



# ARGENTINA

CAPITAL: Buenos Aires

POPULATION: 40.3 million

GNI PER CAPITA (PPP): \$14,020

SCORES	2006	2010
ACCOUNTABILITY AND PUBLIC VOICE:	N/A	4.88
CIVIL LIBERTIES:	N/A	4.71
RULE OF LAW:	N/A	4.18
ANTICORRUPTION AND TRANSPARENCY:	N/A	3.56

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

## Martha Farmelo

### INTRODUCTION

Argentina, though rich in natural resources, has historically been unable to sustain economic prosperity or political and social stability. Its political development in the 20th century was marked by numerous dictatorships and the populism of President Juan Perón and his wife, Eva, who promoted the interests of the working classes while courting both right- and left-wing factions. Today, Peronist parties continue to dominate Argentine politics, and opposition at the national level is fragmented.

Argentina most recently returned to civilian rule in 1983, after a seven-year military dictatorship that resulted in the death or disappearance of some 30,000 people. The presidency of Raúl Alfonsín (1983–89) of the Radical party featured a truth commission, the trials and convictions of military junta members, and later, hyperinflation and economic chaos.

During the 1990s, Peronist president Carlos Menem radically restructured the economy, pegging the peso to the U.S. dollar, scaling up the public debt, dismantling part of the social welfare state, undoing Peronist labor protections, and privatizing state assets on a massive scale. His presidency was fraught with allegations of corruption; he protected himself by increasing the number of Supreme Court judges from five to nine and stacking the court with loyalists.

During and after his tenure, the country's already feeble political institutions were almost completely discredited. In addition, the economy entered a devastating four-year recession in 1998. In December 2001, a government

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freeze on bank accounts mobilized the usually quiescent middle class. Massive pot-banging protests throughout the country precipitated the resignation of President Fernando de la Rúa of the centrist Alianza coalition. The crisis is remembered for its succession of five presidents in less than two weeks, but Argentines adhered to their constitution during the tumult. The slogan “out with all of them”—all politicians and Supreme Court justices—persisted as both a demand and defining point of political debate.

By 2002, over 50 percent of Argentines were poor, up from 25 percent just four years earlier, and 45 percent of the adult population was either unemployed or underemployed. In the wake of the devaluation of the peso and the default on public debt (except that held by multilateral lenders), the economy continued to spiral downward.

In May 2003, Argentines elected Néstor Kirchner, the little-known Peronist governor of Santa Cruz, as their president with the weakest mandate in Argentine history. He oversaw an economic recovery that was bolstered by high international soy prices and increased demand for Argentine exports. He paid off debt to the International Monetary Fund (IMF) early, a move that some considered a populist and ill-advised use of reserves, given the country's levels of poverty and indigence. And several of his other measures—such as a reform of the national Council of Magistrates, institutionalization of executive authority to reassign budget items with no congressional oversight, and excessive use of “necessity and urgency” decrees (NUDs)—deepened the already heavily “presidentialist” political system.

Kirchner sought to make justice for the victims of the last dictatorship the hallmark of his presidency. Several cases were reopened in 2003 after Congress annulled laws that had granted immunity to members of the military who were not in command positions and put a time limit on prosecutions. Kirchner also democratized the previously closed-door selection of Supreme Court justices, establishing a process that allows organizations and individuals to opine about candidates. Early on, he decreed full and timely access to public information held by the national executive branch. Yet his wife, then senator Cristina Fernández de Kirchner, helped scuttle a comprehensive access to information bill that had broad support among politicians and civil society but expired in November 2005.

Fernández won the presidency in October 2007 with 45 percent of the vote, and her party achieved a stronger majority in both the Chamber of Deputies and the Senate. Her campaign was helped by the economic recovery and the lack of a united opposition. However, she was seen as her husband's chosen successor (the party violated its own nomination procedures by failing to hold a primary election) and has been criticized for her husband's continued involvement in day-to-day decisions. Fernández's campaign promises were vague, and she has not introduced any substantive changes to her husband's cabinet or policies.

**ACCOUNTABILITY AND PUBLIC VOICE****4.88**

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	5.00
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.25
CIVIC ENGAGEMENT AND CIVIC MONITORING	6.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.29

Argentina is a federal system composed of 23 provinces and a federal district for the capital, each with its own executive, judicial, and legislative bodies. Presidents can serve up to two four-year terms. Suffrage is universal and obligatory, yet turnout in the 2007 presidential election was only 73 percent, down from 85 percent in 1983.<sup>1</sup> National elections in recent years have been generally considered free and fair. The right to organize political parties is respected, and people's political choices are basically free from domination by powerful groups. However, candidates linked to the incumbent administration enjoy special campaigning opportunities financed with public funds. During the 2007 presidential race, Fernández received airtime on state-owned Channel 7, while opposition candidates drew virtually no coverage.<sup>2</sup> Despite restrictions on public advertising during electoral campaigns, Néstor Kirchner dedicated substantial funds to advertisements promoting his image while his wife ran for president.<sup>3</sup>

Argentina has a bicameral National Congress. Members of the Chamber of Deputies are elected through an open-list, proportional-representation system, with a minimum of five representatives per province. Under a 1994 constitutional reform, three senators represent each of the 23 provinces and the city of Buenos Aires, with two from the party that comes in first place and one from the second-ranked party.

