

**THE NEED TO ACCESS TO PUBLIC
INFORMATION IN ARGENTINA
AND LATIN AMERICA**

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The Need for Access to Information

a. The need to access public information as a tool to prevent corrupt practices in Latin America along with practical examples of successful experiences and frustrated practices.

The civil society should be able to control and evaluate the acts of government, and this is only possible with accurate and timely information. Lack of adequate information leads to a crisis of credibility or trust in government representatives, and can therefore undermine the legitimacy of the democratic system itself. Thus, an adequate legal framework regulating the access to public information should be fundamental in a democratic system. First, this framework should require the standardized publication of information. Second, it should guarantee the effective right to search, receive and publish any piece of public information not directly published by the State. Of course, caveats to protect individual privacy and national and internal security must take into consideration existing legislation on secrecy and publicity of acts of government¹. In fact, there are 15 national laws in Argentina regulating the access to public information. Finally, it is of crucial importance that the legal framework establishes an adequate judicial mechanism to demand the timely and effective enforcement of the right.

Current legislation in Argentina does not regulate the right of citizens to access public information. Furthermore, a number of attempts to pass a Freedom of Information Law in recent years have failed due to diverse reasons. During 2001 the Anticorruption Office (within the Ministry of Justice) elaborated a new draft to be sent to Congress, which was openly discussed in a series of meetings with different civil society groups such as Unions, journalists, NGOs and businessmen among others. This process was called Elaborated

¹ Personal privacy is protected in Argentina since the enactment of the Law 25.326 in the year 2000, (Habeas Data). In addition, the 1994 annual report of the Inter American Commission of Human Rights establishes that "...in a democratic society, public officials [...] should be more exposed –and not less exposed- to public scrutiny and critique. The need for an open and wide debate, crucial for a democratic society, should necessarily involve the persons that participate in the formulation or implementation of public policy”.

Participation of Norms² and is aimed at creating consensus in order to speed the bill's way through Congress and make its implementation more feasible.

However, the international conventions signed by Argentina, which have constitutional standing according to Article 75, comma 22 of the Constitution, clearly defend the right to access public information³. Accordingly, there have been attempts at the local levels of government to pass a law that regulates access to public information, but their efficacy was jeopardized, either by the lack of an informative campaign directed to public officials or by the absence of an awareness campaign directed to the civil society.

In fact, the biggest problem in Latin American countries is the lack of incentives of policy makers at the national level of government to elaborate an adequate legal framework to regulate access to public information. It seems that legislators find enough incentives to elaborate bills of law but scarce rewards in discussing, negotiating and enacting the law. In addition, the current distance of legislators from their constituencies isolates them from any pressure to revert this situation, and diminishes their incentives to elaborate effective frameworks that guarantee the concrete access to public information. In this regard, Argentina's aim is to attempt to place this issue in the legislative agenda at the national level of government and build linkages between policy makers and the media, civil society, educational, private sector and international institutions, in order to raise the demands for the implementation of the right.

As a corollary, the second problem is the lack of media commitment to access public information. Indeed, in the last 2 legislative years there have been around eight bills of law on Freedom of Information in Argentina, but they have received practically no media coverage. Our news files indicate that until mid 2001 there has only been one single paragraph about the current status of bills in an article mentioning other subjects as well. The only two published articles fully devoted to this topic were written by members of

² See "elaborated participation of norms"

³ The American Convention on Human Rights and the International Pact on Civil and Political Rights, establish that all people should have the right to receive, seek and impart information by any means of communication.

CIPPEC. Paradoxically, mass media should be one of the principal stakeholders interested in obtaining free access to public information in order to disseminate key information and influence public opinion.

In all, Countries in Latin America and the Caribbean have made strides at fortifying legal bases for freedom of information over the past decade⁴. Besides calling for improved legal frameworks and perfecting the content of the new laws, local groups have also proven successful at counteracting measures to restrict freedom of information: they have challenged restrictive bills and executive decrees, introduced their own law proposals, and mounted vocal campaigns to gain domestic and international support for their cause⁵.

