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## FEATURED Q&A

# Will Proposed Changes Improve Argentine Justice?



A proposed reform of Argentina's justice system addresses areas including terrorism, fraud and reproductive rights. // Image: weisspaarz.com.

**Q** The Argentine government is working on a proposal to substantially reform the country's justice system by modernizing the criminal code to include new legislation addressing terrorism, reproductive rights, corruption and fraud, drug trafficking and gender violence, among other areas. What are the proposed legislation's most important aspects? Are there reforms missing that should be included? To what extent will the reform help improve Argentina's justice system? What measures are necessary to ensure the new reforms will be effectively implemented and enforced?

**A** Daniel Alonso, managing director and general counsel at Exiger: "The draft reform is a much-needed modernization. The most important aspects are those establishing new crimes that seek to bring Argentina up to the standards of the international community: terrorist financing; cybercrime; corporate criminal liability and the introduction of corporate compliance into the criminal justice system; sentencing guidelines; and more serious penalties for corruption and certain other offenses. Most significantly, Argentina has an opportunity to reform its current, inadequate law relating to cooperating witnesses in criminal cases. The current draft, unfortunately, does not change much, but there is still time to correct that. The details of the problems are too complex to get into here, but the key issue is that the reductions in sentences are insufficient incentives to cooperate in the typical case. The cooperator may only get a reduction if he is also a participant in the defendant's crime, thereby eliminating vast numbers of

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## TODAY'S NEWS

### POLITICAL

## Maduro Opens Door to Human Rights Probe

Venezuelan President Nicolás Maduro said Thursday that the United Nations' human rights chief was welcome to visit his country "whenever she wants" after she called on Caracas to allow an international investigation.

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### ECONOMIC

## Chile Approves Plans for Massive Desalination Plant

Environmental regulators in Chile have approved plans to build the largest desalination plant in Latin America.

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### POLITICAL

## Brazil's Bolsonaro Accused of Past Theft, Aggression

Court documents show Ana Cristina Siqueira Valle, the ex-wife of front-running Brazilian presidential candidate Jair Bolsonaro, accused him of aggressive behavior and hiding millions of reais in assets during divorce proceedings.

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Valle // File Photo: LinkedIn.

## POLITICAL NEWS

## Maduro Opens Door to Human Rights Investigation

Venezuelan President Nicolás Maduro said Thursday that the United Nations' human rights chief, Michelle Bachelet, was welcome to visit his country "whenever she wants" after she called on Caracas to allow an international investigation of the humanitarian situation in the country, Reuters reported. A left-of-center former president of Chile, Bachelet took over the U.N. Human Rights Council on Sept. 1. "President Bachelet, the high commissioner, should coordinate with the foreign ministry when she wants to go to Venezuela. She's always welcome," he added. Bachelet said Thursday that for the Human Rights Council to be able to produce an impartial report on the situation, it was vital to be allowed into the country. The council's resolution this week said the Venezuelan government should open its doors to humanitarian assistance to address "scarcity of food and medicine, the rise of malnutrition" and "the outbreak of diseases that had been previously eradicated or kept under control in South America." The resolution passed by a vote of 23 to seven, with 17 ab-

staining. Countries voting against the measure included China, Cuba, Egypt and Pakistan, according to Human Rights Watch. Earlier this week, the leaders of five Latin American nations and Canada signed a complaint with the International Criminal Court, urging it to investigate Maduro's government on allegations of human rights abuses. The U.S. ambassador to the United Nations, Nikki Haley, on Thursday took the unusual step of joining protesters outside the world body's headquarters who were calling for Maduro's ouster, Agence France-Presse reported. "We are going to fight for Venezuela and we are going to continue doing it until Maduro is gone!" Haley shouted from a megaphone. "We need your voices to be loud and I will tell you, the U.S. voice is going to be loud," she said.

## Ex-Wife of Brazil's Bolsonaro Claimed Theft, Aggression

The ex-wife of front-running Brazilian presidential candidate Jair Bolsonaro accused him of aggressive behavior and hiding millions of reais in assets during divorce proceedings more than a decade ago, *Folha de S.Paulo* reported today, citing court documents obtained by news magazine *Veja*. The filing also

Argentina more toward an accusatorial system like the one we have in the United States, as well as measures that should dramatically decrease the time a case takes from start to finish. In short, a functioning procedural system is more likely to ensure substantive justice."