Peronists are the strongest political force in the country. Though once unified under the Justicialist Party (PJ), they now belong to a variety of groups, including the president's Front for Victory coalition, which includes the PJ. The Radical party, once a solid opposition force, has remained quite weak after many years of decline, especially during the 2001 political crisis. Party ideology is often vague, and the main political forces each have left- and right-wing factions. Some Peronists operate in the opposition, while some non-Peronists have allied themselves with the government. In general, opposition forces on both the left and the right remain divided.

Fernández came to power with ample control over the Congress: her coalition held 40 of 72 Senate seats and 125 of 254 seats in the lower house, and she had additional support from other pro-Kirchner forces. However, growing fragmentation among the Peronists has made it more difficult for Fernández to exercise partisan control.

In March 2009, Congress approved Fernández's initiative to move legislative elections up from October to June of that year, apparently motivated by defections from the pro-Kirchner bloc. Néstor Kirchner promoted the congressional

candidacies of a key governor and several mayors who stated from the outset that they would not leave their current posts if elected. The elections proved a major defeat for the Kirchners. Different Peronist factions ran different slates, and when the new Congress convenes in December 2009, the government will no longer hold a majority in either chamber.<sup>4</sup> Néstor Kirchner won a seat in the lower house for the province of Buenos Aires, but his list came in behind that of a conservative alliance including dissident Peronists.

Provincial governors have significant influence over the nomination of congressional candidates, and the electoral system effectively asks citizens to vote for parties—or perhaps for the figure heading a given candidate list—rather than for individuals. As a result, lawmakers tend to be more loyal to their parties than to their constituents.

Argentina has comprehensive federal campaign finance laws, including some public funding for parties, restrictions on anonymous donations, and strict oversight rules. However, the conventional wisdom is that legitimate contributions are complemented by illegal revenues. Parties often submit timely income and spending reports that are available online, but verification and analysis are deficient. The federal electoral court responsible for investigating irregularities is considered ineffective, in part because of excessive delays in its probes. In addition, widespread clientelism by political parties, sometimes involving national government officials, reduces the opportunity for the effective rotation of power. During the last elections, Social Development Minister Alicia Kirchner (Néstor Kirchner's sister) personally distributed refrigerators, mattresses, and subsidies to low-income families. Beneficiaries of government unemployment aid and related subsidies complain that disbursements are tainted by partisan favoritism, and that they are sometimes forced to participate in political events under threat of losing their benefits.<sup>5</sup>

Several measures enacted under Kirchner and Fernández deepened already serious weaknesses in Argentina's system of checks and balances. Congress is seen as a rubber-stamp body and is largely ineffective in providing oversight of the executive branch. The director of the National Audit Agency, a congressional body that audits the executive, is appointed by the opposition party with the largest congressional representation, though four of its seven auditors represent the governing party. In early 2009, a proposal to shift control of the agency's external communications from the director to the auditors (that is, from the opposition to the governing party) was defeated, and the agency began opening its audit sessions to the public.

In a continuation of measures first passed under President Menem as a special tool for dealing with the financial crisis, each year Congress passes a measure authorizing the president's chief of staff to reallocate spending without congressional approval or oversight. A lawsuit brought in 2006 by an Argentine civil rights organization to challenge the constitutionality of the measure is pending before the Supreme Court.

As of April 2009, Fernandez had issued five NUDs. By contrast, her husband issued a total of 235 during his presidency, in what was widely considered an abuse of his authority.<sup>6</sup> However, the decrees appeared to improperly usurp congressional power. One NUD announced in March 2009 diverted funds from the tariff on soy exports into an emergency fund for provincial governments, prompting accusations that the president was buying governors' loyalty.<sup>7</sup> Another increased the national budget by 36 billion pesos (US\$10 billion) in light of increased revenues, again bypassing Congress's budgetary authority.<sup>8</sup> In 2006, after a 12-year delay, Congress passed a law creating a bicameral oversight committee. However, the measure failed to establish a time limit for congressional approval or rejection of NUDs, which are considered valid until Congress acts. Furthermore, 10 of the 14 committee members are allies of the current administration. The panel has ratified every NUD issued since its creation.

The consistent use since June 2006 of recorded, roll-call voting (rather than the raising of hands or oral voting) in the Chamber of Deputies represents a positive development. The Chamber generally publishes results online within 48 hours. The Senate, which has used roll-call voting since 2004, releases results only in response to formal requests, generally by specialized nongovernmental organizations (NGOs).