The positive developments notwithstanding, freedom of information laws have yet to prove their power in practice. The next step for the governments of Latin America is to translate the intent of information laws into real, uncompromised access to information.

The case of the Legislative Branch of Government in Argentina

As a key representative institution in a democracy, the Legislative Branch of government should be included in any anti-corruption effort. Legislatures constitute an important pillar in the general fight to combat corruption. Firstly, through the consideration and adoption of norms that prevent unethical practices, and also, through the control of other State agencies. But to approach the issue in a more effective way, it should first clean its own chambers and establish internal conduct standards or mechanisms. These conducts should reflect the consensus of civil societies' expectations.

It is very clear, at least in Argentina, that for the moment, this is not happening. The National Ethics Law (25.188), passed in late 1999, is far from being enforced in the Legislative Branch of government. This Law establishes the conformation of a National Ethics Committee supposed to manage, investigate and make public all legislators' sworn

⁴ See chart below for countries with Constitutional and/or internal legal frameworks in the region

⁵ "Access to Information in Latin America and the Caribbean", by Kati Suominen, prepared for conference on Access to Information in the Americas

personal affidavits (financial disclosure). Unfortunately, this Committee has never been created.

I have myself organized a group of one hundred people multidisciplinary network of volunteers, aiming at the National Senate to comply with the National Ethics Law. The campaign lasted four months and the result was a Senatorial Decree (419/02) signed by Hon. Juan Carlos Maqueda, Provisional President of the Senate, admitting that the documents had to be released “to these citizens and to everyone else that asks for them in the future”.

National Deputies, in contrast, have not listened to the requests. That is why we have filed for a judicial mechanism (“Amparo por Mora”) to demand for an answer through CIPPEC⁶ foundation and Poder Ciudadano foundation.

The packet of Political Reform Laws will have their fourth birthday of debate in Congress by the end of this year. The concrete results are only two laws: one, on electoral campaigns (25.600), whose texts evades the neuralgic point that justifies the existence of the norm, which is the prohibition to political parties of direct buys of television spots. The second one establishes the celebration of open and simultaneous primaries (25.611). This Law has recently been regulated by decree, but it already concentrates more controversies than consensus between the Executive, some governors and the same legislators that voted the original text. This is why there is a firm possibility that this new system will not even be implemented for the next national elections.

When it comes to the people’s right to access public information that could contribute to revert legislator’s negative image, there are innumerable barriers. For example, the personal web pages of the legislators are far from being updated and the only effort to strengthen the relationship between representatives and represented is being made by some civil society organizations (CSO) with a great deal of difficulty. For instance, some of the things these organizations do is publish information about who the representatives are and how they

⁶ Center for the Implementation of Public Policies Promoting Equity and Growth. Av. Callao 25 1ª, Buenos Aires, Argentina.

represent the people; create data banks with information about candidates; elaborate surveys about civil society's knowledge about civic matters; organize seminars and conferences; and implement projects that foster civil participation and representatives' responsibility towards their constituents. An example of this is the elaboration of a 350 pages *Legislative Directory*, which gathers information about all the legislators. The difficulties I had to face in order to gather all the information and the many refusals to collaborate from the same legislators that would then appear in the book reflect the little importance they assign to these matters.

The internal administrative and presidential resolutions that govern the activities of both chambers are not public. For example, in order to find out the evolution of legislators' income throughout the years, one needs to wait for the approval on the presidency of the chamber, which generally comes after months with a negative response.

Neither is its organizational chart public. The publication of the basic organizational structure of the body, with the internal organisms, duties, ranks and constituents, in the web page of the Congress, is highly insufficient. Furthermore, the responses they provide when the information is requested, is equally poor.

Moreover, the prohibition of every person not directly related to the legislative body to access the buildings of Congress freely inhibits and obstructs civil participation in committee meetings and floor sessions. This frustrates any capacity to control and monitor, not only by common citizens but by CSOs as well, and contributes to an atmosphere of obscurity and secrecy in the discussion and sanction process of norms on public matters.

