

Human Rights and Business Country Guide

# Argentina



# How to Use this Guide

*This Human Rights and Business Country Guide contains information regarding the potential and actual human rights impacts of businesses. The information in this Guide is gathered from publicly available sources, and is intended to help companies respect human rights and contribute to development in their own operations and those of their suppliers and business partners.*

## About the Human Rights and Business Country Guide

The Human Rights and Business Country Guide provides country-specific guidance to help companies respect human rights and contribute to development.

For companies to manage their potential human rights impacts, they must have comprehensive information about the local human rights context in which they operate. The Country Guide provides a systematic overview of the human rights issues that companies should be particularly aware of. For each issue, it provides guidance for companies on how to ensure respect for human rights in their operations or in collaboration with suppliers and other business partners.

The Country Guide is not only a resource, but a process. This Guide was produced through a systematic survey carried out by the Danish Institute for Human Rights (DIHR) and the Centre for Human Rights and Environment (CEDHA). The aim of this Guide is to improve the human rights practices of companies, including through facts-based dialogue regarding the issues presented here.

### **How the Human Rights and Business Country Guide can be used by companies**

- Develop company policies and procedures related to human rights issues in the local environment.
- Assess and track the potential human rights impacts of your own operations or in suppliers, business partners and investments.
- Raise awareness among staff, suppliers and other business partners.
- Engage with workers, potentially affected communities, consumers and other stakeholders whose human rights might be affected by your operations.
- Engage with civil society organisations, government bodies or international organisations on human rights-related issues.
- Provide background information for auditors.
- Establish or collaborate with mechanisms for workers, communities and other whose human rights might be affected by your operations.
- Contribute to development initiatives that align with human development needs and priorities in the local context.

### **How the Human Rights and Business Country Guide can be used by governments**

- Review and reform public policy and legislation relevant to the human rights impacts of business, including in the areas of labour, environment, land, equal treatment, anti-corruption, taxation, consumer protection or corporate reporting.
- Ensure respect for human rights in the state's own business affairs such as state-owned companies, sovereign wealth funds and other investments, public procurement, development assistance, export credit and other activities.

- Build awareness and capacity on human rights and business issues within relevant areas of public administration.
- Provide targeted advice to domestic companies.
- Inform the development of trade policy, trade and investment agreements and trade and investment promotion.
- Improve effective access to judicial and non-judicial remedies for victims of business-related human rights abuses.
- Enhance the contribution of the private sector in national and regional development programmes relevant to human rights.

#### **How the Human Rights and Business Country Guide can be used by civil society organisations**

- Inform human rights research and monitoring related to business operations.
- Work with affected workers and communities to define human rights and human development priorities related to the role of business.
- Provide capacity-building to government, business and civil society stakeholders on human rights and business.
- Work with local stakeholders to provide recommendations to business and government.
- Facilitate dialogue and engagement with, including multi-stakeholder forums, with state agencies and businesses.

The Country Guide aims to work with all stakeholders to promote, monitor and expand the activities described above. We request that all stakeholders who use the findings of the Country Guide in their work notify the Country Guide team of their activities and lessons learned. These experiences will be included in the Country Guide website, [HRBCountryGuide.org](http://HRBCountryGuide.org).

## Country Guide Process

Argentina is currently at step 3 in the Country Guide process.

The Argentina Country Guide was produced by the Danish Institute for Human Rights (DIHR) and the Center for Human Rights and Environment (CEDHA).

The Country Guide is a compilation of publicly available information from international institutions, local NGOs, governmental agencies, businesses, media and universities, among others. International and domestic sources are identified on the basis of their expertise and relevance to the Argentine context, as well as their timeliness and impartiality.

The initial survey of publicly available, international sources was carried out in 2013. The draft was then updated and localized by CEDHA with some interaction with local stakeholders. This Guide was updated in 2016.

The completed Country Guide aims to provide a comprehensive overview, on the basis of the information available, of the ways in which companies do or may impact human rights in Argentina. The current Country Guide is not meant as an end product, or a final determination of country conditions. It is intended to be the basis, and the beginning, of a process of dissemination, uptake and modification. DIHR and CEDHA seek further engagement with local stakeholders, and intend to update the Country Guide on that basis.

## Country Guide Content

*The Country Guide contains the following information:*



## Areas for Attention

Each section of the Country Guide identifies areas for particular attention by businesses. The Country Guide identifies these areas through an analysis of the country's legal framework for human rights protection; enjoyment of human rights in practice; and the proximity of third-party human rights violations to company operations.

The headline and risk description describe the relevance of each issue for businesses. The text that follows the risk description presents the quantitative and qualitative information upon which this determination was based.