Roll-call voting was key to resolving the Fernández administration's biggest political conflict to date. Beginning in March 2008, farmers protesting a decree that greatly increased the tax on soy exports disrupted the transport of foodstuffs throughout the country. In July, after months of conflict and complaints that the president had usurped Congress's role in establishing tax policy, Fernández submitted the measure to Congress for approval. The ensuing legislative debate and voting were televised, and several legislators broke party discipline in favor of their constituents' interests. The president's bill was ultimately defeated in a dramatic tie-breaking vote by the vice president, and the whole process left the legislature with renewed credibility and activism. During the same period, the legislatures of the provinces of Mendoza and Tierra del Fuego and the city of Buenos Aires adopted roll-call voting, joining Tucumán, the only other province with such a system.

Current NGOs have built on the history of brave human rights groups formed during the last dictatorship. NGOs play a prominent role in monitoring and influencing government policy on a variety of issues. They are generally free from legal impediments and political pressure from the state, as are their donors. NGOs are occasionally invited to testify or comment on pending legislation. However, the absence of a legislative agenda and scant information regarding committee meetings makes it difficult to influence pending bills.

By law, civil-service positions are awarded through merit-based competition, though noncompetitive employment contracts, often funded by multilateral

donors, are used to bypass that system. The Argentine civil service is considered relatively professional.

Government interference with the press is largely indirect, unlike past regimes' overt censorship, media closures, and attacks on journalists. Néstor Kirchner never held a press conference during his presidency, and rarely made contact with the media. Both he and his wife have characterized critical media as political opponents, sometimes publicly criticizing specific journalists and outlets. Executive officials call journalists to complain about critical coverage, and block access to official sources and events as punishment.

Defamation of public officials remains a criminal offense. In May 2008, the Inter-American Court of Human Rights ordered the government to modify its defamation laws, and several bills to decriminalize defamation are pending before Congress. Journalists are sometimes investigated and forced to defend themselves against such charges, though they are rarely jailed. In August 2009, the operations director of the national intelligence service filed a defamation suit against the director and president of *La Nación*, a prominent daily newspaper.

Government intimidation and physical violence against journalists continues to occur in some provinces. The national government generally refrains from traditional censorship and direct subsidies to the media. However, it regularly makes generous advertising allocations to favored outlets and withholds such contracts in order to punish critical coverage. Direct payments to journalists by the national and local governments are sometimes used to facilitate positive reporting. Government advertising manipulation is most marked at the local level, where media are more dependent on such revenue.

Two legal rulings in recent years restricted advertising abuses. In September 2007, the Supreme Court ruled that the government of Neuquén province violated the free speech rights of the *Río Negro* newspaper by withdrawing advertising in retaliation for critical coverage and ordered the province to present a plan for reversing such practices. In February 2009, a federal court ruled that the government of Néstor Kirchner discriminated against the publishing company Perfil by denying advertising as punishment for its editorial line, and ordered the government to advertise in Perfil publications.

After a 2005 reform made nonprofit organizations eligible for broadcasting licenses, the government allocated some licenses in limited areas. In March 2009, the president took out advertisements to announce a draft reform of the broadcasting law—a remnant of the last dictatorship—and plans for public debates before the bill's submission to Congress.

Freedom of cultural expression and academic freedom are generally unrestricted. The state does not hinder access to the internet, and the number of households with an internet connection rose 18 percent during 2008, to 3.43 million residential connections.<sup>9</sup>

**CIVIL LIBERTIES****4.71**

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.88
GENDER EQUITY	4.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.75
FREEDOM OF CONSCIENCE AND BELIEF	6.00
FREEDOM OF ASSOCIATION AND ASSEMBLY	5.25

Argentina has made great strides since 1983 in assuring respect for civil liberties, but it still has many deficits to overcome. Arbitrary arrests continue to occur, especially of low-income and other marginalized persons, and excessive violence and torture by security forces remains a serious problem. Causes include low salaries and lack of interrogation skills, and the government has yet to reform police regulations dating from the last dictatorship. Punishment for such abuses is more common than several years ago, though few cases are denounced and even fewer end in conviction. Most statements are taken by judges or prosecutors, which helps prevent the practice of coercing confessions.

Prison conditions are deplorable. Endemic torture, violence, overcrowding, and disregard for health and safety seriously threaten the lives of inmates. Immigrant prisoners, who make up 21 percent of the federal prison population, are especially vulnerable, in part because they usually lack adequate legal representation.<sup>10</sup> Foreign detainees made 38 percent of the complaints received by the prison ombudsman in 2007.<sup>11</sup> Approximately 60 percent of the country's detainees are awaiting trial or the outcome of their trial, and the rate is as high as 80 percent in the province of Buenos Aires.<sup>12</sup> Judges jail those charged with crimes almost automatically. The federal and provincial governments establish their own time limits for pretrial detention; the maximum is generally two years with the possibility of a one-year extension, but the limits are often disregarded.

The government has taken some steps to comply with a May 2005 Supreme Court ruling that recognized the massive violation of the rights of prisoners in the province of Buenos Aires, who represent roughly half of the country's inmates. A partial reform of the criminal code in 2007 resulted in a decrease in the prison population, but since then, new measures including stricter rules on prisoner releases have begun to raise the overall number of inmates again.<sup>13</sup> The lack of official information on the number of detainees, their legal status, and basic conditions of detention is a serious impediment to wise policy making. In addition, while Argentina was one of the first countries to ratify the UN Optional Protocol for the Prevention of Torture (OPCAT), debates on monitoring and jurisdiction have stalled passage of a federal law on implementation.