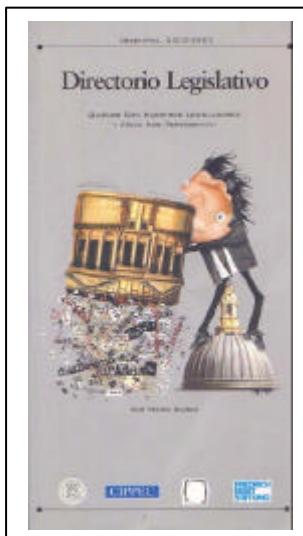
It is evident, therefore, that any reform that does not include and promote access to public information or obstruct it by not passing a national law, underestimates the need to strengthen the relationship between citizens, public officers, and legislators, and does not start by organizing, cleaning up and improve the internal administration of both chambers, and therefore would have little or no sense at all.

1. Practical Example - Argentina

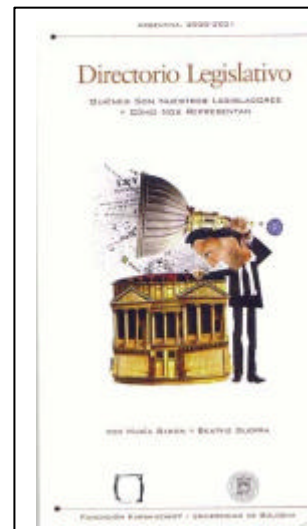
Legislative Directory. Who are our legislators and how they represent us⁷

Legislative Directory is a biannual publication that compiles information on Argentine legislators: personal data, legislative activity, personal income (including financial statements) and contact information. Its main aim is to increase the available information for the general public, contribute to the education of citizens on the importance of debates within the institution, and promote the active participation of the civil society in the elaboration, execution and evaluation of public policy. The importance of this publication relies on the fact that most of the times the book constitutes the first and only contact the civil society has with its representatives. It is also a tool that enables citizens to participate in the legislative process because it includes schedules of Committee Meetings, a map of the “legislative neighborhood” (people can begin to identify the buildings that conform the legislative branch of government), a picture of a floor session indicating who is who during the debates, an explanation of how a bill becomes a law, and information on state legislatures.

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First Edition 2000-2001

2. Practical Example - Paraguay

⁷ To download it go to www.cippec.org

Citizen Oversight (Contralorías Ciudadanas)

Citizen Oversight (CO) is a system through which citizens can voluntarily organize to control the performance of the officers in the public administration as well as the use of public resources. In this way, the civil society can be motivated to exercise its responsibility beyond the electoral vote, monitoring what takes place in the public sphere of a community or country. Consequently, once the officers know that they are being observed by the citizenry, they act in a more responsible way.

The most important task undertaken by the COs is to back and support citizens that are willing to report corrupt practices (without assuming themselves the accuser's role). It is their own responsibility to report unethical practices and bring more legitimacy to the entire process. Nevertheless, a legally constituted organization should carry out the corresponding follow up of the process so that the corrupt behavior does not go unpunished.

Another objective of the COs is to spread and make public corrupt behaviors once the evidence is established.

Basically, COs receive the accusations and questions from citizens on cases related to irregularities and corruption in the public administration and channel them to the General Oversight Administration of the Republic and other institutions in charge of law enforcing. They promote sensitizing campaigns on rights and duties related to management of public resources. Also, they establish informative and cooperative relations at the national and international levels, with organizations that pursue the same goals.

These goals can be reached through investigations on the management of resources (in every level of government) that appear in the General Budget in order to document cases of irregularities and also through the creation of a cooperation network with other COs in the country. They also organize events such as seminars, panels and conferences to help the citizen gain consciousness on his/her rights and duties with the community. They can disseminate plans of action, norms and proceedings in relation to specific cases of

corruption or help other organizations that denounce corrupt behaviors. They can also defend rights of any sector of the community as well as support honest authorities by disseminating their previous work

The only requirement to conform a CO is to be 18 or older.

