16, 17, 25, 46 paragraphs 9 and 13, 52 and 53 of the United Nations Convention against Corruption

Reviewing Countries: Peru and United States of America

A. Introduction

Article 63 of the United Nations Convention against Corruption (UNCAC) establishes a Conference of the States Parties with a mandate to, inter alia, promote and review the implementation of the Convention. In accordance with article 63 paragraph 7, the Conference shall establish, if it deems necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

At its first session, held in Jordan in December 2006, the Conference of the States Parties agreed that it was necessary to establish an appropriate and effective mechanism to assist in the review of the implementation of the Convention (resolution 1/1). The Conference established an open-ended intergovernmental expert group to make recommendations to the Conference on the appropriate mechanism, which should allow the Conference to discharge fully and efficiently its mandates, in particular with respect to taking stock of States' efforts to implement the Convention. The Conference also requested the Secretariat to assist parties in their efforts to collect and provide information on their self-assessment and their analysis of implementation efforts and to report on those efforts to the Conference. In addition, several countries already during the session of the Conference expressed their readiness to support on an interim basis a review mechanism which would combine the self-assessment component with a review process supported by the Secretariat.

The "Pilot Review Programme", of which this report forms part of, was established to offer adequate opportunity to test possible means for implementation review of the Convention, with the overall objective to evaluate efficiency and effectiveness of the tested mechanism(s) and to provide to the Conference of the States Parties information on lessons learnt and experience acquired, thus enabling the Conference to make informed decisions on the establishment of the appropriate mechanism for reviewing the implementation of the Convention. The Pilot Programme is an interim measure to help fine-tune the course of action. It is strictly voluntary and limited in scope and time.

The methodology used under the Pilot Review Programme was to conduct a limited review of the implementation of UNCAC in the participating countries using a combined self-assessment / group / expert review method as possible mechanism(s) for reviewing the implementation of the Convention. Throughout the review process, members of the Group engage with the individual country in an active dialogue, discussing preliminary findings and requesting additional information. Where requested, country visits are conducted to assist in undertaking the self-assessments and/or preparing the recommendations. The teams conducting the country visits will be composed of experts from two prior agreed upon countries from the Group and a member of the Secretariat.

The scope of review is articles: 5 (preventive anti-corruption policies and practices); 15 (bribery of national public officials); 16 (bribery of foreign public officials and officials of public international organizations); 17 (embezzlement, misappropriation or other diversion of property by a public official); 25 (obstruction of justice); 46 (mutual legal assistance), particularly paragraphs 13 and 9; 52 (prevention and detection of transfers of proceeds of crime); and 53 (measures for direct recovery of property).

B. Process

The following review of Argentina's implementation of the United Nations Convention against Corruption is based on the self assessment report received from Argentina on 15 August 2007 (additional information on article 46 para. 9 on 23 August 2007), the outcome of the active dialogue between the experts on a number of occasions between October 2007 and March 2009 and an on-site visit held from 20 to 22 February 2008 (for a chronology of events, a list of participants and an agenda of the country visit cf. Annexes I.-III.)

C. Executive summary

Argentina has largely implemented the requirements in accordance with the eight Articles under the scope of the Pilot Review Programme.

Argentina has taken all measures required for the full implementation of articles 5; 16 article 1; 25; and 46 para. 9, 52 and 53.

For the full implementation of the mandatory articles of the Convention under the scope of the Pilot Review Programme, the review concluded with a number of observations and recommendations.

With regard to the passive bribery provisions in the criminal code, it was recommended to amend the Criminal Code in order to cover the promising or accepting of advantages for a third party, and to give further consideration to include the "soliciting" of a bribe and to clarifying whether the whole range of "undue advantages" is covered (article 15). Further, the legislation on embezzlement (article 17) should be amended in a way that it covers expressly the use public goods, without appropriation of them. With regard to article 53 (a) it is expected that, while legislation is not explicitly addressing the issue, it is expected that its full implementation will be established in practice.

With regard to the fight against corruption in general, and the implementation of the non-mandatory provisions of the Convention under the scope of the pilot programme, the review team made the following recommendations:

It was noted that the National Commission on Public Ethics foreseen in Law No. 25.188 has not been established yet, and it was recommended to establish the Commission and/or establish institutions to follow up on public ethics regulations in all branches (article 5). It was further recommended that Argentina may wish to consider to develop a systematic approach to ethics training and education in transparency issues for all branches of the public sector. Measures to implement the non-mandatory provision of article 16, para. 2 of the Convention may be considered. The methodologies of identifying domestic PEPs at all levels of the federal administration, and foreign PEPs, could be enhanced; and Argentina may wish to consider strengthening its Financial Intelligence Unit through providing it, in appropriate cases, with access to the confidential part of asset declarations.

B. Implementation of the United Nations Convention against Corruption

1. Ratification of the Convention

Argentina signed the Convention on 10 December 2003.

Article 75 No. 22 of the Argentinean Constitution states that international Conventions concluded by the President need the approbation of the Congress. The act approving the Convention (Ley No. 26.097), was passed by the Congress on 10 May 2006 and promulgated on 6 June 2006.

The instrument of ratification was deposited on 28 August 2006.

2. The Argentinean legal system

Status of the Convention

Article 75 No. 22 of the Argentinean Constitution states that international Conventions, once they have come into effect, rank above national legislation and override any other contrary provision of

domestic law. The Congress can further, with the votes of two thirds of both Chambers, decide to give an international convention on human rights constitutional rank, and the Congress has done so with a number of international instruments on human rights (article 75 No. 22, para. 2 and 3).

Article 31 establishes the legal status of treaties within the Argentinean legal system: "This Constitution, the laws of the Nation enacted by Congress in pursuance thereof, and treaties with foreign powers, are the supreme law of the Nation (...)", resulting that UNCAC has the status of "law of the Nation". Together with Article 75 No. 22, this provision states that UNCAC is an integral part of Argentinean domestic law and ranks ranking below the Constitution, but above national legislation.

According to the Argentinean Supreme Court, domestic legislation which conflicts or is deficient with respect to a treaty can be replaced by a direct application of the treaty, provided that the treaty provisions have the sufficient level of detail and specificity required for immediate application (Supreme Court Decision, July 7-1992 – *Ekmekdjian, Michel A. v. Sofovich, Gerardo et al*.).[1]

Argentina issued a number of laws for the implementation of the Inter-American Convention against Corruption, the OECD Convention on Combating Bribery Foreign Public Officials in International Business Transactions, which are relevant for the United Nations Convention against Corruption. A central regulation is Law No. 25.188 (Law on Ethics in the Exercise of Public Office) from 1 November 1999, which entered into force on 10 November 1999. This legislation amended the Argentine Criminal Code and established measures for the prevention of corruption. Further, Argentina adopted the Statute on International Cooperation in Criminal Matters on 18 December 1996, the Statute on Money Laundering (Law No. 25.246) on 13 April 2000, Decree 41/99 (Código de Etica de la Función Pública) and Decree 152/97 (establishment of the National Office for Public Ethics, later replaced by the Anticorruption Office which was established by article 13 of Law No. 25233.