Argentina is a source, transit, and destination country for adults and children trafficked for sexual exploitation and forced labor. Argentina has made significant



yet insufficient efforts to combat trafficking, including the 2008 passage of its first federal legislation and the creation of national programs on the issue.

In November 2007, crime was considered the top issue for the incoming president to address.<sup>14</sup> There is a public perception that crime is on the rise, though annual statistics for 2005–2007 showed a slight overall decline.<sup>15</sup> The sense of insecurity is heightened by police corruption and reports that officials sometimes collude with criminals to secure temporary releases that are used to commit crimes. The 2008 murders of three Argentines who were allegedly involved in ephedrine trafficking exposed the activities of Mexican cartels in Argentina. The cartels' presence was denied by the government but reported in detail by the press.

Citizens whose rights are violated by the state can contact the national or local ombudsman, or take their cases to court with a public or private lawyer. In practice, however, access to these options is limited, especially for low-income and other socially marginalized people. The government has no clear policy for addressing this problem, leaving the task largely to NGOs. The national ombudsman has a low profile and plays a limited role in assuring citizens' right to petition. Most cases brought to the courts suffer from the broader problems in the functioning of the judicial system, described below.

Argentina has traditionally enjoyed a less "machista" culture than other countries in the region, and many women occupy significant positions in the public and private sectors. Two Supreme Court justices and the ministers of defense, social development, health, and production are women. A 30 percent electoral quota law was passed in 1991, and a 2000 ruling established that for every three candidates on the list, at least one must be a woman. Today, 40 percent of members of Congress are women, many of whom head important committees.<sup>16</sup> In the last presidential election, both the winner and the runner-up were women. However, Fernández and a significant number of female legislators and ministers at the national and provincial levels are relatives of politicians.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was incorporated into Argentine law with constitutional status in 1994. Some additional statutes favor women's rights, including a law addressing reproductive health. In March 2009, Congress passed a law aimed at eliminating all forms of violence and discrimination against women, which now requires regulations and implementation. In practice, compliance with CEDAW is generally deficient. Women face discrimination in the workplace and hold a disproportionately high number of low-paying jobs. The wage gap between men and women has worsened in recent years; as of early 2008, women earned 29 percent less than men for equal work.<sup>17</sup> Relatively generous maternity-leave policies (typically three months with pay) are a double-edged sword, as employers may prefer to hire men to ensure continuous service.



Judicial and police responses to domestic violence are grossly inadequate. Access to therapeutic abortions in the limited cases permitted by law is often obstructed by doctors, who seek unnecessary judicial authorizations or otherwise fail to provide timely procedures due to fear of prosecution or personal objections.

Although the government carries out some programs to promote gender equality, it does not produce information on violations of women's rights and rarely punishes those responsible. To date there is no concerted, comprehensive policy approach to gender equality. The National Council of Women has a low profile, and its budget decreased by 80 percent over the last several years.<sup>18</sup>

A government study released in November 2008 found that 30 percent of people in Argentina had experienced discrimination, and that 50 percent had witnessed an act of discrimination. Low-income residents are seen as the most common victims.<sup>19</sup> Lack of awareness and acknowledgment of racism complicates efforts to combat discrimination. A national antidiscrimination institute under the Ministry of Justice is charged with investigating violations of a 1988 law that prohibits discrimination based on race, religion, nationality, ideology, political opinion, sex, economic position, social class, or physical characteristics. It carries out educational programs to promote pluralism and combat discriminatory attitudes.

Argentina hosts significant numbers of immigrants, many of them from Paraguay and Bolivia. A 2004 law codifies nearly all provisions of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families—including the right to a two-year work permit for registered migrant workers. The government conducted a campaign in 2006 to register tens of thousands of domestic workers, many of whom are immigrant women, and provide them the benefits and protections guaranteed by law. However, authorities have yet to regulate or implement the 2004 law, and there is no comprehensive policy to combat discrimination or enforce immigrants' rights.

Argentina's indigenous peoples, who constitute 3 to 5 percent of the population, live largely in conditions of extreme poverty and social exclusion. The constitution recognizes the identities and rights of indigenous peoples (including the right to bilingual education), and Argentina is a signatory to International Labor Organization (ILO) Convention 169, on the rights of indigenous groups. Although the government implements some programs, including education for indigenous leaders on their legal rights, it largely ignores the plight of indigenous peoples. Violent evictions of native communities in areas such as the far northwestern provinces have occurred despite a 2006 law imposing a four-year suspension on all such expulsions where indigenous claims to ancestral lands are pending. Judges tend to have little knowledge of indigenous peoples' rights.

Argentina's legal framework respects most provisions of the UN Convention on the Rights of Persons with Disabilities, which the country ratified in 2008.

The Committee on Disability in the lower house of Congress summoned several civil society organizations to assist in a review of existing laws and guide reforms to bring Argentina into full compliance with the convention. However, implementation of statutes on issues such as transportation, education, health, and employment is extremely poor, due largely to ignorance of the issues and lack of political will.