**Claudia Martín, lecturer and co-director of American University's Academy on Human Rights and Humanitarian Law:**

"The draft criminal code incorporates new provisions on international law and human rights law, as required by treaties binding upon Argentina. First, the draft criminal code

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## NEWS BRIEFS

## Chilean Regulators Approve Plans for Desalination Plant

Environmental regulators in Chile on Thursday approved plans to build the largest desalination plant in Latin America, Reuters reported. With an initial investment of about \$500 million, the ENAPAC project, led by Chile-based firm Trends Industrial, will desalinate sea water for business customers in the metals-rich Atacama region. The project, which had been under government review for more than a year, will be the first large-scale desalination plant powered with solar energy.

## A Third of Latin American, Caribbean Banks Hit by 'Successful' Cyber Attacks

Nine out of 10 banks in Latin America and the Caribbean experienced "cyber incidents" during the last year, the Organization of American States said in a research report released this week in Washington. Thirty-nine percent of the incidents were not reported, although in the case of the largest banking entities that number goes down to 19 percent. More than a third of the banks in the region suffered "successful attacks," according to the study.

## Colombia May Spend \$300 Million on New Anti-Aircraft System

Colombia's government is considering spending more than \$300 million on a new system of anti-aircraft missiles, Reuters reported Thursday, citing military sources. Manufacturers from the United States, France and Israel are reportedly in the running to provide the system. In 2005, Colombia bought 25 planes from Brazil's Embraer for \$234 million, its largest-ever military purchase. At the beginning of 2015 the country added 32 Canadian-made armored vehicles to police its border with Venezuela at a cost of \$84 million, Reuters reported.

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potential cooperators; the law only applies to a limited list of crimes; and it only applies if the person agrees to cooperate before trial. Without an adequate cooperator law, Argentina will have a very difficult time making significant dents in its corruption problem. Because it is so comprehensive, and seeks to account for all modern crimes, it will be difficult to find loopholes in these statutes, which means a greater likelihood that the guilty will be punished. In that sense, I think it will improve the system. But only time will tell. The most important measure is the implementation of the Criminal Procedure Code, which I'm told is scheduled for 2019. That code includes measures that will move

accused Bolsonaro of “explosive behavior” and unchecked “aggressiveness.” Ana Cristina Siqueira Valle also accused her ex-husband of stealing nearly a million dollars worth of jewelry and cash from a safety deposit box the couple held at Banco do Brasil. Today, however, Valle, herself running for office, has supported Bolsonaro’s candidacy, saying the accusations she levied in court documents in 2007 were “excessive” and filed under the strain of a custody battle over their children. Meanwhile, Bolsonaro, who was stabbed while campaigning nearly three weeks ago, will not leave hospital today as expected due to an infection, Reuters reported. He continues to hold the lead ahead of the Oct. 7 election, which is expected to be decided in a second-round vote. While Bolsonaro has a six-point lead over surging leftist Workers’ Party candidate Fernando Haddad, he would lose the second round against him Oct. 28, a new opinion poll by Ibope showed on Wednesday, Reuters reported.

## BUSINESS NEWS

### Petrobras Agrees to \$853 Million Graft Settlement

Brazilian state oil company Petrobras said Thursday it had agreed to an \$853 million settlement with U.S. and Brazilian authorities to end investigations into the Operation Car Wash corruption scandal, The Wall Street Journal reported. The company had been accused of misleading investors and violating the U.S. Foreign Corrupt Practices Act. About \$683 million of the settlement is slated to fund efforts in Brazil to promote corporate transparency and compliance practices, with about \$170 million to be equally split between the U.S. Justice Department and the U.S. Securities and Exchange Commission. The scandal, which broke in 2014, has led to jail terms for numerous senior executives. Petrobras has admitted that members of its board directed millions of dollars in illicit payments to Brazilian politicians and political parties. “Executives at the highest levels of Petrobras—including members of its Executive

## THE DIALOGUE CONTINUES

### How Are Trade Tensions Between the U.S. & China Affecting Latin America?

**Q** **The International Monetary Fund’s managing director, Christine Lagarde, warned this month in an interview with the Financial Times that emerging markets could suffer a “shock” due to the escalating trade war between the United States and China. While Lagarde said her staff does not yet see widespread contagion, developing countries are facing threats due to rising “uncertainty” and a “lack of confidence,” she added. How are trade tensions between the United States and China affecting Latin American countries? Which countries and industries stand to gain or lose the most? How should countries in the region protect themselves against the fallout from external factors such as friction over trade?**

