

TOWARDS A

SOCIAL

AGREEMENT

AGAINST

CORRUPTION

TOWARDS A SOCIAL AGREEMENT AGAINST CORRUPTION

Participant organizations:



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TOWARDS A SOCIAL AGREEMENT AGAINST CORRUPTION

INTRODUCTION

This agreement is proposed by civil society organizations, experts and members of academia from different backgrounds and perspectives. It introduces a number of proposals for regulatory reforms and public policies as a roadmap of the actions to be implemented by Argentina in the fight against corruption.

Corruption impacts negatively to society as a whole , but affects particularly the most disadvantaged groups and communities. Institutional shortcomings that allow this phenomenon to occur deepen the existing inequalities, and alienate those in power from those who have their rights violated.

Simultaneously, corruption seriously affects the quality of democracy. It is a practice where state and private actors converge, producing alterations in the public decision making processes in detriment of the general interest. Thus, corruption undermines the independence of -and, therefore, the trust in- public institutions and impacts civic participation.

Corruption has a direct effect on the fulfilment of civil and political rights, as well as economic, social and cultural rights. It reduces the quantity, quality and distribution of public resources, goods and services. Although it is one of the issues that the Argentine society is more concerned about and has had a remarkable presence in the public debate in the last years, the discussion on corruption is deficient and, in general, has failed to adequately dimension the problem, to assess its causes or to identify its impacts. In this context, it has been extremely difficult to find basic consensus among public decision makers that makes possible to design and implement long term policies to tackle corruption systematically and to produce significant changes on structural aspects.

A growing role of the citizenry, informed and aware of the consequences of corruption in the daily lives of people, is key to promote more efficient public policies to prevent, detect and mitigate corruption. Therefore, we call all actors in the Argentine society, and particularly political parties and social leaders, to endorse this document in order to generate the structural and long term consensus that we need to achieve a country with less corruption and more equality.

Proposals

We are convinced that the implementation of the following public policies, destined to the different branches, will represent a significant improvement in the fight against corruption, the strengthening of democracy and the fulfillment of human rights in our country. Therefore, the undersigned, propose:

Section A – A new national public integrity system

► Topic 1: Ethics in the public administration

Our country needs to promote a new “ethics in public administration act” that remedies the deficiencies of the current legal framework in order to build an effective national integrity system, in line with the actual problems of public administration.

A new Public Ethics Act should include, among other regulations:

- **The creation of autonomous law enforcement agencies in the three branches of the State, replacing the current Anti-Corruption Office, which is dependent on the Executive Branch.**
- **Conflict of interests regulations to guarantee that the decision-making processes in the elaboration, implementation and monitoring of public policies are not motivated by personal interests in detriment of public responsibilities and general interest.**
- **Restrictions before and after the exercise of public functions to avoid negative impacts when public officers migrate to the private sector and vice versa, and to discourage the design of public policies to favor a certain corporate sector.**
- **The obligation for all public officers of the three branches of the State who have any responsibilities in the decision making process or in the use, distribution or administration of resources, to submit assets declarations and those of their closest relatives in real values and publicly. Moreover, an adequate system to detect disproportionate assets growth should be established.**

- **Extension of the amount of information contained in the assets declarations in relation to the description of assets and to the interests declaration, including previous professional experience.**
- **To enhance the oversight of public officer's gifts and trips in the different branches of the State.**
- **To promote the independence of the Transparency Units that operate within each Executive agency and to promote the creation of such units in the other State branches.**

▸ **Topic 2: Democratic admission to public service**

Although the Constitution establishes aptitude as the only requirement to access public service positions, there are few procedures in the State to oversee the accomplishment of this condition. On the contrary, access to public service positions in most of the State agencies is based on arbitrary and obscure criteria. In order to overcome this state of things, we propose to:

- **Strengthen the administrative career and selection processes in all branches of the State, to guarantee aptitude and stability, and to prevent nepotism or any other practices that could result in selecting public officers based on arbitrary criteria. These proposals are basic prerequisites to establish an adequate system of prevention, control and punishment in the public administration.**
- **Implement the Act 26.861 for the democratic and equal admission of staff to the Judiciary and the Public Prosecutor's Office.**

Section B – Investigation and prosecution of public and private corruption

▸ **Topic 3: Corruption punishment**

The fight against corruption should be based on an integral approach of the issue. This includes the acknowledgement that corruption is related to a business model that links private and state sectors, and that these relations are part of a larger system: economic crime. In this sense, an efficient and democratic criminal policy to tackle corruption should act both upon the political and the economic powers.

