

SPECIAL REPORT

The Argentinian Congress: political outlook in an election year

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d+i LLORENTE & CUENCA

1. INTRODUCTION
2. WHAT HAPPENED IN 2012?
3. 2013 OUTLOOK
4. JUSTICE REFORM AND ITS POLITICAL CONSEQUENCES
5. 2013 LEGISLATIVE ELECTIONS
6. CONCLUSIONS

AUTHORS

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1. INTRODUCTION

On 1st March 2013, the president of Argentina, Cristina Fernández de Kirchner, opened a new regular sessions' period in the Argentinian Congress.

In her message, broadcasted on national radio and television, the head of state summarized the main economic indicators of Argentina and how they had developed over the last 10 years of Kirchner's administration, a timeframe she called "a won decade".

National deputies and senators, in Legislative Assembly, attended the Presidential speech after **having taken part in 23 sessions in each House, which strongly contrasts with the figure registered in 2011, when approximately a dozen sessions were held.**

The central point of her speech was the announcement of the outlines of what she called "**the democratization of justice**". The modification of the Judicial Council, the creation of three new Courts of Cassation and the regulation of the use of precautionary measures in lawsuits against the state were, among others, the initiatives that the president promised to send to Congress for discussion. Therefore, the judicial system reform became the main political issue in the 2013 public agenda and had a noteworthy impact on all areas of Argentinian society.

The presidential speech took place in the context of an election year, which will entail the modification of the composition of both Houses and in which represented political parties will play different roles. On one hand, the government will seek a parliamentary majority that allows them, if necessary, to discuss a constitutional reform which shall enable a further mandate. On the other hand, the opposition will try to achieve as many seats as possible in order to implement their agenda and act as a counterweight to the decisions taken by the executive authority, thus becoming a viable alternative for the 2015 elections.

“During the 130th period of legislative sessions, both Houses of Congress passed and enacted several bills, resolutions and declarations”

2. WHAT HAPPENED IN 2012?

The National Congress has witnessed a year of intense activity. Since the legislative changes of 2009, both the House of Representatives and the Senate managed to overcome the low number of sessions held in 2011, marked by the elections in which Cristina Fernández de Kirchner was re-elected with over 54% of the votes casted.

House of Representatives:

- **23 sessions** were held (in contrast with the figure of 2011; 7). These can be divided into special (11), urgency (7), informative (1), preparatory (2) and extraordinary sessions (2).
- **The government organized a record number of special sessions** compared to urgency sessions, in many cases because the time lapses between its issuing and handling in the Houses could not be met.
- While 80 deputies did not make any statements during these sessions, only 14 did not make any speeches in 2012. Therefore, a mere 5% of the members never appeared on the list of speakers.
- **229 bills were passed.**
 - » Deputy Héctor Recalde (FpV) was the leading member in relation to presented bill initiatives, while Liliana Faldul (Partido Federal Fuegoño) topped the list of draft declarations and

Ivana Bianchi (Alianza Compromiso Federal) the draft resolutions list.

Senate:

- **23 sessions were held** (unlike the 13 recorded in 2011).
- Half of the senators attended every session or just missed one.
- Senator Aníbal Fernández (FpV) was the member who talked the most in 2012, with 85.876 words, followed by Gerardo Morales (UCR), with 76.195 words.
- **1045 projects were passed**, 118 were draft laws; 58 communication-related; 118 resolutions and 751 declarations.
 - » Senator Roberto Basualdo (Bloque Producción y Trabajo) lead the ranking of presented bills, while Mario Colazo (UCR) topped the list of draft resolutions and declarations.

During the 130th period of legislative sessions, both Houses of Congress passed and enacted several bills, resolutions and declarations.

The highlights of the 2012 legislative year were:

- **Reform of the Charter of the Central Bank:** it was granted further powers in relation to credit regulation and enhanced control for Superintendence of Financial and Exchange Institutions.