The Need to access public information as a development issue and as a creator of social capital with practical examples on different experiences in several countries in Latin America⁸.

According to Geoffrey Shepper, in “The Fight Against Corruption in Latin America and the Caribbean: A World Bank View”, corruption imposes massive costs on countries and ordinary citizens. It corrodes public institutions, undermines the legitimacy and credibility of the State causing serious problems in governance, and affects macro-economic stability by encouraging wasteful, ineffective government. Finally, it discourages investment, especially foreign direct investment.

Furthermore, according to Transparency International’s world survey, Latin American countries are consistently below the minimum accepted score of 5.0, the exceptions being Uruguay and Chile. In 2001 Argentina’s score of 3.5, places it at number 57 tied with China. However, it is expected that in the year 2002, Argentina will drop to number 70 on the list with a score of 2.8. This survey measures perceived levels of corruption and is an indicator of society’s views of the transparency of their governments (www.transparency.org/cpi/2001/cpi2001.htm#cpi).

The “World Development Report 2002: Building Institutions for Markets”, published by the World Bank says that weak institutions—tangled laws, corrupt courts, deeply biased credit systems, and elaborate business registration requirements—hurt poor people and

⁸ For this box I took excerpts from the World Bank’s “World Development Report 2002: Building Institutions for Markets Annual Report 2002”.

hinder development. Countries that systematically deal with such problems and create new institutions suited to local needs can dramatically increase incomes and reduce poverty. These institutions range from unwritten customs and traditions to complex legal codes that regulate international commerce.

According to the World Development Report, complex and inefficient institutions are a common problem, especially for poor people in poor countries. In Mozambique, for example, registering a new business requires 19 steps and five months, and costs more than the average annual income per capita. By contrast, registering a new business in Australia requires only two steps, two days, and two percent of the average annual income per capita.

"Overly complex regulations are especially problematic in poor countries," says Roumeen Islam, director of the World Development Report 2002. "Rather than protecting consumers and businesses, these regulations lead to higher corruption, a diversion of energy, and lower productivity."

"To settle disputes that arise out of normal business transactions, people need access to efficient courts and judges that are accountable," says Islam

The report argues that all market-supporting institutions perform one or more of three functions: **they ease or restrict the flow of information**; define and enforce property rights and contracts; and increase or decrease competition. It finds that reforms and innovations have been most effective when they meet these needs in ways that are compatible with country conditions and increase access for the poor.

The authors also found that open information flows increased public demand for more effective institutions, thus improving governance and social and economic outcomes.

Lack of information breeds corruption. When the actions of public officials are not subject to scrutiny by the general public, opportunities for official misconduct become more attractive. The availability of information can be a force for changing behavior in several dimensions. Without information about the details of regulations, individuals are vulnerable to bureaucratic harassment and demands for bribes. Without widespread information on the extent of public wrongdoing, the public disgust with corruption that is essential to implementing reforms is slow to form.

The right to access public information is fundamental to this issue, because it enables the access to other rights, such as education or social welfare. The information could help people understand which are and how to use their other rights. So, in any part of the world information is key to development. Aids, for example, is a virus transmitted through unsafe sex or blood transfusions. With that information available, this problem could see a way to be solved. Also representatives and public officials politicians are already doing things knowing that some day that information will be made public, so already possibilities of having a better government increases.

As expressed by Nobel Laureate, Joseph Stiglitz in a recent article, “Access to information constitutes a fundamental component in a successful strategy towards development. If we were serious in our objective to reduce global poverty, we should free access to information and improve its quality. (...) More openness is not just part of a good government practice, it also contains an intrinsic value. Citizens have a basic right to know. If the people of any country want and work for a more transparent and efficient country and economy, then they have to fight for the freedom of those who disseminate information. They have to fight for the right to know and tell things how they really are⁹.”