The criminal process

The Argentine federal criminal process before the federal judiciary is divided into two parts:

1) Investigation phase (*Instrucción*) (2nd book of the Criminal Procedure Code, Art. 174-353: Reports on allegations of crime can be submitted by any citizen, both formally and informally, to the police, prosecutors and judges (186, 188 and 195 Criminal Code). Public officials are obliged to report on allegations of which they get knowledge while on duty (art. 177 Criminal Procedure Code). Prosecution of corruption is mandatory and conducted *ex officio* (art. 71-73 Criminal Code).
The investigation on alleged crimes is conducted by an investigating judge (*juez instructor*) (Art. 26 of the Criminal Procedure Code (Law No. 23.984)), supported by the Prosecutors' Office (*Ministerio Público*) (Art. 198 CPC). The investigating judge has discretion to transfer investigation competencies to the prosecutor (Art. 196 CPC). The files of the investigation phase are made public to the parties, but are kept confidential to the public.

2) Trial phase (*Juicio/Debate*, 3rd book of the Criminal Procedure Code, Art. 354ss.): The second phase of the process is the trial phase, which is conducted orally and in public (art. 363 Criminal Procedure Code). It takes place before the Court (*tribunal*) and ends with a judgment of the court (*Sentencia*, art. 396). The court is not bound by the scope and content of the accusation (art. 401).

Argentina is successively moving from the inquisitorial to the accusatorial process. On a provincial level, a number of the 16 federal jurisdictions and 23 provincial jurisdictions have already adopted an accusatorial system. On the national level, a project for the reform of the criminal procedure code is

[1] Article 18 of the Argentinean Constitution states that criminal sanctions can only be applied through a judgment based on proceeding legislation (*juicio previo fundado en ley anterior*).

under development, which will transform the national criminal procedure into an accusatorial system. Further, the articulations of the defense will be addressed in the reform. The commission mandated by the Ministry of Justice with the reform has published a first draft.

Further multilateral anti-corruption treaties

Prior to UNCAC, Argentina ratified the Inter-American against Corruption (9 October 1997) and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (8 February 2001).

Argentina completed the first evaluation round under the Inter-American Convention on 13 February 2003. Recommendations included the strengthening of implementation of laws and regulatory systems concerning conflicts of interest so that they cover all government officials and employees and permit practical and effective application of the public ethics system, including through 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. It was further recommended to strengthen the internal and external control systems and utilize effectively the information generated during audits, to strengthen the mechanisms that Argentina has for requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, to ensure better coordination and cooperation among the Attorney General's Office, Administrative Investigations Office, Inspector General, Anticorruption Office, Auditor General and Congressional Committees, and to reform and strengthen the oversight bodies. Further, the institution of legal norms supporting public access to government information and to provide an opportunity for public consultation prior to the final approval of legal norms were addressed, as well as the strengthening and further implementation of mechanisms that encourage civil society and nongovernmental organizations to participate in public administration and its monitoring.

In second evaluation round, completed on 15 December 2006, it was recommended to strengthen the systems for hiring public servants in the federal Executive, Legislative and Judicial Branches, , to strengthen the systems for government procurement of goods and services in the federal Executive Branch; to strengthen the systems for protecting public servants and private citizens who in good faith report acts of corruption. Further, the following legislative amendments were recommended: (a) Modify article 256 of the Criminal Code by the inclusion of the elements "solicitation" and "acceptance", as well as "favors" and "advantages"; modify article 257 of the Criminal Code, amended by Article 33 of Law 25,188, by the inclusion of the elements "solicitation" and "acceptance", as well as "favors" and "advantages", and modify article 258 of the Criminal Code, modified by Article 34 of Law 25,188, by the inclusion of the elements "favors", "promises", or "advantages".

Argentina completed the first round of evaluation under the OECD Convention in April 2001. The review team noted that Argentine legislation did not criminalize the bribery of officials of international organizations. They further noted that Article 258 bis did not cover the case where the briber's intent is to induce the public official's act/omission which is not within his/ her competence, but is in relation thereto. The reviewers expressed their concern on the fact that Argentina's legal system did not provide for criminal liability of legal persons for the offence of bribery; however, they recognized that Argentinean law contained several legal instruments that enabled it to impose administrative sanctions on legal persons involved in the foreign bribery offence. The working group further noted, that Argentina did not establish jurisdiction over its nationals who commit bribery abroad unless they are Argentine public officials; while this was considered in conformity with the requirements of the Convention, it was recommended that this issue should be examined on a

horizontal basis in Phase 2. With regard to tax deductibility, the group expressed some concerns that bribes may be deducted if disguised as regular business expenses and expenditures, and that it remained uncertain how it would be determined in practice whether a certain expenditure is legitimate or a bribe.

In the second evaluation round, completed in June 2008, the working group expressed two fundamental concerns: First, that Argentina had not adopted liability of legal persons for foreign bribery, and second, that for a number of reasons it appeared that Argentina was rarely able to effectively investigate and prosecute serious economic crimes to a resolution on the merits, in particular because of lengthy delays in getting to a decision due, *inter alia*, to the applicable rules of procedural law. The evaluation report further contains recommendations on awareness-raising and prevention-related activities, to detection and reporting, investigation and prosecution of foreign bribery, the offence of foreign bribery, jurisdiction, the limitation period, mutual legal assistance, sanctions, accounting, auditing and internal controls relating to the fight against foreign bribery, related tax offences and related money-laundering offences.

3. Review of implementation of selected articles

3.1. Article 5

> ***Preventive anti-corruption policies and practices***
>
> "1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
>
> "2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
>
> "3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
>
> "4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption."

a. Summary of the main requirements

In accordance with article 5, States parties are required: (a) To develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs (para. 1); and (b) To collaborate with each other and relevant international and regional bodies for the pursuit of the above goals (para. 4). Article 5 does not introduce specific legislative requirements, but rather mandates the commitment of States parties to develop and maintain a wide range of measures and policies for the prevention of corruption, in accordance with the fundamental principles of their legal system. Under article 5, paragraph 1, the requirement is to develop, implement and maintain effective, coordinated measures that: (a) promote the participation of the wider society in anti-corruption activities; and (b) reflect the principles of: (i) the rule of law; (ii) proper management of public affairs and public property; (iii) integrity; (iv) transparency; and (v) accountability. These general aims are to be

pursued through a range of mandatory and optional measures outlined in subsequent articles of the Convention. Article 5, paragraph 4, requires that, in the pursuit of these aims, as well as of general prevention and evaluation of implemented anti-corruption measures, States parties collaborate with each other as well as with relevant international and regional organizations, as appropriate and in accordance with their fundamental principles of law.

b. Findings and observations of the review team concerning article 5

Argentina has a number of programmes and measures for the prevention of corruption in place and designated various institutions for different aspects of the fight against corruption.

1. Programmes and Measures for the Prevention of Corruption

The Law on Ethics in the Exercise of Public Office (Law No. 25.188) is the comprehensive regulation on public ethics and applies to the entire national public administration in its three branches. It contains regulations on ethical behavior, asset declarations and conflict of interest, and establishes the pertaining criminal offences. This law is further the basis for ethics codes for the public sector. The Ethics Code for Public Officials is contained in Decree 41/99 which was modified to a large degree by Law 25.188; it contains regulations on matters such as recruitment and promotions, procurement, publicity of lobbying and public hearings. Ethics Codes for the legislative and judicial branch are under development, the latter following the Bangalore Principles.

The National Commission on Public Ethics is foreseen as the body responsible for the enforcement of the public ethic regulations. Article 23 of law 25.188 foresees it to be established as an independent body of the Congress. However, the commission has not been established. The executive and the judicial branch have designated institutions to follow-up on public ethics regulations. In the executive branch, the institution responsible for the follow-up on all legislation and regulations on public ethics in the national public administration is the Anticorruption Office, according to Decree 164/99 and Resolution 17/00 of the Ministry of Justice. For the judicial branch, Resolution 734/07 of the Magistrates Council establishes the competence of this body for reception and archiving the asset declarations in the judiciary.