“A rise in consumer prices of 10.8% and a growth of 4.4% is expected for the current year”

- **Transfer of subways, pre-metro, Puerto Madero tram and 33 bus lines services to the City of Buenos Aires:** the Act-Agreement signed between National Government and Local Government was approved.
- **Electoral Code amendments:** this initiative replaced the National Identity Book for a card in order to vote.
- **YPF:** 51% of the shares owned by the oil company Repsol were expropriated, as the Government sought to achieve fuel self-sufficiency and the recovery of leadership in the energy sector.
 - » According to the members of Congress consulted by the website www.parlamentario.com, this was the most important action of the year.
- **Expropriation of former Ciccone Calcográfica:** thus Argentine Mint controlled the South American Values Company, the only private enterprise allowed to issue legal tender banknotes.
- **Transfer of judicial deposits from the City to the National Bank:** it was agreed that the funds generated from lawsuits in federal and national courts of the City of Buenos Aires shall no longer be deposited in the City Bank but in the National Bank.
- **2013 Budget:** the “law of laws” was passed. A rise in consumer prices of 10.8% and a growth of 4.4% is expected for the current year, among other economic parameters.
- **Reform of ART law:** this measure amended the Occupation Hazards regulation, allowing the injured worker to choose between an ART compensation, increased by 20%, or to pursue a claim for damages through civil proceedings.

PASSED BILLS

POLITICAL

- Transfer of subways, pre-metro, tram and 33 bus lines services to the City of Buenos Aires
- Electoral Code amendments
- Expropriation and nationalization of YPF
- Expropriation of former Ciccone Calcográfica
- “Per Saltum” Regulation
- Agreement with Iran regarding the AMIA bombing

ECONOMIC

- Reform of the Charter of the Central Bank
- Transfer of judicial deposits from the City to the National Bank
- 2013 Budget
- Capital Market reform

SOCIAL

- Reform of ART law
- Young Vote
- Gender Identity

- **Young Vote:** citizens over 16 years will be eligible to vote in the next elections.
- **Gender Identity:** the rights related to gender identity recognition and to be identified in accordance with the internal feelings of each individual were addressed.
- **“Per Saltum” Regulation:** the extraordinary petition for

“Despite being an election year, it is likely that Congress’ legislative activity level of 2012 will not drop”

direct access to the Supreme Court of Justice in case of “serious institutional crisis” was approved.

- **Capital Market reform:** allowing the National Commission of Values to become the watchdog of public offering of securities.
- **Agreement with Iran regarding the AMIA bombing:** an Understanding Memorandum between Argentina and Iran was passed in order to investigate the bombing of the Jewish center of 1994.

outline the main points on which the Government and opposition agendas will be centered on the Legislative Power:

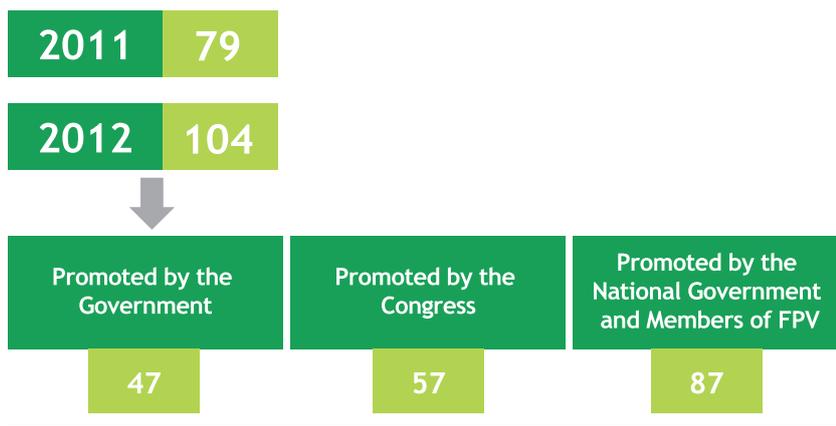
- **Issues that might have an impact on the media:** matters that may eventually define the national public agenda, shaping the political and social debate:
- **Potential Constitutional reform:** it stems from statements made by senior officials, who began considering the possibility of amending the Constitution to ensure the possibility of a third term for the current President.