Freedom of religion is guaranteed in the constitution and generally respected in practice. Interference in religious observance is rare, and the state is not involved in the internal affairs of any faith. However, the state openly favors Roman Catholicism. Although a 1994 constitutional reform abolished Catholicism as the official religion, the government supports Catholic institutions with special tax benefits and subsidies, pays the salaries of certain members of the Catholic hierarchy, and tolerates Catholic symbols such as crucifixes in numerous government spaces, including courtrooms. There have been several reports in recent years of anti-Semitic acts, including vandalism in Jewish cemeteries and a violent May 2009 attack on a street celebration organized by the city of Buenos Aires and the Israeli embassy to mark the anniversary of Israel's founding. Efforts to identify and convict the material and intellectual authors of the 1994 bombing of a Jewish community center in Buenos Aires, which left 86 dead and 300 injured, have been grossly inadequate.

The government generally recognizes freedom of association and assembly. In November 2006, the Supreme Court ruled that the government must give legal status to the Association for Transvestite and Transsexual Identity, overturning a lower court finding that the group failed to contribute to the "common good."<sup>20</sup> The country's powerful trade union movement has long been dominated by the Peronist General Labor Confederation (CGT). The Argentine Workers' Central (CTA) was founded in 1992 as a nonpartisan labor federation that would oppose then president Menem's structural adjustment policies. The CTA has been unable to obtain full legal standing due to a rule allowing only one union per sector, despite ILO support for its petition.

Argentines have a robust tradition of social protest, and the blocking of streets and highways is a common (and controversial) tactic. Unlike their predecessors, Kirchner and Fernández have refrained from using force to break up demonstrations. However, serious government violence has occurred in some provinces. In July 2008, a court in Neuquén province gave a life sentence to the police officer responsible for killing a schoolteacher during a 2007 union protest. In contrast, in December 2008, a former member of Kirchner's government received a suspended sentence and retained his driver's license after being convicted of running over 40 protesters with his vehicle in Santa Cruz province. While there have been few new cases of legal charges against protesters, thousands of people still face long-standing charges for participating in social protests, with some cases dating to the 1990s.<sup>21</sup>

**RULE OF LAW****4.18**

INDEPENDENT JUDICIARY	3.60
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	4.20
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.25
PROTECTION OF PROPERTY RIGHTS	4.67

Argentina's judicial system is divided into federal and provincial court systems, each consisting of a supreme court, appellate courts, and district courts. In general, judicial and law enforcement institutions continue to be highly politicized and suffer from extremely low public confidence. Negative perceptions are fueled by inordinate delays and general inefficiency.

The national Supreme Court is a notable exception. Its justices, including four nominated by Néstor Kirchner and confirmed by the Senate, have taken important steps to improve the court's transparency and legitimacy. Building on earlier progress, such as the introduction of timely publication of dockets and sentences, the court in 2006 launched online announcements of broader opportunities to submit *amicus curiae* briefs (previously restricted to those invited by one of the parties involved). It also established rules and procedures for holding public hearings and began to implement them in November 2007.

During much of 2006, the Supreme Court's functioning was impeded by the failure of the executive branch to name justices to fill two empty positions. The court consequently needed a majority of five members out of seven to rule, leaving it effectively paralyzed. The executive branch ultimately announced its decision to refrain from appointing additional justices and bring the number of justices back down to the pre-Menem level of five through attrition. This move echoed civil society proposals designed to address the relative difficulty of reaching consensus among nine judges and to avoid a court in which the vast majority of justices were appointed by a single president.

The Supreme Court is relatively independent from political pressures, as evidenced by its increasing willingness to issue rulings that require the executive to address major policy challenges and ensure the protection of human rights, as opposed to addressing a plaintiff's narrow complaint. For example, in 2008, the Supreme Court ordered the national government, the province of Buenos Aires, and the city of Buenos Aires to carry out the long-awaited cleanup of the Riachuelo-Matanza River, which separates the city and the province. It also ordered fines for delays by the relevant intergovernmental body, headed by the national secretary of the environment.<sup>22</sup>

There has been little change in the lower federal courts, which are plagued by corporatist attitudes and minimal transparency. Appointments of federal judges are subject to major delays, leading to an excess of unfilled positions. Concern about lax procedures for the appointment of temporary judges led

the Supreme Court to require that the process involve the same bodies responsible for appointing permanent judges: the Council of Magistrates, which proposes three candidates for a position; the executive branch, which selects one of those candidates; and the Senate, which confirms the nominee. Reforms made by the Supreme Court have not been considered by the court just below it, the *Cámara de Casación Penal*, or Penal Cassation Chamber, which filters all appeals from the federal criminal system to the Supreme Court. This court is considered to be one of the least transparent, and its judges are among the most resistant to change. It does not always respect the legal precedents set by the Supreme Court, although it is constitutionally required to do so. Nor does it maintain consistency in its own interpretation of criminal law. Indeed, the chamber was accused of deliberately stalling or otherwise interfering with key cases related to the crimes of the dictatorship. Courts in the provinces also suffer from weak transparency and political interference, especially from the provincial executive branches.