⁹ Clarin Newspaper, Buenos Aires, Argentina, January 3rd 2003. For complete article go to www.clarin.com.ar

International Treaties and Internal legal frameworks in some countries in Latin America¹⁰.

<u>Country</u>	<u>International Treaties</u>				Constitution	Internal legal framework
	<u>Universal Declaration of Human Rights</u>	<u>American Convention on Human Rights</u>	<u>International Covenant on Civil and Political Rights</u>	<u>Interamerican Convention on Corruption</u>		
Argentina	✓	✓	✓	✓	X	X
Belice	X	X	✓	X	X	X
Bolivia	✓	✓	✓	✓	X	X
Brasil	✓	✓	✓	✓	✓	X
Chile	✓	✓	✓	✓	X	X
Colombia	✓	✓	✓	✓	✓	X
Costa Rica	✓	✓	✓	✓	X	X
Ecuador	✓	✓	✓	✓	X	X
El Salvador	✓	✓	✓	✓	X	X
Guatemala	✓	✓	✓	✓	X	X
Haití	✓	✓	✓	X	✓	X
Honduras	X	✓	✓	✓	✓	X
Jamaica	X	✓	✓	✓	X	✓
México	✓	✓	✓	✓	✓	✓
Nicaragua	✓	✓	✓	✓	✓	X
Panamá	✓	✓	✓	✓	✓	✓
Paraguay	✓	✓	✓	✓	✓	X
Perú	✓	✓	✓	✓	✓	✓
Rep. Dominicana	✓	✓	✓	✓	X	X
Trinidad y Tob.	X	✓	✓	✓	X	✓
Uruguay	✓	✓	✓	✓	X	X
Venezuela	✓	✓	✓	✓	✓	X

¹⁰ For more information go to www.cippecc.org

Legal Frameworks Enforcing Right to Information

The Importance of Public Access to Information in Environmental Matters in Developing Countries¹¹

United Nations Declaration of the Conference about Environment and Development – Rio de Janeiro – June 5^h 1992

Principle 10: The best way of treating environmental matters is the participation, at the corresponding level, of all citizens interested. At the national level, every person should have adequate access to public authorities' information about environment, including information about the materials and activities that threaten their communities, thus giving them the opportunity of participating in the decision-making process. The State should facilitate and encourage the awareness and participation of the citizens by making the information accessible to everyone.

Why is a regime of public access to information regime/system related to environmental matters necessary?

A regime of public access to environmental matters is extremely useful for the citizenship as well as for the State and its political and administrative authorities:

a) Benefits for the citizens:

i. Improvement in the public awareness about the environmental problems:

A regime of public access to environmental matters allows people to select the information according to their interests and then use it according to their own priorities, preoccupations, values and inclinations. Furthermore, information allows the beneficiaries to get to see new aspects of familiar problems, rise their perception and the precision level of their understanding, thus reaching a higher degree of awareness about the magnitude and the range of the environmental problems that affect them. Even though this is obvious, a sharper public awareness about the environmental critical issues is the primary precondition for any responsible public participation in policy making and environmental management.

ii. Qualitative improvement of public and participation:

A regime of public access to environmental matters deepens knowledge and therefore could encourage commitment and participation. An informed kind of participation (enriched by factual, economic, scientific, technological and cultural fundamentals) contributes to a more responsible and effective way of acting for the improvement of the environmental conditions.

iii. Enlargement of transparency in the Public Environmental Management

A regime of public access to environmental matters allows for the control of the Administration by the citizens. In fact, this mechanism makes public the same

¹¹ Document produced by FARN (Fundación Ambiente y Recursos Naturales), 2002. - For more information go to www.farn.org.ar

information used by the authorities to make decisions. That creates an external source of control or monitoring very difficult to bypass, forcing the public stakeholders to assume a transparent behaviour.