Argentina developed a Draft Plan of Action for the Implementation of the Recommendations by the Committee of Experts of the Mechanism for the Follow-up on the Implementation of the Inter-American Convention against Corruption (MESICIC), which was published in March 2006 and circulated to the MESICIC Committee of Experts. The “Plan Provincias” is a policy instrument with the purpose of furnishing assistance and cooperation for the implementation of the Inter-American Convention, other international instruments, including UNCAC, and anti-corruption policies by provincial and municipal governments. Workshops were held in the provinces on the implementation of the plan.[2]

Access of information is regulated in Decree 1172/2003, applicable to the national executive branch, which aims at enhancing transparency, strengthen citizens’ access to information and participation, accountability and efficiency of the public administration. According to this decree, the high levels of

2 Detailed information on the plan can be found at the web site of the Anticorruption office: http://www.anticorrupcion.gov.ar/politicas_09.asp (general information on the plan), semiannual / annual reports on the activities of the Office: http://www.anticorrupcion.gov.ar/gestion.asp. Cf. also to the progress reports of the MESISIC: http://www.oas.org/juridico/spanish/mec_inf_avance.htm.

administration are subject to public auditing, carried out through public hearings. The decree further contains provisions on the participatory development of norms, which is conducted upon request of any citizen through submission of opinions and suggestions within a certain time after the publishing in the official gazette. The decree further establishes a procedure through which all natural and legal persons can request access, within 10 days, to all documents produced in the national administration, without any specific requirement of legitimate interest. Exceptions include not only classified information and such information that can affect the legitimate rights of third persons, but also information dedicated to regulate or supervise financial institutions, or to the prevention or investigation of the legalization of proceeds of crime (the latter serves the protection of ongoing investigations) (annex VII, General Regulation on the Access to Public Information for the National Executive Power, Art. 16.)

According to the information received by the review team, good practices and lessons learned in the prevention of corruption could be shared in a more systematic way.

2. Institutions

The Argentinean State has created and/or designated a number of institutions responsible for the fight against corruption.

a) The Anti-Corruption Office (*Oficina Anticorrupción*) was created in 1999 (Ley 25.233 of 10 December 1999) and restructured in 2005 (Decreto 163/2005) and in 2007 (Decreto 466/2007). It is an independent body under the Ministry of Justice, Security and Human Rights. Its head has the rank of a State Secretary. Although the work of the Office is broadly discussed and reflected in the public discussion on corruption cases and policies, it is a relatively small body, composed of 90 staff members, and has specific, targeted responsibilities. Those responsibilities are assigned to its two directorates – with the rank of State Under-secretaries - for "Planning of Transparency Policies" and "Investigation".

The Directorate for the Planning of Transparency Policies is responsible for the prevention of corruption, in particular the elaboration and coordination of corruption prevention programmes within the national public sector and assistance to the organs of the national public sector to implement them. The Directorate further assumes a coordinative role for the implementation of international Conventions and assesses the institutions of the public sector in order to design and implement preventive policies. It further has the responsibilities for capacity-building programmes, including e-learning programmes, on corruption. However, it was noted that a systematic approach on integrity training for all branches of the administration was not developed yet.

The Directorate for Investigation is responsible for the preliminary investigation of criminal corruption cases, which are then brought to the attention of the prosecutor's office. It further conducts internal investigations for the control of the bodies of the national public administration, and suggests follow-up measures to the institutions based on the results of the investigations. The Directorate for Investigation has the right to take the initiative for the investigation of cases, which are brought to its attention through a broad range of different sources; these include *ex officio* reports of corruption allegations by other agencies (in particular the Auditor General's Office), reporting by private persons, and press and media. Investigations on the basis of anonymous reports can be transferred to the judiciary as evidence if they are substantiated, grave, and there is a reason for the request for anonymity. The Directorate for Investigation takes up cases based on their economic, institutional and/or social significance (established in the document "Action Plan and Significance Criteria" of the Anti-Corruption Office from March 2001). As to its competences, the office has the same investigation competences as the *Fiscal Nacional de Investigaciones Administrativas*, (Art. 45 Ley 24.946 and Art. 13 of Ley 25.233). It can, inter alia, take sound and film recordings of public places, but is not entitled to the tracing of phones or recordings in private

rooms; it can request bank information but does not have direct access to tax information. In order to avoid duplication, the Anti-Corruption Office is in permanent contact with the judicial authorities. Where appropriate, joint case strategies with the prosecution authorities are developed.

The Anti-Corruption Office is further entitled to act as a plaintiff (*querellante*, art. 82 Criminal Procedure Code) in corruption cases before the courts, thus directly intervening in the proceedings. Since 2000 the Anti-Corruption Office has investigated 400-500 cases, mostly such of fraud and incompatibility, more rarely of bribery. 83 cases are currently being pursued by the Anti-Corruption Office as plaintiff, originating from the years 2000-2008. However, it was reported that no final judgment was received yet in any of the cases.

b) The Auditor General's Office (*Auditoría General de la Nación*) is an assistant body to the Congress and as such part of the legislative branch. As set out in Article 85 of the Constitution, it is the institution for external control of the national executive branches assets, its economic and financial operations and its general performance. To this end, it audits the legality of all activities of the centralized and decentralized administration of the national executive. The judicial power is not subject to the auditing by the Auditor General's Office, however, the Supreme Court has requested a voluntary cooperation with the Office for the external auditing of its procurement operations.

The Auditor General's Office has no competence for the criminal investigation of a case, such as direct access to banking information. If allegations of criminal conduct are found, the office presents them to the Anti-Corruption Office or the judiciary for further investigation and prosecution. The Office does further not have the right to follow up as a plaintiff in the criminal process.

Further to its control functions, the Office issues basic accounting standards in line with international guidelines.

A Memorandum of Understanding with the Financial Intelligence Unit is under development.

The Auditor General's Office has a budget of $20 million and 720 officials – a number that has been rising throughout the last years from a number of 400 officials. It was reported that the current state of resources, both financial and personnel, was challenging with regard to upcoming new topics, such as foreign loans, and to additional voluntary audits.

c) The Comptroller-General's Office (*Sindicatura General de la Nación*, SIGEN, established on the basis of Law No. 24.156) is the institution responsible for internal control of the Executive Branch. Further to its staff in its headquarters, the institution works through decentralized officers seconded to the national administration, in particular the Ministries. The Office has further concluded cooperation agreements with the accounting offices of the provinces (*Tribunales de Cuenta*). In case irregularities are found, a report is submitted to either the prosecutor's office, or the Anti-Corruption Office, or both. The SIGEN has a staff of 350 persons, most of them accountants.

d) The National Office for Administrative Investigations of the Prosecutor-General's Office (*Fiscalía de Investigaciones Administrativas del Ministerio Público de la Nación,* FIA) is a specialized branch of the Prosecutor General's Office (Ministerio Público). It is responsible for the investigation of cases of alleged misconduct within the federal executive power, the companies and other entities in which the State owns shares, and the institutions and associations that operate on national public resources; it does not regularly assume the prosecution of those cases. The Office exercises discretion over the initiation of investigations. Depending on the results of its investigations, it reports the allegations to the police and/or the regular prosecutors. Only in case the judgment of prosecutors differs and no prosecution is initiated, the Office has the right to bring the case itself.