Furthermore, in contrast to his improvements in the selection of Supreme Court justices, Kirchner promoted and signed 2006 legislation that threatens judicial independence by restructuring the Council of Magistrates, which oversees the appointment, promotion, and dismissal of judges. The new law eliminated minority party representation and reduced the numbers of judges, lawyers, and academics on the panel, increasing the influence of the governing party and altering the balance between political and professional opinion called for in the constitution. The Supreme Court is considering a constitutional challenge to the law brought by the Buenos Aires Bar Association. The Council of Magistrates continued to wield discretion in the selection and removal of judges, a highly politicized process that lends itself to the appointment of judges with poor qualifications or little political independence. Judges have at times been investigated after making controversial rulings, fueling the general fear among judges of personal and political repercussions for their decisions. Judges receive academic and technical training but not specialized training to carry out justice in a fair and unbiased manner. Unlike judges, prosecutors are for the most part considered independent of political control.

Criminal defendants are presumed innocent until proven guilty, and the constitution provides for the right to a fair and timely public trial. However, in practice defendants often wait years for their trials to begin and end. Contributing factors include outdated and inefficient judicial infrastructure and procedures, inadequate human resources and experience, a culture of slow proceedings, and the absence of accountability for delays.

The public defender system is critical for meeting defendants' need for legal counsel. Experts estimate that as many as 90 percent of detainees are represented by public defenders.<sup>23</sup> However, a lack of resources for the service leads to deficiencies such as infrequent lawyer-defendant contact and inadequate follow-up on cases. Argentina currently has no coherent policy for addressing these deficits at the federal or provincial levels. The 1994 constitution calls for

trial by jury, but implementing legislation has yet to be passed. Compliance with judicial decisions occurs as a general rule, though less often in complex cases involving rulings against the state, especially when they imply major changes in public policy. Low-income and other marginalized persons generally lack access to public attorneys to bring their concerns before the authorities in both civil and criminal matters.

Civilian control over the military has been consolidated, and security forces do not unduly interfere in the political process. In recent years Argentina has taken a series of measures to prosecute former military and police personnel accused of grave human rights violations during the last military dictatorship. The executive branch actively encourages such prosecutions.

In June 2005, the Supreme Court struck down the “impunity laws” that had limited prosecution of the perpetrators of state terrorism, contributing to the opening of new cases. In July 2007, the court also annulled the pardons for accused and convicted human rights abusers issued by Menem in 1989–90. More than 500 people currently face charges for these crimes, the vast majority of whom are in pretrial detention, and 44 police and military officials have been convicted for crimes such as torture, disappearances, and extrajudicial execution, with many receiving lengthy or life sentences.<sup>24</sup> In October 2007, Catholic priest Christian von Wernich received a life sentence for his participation in homicide, torture, and illegal detentions while serving as police chaplain in the province of Buenos Aires.

Despite these advances, the majority of such abuse cases move very slowly, which has provoked significant public debate. Attorneys involved in human rights trials have received multiple threats, and the security of witnesses is a grave concern. In September 2006, Jorge Julio López, a torture victim who testified in one of the cases, disappeared the day before he was to attend a final trial session and remains missing. In December 2006, Luis Gerez was abducted for 48 hours and tortured after publicly accusing former police chief Luis Patti of participating in torture during the dictatorship. Patti, a former mayor in the province of Buenos Aires, was elected to the Chamber of Deputies in October 2006. Congress blocked him from taking his seat based on information linking him to crimes against humanity, although he had not been convicted in court. The Supreme Court ruled in Patti’s favor, but because he was detained on charges of human rights violations, he never occupied his seat. Sitting legislators have immunity from prosecution.

In August 2008 Congress annulled the Code of Military Justice and created a new process for trying military officials in federal civilian courts. Lack of political will results in relatively few sanctions for members of the security forces involved in abusing power for personal gain, a relatively common practice.

The World Bank Doing Business 2009 report rated Argentina 113 of 181 countries for doing business overall, and 45 of 181 on contract enforcement.<sup>25</sup> Property rights are guaranteed by law, though problems in the judicial system sometimes compromise contract enforcement. The state generally protects

citizens from the unjust confiscation of their property. In a glaring exception, an inadequate legal framework and conflicting jurisprudence on government confiscation of bank savings in 2001 and 2002 remain unresolved, leaving open the possibility that such measures—typical in Argentina during extreme economic crises—could again be implemented.

