

Accountability for Safe Train Service in Argentina

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INTRODUCTION

On 2 March 2012, the General Audit Office (AGN) in Argentina issued an audit report pointing out irregularities concerning maintenance and procurement issues related to the train services provided by the private company Trains of Buenos Aires (TBA).

The audit verified the checks carried out by the National Regulatory Commission on Transport (CNRT), which reported to the Secretary of Transport with regard to: 1) the contractual obligations on maintenance, quality, and safety of the TBA train services; and 2) the process for re-determination of subsidies concerning railway services managed by TBA.

The audit report was issued right after a fatal train accident, known as the “Once Tragedy.” On 22 February 2012, the working brakes on a train traveling on the Sarmiento Line failed to be activated, causing it to crash into the Once train station in Buenos Aires. Of approximately 1,000 passengers on board, 52 people died while over 789 were injured. It was the third largest train tragedy in Argentina’s history and came just five months after another accident on the same train line.

The Sarmiento Line operated under a contract held by TBA, a company owned by the Cirigliano family. AGN’s previous reports on TBA had highlighted recurrent breaches and failures in the maintenance of railways, carriages, and other infrastructure. In addition, the CNRT had imposed sanctions on TBA, which were not enforced by the Secretary of Transport.

The scope of the accident sparked public outrage and led to a debate on whether the cause was human or technical failure, while triggering a demand for accountability. Noncompliance with AGN and CNRT alerts were said to account for an accident, which could have been prevented had prior recommendations by the AGN been acted upon by the government. The audit concluded that a failure to meet both private and public responsibilities accounted for a serious decline in the safety of rail transport. After the audit was released, AGN provided its

evidence and its staff served as witnesses for the trial against those accused, while the former president of AGN shared the audit findings through media interviews and meetings with victims' relatives and their lawyers.

Why did this particular AGN audit have an impact so much greater than previous reports that had raised similar irregularities? Coming just after the Once Tragedy, the report received widespread media coverage and was broadly quoted by the judiciary, the lawyers for the victims' relatives, and civil society organizations. The accident also shed light on the relevance of accountability institutions in ensuring the quality of public services, while also making evident the absence of an effective monitoring system for compliance with audit recommendations. In fact, AGN audit reports had anticipated the likelihood of such an incident, yet were disregarded by public authorities.

AUDIT REPORT FINDINGS AND RECOMMENDATIONS

Discussed by the Board of Auditors on March 2, 2012 during a livestreamed session, the audit report built upon previous audits listing similar findings, by highlighting the following.

- *Re-determination of subsidies:* The Secretary of Transport delayed in addressing TBA claims concerning the re-determination of the subsidies and generated costs that could have been avoided if it had met deadlines specified in the regulations.
- *Maintenance:* The CNRT pointed out significant deterioration of rails, carriages, and other infrastructure due to lack of maintenance. TBA justified its lack of maintenance because of delays in the government's handling of public subsidies.
- *Penalties:* The Secretary of Transport did not report back on sanctions proposed by the CNRT as a result of noncompliance by the TBA.
- *Procurement:* Serious deficiencies were cited in the handling of procurement, along with the lack of due diligence for contracting work.

Among the audit recommendations, the AGN [listed the following actions](#) to be taken:

- order TBA to comply with actions that ensure proper maintenance and the system's safety;
- clarify the uncertainty regarding requests for price re-determination;
- put in place proper public procurement processes;

- apply the sanctions provided for in the rules governing the execution of contracted works in the cases of non-compliance; and
- evaluate the possibility of publicizing the penalties imposed by the CNRT in implementing its resolution No. 1770/08.

SUBSEQUENT EVENTS

Right after the accident, the Argentine President declared two days of national mourning. The contract with TBA was terminated. Members of the opposition proposed the impeachment of the Transport Secretary -who resigned two weeks after the tragedy- and demanded explanations on the state of railways based on AGN audit reports. In addition, they urged Congress to create a commission to investigate the case and the responsibilities of the government.

A judicial investigation was launched. The train's black box and the train station security tapes were handed over to federal judge Claudio Bonadío. During this instruction phase, Judge Bonadío [determined](#) that the tragedy had been caused by the lack of investment in rail infrastructure and diversion of public funds by Cometrans (another private contractor) and TBA; however, he also found national authorities and union representatives to be complicit.

Documentaries were produced and books published, including [one by the AGN former President Leandro Despouy](#), which built upon audit findings related to the railways system.

Family members of the victims came together to sue the government in a number of separate actions. Much of the media attention centered on an action led by the family of Lucas Menghini Rey, a passenger who died in the accident. On several occasions, his parents made public appeals highlighting the government's responsibility for the accident. Public protests also took place, and every 22 February people gathered in Once Station claiming that "corruption kills".