**A** **Andre Soares, China-Latin America counselor at the Inter-American Development Bank’s board of directors:** “The trade war has caused limited direct impact to emerging markets, and it is still early to identify its spillover effects to the LAC region. The catalyst for a downfall of stock markets across Latin America will be closely related to the macroeconomic situation of countries in the region vis-à-vis the combination of a strengthening American economy and prospects of faster rate hikes in the United States. Markets across the region

Board and Board of Directors—facilitated the payment of hundreds of millions of dollars in bribes to Brazilian politicians and political parties and then cooked the books to conceal the bribe payments from investors and regulators,” the head of the Justice Department’s criminal division, Brian Benczkowski, said Thursday. The company agreed in January to pay \$2.95 billion to holders of Petrobras’ American depository receipts and bonds who had filed suit in the United States after the value of the

have also been affected by the uncertainty in Brazil’s election—it is still unclear which economic path the region’s largest economy will pursue next year. Undoubtedly, the agriculture sector is the short-term winner, with companies from the grain segment experiencing growth due to increases in demand from China. Brazilian soybean exports grew by double digits since the trade war started. In August, Brazil registered a record high for this segment’s exports. Nevertheless, one could claim that, so far, this is the only winner, considering that the trade war may result in negative effects across markets in Latin America. This is explained by the possibility of seeing significant trade deviation, which could result in even cheaper Chinese goods that now have no destination, flooding markets in the region. In conclusion, there is no clear evidence that the trade war is the main driver behind the short-term volatility in LAC markets. Investors will have to closely follow how negotiations between China and the United States will unfold and assess how the results from each round of negotiation will trigger movements in LAC markets.”

**EDITOR’S NOTE:** The comment above is a continuation of the [Q&A](#) published in Thursday’s issue of the Advisor.

paper plummeted. Major proposals related to Petrobras have come up throughout Brazil’s unpredictable presidential election campaign this year. Front-running candidate Jair Bolsonaro has said he supports privatizing some parts of Petrobras, while earlier this month, leftist presidential candidate Ciro Gomes warned investors not to buy state assets in the energy sector because he plans to expropriate them if he wins the presidency. [Editor’s note: See related [Q&A](#) in this week’s issue of the Energy Advisor.]

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typifies the international crimes provided by the Statute of Rome, including crimes against humanity, war crimes, genocide and the crime of aggression. Additionally, the draft provides for the criminal liability of commanders and other superiors in the perpetration of those crimes, in line with the Rome Statute and case law developed in the domestic trials that prosecuted the perpetrators of crimes against humanity in Argentina during the military dictatorship. Furthermore, the draft code criminalizes forced disappearance as an individual crime and as a crime against humanity when

“The success of this reform will depend on the inclusion of a more extensive constituency...”

— Claudia Martín

perpetrated as part of a widespread or systematic attack directed against a civilian population. Unfortunately, the draft fails to provide for the crime of torture in a separate provision, as required by international treaties prohibiting torture. Even if the draft lists torture among the acts that may constitute a crime against humanity or a war crime and provides for the punishment of torture when perpetrated against a victim deprived of liberty, it fails to typify the crime torture or other forms of ill-treatment. Finally, the draft code continues to criminalize abortion, subject to a few exceptions. Given the context in which abortion is practiced in Argentina, and the inherent inequalities faced by poor

women when accessing this procedure, the prohibition constitutes a discriminatory measure that should be eliminated from the proposal. Ultimately, despite a shared view that the criminal code needs updating, the success of this reform will depend on the inclusion of a more extensive constituency in the process so that there is buying into the draft and agreement upon the scope of the proposed changes.”

**A** **Gastón Chillier, executive director of Centro de Estudios Legales y Sociales in Buenos Aires:**

“The first problem with the criminal code reform project is that, although preliminary versions have been circulating, they have not been presented before Congress. In fact, in mid-August, the presentation of the draft was postponed for the third time this year. Since the project has not been discussed in public forums either, there is little to be known regarding its definitions. However, there are some concerning trends in the circulating draft. For example, the regressive penalties in the case of abortion and the broad definition of terrorism, which would allow its application to any grave incident. This, as has been seen in other countries, tends to have dangerous consequences to other rights, including the right to protest. Moreover, the code would not improve justice, in terms of structural problems, which this government has made worse, as the difficulties to investigate power and relations between government, federal justice and intelligence agencies have made evident.”

*The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at [gkuleta@thedialogue.org](mailto:gkuleta@thedialogue.org).*

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