Although the major problems to prosecute corruption in Argentina are related to procedure mechanisms, current penalties also need to be adapted. The national criminal code has been under review for a long time. This code is based on a text elaborated on 1921 that has been inconsistently modified during decades with a punitive approach that does not guarantee penalties effectiveness. Crimes related to corruption tend to be more complex due to the inclusion of new technologies in many areas of the State and the financial markets. For this reason, it is important to rethink criminal penalties on corruption, in order to have a modern, intelligent and articulated criminal code. In particular, it is necessary to reform it in relation to corruption crimes, which includes the following proposals:

- **To harmonize corruption crimes in relation to the rest of the criminal code in a coherent and proportional manner, based on the international obligations of our country in the Inter-American Convention against Corruption and the United Nations Convention Against Corruption.**
- **To improve the writing of article 67 on the limits to the prescription of corruption crimes committed by public officers.**
- **To create an automatic investigation system of corruption cases where judges had declared its prescription This investigation will be conducted by the sanctioning agencies for judges, prosecutors and public defenders.**
- **To review ancillary penalties to prison, such as fines and debarments, in order to make them more effective in the fight against corruption.**

► **Topic 4: Procedural reforms to investigate corruption**

Our Judicial system has proved inefficient to avoid impunity on crimes of the powerful. The exaggerated length of judicial procedures in corruption cases, the lack of material resources and prepared staff on complex crimes, and a criminal procedure incompatible with current characteristics of corruption crimes, are among the main factors that determine impunity.

In relation to the above mentioned, we propose:

- **The full implementation of the new Criminal Procedure Code and, consequently, the accusatory criminal justice system.**

- To pass a law for an Extinction of Domain Regime effective to recover assets related to corruption cases that respects the adequate Congress law enactment process, that includes the participation of civil society and in accordance to constitutional guaranties.
- To guarantee the adequate, transparent and non discretionary implementation of “whistleblowers” programs, as well as pre-trial detentions, to avoid illegal proceedings that could nullify the prosecutions.
- To reform the witness protection program in accordance with the characteristics of corruption crimes and to pass a law for the protection of “whistleblowers”.
- To reinforce the controls on the telephone tapping system, as well as to review the design and institutional location of the agency in charge of implementing it. This to avoid any incompatible use of this system with regard to the rule of law.

Section C– Prevention of corruption in typically critical situations

▸ Topic 5: A new public procurement system

Public procurement systems, either related to goods and services or to public works, have always had a high risk of corruption. The cartelization of public works, collusion, bribery or the electoral campaign financing in exchange of contracts, are some of the most frequent corruption cases in this area.

The government should promote a unique public procurement and contracting act for goods, services and public works, that includes:

- An enlargement of concurrence in public tenders and the promotion of competition.
- Publicity of information of the entire public procurement cycle, from planning to payment and execution, using international open data standards, including its linkage with budget information.

- **To promote the crosslinking of records and databases on providers and suppliers of the State at the national, provincial and local levels.**
- **Elimination of every form of discretionary assignment of public contracting and fostering clear and objective rules for contract awarding.**
- **Creation of an anti-corruption clause for the suspension of contracts in cases where irregularities in contracting had been detected and to guarantee the debarment of the contractors condemned for this crimes.**
- **Prohibition to be public contractors or suppliers for those individuals or corporations that have accounts or companies at tax havens.**
- **To extend the obligation to submit assets declarations to CEOs and managers of State contractors that are benefited by the largest contracts.**
- **Implementation of mandatory civic participation mechanisms at all stages of the public procurement cycle, particularly in planning and monitoring.**
- **To monitor joint ventures and their subcontractors.**
- **To regulate the conflict of interests at public procurements.**

▸ **Topic 6: Preventing deviations of public resources for political-partisan purposes**

In Argentina, confusion between the State and political parties in power involves, among others, the inadequate use of public resources, particularly during electoral campaigns. This includes the non-neutral use of public advertising, the utilization of public goods -such as official aircrafts- during electoral campaigns, the use of public officials for party activities, among other deviations.

In order to prevent this kind of situations, we have identified that the State should take the following measures:

- **To promote a Public Advertising legislation to guarantee it is only focus to the public interest and that its distribution is done in accordance with objective parameters.**
- **To implement a monitoring and control system on the use of public resources during electoral periods.**

► **Topic 7: Money in politics**

Political parties' activities and electoral campaigns are financed by private contributions coming from different origins, in many cases illegally and in violation of the limits established by the National Electoral Court. This lack of transparency in politics financing reduces the possibility of public monitoring and favours State capture by the private sector and corruption. In order to reverse this situation, we recommend:

- **To ensure full publicity, in real time, of all the donations received by political parties, both for ordinary activities and for electoral campaigns.**
- **To guarantee resources for the monitoring bodies (tribunals and electoral courts) so they have adequate staff and tools to control parties financing.**
- **To promote the enforcement of the sanctioning regime when inadequate behavior of parties and their representatives is detected (including the prohibition to participate in electoral campaigns when law is breached).**

Section D– Transparency

► **Topic 8: Access to public information**

Since it was enacted, the Access to Public Information Law (27.275) has been applied inconsistently. This is due to the absence of some of the control authorities and the deficient design of the agencies in charge of the enforcement of the law, which does not guarantee both financial and functional autonomy.