3. 2013 OUTLOOK

Despite being an election year, it is likely that Congress’ legislative activity level of 2012 will not drop. It is possible, in principle, to

- **Amendments, updates and unification of the Civil and Commercial Codes:** the draft was announced by the President herself, Cristina Fernández de Kirchner, along with the President of the Supreme Court, Ricardo Lorenzetti. The Congress formed a Bicameral Committee to study the reform over the past year. It carried out 15 public hearings throughout the country.

The designation of former Argentina Cardinal Jorge Bergoglio as Pope opened a new debate regarding the unification of both Codes. It is expected that the Government will meet with the head of the Argentinian Church to discuss and agree on many points of the Civil Code bill that bishops are



LAWS PASSED IN 2012 DIVIDED BY SOURCE



“The objective is to give citizens access to information from all three branches of government”

not been on. The main debate will revolve around:

- » Divorce may be requested by only one of the spouses, without justification, and will not require three years of marriage. Infidelity shall not be a cause for divorce.
- » Spouses shall not be obliged to share the same home.
- » Hetero- and homosexual couples shall have the same rights to adoption and fertilization.
- » Surrogacy: having another woman bear a child for a couple shall be lawful.
- » Fertilization: gestated embryos can be implanted after the man’s death. The Church has always held that human life exists since the fecundation and rejects the destruction of embryos not implanted in the womb.

Although the debate will continue throughout 2013, it is expected to become a law before the legislative elections in October.

- **Possible reopening of the exchange of government securities of foreign debt:** if an agreement with government bonds holders is met, the Congress shall derogate the “Bolt Act” that prevents to renegotiate debt payments.

- **Income Act amendments:** there are different bills pending in relation to the modification of income tax and it is possible that the raise of the non-taxable minimum becomes one of the agenda items in 2013.

Other projects

- **Institutional:**
 - » **Criminal Code reform:** the government’s proposal could be discussed in Congress as long as the drafting committee continues developing it.
 - » **Management of decisions of the Mixed Committee Controller of Accounts, based on the resolutions of the General Auditing Office of the Nation (AGN):** related to alleged irregularities that have been detected in various public agencies. It is believed that the opposition will promote this measure.
 - » **Access to public information:** although the project had been provisionally adopted by the Senate in 2010, it never reached the Congress. The objective is to give citizens access to information from all three branches of government.
 - » **Consumer Price Index:** Even though there are

different projects from the opposition expressing concerns about inflation, statistics from the National Institute of Statistics and Census (INDEC) and requesting the creation of a new consumer price index, it is expected that none of them will be handled in 2013, as FpV will keep the majority, at least, until the legislative elections.

- **Social:**

- » **In-Vitro fertilization:** the bill regulating assisted reproduction techniques which also includes the treatment of infertility in the Compulsory Medical Program was passed by the House, but has not been approved by the Senate yet (despite it expressing a favorable opinion).
- » **Electronic Waste Law:** this initiative was introduced by the government to create a system for the management of electrical and electronic equipment waste. It was approved by the Senate and is currently being discussed in Congress.
- » **Corporate Social Responsibility:** there are several bills seeking to establish the preparation of an annual social report for state enterprises as well as the development of a sustainability report

for private businesses. Both are currently being discussed in the pertinent Legislative Committees.

- **Agricultural:**

- » **Seed law:** amendments to the Seed and Phytogenic Creations Acts have been proposed. On one hand, there is a project driven by the government which is currently being debated in the National Seed Committee (CONASE). On the other hand, the opposition introduced two initiatives that are currently on hold in both Houses.
- » **Agrochemicals Act:** although several initiatives seeking to regulate the use of glyphosate in agricultural activities were presented, they have not been addressed in any of the two Houses yet.
- » **Mate:** a project that modifies the Law of the Mate Institute was issued. It seeks to change the voting system in the body and regulate the price of the raw material and the finished product. It was passed by Congress and has been sent to the Senate for debate.
- » **Biofuels:** an initiative that regulates the development and use of biofuels and

“Last March, the president of Argentina, Cristina Fernández de Kirchner, announced the projects related to the “democratization of Justice” to the Legislative Assembly’”

oleochemical derivatives. It has been partially approved by the Congress and sent to the Senate for discussion.