This does not preclude the participation of the Anti-Corruption Office as a plaintiff. The Office has regular investigation competences, including, subject to judicial decision, the right to conduct undercover investigations. It was reported that the proceedings for the initiation of such operations were lengthy, which can weaken their effectiveness.

e) The Financial Intelligence Unit (*Unidad de Información Financiera*, *UIF*) was founded in 2000 through Article 5 of Law No. 25.246 as an autonomous body under the Ministry of Justice and Human Rights. Its organizational structure is established in Decree 1038/2003. The FIU is responsible for the analysis and transmission of financial information for the prevention and repression of the laundering of funds related to the offences listed in Article 6 of the same law, in particular for the analysis of suspicious transactions reports. The relevant offences include bribery and improper lobbying (art. 256-259 CC), misappropriation of Pubic Funds (260-264 CC), illegal demands (266-268 CC) and illegal enrichment of public officials and employees (Articles 268 (1)-(3) CC). The FIU has no access to the restricted part of asset declarations (cf. below under art. 52 para. 5 and 6). It was also reported that the process to receive tax and real estate information was considered cumbersome and difficult.

Summary findings Article 5: Argentina has adopted the measures required in accordance with UNCAC Article 5, and is encouraged to continue implementing policies for the prevention of corruption. It was noticed that the National Commission on Public Ethics foreseen in Law No. 25.188 was not established yet.

3.2 Article 15

> ***Bribery of national public officials***
>
> "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
>
> "(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
>
> "(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

a. Summary of the main requirements

In accordance with article 15, States parties must establish two offences: active and passive bribery of national public officials:

States parties must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (art. 15, subparagraph (a))[3]. The required elements of this

[3] It is reiterated that for the purposes of the Convention, with the exception of some measures under chapter II, "public official" is defined in article 2, subparagraph *(a)*. An interpretative note indicates that, for the purpose of defining "public official", each State party shall determine who is a member of the categories mentioned in

offence are those of promising, offering or actually giving something to a public official. The offence must cover instances where no gift or other tangible item is offered. Thus, an undue advantage may be something tangible or intangible, whether pecuniary or non-pecuniary. The undue advantage does not have to be given immediately or directly to a public official of the State. It may be promised, offered or given directly or indirectly. A gift, concession or other advantage may be given to some other person, such as a relative or political organization. Some national legislation might cover the promise and offer under provisions regarding the attempt to commit bribery. When this is not the case, it will be necessary to specifically cover promising (which implies an agreement between the bribe giver and the bribe taker) and offering (which does not imply the agreement of the prospective bribe taker). The undue advantage or bribe must be linked to the official's duties.

States parties must establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a public official, directly or indirectly,of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his
or her official duties (art.15, subpara. *(b)*). This offence is the passive version of the first offence. The required elements are soliciting or accepting the bribe. The link with the influence on official conduct must also be established. As with the previous offence, the undue advantage may be for the official or some other person or entity. The solicitation or acceptance must be by the public official or through an intermediary, that is, directly or indirectly. The mental or subjective element is only that of intending to solicit or accept the undue advantage for the purpose of altering one's conduct in the course of official duties[4].

b. Findings and observations of the review team concerning article 15

Argentina has a legal regime covering both active and passive bribery of public servants and government officials in its articles 256 to 259 Criminal Code. The law draws a distinction between active and passive bribery, and within these categories between bribery of a public official (art. 256, 258 s. 1) or bribery of the magistrate of the judiciary branch or the Prosecutor-General's Office (art. 257, 258 s. 2). Further, the law makes a distinction between bribery with the purpose of any action or omission by the public official or magistrate (art. 256, 257, 258), and the mere acceptance or giving of a gift, without direct connection to any specific action or omission by the public official or magistrate (art. 259).

a) Active bribery
The active bribery of public officials, as defined by subparagraph (a) of Article 15 of the UNCAC, is established as a criminal offence in Article 258 and Article 259 of the Criminal Code. These provisions address "any person who personally or through an intermediary gives or offers any gift for the purpose" of the official carrying out, delaying, or omitting anything in relation to his duties. If the gift is given to a magistrate of the Judiciary Branch or the State Attorney's Office, with the purpose of such magistrate issuing, decreeing, delaying or omitting any resolution, sentence or judgment, the law provides for increased punishment. Article 259 criminalizes the giving and offering of gifts without any further purpose, with a lower sanction.

b) Passive bribery
The passive bribery of public officials, as defined by subparagraph (b) of Article 15 of the UNCAC, is established as a criminal offence in Article 256 and 257 of the Criminal Code. Article 256 covers "any

subparagraph (a) (i) of article 2 and how each of those categories is applied (A/58/422/Add.1, para. 4).

[4] see art. 28, which provides that "Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances"

public official who personally or by means of an intermediary, receives money or any other gift, or directly or indirectly accepts promise of such in order to carry out, delay, or not to do something in relation to his duties," while Article 257 criminalizes the same behavior committed by magistrates of the Judiciary Branch or the State Attorney's Office "in order to issue, decree, delay or omit any resolution, sentence or judgment concerning any matter under his jurisdiction". The law also provides for the public official or magistrate to be punished by disqualification from office. Article 259 criminalizes the accepting of gifts without purpose of carrying out or omitting any act, with a lower sanction.

Article 266 addresses the conduct of a public official who "by the illegal abuse of his office, unduly requests, demands or forces the payment or delivery, personally or through an intermediary, of any tax, fee or gift, or charges any higher fee than he is authorized. The maximum punishment for such behavior is lower than for passive bribery with the purpose of action or omission, but higher than for the mere acceptance of a gift. Article 268 extends the punishment to a public official who uses to his own advantage or the advantage of a third party the wrongful acts described the two preceding articles (including article 266).

The terms "public official" and "civil servant" as used in the Argentinean Criminal Code refer "to any person who temporarily or permanently discharges public functions, whether as a result of popular election or appointment by the competent authority" (art. 77 Criminal Code).

This statutory framework does not expressly cover benefits given to a third party, such as a relative or political party, as foreseen in article 15 UNCAC.

With regard to passive bribery, the wording of the relevant provisions focused on the accepting and receiving of the bribe. Discussions address the issue whether the extortion of a bribe is covered by the wording "accepting" or "receiving". It is recommended to give further consideration to clarifying these cases by inserting in the legislation a verb such as "soliciting" of a bribe.

With regard to the "undue advantage", the wording of the provisions focuses on the transfer, i.e. the "giving or offering" or "accepting / receiving" of the bribe. While some Argentinean authorities, in particular the FIA, stressed that the concept should be broadened and centered of the "undue" nature of the advantage and not on the concrete transfer, others (OA) reported that the concept of bribe or gift comprised any advantage that was quantifiable, which was considered sufficiently broad since nearly everything was considered quantifiable. It is recommended to give further consideration to this issue, taking into account relevant case practice.

Argentinean authorities stated that cases in which a public official demands a bribe for a conduct which he pretends to control but which is in fact outside of their competence or reach ("rainmaking") are covered by the fraud provisions of Argentinean criminal law. However, it was reported that, although this conduct was considered a problem, convictions were very rare.

Corruption cases are known to be particularly complex, comprising often more than one accused. While Argentinean authorities stated that a final judgment can be achieved in other matters within 2 years, the complexity and procedural challenges of corruption cases were considered one of the reasons for a longer duration of the investigation phase in corruption cases (frequently 6-8 years). Argentinean authorities expressed their concern about the delays of investigation proceedings, presuming that these delays may result in loss of trust in the judicial system.