**ANTICORRUPTION AND TRANSPARENCY 3.56**

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.75
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	3.25
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	4.25
GOVERNMENTAL TRANSPARENCY	3.00

For the average citizen, bureaucratic red tape can be time consuming but has a limited effect on opportunities for petty corruption. Still, corruption—both petty and serious, mostly involving the executive branch—constitutes a structural problem in Argentina, and only a handful of politicians have ever been convicted. Allegations of major corruption generally receive significant attention from the news media, including high-level scandals involving the current government. Néstor Kirchner and Planning Minister Julio de Vido are under investigation for “illicit enrichment.” In June 2007, Economy Minister Felisa Miceli resigned after failing to account for more than US\$60,000 in dollars and pesos found in her office bathroom. In August 2007, customs officers discovered US\$800,000 in cash in a suitcase carried by Venezuelan American businessman Guido Antonini Wilson, who was traveling on a plane chartered by Argentina’s state oil company. This event spurred the resignation of Claudio Uberti, head of the agency in charge of privatized highway concessions, who was also on the plane. Antonini stated that the suitcase contained Venezuelan government funds destined for Fernández’s presidential campaign. U.S. courts have given prison sentences to two Venezuelans involved in the case, which is still under investigation in Argentina.

The 1999 Public Ethics Law requires asset declarations for members of all three branches of government. The federal anticorruption office has a complete database of executive declarations, which are made available on request. As of March 2009, Media Secretary Enrique Albistur was under investigation for conflict of interest related to state advertising contracts he allegedly awarded to firms linked to himself and family members, which is prohibited by law. It is difficult to obtain asset declarations for members of Congress, even when requested by specialized NGOs. In 2007, the Supreme Court made its own asset declarations public for the first time, after arguing for years that it was exempt from the 1999 law. Only some lower federal judges have followed suit, and questions have been raised regarding the accuracy of their statements. There is no control for conflicts of interest involving judges.

Argentine law includes criminal penalties for official corruption, but these are not implemented effectively, due primarily to lack of political will. Victims of corruption generally assume that they have few mechanisms to pursue their rights, in part because cases usually take more than a decade to be resolved and only a handful have resulted in convictions.

The several agencies tasked with investigating corruption generally suffer from a lack of independence from the executive branch. Most cases fall under the purview of federal courts in the capital, which are known for their vulnerability to political influence. As a result, while some cases are investigated, they consistently stall and are often closed before actual trial or conviction. The situation is worse in the provinces, where the independence of executive agencies and the justice system is seriously compromised.

Created in 1999, the federal Anti-Corruption Office has two directors tasked with prevention and investigation, respectively. However, it cannot prosecute cases, and while the directors have generally had excellent personal reputations, they report to the justice minister, weakening the agency's independence and effectiveness.

A special prosecutor's office for administrative matters forms part of the Public Ministry, which, in turn, reports to the president. In March 2009, special prosecutor Manuel Garrido resigned, alleging that Prosecutor General Esteban Righi had signed a 2008 resolution that reduced his functions and limited his role in denouncing corruption cases. The special prosecutor had initiated criminal investigations of senior government officials, including the secretaries of media and transportation.

Argentina has no adequate law to protect whistleblowers, and anticorruption activists and investigators do not feel secure when reporting cases of bribery and corruption. The top regulators of privatized public services are generally allies of the current administration, making the agencies ineffective. Argentina has some public enterprises that had previously been privatized (such as mail service, water works, and the national airlines), and they are widely believed to be tainted by corruption. The national tax administrator implements a sophisticated internal audit system to ensure the accountability of tax collection. Corruption is not common in the education system.

Kirchner's decree establishing public access to executive branch information is still in effect, but like scattered provincial and municipal statutes, it is underutilized. While the national government has freedom of information officers in each ministry, journalists, NGOs, and university students report that responses to formal requests are often slow, incomplete, or nonexistent. The government never actively publicized the right to access information.

Given Fernández's role in scuttling the access to information bill in 2005, and her hold over Congress since then, no similar bill has received serious consideration. Many NGOs fear that a bad public information bill—for example, one that establishes the same requirements for private businesses as for public institutions, which Fernández has supported—would be worse than no bill at all.



Even when access is provided, government data are often unreliable, incomplete, or out of date, leading to calls for a legal framework to govern its production. In early 2007 the national statistics agency (INDEC) modified the consumer price index so as to underreport inflation. This in turn lowered the official rates of poverty and indigence and made comparisons with past inflation rates impossible. In May 2008, a federal judge ordered INDEC to provide clear and complete information regarding the methodological changes after the agency failed to comply with a freedom of information request by a civil rights NGO, and the government lost an appeal of the ruling. The scandal destroyed INDEC's credibility. The government also canceled publication of widely used data on production and sales in the agricultural sector, such as the amounts of grains produced; that information was considered politically sensitive in light of the conflict over the tax on soy exports.

The 2008 Open Budget Index ranked Argentina 25 out of 85 countries evaluated. The government provides some information at the beginning of the budget year. However, it is extremely difficult to obtain data regarding expenditures during and at the end of the budget cycle<sup>26</sup>—a situation that is greatly aggravated by the executive's authority to reallocate budget items at will, as mentioned above.

Argentina's legal framework for government contracting is outdated and deficient, opening the door to numerous allegations of contracting-related corruption. Sole-source contracting is used disproportionately, due to the slowness of competitive bidding and lack of ministerial planning, which leads to unreasonably short time frames for nonurgent procurement. An online information system launched in December 2005 improved access to information for providers of goods and services. Public works are contracted separately by the Planning Ministry, and various irregularities occur in both sole-source and competitive processes.