- **Food:**
 - » **Healthy Kiosks:** several projects regarding healthy kiosks were unified and received preliminary approval in the Congress. They are being discussed in the Senate.
- **Employment:**
 - » **Employee participation in company profits:** even though it received media coverage last year, it might not be handled.
 - » **Amendments to the Law of Labor Contract:** several projects were submitted seeking to amend the Law of Labor Contract (payment of fringe benefits and the modification of the compensatory system, among others).

4. JUSTICE REFORM AND ITS POLITICAL CONSEQUENCES

Last March, the president of Argentina, Cristina Fernández de Kirchner, announced the projects related to the “democratization of Justice” to the Legislative Assembly. These are:

- **Modification of the Judicial Council:** The objective is to modify the representative body that regulates the selection

and prosecution of judges. The project intends to give the power to people to choose the members of the Council by popular vote. Therefore, candidates will be included in the lists that the political parties will have to submit in August for the primary elections. In order to select and suspend a judge and bring him to justice, half plus one of the votes will be required. Thus, the political party that wins the elections, even with just 35% of the votes, will obtain an automatic majority of 10 votes that will allow it to take decisions regarding the future of judges.

- **Creation of Chambers of Cassation in the fields of Civil and Commercial, Social Security and Labor and Contentious and Administrative Matters.** These courts will be above the Courts of Appeals and will decrease the number of cases to be settled by the Supreme Court.
- **Regulation of precautionary measures:** “precautionary measures have become a tool to destroy justice by paralyzing the judicial administration”, stated the President. The objective is to limit the use of these measures in judicial processes against the State. They may last for 6 months, renewable for the same amount of time in specific cases. After the deadline, the judge will have to deliver a judgment on merits. In case of appeal, the effect of the precautionary measure will be suspended,

“The initiatives that public opinion has deemed most controversial were the ones related to the modification of the Judicial Council and the regulation of precautionary measures”

except when this jeopardizes the life, health, environment or vulnerable sectors.

- **Democratizing the access to the judicial system.** “Everybody who meets the qualifications and requirements and has passed the exams will be eligible. In case there are too many people fulfilling these conditions, a public draw will be held”, said the head of state.
 - » **Access to information of the cases that are being addressed in the Supreme Court (CSJN):** implementation of a registration system of cases and publication of the judgments.
 - » **Internet access to the affidavits of all the members of the branches of government (Legislative, Executive and Judicial).**

The initiatives that public opinion has deemed most controversial were the ones related to the modification of the **Judicial Council** and the regulation of **precautionary measures**.

The arguments supporting the reform the of the **Judicial Council** imply that the body cannot perform its duties and is currently virtually paralyzed: a five-member opposition group, headed by Unión Cívica Radical (UCR), can prevent the Council from taking important decisions such as the prosecution and

selection of judges, as it requires the votes of two thirds of the Council.

The opponents of this project consider that these measures will be harmful to the composition of the body **for the sake of the governing party and this will lead to the politicization of the judicial system**, as judges will need strong links to political parties so that their names are present on the electoral lists.

Following the reforms suggested by the Center for Legal and Social Studies (CELS) and the group “Legitimate Justice” (Justicia Legítima), the government agreed to implement some modifications on the original project on precautionary measures in order to provide more protection to vulnerable sectors whose constitutional guarantees might be in jeopardy.

As happened with resolution 125 that sparked the conflict between government and agricultural sector and, likewise, as occurred with the Law on Audiovisual Communication Services that led to the confrontation between public authorities and the media, the importance of the reform **strongly divided society, as people defended one of two clearly divergent political positions.**

On one hand, **the opposition and several NGOs promoted the idea** that these judicial reforms proposed by the Government were part of a **“strategy of Kirchnerism to hold on to power with impunity, violating the National**

“The legislative elections to be held in October 2013 will be the main political event of the year”

Constitution”. Therefore, they launched a campaign to identify 12 members of opposition political parties that usually support initiatives of government to discourage them from doing so. Additionally, they took part in an important public protest organized through the social networks, the so called “18-A”.