Summary findings Article 15: Argentina has adopted most of the measures required in accordance with UNCAC Article 15. The promising or accepting of advantages for a third party are not yet covered by the relevant provisions of the Criminal Code.

Further consideration should be given to including the "soliciting" of a bribe into the provisions of passive bribery and to clarifying whether the whole range of "undue advantages" is covered by the bribery provisions.

3.3 Article 16

> ***Bribery of foreign public officials and officials of public international organizations***
>
> "1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
>
> "2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

a. Summary of the main requirements

Under article 16, paragraph 1, States must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business. Article 16 does not require that bribery of foreign public officials constitute an offence under the domestic law of the concerned foreign country.[5]

Article 16, paragraph 2, requires that States parties consider establishing as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. This is the mirror provision of article 15, subparagraph *(b),* which mandates the criminalization of passive bribery of national public officials.

[5] As noted in chapter I of the Convention against Corruption, "foreign public official" is defined as "any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise" (art. 2, subpara. *(b)*). The "foreign country" can be any other country, that is, it does not have to be a State party. State parties' domestic legislation must cover the definition of "foreign public official" given in article 2, subparagraph *(b)* of the Convention, as it would not be adequate to consider that foreign public officials are public officials as defined under the legislation of the foreign country concerned. An official of a public international organization is defined as "an international civil servant or any person who is authorized by such an organization to act on behalf of that organization" (art. 2, subpara. *(c)*).

b. Findings and observations of the review team concerning article 16

With regard to the active bribery of foreign public officials and officials of international public organizations as described in Article 16 (1) of the Convention, Argentina has a relevant provision in Article 258 (b) Criminal Code. This provision states that "any person who offers or gives a public official from a foreign State or from an international public organization, personally or through an intermediary, money or any object of pecuniary value or other benefits such as gifts, favors, promises or benefits, for his own benefit or for the benefit of a third party, for the purpose of having such official do or not do an act related to his office or to use the influence derived from the office he holds in an economic, financial or commercial transaction", shall be punished.

This provision includes all pecuniary advantages, including the indirect advantages for the benefit of third parties. While the "offering" and "giving" of a bribe is the main conduct punishable under this offence, the mere promising of advantages is covered where the law states "or other benefits such as gifts, favors, promises or benefits".

The provision does not state that the advantage needs to be "undue". However, where the advantage is expressly permitted or required by the written law of the public official's country, an offence is not committed. When law does not mention the advantage, the offence is committed, even if the advantage is not explicitly illegal (OECD 1st Report on the Review of Implementation of the Convention and 1997 Recommendation).

The provision specifies that the purpose of the bribe is "having such official do or not do an act related to his office or to use the influence derived from the office he holds in an economic, financial or commercial transaction." This corresponds the purpose described in article 16, paragraph 1, which is a payment "in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business."

"Any person" in article 16 refers to natural persons, since Argentinean law does not establish the criminal liability of legal persons for bribery (different in money-laundering).

Argentina has not adopted measures to implement the non-mandatory provision of Article 16, paragraph 2, of the Convention.

Summary findings Article 16: Argentina has adopted the measures required in accordance with Article 16 para. 1 UNCAC.
Argentina has not adopted measures to implement the non-mandatory provision of article 16, para. 2.

3.4 Article 17

Embezzlement, misappropriation or other diversion of property by a public official

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position."

a. Summary of the main requirements

States parties must establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position. The required elements of the offence are the embezzlement, misappropriation or other diversion[6] by public officials of items of value entrusted to them by virtue of their position. The offence must cover instances where these acts are for the benefit of the public officials or another person or entity. The items of value include any property, public or private funds or securities or any other thing of value. This article does not "require the prosecution of de minimis offences" (A/58/422/Add.1, para. 29).

b. Findings and observations of the review team concerning article 17

Argentina has established the embezzlement, misappropriation or other diversion of property by public officials in Section XI, Chapter VII of its Criminal Code, "Misappropriation of Public Funds (Articles 260-264).

The lightest punishment is foreseen in Article 260, which foresees punishment with disqualification for a public official who uses funds under his administration for a public use different than the one intended. Punishment with a fine is foreseen in the case in which the service for which the funds or property were intended was injured or impaired thereby.

Article 261 foresees imprisonment and complete disqualification for a public official who misappropriates funds under his administration or care, or which by reason of his office are due to collection, or the employment of services, for private benefit. Article 261 covers the public official who "by imprudence or negligence or by non-compliance with any regulation or duty of his office, gives to another person the opportunity to misappropriate any funds or property".

Article 262 provides an extension of the concept of "public official" as compared to the general definition in article 77. Following this provision, the offences of embezzlement are applicable to "any person who administers or takes care of any property belonging to any institution of public education or welfare, and also to any administrator or trustee or receiver of any funds appropriated which have been seized, confiscated, or deposited by any competent authority, although such funds or property belong to a private person".

The central term for the criminalized action is "misappropriation" and the "employment of services". It was noted that the term "misappropriation" does not cover the mere use, without appropriation, of goods or funds for private purposes, in case this does not fall under the concept of "services". In the Convention this is regulated under the category of "any other value".

Summary findings Article 17: Argentina has adopted most of the measures required in accordance with article 17 UNCAC, although the legislation should be amended or clarified in a way that it covers expressly the use of goods or funds, without appropriation, for private purposes.

[6] The term "diversion" is understood in some States to be distinct from "embezzlement" and "misappropriation", while in others "diversion" is intended to be covered by or is synonymous with those terms (A/58/422/Add.1, para. 30).

3.5 Article 25

Obstruction of justice
"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
"(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention; "(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official."

a. Summary of the main requirements

Under article 25, States must criminalize the use of inducement, threats or force in order to interfere with witnesses and officials whose role would be to produce accurate evidence and testimony. The first offence relates to efforts to influence potential witnesses and others in a position to provide the authorities with relevant evidence. States parties are required to criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to the commission of offences established in accordance with the Convention (art. 25(a)). The obligation is to criminalize the use both of corrupt means, such as bribery, and of coercive means, such as the use or threat of violence.

b. Findings and observations of the review team concerning article 25 (a) and (b)

The Argentinean Criminal Code addresses the obstruction of justice, as described in article 25 of the Convention, in a combination of various provisions.

1. *Use of inducement, threats or force to interfere with witnesses*

With regard to article 25 (a) of the Convention, the use of inducement, threats or force to interfere with witnesses,

a) Article 237 addresses the case of a person who uses intimidation or force against a person who is furnishing assistance at the request of a public official or in performance of a legal function in order to obtain from either of them the performance or omission of an act pertaining to their functions.

b) Article 92 in combination with Article 89-91 and Article 80 No. 7 Criminal Code covers the case in which a person inflicts various degrees of injuries to another person in order to obtain impunity for himself or another person or when he has not succeeded in achieving the intended purpose of another offence.

c) Article 149 *bis* is a general provision addressing those who use threats to alarm or terrify one or more persons in order to force another person to perform, not to perform or to tolerate some act against his will. Article 149 ter contains increased sanctions if the tretas were made with the purpose of any measure or granting of any concesión by any of the public powers.

d) Article 276 s. 2 covers the inducement of false testimony through bribery.