iv. Deeper citizen's confidence in the Public Performance

A citizenship aware of its real and effective possibilities of control over the public management, knows that the opportunities to bypass it are very restricted. It is not easy to take and get away with corrupt decisions when the information is shared by all the citizens. In this way, it is the mere possibility of citizens accessing public information what forces the stakeholder to make honest and reasonable decisions according to his legally assigned responsibilities. This generates a gradual growth of the citizens' confidence in the public authorities' management.

b) Benefits for the State and its authorities:

i. The enlargement of the informative base of the environmental public authorities

A citizenship who knows the contents of the information administered by the environmental authority can, without any doubt, complement it with additional information. In fact, a public system of environmental information could be enriched by contributions coming from different actors and organizations in the community. It is worth remembering that the information held by the society is always superior in volume and quality to the one in possession of public authorities. That is why it is particularly useful for the authorities to implement mechanisms that allow citizens to complete the information of the State.

ii. Improvement in the public decision quality when having a better and more informed citizenship:

Citizens aware of the information level with which public environmental decisions are taken, can contribute significantly to the techno-scientific quality and the economic and social viability of any public decision. A regime of public access to environmental matters allows citizens to make more accurate, grounded, feasible and appropriate interventions towards the improvement of the management of the public environment. In this way, the public authorities could deepen their own knowledge by taking into account the information provided by a variety of social actors. This endows the acts of the government with a significantly larger social legitimacy.

iii. The opportunity to display a transparent management and restore the credibility in public institutions

A transparent public management, in which any person can access the information that was used to make decisions, allows for a trustful relation between the authorities and the people. And in fact, the need to recover social trust and confidence in the authorities seems to be urgent in our societies. Without that confidence, developing complementary associations between the actions of the society and those of the State turns out to be very difficult. That association is essential because how effective the environmental management is depends on the continuous and daily participation of the people involved. A way to ensure confidence in the public environmental authorities is to share the information that they use for the administration. This is a way of recognizing in the face of society

that the information is not of their own private property, but that it belongs to the society at large.

Conclusions:

As we analyzed before, the availability of environmental information is closely related to the level of public participation. For this reason, the benefits for the society and the State of a regime of public access to environmental matters are evident. In fact, it could be stated that it indirectly displays all the foundations for a participatory regime or, even more, for a democratic society.

Also, we could affirm that a regime of public access to information in environmental matters contributes to the deconcentration of power, the fostering of equal opportunities, the reduction of administrative and political discretion, the achievement of an honest government and a reliable public management. Of course, it is key to nurture the necessary social values in order to make our public authorities believe that working daily with common citizens could benefit us all.

The pros and cons of the social control mechanisms and institutions / The importance of the enforcement of the laws that address corruption prevention, public ethics and transparency policies. The lack of a legal framework that guarantees that right¹².

Center for the Implementation of Public Policies promoting equity and Growth undertook a research project financed by Transparency International aimed at identifying initiatives on behalf of governments to address corruption. The project consisted of a series of interviews with different officials in charge of governmental institutions related to social control.

Likewise, various impediments to reduce the opportunities of corruption were identified from the analysis of the normative framework, the information collected from the Anticorruption Office, and the interviews, all of which, foster incentives towards the discretion of public officials, as well as the lack of transparency in the management of public agencies. These obstacles may be characterized as: (i) defective normative, (ii) defective control, (iii) defective information, (iv) defective penalisation, (v) defective organization of the public administration, and (vi) defective use of the human resources.

In the first place, the deficiency of the normative framework is reflected in the absence of systems of rewards and punishments, which incentive higher levels of performance and efficiency in public positions. Likewise, it allows a formal compliance with the law, satisfying, alternatively, personal or political ends. On the other hand, the delay of the existing normative framework regarding financing of political parties, access to public information, and “Lobby” procedures has been revealed. Finally, it is important to stress the lack of operativeness of the requirements contemplated in the legislation, as shown by the lack of records of gifts obtained by public officials or in the non-existence of the Public Ethics National Committee, both required by the Law of Ethics in the Exercise of Public Administration 25.188 issued in 1998.