During the almost 19 hours that the handling of these projects required, several tense situations took place in the House of Representatives. Elisa Carrió, member of Coalición Cívica (CC), claimed that there was a “pact for the money” between the president and the Head of the Supreme Court, Ricardo Lorenzetti, in order to help pass the judicial reform.

On the other hand, the reform was deemed suspicious when two key votes were not registered. For a moment, the opposition thought it had achieved its objective of halting the initiative, as a special majority was required in order to pass the project. However, a member of government and an ally of FpV pointed out that they had voted in favor of the amendments yet their votes had not been recorded. The opposition claimed that the voting was a fraud and withdrew from Congress. This situation left Kirchnerism alone voting the rest of the articles. **Even so, the government managed to get the preliminary approval for the project which was sent to Senate, where it was finally approved.**

Thus, it now forms part of the list of projects previously approved by the Congress along with the creation with

three Chambers of Cassation and the regulation of the use of precautionary measures. The same is expected for the project that promotes democratic access to Judicial Power, which will be debated in the House of Representatives, where Kirchnerism holds the majority.

It is likely that before the start of the election schedule which will lead to the elections in October, several judge and lawyers associations, as well as certain NGOs will make unconstitutionality appeals to prevent the implementation of the aforementioned measures. Therefore, the center of the political stage will gravitate around the Supreme Court, which will have the last word on this issue. It is yet to be seen how the Court will act on an unknown scenario for this judicial body: whether to allow reforms that affect its own structure.

5. 2013 LEGISLATIVE ELECTIONS

The legislative elections to be held in October 2013 will be the main political event of the year. This election is quite important as its results **will greatly define the Argentinian political scenario for 2015**. On one hand, the Senate renews the elected third of 2007, when President Cristina Fernández de Kirchner won for the first time. On the other, the House of Representatives will renew half of the elected members of 2009, when FpV was defeated.

Since it is not a presidential election, from a political point of view, the realities of local districts

“During the last weeks, looking for a candidate who could unify Peronism and prevent a possible defeat has become a reality”

will play a bigger role than national issues. Thus, it is possible for the FpV to find difficulties in order to achieve victory in the most important districts, such as the **City of Buenos Aires and the provinces of Santa Fe, Mendoza and Cordoba.**

In the City of Buenos Aires, PRO faces a key challenge for its future. If it obtains a significant amount of votes, it is likely that some of the elected candidates will run to become the successor of Mayor Mauricio Macri, current head of the City Government, who ends his term in two years. **If the expected results are not achieved, it is possible that the presidential aspirations of Macri will have to be postponed indefinitely,** which would force his political party to form an alliance with other groups in order to fight for the elections against Kirchnerism in 2015. The advantage for FpV is that it only needs to renew a single deputy, although this cannot be applied to the Senate, where it would lose an own senator and an ally, key during the last two years of government. **On the side of Frente Amplio Progresista, if they manage to form an alliance with Proyecto Sur, UCR and the Civic Coalition, it will be possible for them to fight with PRO for the first place.** However, the lack of management makes it difficult to form a joint strategy.

In Santa Fe, it is likely that the political contest will come down to a battle between the ruling party's candidate, former Governor Hermes Binner and the member of PRO, Miguel del Sel. Although the former is leading most opinion polls,

his opponent will try to emulate his successful performance of 2011, in which he obtained the second place. Furthermore, Peronism is divided and experiencing severe internal disputes. Former provincial legislator María Eugenia Bielsa and some mayors reject a new designation of national deputy Agustín Rossi. Therefore, during the last weeks, looking for a candidate who could unify Peronism and prevent a possible defeat has become a reality. The chosen member is no other than Alexander Ramos, current Secretary of Transportation, who has a very good relationship with President Cristina Fernández de Kirchner.

In Cordoba, Peronist Governor José Manuel De la Sota will promote the designation of Juan Schiaretti as leading candidate, a former provincial leader, while UCR will try to encourage the appointment of Senator Oscar Aguad. FpV has not elected a candidate yet, although Carolina Scotto, current Head of the National University of Cordoba and Adolfo Acastello, Mayor of Villa María, are being considered.