2. *Interference with actions of judicial or law enforcement officials*

For the interference with actions of judicial or law enforcement officials, a number of provisions in the Argentinean Criminal Code are relevant:

a) Article 237 covers the case of a person who uses intimidation or force against a public official in order to obtain from them the performance or omission of an act pertaining to their functions.

b) Article 92 in combination with Article 89-91 and Article 80 No. 7 covers the case where a person inflicts injuries (with different consequences) to another person in order to obtain impunity for himself or another person or when he has no succeeded in achieving the intended purpose of another offence.

c) Article 149 *bis* covers the case in which a person uses threats to alarm or terrify one or more persons in order to force another person to perform, not to perform or to tolerate some act against his will. Article 149 *ter* (a) foresees increased punishment for the case that the behavior has the purpose to secure some act or concession from any member of a public authority.

Summary findings Article 25: Argentina has adopted the measures required in accordance with article 25.

3.6 Article 46

Mutual legal assistance

"1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

"…"

"9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

"(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

"(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

"…".

"13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the

central Authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

"…"

a. Summary of the main requirements

The Convention against Corruption requires States parties: (a) To ensure the widest measure of mutual legal assistance for the purposes listed in article 46, paragraph 3, in investigations, prosecutions, judicial proceedings and asset confiscation and recovery in relation to corruption offences (art. 46, para. 1); (b) To provide for mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences for which a legal entity may be held liable under article 26 (art. 46, para. 2); (c) To ensure that mutual legal assistance is not refused by it on the grounds of bank secrecy (art. 46, para. 8); (d) To apply paragraphs 9 to 29 of article 46 to govern the modalities of mutual legal assistance in the absence of a mutual legal assistance treaty with another State party (art. 46, para. 7)

Article 46, paragraph 9, allows for the extension of mutual legal assistance in the absence of dual criminality, in pursuit of the goals of the Convention, including asset recovery. An important novelty is that States parties are required to render assistance if non-coercive measures are involved, even when dual criminality is absent, where consistent with the basic concepts of their legal system (art. 46, para. 9 *(b)*). An example of such a measure even in the absence of dual criminality is the exchange of information regarding the offence of bribery of foreign officials or officials of international organizations, when such cooperation is essential to bring corrupt officials to justice (see the interpretative note contained in document A/58/422/Add.1, para. 26, relating to art. 16, para. 2, of the Convention). Further, the Convention invites States parties to consider adopting measures as necessary to enable them to provide a wider scope of assistance pursuant to article 46 even in the absence of dual criminality (art. 46, para. 9 *(c*)). States parties need to review carefully existing laws, requirements and practice regarding dual criminality in mutual assistance. In some instances, new legislation may be required.

The UNCAC requires the designation of a central authority with the power to receive and execute or transmit mutual legal assistance requests to the competent authorities to handle it in each State party. The competent authorities may be different at different stages of the proceedings for which mutual legal assistance is requested. Article 46, paras. 13 and 14 requires States parties to notify the Secretary-General of the United Nations of their central authority designated for the purpose of article 46, as well as of the language(s) acceptable to them in this regard.

b. Findings and observations of the review team concerning article 46

Article 46 IX

The norm regulating international cooperation in criminal matters in the absence of a treaty is Law No. 24.767 , promulgated on 13 January 1997 (Law on International Cooperation in Criminal Matters).

This law starts with the general principle that the Republic of Argentina provides to all requesting States the widest measure of assistance for the investigation, adjudication and the punishment of offences under their jurisdiction. In the absence of a treaty, Argentina provides international cooperation on the basis of reciprocity (Art. 3 Law No. 24.767).

Article 68 para. (1) of the same law states that assistance in the investigation and adjudication of criminal offences is generally provided even in the case that the act for which assistance is requested does not constitute an offence in Argentina (no requirement of dual criminality). As an exception from this general rule, dual criminality is required for measures requiring confiscation, house search, surveillance of persons and interception of correspondence or telecommunications (Article 68 para. 2).

All non-coercive measures, as well as coercive measures that do not show in this list, can thus be taken also in the absence of dual criminality.

Art. 67 in combination with art. 8-10 of the same law provide for some general exceptions from mutual legal assistance. Mutual legal assistance is not provided in cases of political offences (further specification of such offences in article 9), offences foreseen exclusively in military penal law, when basic fundamental rights of criminal procedure (article 18 of the Constitution) were violated in the requesting State, when the process in the requesting State was result of discrimination due to political opinion, nationality, race or religion or the defense was hindered by such, and when there is grounded suspicion that the accused suffered torture or was facing death penalty (art. 8). Further exceptions are cases where the national sovereignty, security or other essential interests of the Republic of Argentina are concerned (art. 10).

Article *46 XIII*
On 17 July 2007, Argentina designated, as its central authority in accordance with article 46 (13) of the Convention, the International Legal Assistance Directorate, Directorate General for Legal Affairs of the Ministry of Foreign Affairs, International Trade and Worship, Esmeralda 1212, Piso 4 (C.P. 1007), Ciudad de Buenos Aires, República Argentina, Tel./Fax: (54-11) 4819-7170/7172/7231, e-mail: diaju@mrecic.gov.ar .

Summary findings Article 46: Argentina has adopted the measures required according to article 46 para. 9 and 13.

3.7 Article 52

Prevention and detection of transfers of proceeds of crime

"1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such

enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

"2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

"(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

"(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

"3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

"4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

"5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

"6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance."

a. Summary of the main requirements

Under article 52, paragraph 1, without prejudice to article 14, States parties are required to take necessary measures, in accordance with their domestic law, to oblige financial institutions within

their jurisdiction: (a) To verify the identity of customers; (b) To take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and (c) To conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. These provisions must be seen in the context of the more general regulatory and supervisory regime they must establish against money-laundering, in which customer identification, record-keeping and reporting requirements feature prominently

In order to facilitate implementation of these measures, States parties, in accordance with their domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, are required: (a) To issue advisories regarding the types of natural or legal person to whose accounts financial institutions within their jurisdiction will be expected to apply enhanced scrutiny; the types of accounts and transactions to which particular attention should be paid; and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; (b) Where appropriate, to notify financial institutions within their jurisdiction, at the request of another State party or on their own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

b. Findings and observations of the review team concerning article 52

Article 52 paragraph 1
With regard to the requirements for financial institutions to verify the identity of customers, art. 21 of Law No. 25.246 establishes the obligation for banks "to obtain … documents offering reliable proof" of the identity of clients and persons requesting withdrawals and deposits. Regular clients are required to produce their identity document or – in the case of legal persons – the company statute or comparable documents. Occasional clients are required to produce a valid identity document and, above a threshold of 30,000 pesos, a sworn statement of the legality and source of the funds, and, above a threshold of 200,000 pesos, documents supporting the source of the funds (FIU Resolution 2-2007 from 13 June 2007).

With regard to the requirements for financial institutions to take reasonable steps to determine the identity of beneficial owners, FIU Resolution 2-2007, Paragraph 2.1.6.1 requires the financial and foreign exchange institutions to take additional reasonable steps to establish the true identity of the persons on whose behalf a client is acting in case it is doubtful whether the client is acting on their own account or it is certain that they are acting for somebody else. The enhanced scrutiny applies regardless of the size of the account.

The Central Bank has recently, in a circular to all financial institutions, updated its definition of PEPs and obliged financial institutions to apply enhanced scrutiny to them. It comprises all national public officials, high local officials, high officials of foreign States and those who are linked to them (Central Bank, Comunicación 4835, August 2008). For the identification of national PEPs (or individuals who are, or have been, entrusted with prominent public functions and their family members and close associates), they are identified in accordance to the criteria that establishes the obligation to present an asset declaration (cf. below para. 5). However, it was considered that some groups of Argentinean PEPs, in particular local PEPs, were not sufficiently covered by this methodology.