The Menghini Rey family's case went to trial on 18 February 2013. After a lengthy process, that included televised public hearings, on 29 December 2015 the court found two former national Secretaries of Transport (Ricardo Jaime and Juan Pablo Schiavi), the TBA owner Sergio Cirigliano, and the train driver Marcos Córdoba all guilty of negligence and fraud against public administration. On 30 March 2016, the bench released the grounds of the judgment.

The AGN president made several public appearances in Congress and in the media, noting that previous audits had detected systemic problems in the train service due to lack of maintenance and irregular contracts between the government and the economic group headed by the Cirigliano brothers. In addition, [other AGN staff were asked to testify before court](#).

ACCOUNTABILITY AND CORRECTIVE ACTIONS

The Secretary of Transport put an end to the contract with TBA. In Court, 21 people were convicted and seven acquitted. In July 2016, under the administration of President Mauricio Macri, the Federal Court of Appeals confirmed former Minister of Planning Julio De Vido's prosecution on criminal charges related to train derailment, aggravated by the deaths of people, and for fraud against public administration.¹ Former UNIREN (*Unidad de Renegociación y Análisis de Contratos de Servicios Públicos*) Secretary Gustavo Simeonoff was also prosecuted. Finally, former Minister of Transport Florencio Randazzo (2012-2015) issued a resolution ([N° 62/12](#)) requiring the ministry to incorporate AGN audit recommendations into its policies by coming forward with plans including corrective actions in response to AGN recommendations.

FACTORS LEADING TO ACTING ON THE AUDIT

TIMELINESS

Unlike previous AGN audit reports on the railways that had raised similar issues, this audit report was immediately preceded by the third-worst train accident in Argentina's history. By chance, when the accident occurred in February 2012, the AGN had already completed its report on the Sarmiento train services and the checks performed by the CNRT between 2007 and 2009. In fact, the tragedy made it difficult for the Board of Auditors to do anything other than act on the report without delay.²

The audit report findings were in sync with the widely held view of the underlying causes of the accident: since public services had been privatized, companies had failed to make investments in services, and public authorities had failed to oversee contracts with private firms. Therefore, negligence and fraud were seen as the causes of the

¹ This occurred after De Vido's ruling party lost the national presidential elections and the Cambiemos alliance won after a campaign arguing for transparency and open government.

² AGN decision-making relies on seven general auditors appointed by Congress. During President Cristina Fernández de Kirchner's two consecutive administrations, the ruling party held the majority in the Board of Auditors, while the AGN was headed by an auditor general appointed by the main opposition party.

accident, as noted in the AGN reports. There was the impression that this accident could have been prevented, had a series of measures been taken in time, including the recommendations from the AGN.

MEDIA COVERAGE

The scope of the tragedy, along with the mobilization and organization of the victims' relatives, led to widespread media coverage. This encouraged further examination of the intricate relationships between the government and the Cirigliano Group. Until the federal court issued its sentences, many journalists provided thorough coverage of the case over the years. The leading TV channels, radio stations, and newspapers followed the investigations closely after the accident, making extensive references to the AGN report, while also including quotes from the lawyers for victims' relatives and the prosecution team regarding the audit report. In addition, documentaries were produced and books written on the Once Tragedy, which also quoted AGN reports. AGN President Leandro Despouy's high-level public exposure also contributed to media coverage of the AGN audit report.

This and previous AGN reports on the railway services were also utilized by well-respected civil society organizations with access to media: within days of the tragedy, the Asociación Civil por la Igualdad y la Justicia (ACIJ) published a report that relied on AGN audits, linking the accident to weaknesses in the accountability institutions. In particular, [ACIJ noted](#) the absence of an adequate mechanism for following up on AGN recommendations, the lack of responsiveness by the audited agencies with regard to the irregularities detected by AGN, the lack of consequences for noncompliance with AGN recommendations, the delay by Congress in dealing with the audit reports, and the lack of awareness of the AGN reports by the relevant legislative commissions. In addition, Chequeado, a fact-checking media outlet, [published an article](#) explaining the functioning of the train service and the responsibilities of the different players while also referring to deficiencies observed by the AGN. Finally, the organization Poder Ciudadano included in its [2014 report on Corruption](#) an article by a journalist analyzing the Once Tragedy that noted previous alerts by the AGN.

PUBLIC OUTRAGE

The sheer number of dead and injured people sparked public outrage. The fact that an accident such as this took place early on a weekday morning, when most passengers are commuting to work, meant it could have happened to anyone. The involvement of former Secretary of Transport Jaime, who was being investigated for alleged corruption and conflict of interest, led to the slogan "*La corrupción mata*" ("Corruption kills"), embodying the people's demands for accountability. In fact, public pressure played a key role in the unusually fast response by the Judiciary.