There is a great division in the two main parties of Mendoza. UCR, led by Alberto Cornejo, will have Julio Cobos as its candidate, a former Vice-President of Argentina. This situation has entailed a strong internal debate by Roberto Iglesias, former Governor Candidate, and Víctor Fayad, Mayor of Mendoza. Such is the magnitude of the problem that Iglesias and Fayad would be willing to run with their own lists, independent of UCR and would skip the primary elections of August if Cobos is finally

elected. Meanwhile, FpV is paying attention to the polls that reflect the popularity of the Head of the Bank of the Nation, Juan Carlos Fábrega, although his support acts in the province have not been successful. Provincial Peronism is also experiencing a strong confrontation between Governor Francisco Pérez and his deputy Carlos Ciarca. Pérez promotes a reform of the Constitution that would allow him to run for reelection in 2015, but his deputy opposes this measure. This move by the Governor complicates drafting a single list for the legislative elections for this year.

The main question will be the province of Buenos Aires, which accounts for 38% of the electoral

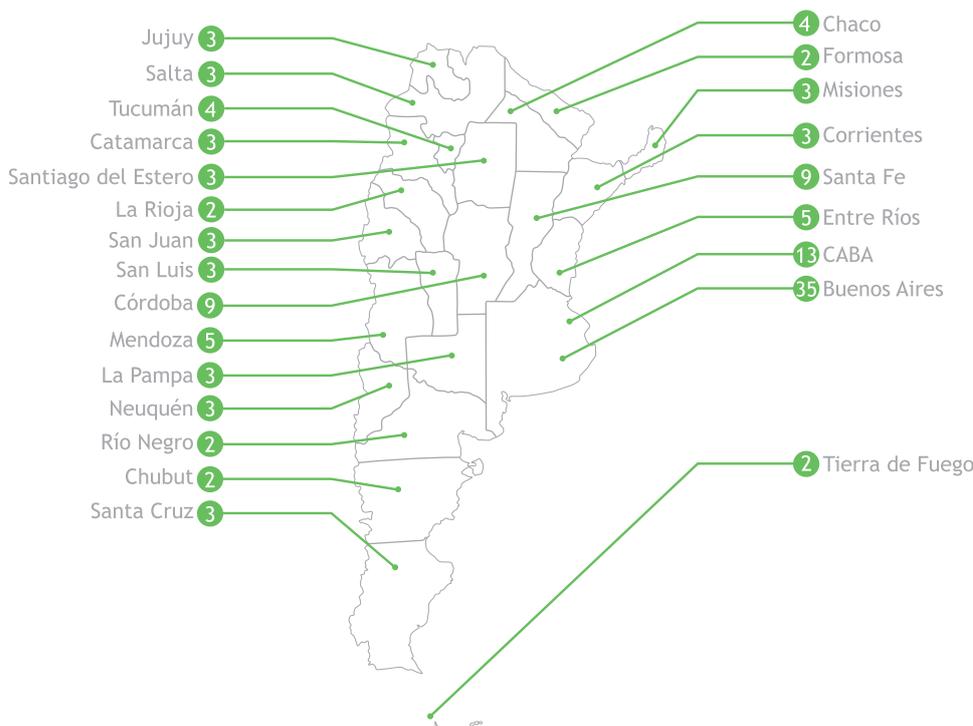
roll, as it is yet to be defined whether Peronism will run united or divided in several lists. People like Daniel Scioli, Governor of the province and Sergio Massa, Mayor of Tigre, are gaining relevance in the political arena. It has not been yet defined how both will influence these elections, as their decisions will not only depend on the configuration of Congress, but essentially, on the electoral outlook for 2015. On the side of the opposition, FAP (Hermes Binner and Margarita Stolbizer) is trying to form an alliance with UCR, which would allow them to return to the political forefront.