For the identification of foreign PEPs, a database is run by the Central Bank (*Superintendencia de Entidades Financieras y Cambiarias*); however, the identification of foreign PEPs was still considered a challenge.
The FIU receives suspicious transactions reports from the financial institutions listed in article 20 of Law No. 25.246. The FIU further issues advisories for the same institutions. The FIU is supported in

these functions by the Central Bank. The Central Bank has issued a regulation entitled "Prevention of money-laundering and other unlawful activities" on 17 November 2006, which deals with client identification, minimum precautions, the presumption of action on behalf of others, and situations involving public officials. The Inspectorate of Financial and Foreign Exchange Institutions verifies the application of these regulations.

Article 52 paragraph 2

Regulation 2-2007 of the Financial Intelligence Unit and the Central Bank's "Regulations on preventing money laundering and other unlawful activities" of 17 November 2006 contain rules on the persons and situations that are subjected to enhanced scrutiny by financial institutions, such as presumption of action of behalf of other persons, corporate vehicles, trusts, remote transactions of public officials, and funds originating in countries classified as low-tax countries (Decree 1037/00), and the measures to be taken in order to apply such enhanced scrutiny. Article 14.1 of Act 25.246 empowers the FIU to require specific monitoring on its own initiative or at the request of a foreign authority of specific accounts.

Article 52 paragraph 3

Resolution 2-2007 of 13 June 2007 of the Financial Intelligence Unit requires financial institutions to keep records with regard to client identification and similar for a minimum period of five years from the conclusion of the client relationship, and records with regard to transactions and operations for a minimum period of five years from the execution of such transaction or operation. Those records may be microfilmed two years after the transaction (Central Bank Communication A-3035 from 23 December 1999); the microfilm must be kept for 10 years.

Article 52 paragraph 4

The establishment of branches of foreign institution in Argentina is subject to prior compliance with the production of documents certifying, inter alia, the existence, regulation, operation of consolidated oversight system, plan of action, structure and staffing numbers (Circular CREFI-2, A-2241).

Article 52 paragraph 5 and 6

With regard to the requirement to establish financial disclosure systems for public officials, Argentina has a system of asset declarations, according to which persons regarded as politically exposed – a list of those is published by the Central Bank following article 5 of Law No. 25188 (Law of Ethics) – are obliged to submit declarations on their entire patrimony. Similar regulations were enacted by the provinces and the autonomous Government of Buenos Aires according to articles 5, 6, and 47 of the same law.

The list in article 5 of Law No. 25.188 (Law of Ethics) includes the National President and Vice-President, the members of the two chambers of the National Parliament, judges, prosecutors, ministers, state secretaries, personnel of the Sindicatora General de la Nación, National Auditing Office, highest regulatory bodies, Ambassadors, Consuls and other senior diplomatic personnel, army, police, navy and jail personnel from the grade of colonel upwards, senior university personnel, all senior managers in the public administration, official financial institutions, state corporations and all officials responsible for the provision of concessions, procurement and administration of assets. Every year, round 30.000 asset declarations are submitted and analyzed. Argentinean authorities stated that the compliance rate with the declaring obligation is close to 100%.

Argentina has a web-based system of asset declarations in place, which was developed and is operated by the Anticorruption Office. Asset declarations have a public and a confidential part. The public part can be accessed by everyone after presentation of basic personal data and the motivation

for accessing the declaration (art. 10 Law 25.188). The public part contains information such as the type and value of assets hold by a public official. The information of the public part can be used for any public reason, in particular for journalistic purposes; however, it is not evidence before courts. Any illegal use is sanctioned with a fine (art. 11 para. 2 Law No. 25.188). During the past 8 years, round 3000 public files were requested, the vast majority relating to the highest level of political officials. The confidential part contains information such as bank account numbers or addresses of real estate. It may only be produced at the request of a judicial authority; it is further foreseen by law that it may be produced by request of the National Commission on Public Ethics; however, this body has not been established. The functions of the Financial Intelligence Unit are weakened by the fact that it has no access to the confidential part of the asset declaration, and that the public part does not have evidential power. The authorities of foreign States may access both the public and the confidential parts of declarations, the latter within the framework of international cooperation in criminal matters.

Law 25.188 in its article 6 states that the entire patrimony must be declared, in particular such assets listed in this article. Article 6 (e) mentions explicitly the obligation to declare the amount of assets held in deposits in financial institutions in Argentina and abroad, with specific information such as the name of the bank, the account number, and credit card numbers. Cash supplies in national or international currency have also to be declared. Such information is part of the confidential portion of the declaration and must be kept in a separate envelope. Resolution 1000/2000 of the Ministry of Justice and Human Rights states that the amount of assets in bank accounts of public officials in national and international financial institutions show in the public part of the statement, only the account number has to be kept confidential.

A person who fails to present an asset declaration or falsifies or omits data in such declaration commits a criminal offence pursuant to art. 268 of the Criminal Code, as amended by Law 25.188. While several cases of concealment of data were adjudicated, Argentinean authorities did not recall any cases of conviction for falsification with malicious intent during the eight years since the system has been operational. It was also noted that the statute of limitation of this offence was relatively short and the sanctions prescribed by the law were relatively lenient.

Summary findings Article 52: Argentina has adopted most of the measures required according to article 52, although the methodologies of identifying domestic PEPs at all levels of the federal administration, and foreign PEPS, should be enhanced.
Argentina may wish to consider strengthening its Financial Intelligence Unit through providing it, in appropriate cases, with access to the confidential part of asset declarations.

3.8 Article 53

> ***"Measures for direct recovery of property***
>
> "Each State Party shall, in accordance with its domestic law:
>
> "(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;
>
> "(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and
>
> "(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State

Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention."

a. Summary of the main requirements

Article 53 requires States parties: *(a)* To permit another State party to initiate civil action in its courts to establish title to or ownership of property acquired through corruption offences (subpara. *(a)*); *(b)* To permit their courts to order corruption offenders to pay compensation or damages to another State party that has been harmed by such offences (subpara. *(b)*); *(c)* To permit their courts or competent authorities, when having to decide on confiscation, to recognize another State party's claim as a legitimate owner of property acquired through the commission of a corruption offence (subpara. *(c)*). The implementation of these provisions may require legislation or amendments to civil procedures, or jurisdictional and administrative rules to ensure that there are no obstacles to these measures. Article 53 focuses on States parties having a legal regime allowing another State party to initiate civil litigation for asset recovery or to intervene or appear in domestic proceedings to enforce their claim for compensation.

b. Findings and observations of the review team concerning article 53

On the implementation of article 53 (a), there is no explicit regulation in the Argentine legal system that would permit or prohibit a State to initiate civil action in its courts or to establish title or ownership of property. No case has been produced so that courts have not yet produced any opinion.

With regard to article 53 (b) and (c), Article 23 of the Criminal Code provides that "in any and all cases in which sentence shall be served on account of crimes enumerated in this Code or in special criminal laws, said sentence shall determine the seizure of the goods used to commit the crime and that of the goods and product or profit obtained from the crime for the benefit of the national State, of the provinces or the municipalities, except for the rights of restitution or compensation of the victim and third parties." A foreign State can be considered victim and third party.

Summary findings Article 53: Argentina has adopted the measures required according to article 53 (b) and (c) UNCAC in its legislation, while it is expected that the implementation of article 53 (a) will be established in practice.