Furthermore, in certain public institutions opacity is still the rule, which limits the access to public information.

In order to promote an adequate enforcement of the right to access public information, it is necessary to:

- **Promote the full implementation of the Access to Public Information Law, starting with the constitution of all the monitoring agencies at the three branches and ensuring their financial and functional autarchy.**

- **Adapt the production and management of public information in order to guarantee adequate responses to access to public information requests.**
- **Promote compliance with legal obligations regarding the active publication of information.**
- **Elimination of the exception for companies listed on the stock market.**

▸ **Topic 9: Budget and fiscal transparency**

The lack of information on the origins of public financing and how this funds are distributed undermines the chances to detect corruption cases. Although there have been some recent improvements on this issue, not all public institutions publish sufficient information for civic control. Therefore, we propose to:

- **Open all the budget information to its highest level of detail, in every step of the budgetary cycle, from planning, allocation, distribution, to the final orders for goods and services procurements, including opening information about extra-budgetary allocations used by the government.**
- **Limit the powers of the executive branch to reallocate resources approved by the national Congress.**
- **Make visible public information on companies and individuals benefiting from tax exemptions, as well as any other fiscal regime that generates sectorial or individual benefits.**
- **Increase the amount of information and accountability on the budget funds transferred to provinces, local governments and other public bodies.**

▸ **Topic 10: Transparency of financial markets and corruption detection at the private sector**

The private sector plays a fundamental role in corruption. Its intervention is not limited to perpetration of corruption crimes, but it also facilitates their concealment through maneuvers such as money laundering. The opacity of the financial markets and the links between its actors and the public sector hinders the chances to prevent and detect corruption. In order to adequately face the role of the private sector in corruption cases, it is needed to:

- **Reduce the scope of tax and financial secrecy and the arbitrariness of its application, as well as promote more information openness in cases of corruption.**
- **Increase the fight against tax evasion and money laundering by opening information on local financial markets and the participation of Argentine citizens in foreign markets and tax havens.**
- **Increase the control over the relation between the private and public sectors, including the adoption of a law to regulate lobby and to make public meetings between private sector representatives and public officials.**
- **Extend the scope and obligations of the corporate criminal liability regime established by Law 27.401 and to demand the implementation of integrity programs to all public contractors.**
- **Publish the information on beneficial ownership of corporations in Argentina.**

Section E– Institutional Strengthening

► Topic 11: Independence and efficiency of the Judiciary

The Judiciary is the main actor in the investigation and punishment of corruption. Judges should be impartial to avoid impunity. Argentina has serious deficiencies on this issue, which is evidenced by the fact that most corruption cases move accordingly to political context (this cases are frequently slow down or accelerated arbitrarily; pre-trial detentions are ruled or revoked depending on political constraints, etc). The interference of political and economic powers play a key role in relation to the lack of independence of the Judiciary, mainly during judges appointment processes, disciplinary processes and the periodic monitoring of their performance.

In order to revert this situation, we recommend to:

- **Reform the appointment mechanisms for judges at the Judicial Council (Consejo de la Magistratura) to ensure the selection of the most suitable candidates. This includes reducing the extension of public contests, guaranteeing their effective publicity and impartiality.**
- **Limit the use of any other mechanism of selection of judges that is not based on public contests.**

- **Incorporate the obligation for the Executive branch to substantiate the selection of the candidates that are submitted to the Senate.**
- **Reform the disciplinary and removal mechanisms to guarantee the constant supervision of judges' performance. This should be aimed at avoiding any disciplinary procedures to be used as restraints of judges' independence.**
- **Enact a Judicial Ethics Code.**
- **Allow the General Auditing Office of the Nation to exercise control on the Supreme Court and the Judicial Council.**
- **Improve the technical and human resources of courts in charge of corruption cases.**
- **Mandate constant audits on the courts in charge of corruption cases and publish updated information on their performance.**

▸ **Topic 12: Strengthening the role of Public Ministries**

Public Ministries are independent bodies within the justice system, which complement the role of the Judiciary and have specific duties within the criminal process. While the Public Prosecutor's Office is in charge of protecting the general interest of society, the Federal Public Defender's Office guarantees the right to due process and impartiality. Both institution are key in the investigation of corruption and they promote the adequate functioning of the judicial system. Therefore, we propose to:

- **Strengthen the agencies at the Public Prosecutor's Office specialized in corruption crimes and related offences and ensure the suitability, stability and independence of their chairs: the Prosecutor's Office for Administrative Investigations, the Prosecutor's Office on Economic Crimes and Money Laundry, and the General Directorate for Advice on Economic and Financial Investigations and the General Directorate for Asset Recovery and Forfeiture.**
- **Promote the appointment of a general prosecutor in accordance with the constitutional and legal provisions, through an open and participative process.**
- **Guarantee the transparency of public contests and promotion mechanisms of prosecutors.**

- **Promote, by allocating resources in both Public Ministries, the implementation of the criminal accusatory system.**
- **Supervise the performance of attorneys and public defenders periodically.**
- **Eliminate the exclusive power of the General Prosecutor to establish or dismiss disciplinary processes against members of the Public Prosecution Office.**

► **Topic 13: Controlling agencies**

Controlling Agencies play a fundamental role in the prevention, detection and investigation of corruption. These agencies have different functions such as external (General Auditing Office-AGN-) or internal auditing (Anti Corruption Office -OA-, the General Office of the Comptroller-SIGEN-), prevention and control (the Federal Administration of Public Revenues-AFIP-), and detection of specific crimes (Financial Investigations Unit-UIF-). They face all kinds of limitations that obstruct the full development of their goals and functions.

In order to improve the efficiency of these agencies to prevent and detect corruption, we recommend to:

- **Reform agencies that are in charge to control corruption (AGN, SIGEN, AFIP, UIF, CNV, BCRA, AFIP, IGJ, among others) based on transparency, budgetary and functional independence, the strengthening of auditing and prevention mechanisms, in particular to allocate concomitant control powers and to promote the enforcement of their recommendations.**
- **Improve the coordination mechanisms among these agencies in the investigation of corruption crimes.**
- **Increase civic participation in the planning of audits (AGN and SIGEN), as well as in the monitoring of the recommendations done by control agencies to audited institutions.**

► **Topic 14: Reform of the national intelligence system**

Most of the largest corruption cases in Argentina have showned a close connection among intelligence services, the politics and the judiciary system, which has seriously undermined the independence and integrity of the latter. This undue relation is produced by the political misuse of the intelligence agencies. Finally, the secrecy that characterizes this area of the State, particularly in relation to its budget execution, limits an adequate public control.

For this reason, it is necessary to:

- **Reform the National Intelligence System in order to guarantee the transparency and civic control of its resource allocation and compliance with its legal duties by the National Intelligence Law.**
- **Promote civil and political control of the activities carried out by intelligence agencies in the context of judicial investigation related to corruption crimes.**
- **Promote the creation of a Judicial Police or a Federal Agency for Judicial Investigations.**

Section F– Civic participation

▸ Topic 15: Civic participation in preventing, investigating and punishing corruption.

Argentina's democratic system is characterised by delegation of power, which derives in a deficit of civic participation. Citizens are not only distant from decision-makers, but they are also excluded from the monitoring of public institutions. There is a lack of civic engagement in the process of design, implementation and control of public policies, which is key to fight corruption. As a consequence, it is not possible to move from a model of “social accountability” to one based on integrated participation. Similarly, the Judiciary has not been prone to open up to the voice and control of civil society.

In order to revert this trend, it is necessary to:

- **Implement trial by jury all around the country and evaluate its specific implementation in corruption cases.**
- **Incorporate civic monitoring mechanisms for corruption criminal investigation to the Criminal Procedural Code.**
- **Promote the appointment of the national ombudsman.**
- **Generate civic participation mechanisms for corruption prevention and punishment in the three branches of the State.**

- Increase the number of civic participation mechanisms in the Judiciary, such as public hearings and *amicus curiae*.

► **Topic 16: Promote new models for capacity building and research on corruption with an approach based on equality, justice and democracy.**

Capacity building and research are key components of any proposal, plan or program to fight corruption. These activities allow to identify and rise awareness on the impacts of corruption on most vulnerable sectors of society, on the confidence in public institutions and on the stability of democracy. In a context of growing inequality, it is necessary to recover the concept of a State which guarantees common resources and promotes public policies for the general welfare.

For this reason, we propose to:

- Implement a National Capacity Building Plan on public ethics and anti-corruption at the three branches of the State.
- Promote the design and development of academic research projects on corruption, the links between private and public sectors, the unseen social costs of these kind of crimes and, in particular, their impact on the most vulnerable sectors of society.
- Include the debates and public policies related to the fight against corruption in every ethics and civic training programs at all education levels.

Adherents



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