It is important to point out that these districts account for two thirds of the electoral roll and obtaining victories in them poses as the main challenge that the government will have to face in order to continue with its political project beyond 2015. Therefore, opposition will have to create political alliances if they intend on obtaining good results. It is likely that the opposition political parties will repeat the coalitions formed in 2009 to fend off the projects of government: the first union would be Frente Amplio Progresista (FAP), Unión Cívica Radical (UCR) and Coalición Cívica (CC); the second, a center-right wing fusion, which would unite dissident Peronism and PRO.

House of Representatives

The House has 257 members. 127 seats will be renewed in 2013.

HOUSE OF REPRESENTATIVES - NUMBER OF SEATS TO BE REPLACED DIVIDED BY PROVINCE



Senate

The Senate has **72 members**. In 2013, 24 seats, i.e., 3 senators of each of the following districts, will be renewed:

- City of Buenos Aires
- Chaco
- Entre Ríos
- Neuquén
- Rio Negro
- Salta
- Santiago del Estero
- Tierra del Fuego

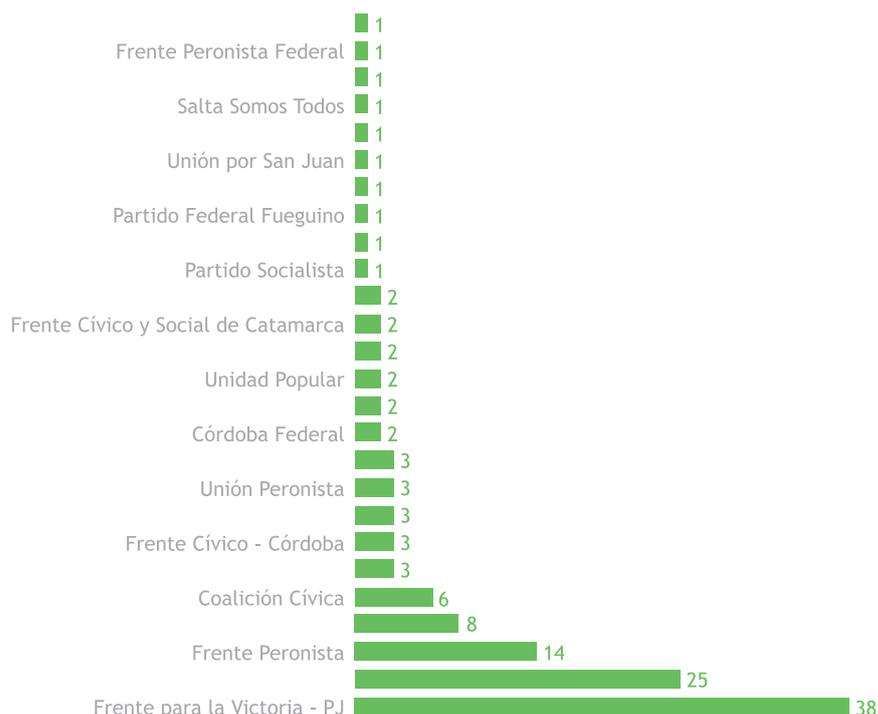
6. CONCLUSIONS

According to the Legislative Directory Foundation, most laws passed in 2012 were projects promoted by the Government or Members of Congress from Frente para la Victoria with the support of the Executive.

“You feel useless”, declared Senator Jaime Linares (Generación para un Encuentro Nacional, GEN), as he analyzed the role played by the opposition in Congress. While projects driven by Kirchnerism advance rapidly, the same cannot be said for the initiatives carried out by the opposition, as these are paralyzed when the pertinent Legislative Commissions have to study and discuss them.

Thus, in 2012, Frente para la Victoria did not encounter any problems in order to find the support needed to pass the bills they proposed, based on its parliamentary majority or by alleging national and public needs. The expropriation of YPF, amending the Charter of the Central Bank of Argentina, the transfer of the subway service to the City of Buenos Aires and the reform of the Electoral Code, among others, were

HOUSE OF REPRESENTATIVES - NUMBER OF SEATS TO BE RENEWED DIVIDED BY GROUPS



SENATORS - NUMBER OF SEATS TO BE RENEWED DIVIDED BY GROUPS



“It is important to understand that the judicial reform entails an electoral reform”

the main laws approved by Congress at the behest of Government. Consequently, it is evident that the opposition faces major difficulties when trying to use the legislative agenda to put their projects to public debate and become a real power alternative.