¹² For complete report download it from www.cippecc.org

In second place, the weakness of some of the control agencies (Anticorruption Office, National Auditing Commission) is revealed by their dependence – regarding the appointment and removal of authorities – on the authorities subject to their control. Accordingly, opportunities for the exercise of political pressure are created, thus restricting the capacity of carrying out rigorous controls, and publishing the outcomes of investigations. In the same manner, there is an absence of mechanisms to carry out substantive evaluations on public administration management, contract fulfillment or convenience, or the performance of public officials. At the same time, the poor performance of the Judicial system regarding the enforcement of the law and the application of sanctions, generated in the bureaucracy of the Judiciary and the dependence of some of its members on the Executive Branch, enhances the absence of controls.

In third place, the possibility of civil society to exert control is significantly hampered by the weakness of the control agencies –in charge of law enforcement and the application of sanctions– and the consequent low risk of being punished for the commission of irregularities which, added to the lack of mechanisms to produce and publicize information on the performance of public officials and the management of public agencies, operates as a system of protection for the commission of irregularities.

In fourth place, the lack of planning and coordination between public agencies, impedes the efficient use of information collected by other public entities, and limits the exercise of rational controls of human and financial resources. This situation is reflected in the lack of databases of suppliers of the State, and of the contracting of services and personnel. Specifically, there are defects in the design of some of the control agencies. In this sense – and notwithstanding its potential vulnerability regarding the appointment and removal of its authorities by the Executive- it is important to stress the limited scope of action granted to the Anticorruption Office, which can only monitor the functioning of the national public administration, excluding from its sphere of control the functioning of the judicial or legislative branches and provincial or municipal governments. Furthermore, the dimension of the bureaucracy present in the Argentine public administration and essentially, the lack of political will to undertake integral institutional reforms, and policies for the prevention and promotion of values, contributes to the persistence of informal codes that incentive inefficiency and irregularity. Thus, it is important to underscore the conclusions risen from the interviews, in which the majority of the interviewed expressed that:

- (i) None of the control agencies outstands, or is effective in the fight against corruption – notwithstanding the mentions to the performance of the National Auditor’s Office, Anticorruption Office, National Auditing Commission, Internal Revenue Service, and the Ombudsman;
- (ii) The Argentine Government has no plan to fight corruption;
- (iii) More emphasis should be placed on the processes of public bidding and contracting, access to public information, mechanisms of control in hands of society, re-organization of the institutions in charge of law enforcement, and giving priority to the fight against corruption as a government strategy;

- (iv) There have not been any government trends to fight corruption during the last decade, except for isolated and mediatic measures;
- (v) The Judicial Branch is not independent from other branches;
- (vi) There are no mechanisms to evaluate the consistency of parliamentarians with their political platform;
- (vii) The State should be in charge of monitoring the financing of political parties; there are no mechanisms for society to be aware of such financing;
- (viii) The media highly affects political decisions, and contributes to set matters in the public agenda;
- (ix) In order to improve civil society's access to public information, it is necessary to establish sanctions for those who do not comply with the duty to inform, and to provide tools to civil society in order to undertake such control;
- (x) The existing mechanisms to select and remove public officials are not implemented, and there are no mechanisms for the evaluation of their performance; and
- (xi) It is necessary to grant more transparency and access to Public Service Regulating Entities.

However, most of the interviewed persons stressed that:

- (i) The reforms implemented in the Judicial Branch during the last decade (Judiciary Board, and courts that try a Judge's malfeasance or misfeasance) constitute a timid progress towards greater transparency; and
- (ii) There exists real competence in the search of political power both, at national and provincial level.

Likewise, the high technical value of the reports elaborated by the National Auditing Commission and the National Auditor's Office, the compromise and training of members of the Anticorruption Office and the detection of cases by the Ombudsman were highlighted.