## RECOMMENDATIONS

- The national and provincial governments should enact comprehensive access to information laws that apply to all three branches of government, are based on principles of maximum disclosure, and include provisions regarding the production and proper archiving of information.
- Measures should be taken to ensure compliance with existing limits on pre-trial detention, and Congress and provincial legislatures should pass laws that restrict the use of pretrial detention, making it an exception rather than the rule. The national government should enact legislation to implement the UN Optional Protocol for the Prevention of Torture (OPCAT).
- Congress should pass and implement a law that assures the full independence of the various oversight bodies, including the National Audit Agency, the executive auditor (Sindicatura General de la Nación), and the

Anti-Corruption Office; modifies the process for the designation of their heads; and expands their purview and functions.

- Congress should enact legislation that modifies the composition and functioning of the Council of Magistrates to ensure its independence from executive control, and the council itself should reform the procedures for selection and removal of federal judges so as to end the excessive delays in their appointment.
- The government should design and implement a policy to provide proper access to public attorneys for low-income and other marginalized persons, allowing them to defend their rights in both civil and criminal matters.

## NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

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- <sup>2</sup> Committee to Protect Journalists (CPJ), "Argentina," in *Attacks on the Press in 2007* (New York: CPJ, 2008).
- <sup>3</sup> Open Society Institute, *The Price of Silence: The Growing Threat of Soft Censorship in Latin America* (New York: Open Society Institute, 2008), 14.
- <sup>4</sup> "La Matemática Parlamentaria" [Parliamentary Math], *Crítica de la Argentina*, June 30, 2009, 10.
- <sup>5</sup> C. Gruenberg and V. Pereyra Iraola, *El Clientelismo en la Gestión de Programas Sociales contra la Pobreza* [Clientelism in the Management of Social Antipoverty Programs] (Buenos Aires: Center for the Implementation of Public Policies for Equity and Growth, January 2009), 6.
- <sup>6</sup> "CFK: The Most Democratic President Since Alfonsín?" *Argentine Post*, March 22, 2009.
- <sup>7</sup> "Argentina Sends 30 Pct Soy Tax Income to Provinces," ABC News, March 19, 2009.
- <sup>8</sup> See tracking of the number and content of NUDs by the Association for Civil Rights at <http://adclegislativo.digbang.com/verdecretosporano.php?iddocumento=2008&idpresidencia=13>.
- <sup>9</sup> "El Acceso a Internet Creció 18,5% en el Último Año" [Access to the Internet Increased 18.5% in the Last Year], Infobae.com, March 16, 2009.
- <sup>10</sup> Data from the Federal Prison Service, "Internos Extranjeros en el Ambito del Servicio Penitenciario Federal."
- <sup>11</sup> Ministry of Justice, Security, and Human Rights, *Prison Ombudsman Annual Report* (Buenos Aires: Ministry of Justice, Security, and Human Rights, 2007), 51.
- <sup>12</sup> Center for Legal and Social Studies, *Human Rights in Argentina: 2008 Report* (Buenos Aires: Center for Legal and Social Studies, 2008), 153–154.
- <sup>13</sup> Interview with Alvaro Herrero, Executive Director, Association for Civil Rights, Buenos Aires, March 26, 2009.
- <sup>14</sup> Data from the Centro de Estudios de Opinión Pública [Center for Public Opinion Studies], cited in *Human Rights in Argentina: 2008 Report*, 95.
- <sup>15</sup> Data from the Ministry of Justice, Security, and Human Rights website, [http://www2.jus.gov.ar/politicacriminal/TotalPais2007\\_evol.pdf](http://www2.jus.gov.ar/politicacriminal/TotalPais2007_evol.pdf) (accessed April 6, 2009).

- <sup>16</sup> Fundación Directorio Legislativo, *Informe No. 1, Congreso de la Nación: Las Legisladoras, Su Influencia y Participación dentro de las Cámaras 2000–2008* [Report No. 1, National Congress: Female Legislators, Their Influence and Participation in Both Chambers 2000–2008] (Buenos Aires: Fundación Directorio Legislativo, September 2008), 2, 9.
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- <sup>19</sup> National Institute Against Xenophobia, Discrimination and Racism (INADI), “Map of Discrimination in Argentina,” November 2008.
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- <sup>21</sup> Interview with Gastón Chillier, Executive Director, Center for Legal and Social Studies, Buenos Aires, March 10, 2009.
- <sup>22</sup> Center for Legal and Social Studies, *Human Rights in Argentina: 2008 Report*, 153–154.
- <sup>23</sup> Center for Legal and Social Studies, *Human Rights in Argentina: 2007 Report* (Buenos Aires: Center for Legal and Social Studies, 2007), 149.
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- <sup>25</sup> World Bank, “Argentina,” in *Doing Business 2009: Comparing Regulation in 181 Economies* (Washington, D.C.: World Bank, 2009).
- <sup>26</sup> Open Budget Initiative, “Argentina,” in *Open Budget Index 2008* (Washington, D.C.: Center on Budget and Policy Priorities, 2008).