In 2013, legislative elections will be similar to the Open Concurrent Compulsory Primary Elections (PASO). This process will be marked by a singularity: since there will be no “drag effect” as occurs with presidential elections, it is likely that relationship between Government and governors regarding the draft of electoral lists will be more balanced.

With the possibility of securing a majority in both houses after the elections, it can be expected that the Government will continue sending several initiatives to the Legislative power in order to be able to continue with its government plan. Similarly, “battles” against corporations will still be present; mainstream media, especially newspaper Clarín, Justice, agriculture or opposition unionism are good examples.

It is important to understand that the **judicial reform entails an electoral reform**. Being able to choose the members of the Judicial Council through a general election is a modification of PASO. It would no longer be a mere election of representatives and senators in each district. The bill approved by the Senate states that “parties and alliances that promote a list of advisors must be registered, with the

same composition, in at least 18 districts”. This led to the rejection of several opposition legislators due to the harm that these measures could entail for provincial political forces. As declared by the **opposition representative** Graciela Carmaño, “there were only going to be district elections and the government implemented a national election”.

However, Frente para la Victoria will need to obtain very good results to be able to proceed with the constitutional reform, an issue that has not yet been formalized, but remains in the public debate. Even though it has been unanimously rejected by the opposition forces, its approval would shatter the dreams of several political sectors that hope to see their lust for power become a reality.

Although mid-term elections can define the remaining years for the party in power, Argentinians witnessed how Kirchnerism was able to overcome the bad results obtained in 2009 and continue dominating the political agenda. In general, the “8N”, the “20N” stoppage by opposition unionism and the latest social demonstration, “18A”, against the government had more political than economic motivations.

Nevertheless, **government has not modified its agenda and the opposition has not been able to take advantage of the aforementioned discontent either**. Cristina Kirchner continues dominating the public agenda and the opposition still faces difficulties in order to implement their projects.



“Congress configuration is not what will be at stake, but essentially, the chances of Kirchnerism to continue its political project”

The key to this legislative election will be to see what exactly will the Government come up with and what will do Peronism, which still has not stated whether it will support the Government or the opposition, and whose main figures are the Governor of Buenos Aires, Daniel Scioli and the Mayor of Tigre, Sergio Massa; both with a high degree of acceptance among the population.

The electoral schedule establishes that the internal open

concurrent compulsory elections will take place in August.

Therefore, political parties will have to specify and make public their political alliances in June. With the candidates already defined, **Congress configuration is not what will be at stake, but essentially, the chances of Kirchnerism to continue its political project as well as the possibilities of the opposition of becoming a true alternative to government.**

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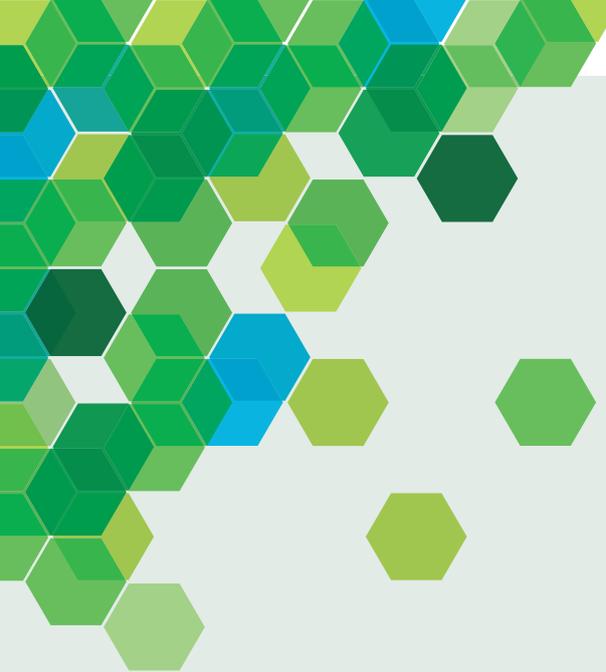
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