Measures to be implemented

? *Improve the normative framework and the administrative procedures:* in order to reduce the discretion of the officials and the costs to operate with effectiveness

? *Grant effectiveness to the laws:* in order to put into practice the policies designed by the State, and avoid the content of laws to become mere texts

? *Implement nimble and timely mechanisms for the detection and prevention of irregularities:* so as to improve the system of control and supervision of the public administration, and to reduce the opportunities for the improper exercise of political, union or economic pressures

? *Elaborate periodical diagnosis, reports and investigations:* in order to evaluate the performance of public officials and public agencies, and thus, be able take the most adequate decisions in the public and private sectors

? *Implement result driven management systems:* in order to re-structure principal agent relations, introduce mechanisms of accountability and competence, and to modify the existing incentives

? *Effect organisational changes:* in order to plan and coordinate the functioning of the public administration, and take advantage of the information collected by each agency

? *Increase and publish mechanisms that grant access to public information and facilitate the filing of claims:* in order to strengthen the capacity of civil society to exert control.

? *Make integral reforms on control agencies and evaluate the effectiveness of their implementation:* in order to increase the impact of such reforms, avoid the implementation of disconnected or isolated measures, evaluate their success, and correct possible deficiencies.

The case of the “Participatory Procedure for Drawing up Rules” implemented in Argentina.

In the Argentine Republic there is no federal law regulating access to information. Certainly there are local laws which do so. In spite of these partial advances, it is not possible to assess whether these are accompanied by efficient mechanisms and systems to make this right effective. It has also become necessary to disseminate in public opinion the importance of these rules as tools so that busy citizens have better resources for participation and control of the public authority.

On a nation-wide basis, in the last decade around thirty draft laws were presented to Congress concerning access to information which then, for one reason or another, were not able to become specific law. In this sense, the Anticorruption Office of the Argentine Republic (www.anticorruccion.jus.gov.ar) has recently drawn up and presented a draft law.

The original idea of the draft law lies not so much in its content as in the process used for its wording. This involves a novel experiment and has given excellent results. The draft law, which the President sent to the Chamber of Deputies, was drawn up using a mechanism, called "Participatory Procedure for Drawing up Rules " (Elaboración Participada de Normas (EPN)).

This mechanism consists of submitting to analysis by civil society, specialists and interested sectors in general, a first draft of the draft law. The first draft is then put forward for consultation through massive communications media (institutional advertisements in newspapers, Internet, etc.) as well as through specific workshops aimed at predetermined social sectors, especially those on which the future law will have the greatest impact or whose interests are more directly related to the central theme of the proposed rules.

Suggestions, contributions and opinions from participants from all levels are compiled, analysed and possibly incorporated in the wording of the final draft law. It consists of a consultative process of a non-binding nature.

The EPN procedure allows the author of the draft law to obtain information and opinions on the matter in question, thus succeeding in improving the quality and transparency of decision-taking, promoting the participation of those concerned and keeping citizens adequately informed.

As part of the EPN procedure, two specific activities were carried out. The first, a workshop for journalists, students of journalism and NGOs, in which two journalists each presented case studies. In one of these, the advantages offered by a country with legislation

on access to information were shown. In the other, the practical difficulties of not having such rules were shown.

The second was the running of five workshops by the Anticorruption Office, in which the opinions of NGOs, businessmen, communications media, journalists, academics, legal offices and civil servants were heard. On the other hand, citizens in general sent their opinions through an e-mail address especially set up for the purpose.

Similarly, a meeting was held with the Special Spokesman from the United Nations on the Freedom of Opinion, Dr. Abid Hussain. Dr. Hussain pointed out that submitting a draft law to public debate leads to an improvement in the quality of democracy, as well as in the rule in question. In his own words: "in democracy, often the procedure is more important than the result".

Thanks to the participatory work carried out up to now, at the moment our draft law has the decided support of several of the biggest Non-Government Organizations of Argentina. The planned strategy has so far been successful.

The draft law is under consideration by the Legislative Authority, and consists of a proposal which is technically sound and which has a high level of social consensus. Because of this, the experiment is believed to be a fine example of constructive, successful collaboration between the public sector and civil society.