LEADERSHIP WITHIN THE AGN

By law, the president of the AGN is appointed by Congress, with the nomination coming from the opposition party. President Despouy was appointed in 2002. He strengthened the AGN communication policy by making reports public, fostering publicity of auditors' board meetings, and implementing a participatory planning mechanism to incorporate proposals by CSOs into the annual audit plan. These changes brought the AGN to public attention as a more open institution. When the accident occurred and the report was released, Leandro Despouy, who had already been serving as AGN President for a decade and had shown great autonomy, took the lead in pointing to prior AGN railways audit reports to explain the plausible causes of the Once Tragedy.³ His reputation, and the AGN's high level of openness, enhanced the public credibility of the AGN. In the aftermath of the Once Tragedy, public opinion seems to regard the AGN as a highly credible accountability institution.

It is worth contrasting Despouy's high visibility in this case (and overall) with the lower profile taken by his other peer auditors. Indeed, Despouy's appearances in the media, and with the victims' families, led the defense team for the accused to ask the court to clarify both the personal and institutional nature of Despouy's public statements that went beyond the ones reflected in the AGN documents. In fact, Despouy published a report on the various AGN railways sector audit reports, and he devoted one chapter of his book *La Década Auditada* to the Once Tragedy.

LEADING ROLE OF VICTIMS' FAMILIES

The relatives of the victims grouped themselves into a few separate legal filings. They also publicly demanded accountability, commemorated the accident's anniversaries, and kept the case alive over the years. Most notably, the lawyer for the Lucas Menghini Rey family (who represented most of the dead) relied heavily on the AGN reports to denounce state responsibility over the tragedy and to demand accountability and sanctions on both public authorities and the businesses accused of corruption and negligence.

ROLE OF THE OPPOSITION

The opposition parties played an active role by denouncing corruption and negligence by the government and its business associates. However, discussion of the report in Congress did not play a key role.⁴ In fact, the

³ AGN President Despouy survived an attempt to remove him from office, led by Cristina Fernández de Kirchner's FPV ruling party in late 2012.

⁴ According to a CIPPEC [report](#) on 'Deficits en la Rendición de Cuentas Horizontal en Argentina' (2016), which looked at legislative approval of audit reports between 1999 and 2014, it took 51 days on average for an AGN audit report to be approved by the national legislature. The report notes that the CPMRC tends to create delays by requesting additional information to the auditees instead of pursuing administrative or judicial investigations.

parliamentary bicameral PAC ruled on the AGN report six months after it was delivered by the AGN, but it was not until June 5, 2013 that Congress finally [approved](#) the report⁵. Indeed, audit reports are rarely debated in Congress, and this is one of the key reasons that AGN President Despouy began making them public. However, public events were organized by opposition legislators, who also recommended the creation of a transport commission to investigate the causes of the tragedy and explore solutions to problems with transport.

ROLE OF THE JUDICIARY

The investigations conducted by the judicial branch built upon the audit findings and recommendations, and the AGN provided both written and oral evidence for the trials.⁶ The judiciary relied on both the audit report and oral evidence provided by the auditors at the trials, as well as on documents of the CNRT, to establish that state authorities had been aware of the conditions and necessary actions to ensure adequate and safe train services. In fact, the reasons that led to the ending of contracts with TBA had been pointed out by the AGN in previous audit reports.

The audit report's recommendations were incorporated in the court's decision. First, the report provided evidence to prove the poor conditions of the Sarmiento railway services, which allowed the tragedy to occur. Second, the report made it clear that the Secretary of Transport was aware of the situation concerning noncompliance with CNRT and AGN recommendations and overlooked the warnings about conditions that led to the tragedy. Moreover, building upon audit reports, the Court demonstrated that public officials had been contracting with the companies of the same economic conglomerate and committing fraud against the state: despite officials continually renewing contracts, infrastructure works were not being properly executed and the rail service was not being adequately maintained to ensure safety. Thus, this was not simply a case of negligence, but an instance of fraud.

THE ROLE OF THE NATIONAL REGULATORY COMMISSION ON TRANSPORT

The CNRT intervened when the accident took place. After Antonio Sícario took office in 2008, he ordered a review of audit reports and issued actuation protocols to establish procedures for inspections, fines, and sanctions regarding the delivery and maintenance of train services by contractors. These protocols took into consideration the AGN audit recommendations, but they depended on the Secretary of Transport to carry them out. The CNRT

⁵ The "Comisión Parlamentaria Mixta Revisora de Cuentas" (CPMRC), composed of deputies and senators, rules on every AGN report and then delivers it to the chamber of Congress that chairs the Commission, which approves it and sends it to the other chamber. A report is formally enacted when it goes through the last Chamber, in its plenary session.

monitored the extent of implementation of the sanctions, but the Secretary of Transport did not act upon them.⁷ For these reasons, the court acquitted Sícario, recognizing that he had tried everything possible to adopt corrective measures and that responsibility lay with the Secretary of Transport.

⁷The Secretary of Transport did not differentiate sanctions related to infrastructure and maintenance from those dealing with economic emergency and sent all information to the UNIREN, an inter-ministerial body charged with monitoring of contracts for public services. Therefore, sanctions not related to specific aspects of renegotiation of contracts with TBA were overlooked.