4. Overall findings of the review team concerning the implementation of the relevant Convention articles by Argentina

Summary findings Article 5: Argentina has adopted the measures required in accordance with UNCAC Article 5.
It was noticed that the National Commission on Public Ethics foreseen in Law No. 25.188 has not been established yet.
Summary findings Article 15: Argentina has adopted most of the measures required in accordance with UNCAC Article 15. The promising or accepting of advantages for a third party are not yet covered by the relevant provisions of the Criminal Code.
Further consideration should be given to including the "soliciting" of a bribe into the provisions of passive bribery and to clarifying whether the whole range of "undue advantages" is covered by the bribery provisions.

Summary findings Article 16: Argentina has adopted the measures required in accordance with Article 16 para. 1 UNCAC.

Argentina has not adopted measures to implement the non-mandatory provision of article 16, para. 2 UNCAC.

Summary findings Article 17: Argentina has adopted most of the measures required in accordance with article 17 UNCAC, although the legislation should be amended or clarified in a way that it covers expressly the use of goods or funds, without appropriation, for private purposes.
Summary findings Article 25: Argentina has adopted the measures required in accordance with article 25.
Summary findings Article 46: Argentina has adopted the measures required according to article 46 para. 9 and 13.
Summary findings Article 52: Argentina has adopted most of the measures required according to article 52, although the methodologies of identifying domestic PEPs at all levels of the federal administration, and foreign PEPS, should be enhanced.
Summary findings Article 53: Argentina has adopted the measures required according to article 53 (b) and (c) UNCAC in its legislation, while it is expected that the implementation of article 53 (a) will be established in practice.

5. Recommendations on the basis of the findings of the review process in Argentina

a) Recommendations with regard to the implementation of mandatory provisions of the Convention

Article 15: The passive bribery provisions of the Criminal Code should be amended in order to cover the promising or accepting of advantages for a third party. Further consideration should be given to including the "soliciting" of a bribe into the provisions of passive bribery and to clarifying whether the whole range of "undue advantages" is covered by the bribery provisions.
Article 17: The legislation should be amended or clarified in a way that it covers expressly the use of goods, without appropriation.
Article 53: it is expected that the implementation of article 53 (a) will be established in practice.

b) Recommendations with regard to the implementation of non-mandatory provisions of the Convention, and generally on the fight against corruption

Article 5: It is recommended to establish the National Commission on Public Ethics foreseen in Law No. 25.188, and/or establish institutions to follow up on public ethics regulations in all branches.
Article 5: Argentina may wish to consider to develop a systematic approach to ethics training and education in transparency issues for all branches of the public sector.
Article 16: Argentina may wish to consider adopting measures to implement the non-mandatory provision of article 16, para. 2 UNCAC.
Article 52: The methodologies of identifying domestic PEPs at all levels of the federal administration, and foreign PEPS, should be enhanced.
Argentina may wish to consider strengthening its Financial Intelligence Unit through providing it, in appropriate cases, with access to the confidential part of asset declarations.

6. Elements for an action plan formulated in cooperation with the reviewed States on the basis of the recommendations

Elements of an action plan are under consultation and will be published as a separate document.

Annex I.

Calendar of events:

Self-assessment checklist

15/8/2007: Argentina submits its self-assessment checklist in time.
23/8/2007: Argentina provides information on article 46 para. 9
20/9/2007: UNODC transmits the translated checklist to the reviewing countries Peru and USA.

Dialogue:

5/10/2007: Peru contacts the US proposing a set of questions concerning Articles 5, 6,15 and 17
31/10/2007: Peru poses new set of questions to Argentina in regard to Articles 53, 54, 57 and requests country visit
1/11/2007: US informs Argentina of the partner countries' attempt to combine questions and comments for Articles 5, 15, 16, 17 noting that Peru also had comments on Article 6 and that the US may have separate questions in regard to Articles on mutual legal assistance and asset recovery
14/11/2007: Argentina, US, Peru and UNODC participate in telephone conference to discuss country visit and additional questions
6/11/2007 and 19/11/2007: US requests clarification on Articles 52 and 53
29/11/2007: Argentina responds to questions from Peru and US and supplies additional documentation
2/6/2008: Draft country report prepared by Secretariat
9/7/2008: Argentina forwards OECD report for inclusion in final report
15/7/2008: Argentina coordinates with Secretariat on final country report
5/9/2008: Draft country report sent to experts by Secretariat
20/10/2008: Trilateral meeting held in Vienna, where (a) US agreed they will approach Secretariat on some open questions in the report soon, (b) Peru submitted two more questions to Argentina, (c) Argentina agreed to provide additional information soon, and (d) report will be shared with Argentina, which will then decide on the type of results (findings/recommendations/possible action plan)
24/10/2008: Peru agrees to send their last 2 questions in Spanish and English beginning next week, Peru agrees to share Peru report with the US (Argentina to send their proposals for next version without highlighted text beginning next week), then meet with US.
29/10/2008: Peru sends comments on Argentina report
17/11/2008: USA sends comments on Argentina report and on pilot review programme process
15/12/2008 and 19/01/2008: Secretariat coordinates with expert reviewers on final comments on country report

Country visit:

14/11/2007: Argentina agrees to country visit in February 2008
01/2008: Discussions are held between Argentina, Peru and US in the context of CoSP 2 on dates and content of country visit; dates suggested by Peru are agreed upon by Argentina, Norway and UNODC.
02/2008: Argentina submits table of agencies to meet during country visit
20-22/02/2008: Country visit to Argentina is conducted

Annex II:
List of mission participants

Peru:
Carolina Lizárraga
Chief
National Anticorruption Office

Jimena Cayo
Vocal Superior Titular
Poder Judicial del Perú

United States:
John Brandolino
Senior Advisor
Dept. Of State, Bureau for INL

Jane Ley
Deputy Director
Office of Government Ethics

Richard Pilger
Senior Prosecutor
Department of Justice, Public Integrity Section

Argentina:
Eugenio María Curia
Ambassador
Permanent Representative of Argentina to the United Nations (Vienna)

UNODC:
Brigitte Strobel-Shaw
Crime Prevention and Criminal Justice Officer
Corruption and Economic Crime Section, Division for Treaty Affairs

Dorothee Gottwald
Associate Expert
Corruption and Economic Crime Section, Division for Treaty Affairs

Coordinators of the country visit:
Nicolás Raigorodsky
Anticorruption Office

Santiago Mariani
Anticorruption Office

Annex III:
Programme of the Country Visit

20 February 2008
11:00 am
Dr. Abel Fleitas Ortiz de Rozas
Head of Anticorruption Office
Anticorruption Office

03:30 pm
Dr. Nicolás Raigorodsky
Director of Transparency Policies Planning
Anticorruption Office

05:00 pm
Dr. Julián Ercolini
Federal Prosecutor (Criminal and Correctional Judge)

21 February 2008
10:00 am
Dr. Anibal Fernández
Minister of Justice
Ministry of Justice, Security and Human Rights

11:30 am
Dr. Leandro Despouy
President of Auditor-General's Office (*Auditoría General de la Nación*)

02:30 pm
Dra. Paula Honisch
Legal Undersecretary
National Prosecution Office of Administrative Investigations (FIA)

04:00 pm
Dr. Julio Fernando Vitobello
Head of National Controller's Office (SIGEN)

22 February 2008
09:30
Dr. Martin Montero
Director of Investigation
Anticorruption Office

11:30
Dr. Zenón Biagosch
Financial Information Unit
Central Bank

14:00
Debriefing session with reviewing experts