- **Background & Context** gives an overview of economic, political and demographic characteristics.
- **Rights Holders at Risk** identifies groups that may be vulnerable to workplace discrimination or community impacts.
- **Labour Standards** identifies areas for attention related to employees and working conditions. This section includes child labour, forced labour, trade unions, occupational health & safety and working conditions.
- **Community Impacts** identifies areas for attention related to communities whose human rights may be affected by company operations. This section includes impacts related to environment, land & property, revenue transparency & management and security & conflict.
- **Sector Profiles** identifies human rights and business impacts related to a particular industry sector, such as extractive operations, manufacturing or agriculture.
- **Region Profiles** identifies regions of the country where the risk of adverse human rights impacts differs markedly from the national profile. This may include underdeveloped regions, export processing zones or conflict areas.

## Cases

Each rights issue includes cases from media and law where the rights issue in question has been allegedly violated. These cases are drawn from the Business and Human Rights Resource Centre, international and local NGOs and stakeholder consultations. The cases presented here should not be considered comprehensive.

## Human Rights Guidance for Businesses

This section includes guidance for businesses to prevent and mitigate their adverse human rights impacts. This guidance is drawn from the Danish Institute for Human Rights (DIHR) existing library of human rights due diligence recommendations, as well as international frameworks, principles and guidelines. Where available, this section includes recommendations issued by local NGOs and directed specifically at companies operating in the country.

This section also includes examples of initiatives carried out by companies to mitigate their human rights impacts. These are organized into Due Diligence Initiatives—activities that aim to meet the company's responsibility not to violate human rights—and Beyond Compliance Initiatives—activities that aim to contribute to development beyond this baseline obligation.

## Engagement Opportunities

Companies have a responsibility to prevent negative human rights impacts, but they also have an opportunity to contribute to positive human rights impacts. Each section of this Guide includes information for companies to link their policies and community engagement processes to ongoing governmental and institutional efforts to promote and fulfil human rights.

This includes Public Sector Initiatives—activities where the government is aiming to fulfil or promote the right in question through discrete programmes—as well as Development Priorities—themes identified by international institutions as warranting deliberate attention, or where companies could have the greatest impact with their development initiatives.

The purpose of the information in this section is to inspire further efforts and engagement by businesses, as well as to identify existing programmes that companies could support or take part in.

## About DIHR

The Danish Institute for Human Rights is a National Human Rights Institution accredited under the UN Paris Principles, and carries out human rights and development programmes in Denmark and around the world. Since 1999, the Danish Institute has worked closely with the business and human rights communities to develop tools and standards for better business practice.

*For more information, see [humanrights.dk](http://humanrights.dk).*

## About The Centre for Human Rights and Environment (CEDHA)

Created in 1999, the Center for Human Rights and Environment (CEDHA) is a non-profit organisation which aims to build a more harmonious relationship between the environment and people. Our work centers on promoting greater access to justice and guarantee human rights for victims of environmental degradation, or due to non-sustainable management of natural resources, and to prevent future violations. To this end, CEDHA fosters the creation of inclusive public policy that promotes inclusive socially and environmentally sustainable development, through community participation, public interest litigation, strengthening democratic institutions, and the capacity building of key actors.

*For more information, see <http://wp.cedha.net/?lang=en>*

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# Background & Context

*Overview of political and socio-economic conditions in which businesses operate. This information is designed to inform businesses of the broader political and development trends in the country.*

Demographics & Economy	
Population	43,431,886 (July 2015)
Ethnic Groups	white (mostly Spanish and Italian) 97%, mestizo (mixed white and Amerindian ancestry), Amerindian, or other non-white groups 3%
Religious Groups	nominally Roman Catholic 92% (less than 20% practicing), Protestant 2%, Jewish 2%, other 4%
Languages	Spanish (official), Italian, English, German, French, indigenous (Mapudungun, Quechua)

## Political, Economic & Development Statistics

*Quantitative indicators and country rankings*

Country Rankings & Ratings			
	2013	2014	2015
Reporters Without Borders: Press Freedom Index <i>(Where 1 indicates the highest degree of freedom)</i>	55	55	57
Freedom House: Map of Freedom - Political Rights	2	2	2

<i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>			
Freedom House: Map of Freedom - Civil Liberties <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	2	2	2
Form of government	Republic		
Most recent general election	November 22, 2015		
Current head of state	Mauricio Macri		
Ruling party	Cambiamos		
Other major parties	<ul style="list-style-type: none"> <li>• Civic Coalition</li> <li>• Dissident Peronists</li> <li>• Front for the Victory</li> <li>• Peronist</li> <li>• Popular Path</li> <li>• Progresistas</li> <li>• Radical Civic Union</li> <li>• Republican Proposal</li> <li>• Socialist Party or</li> <li>• Renewal Front</li> </ul>		

Development Indicators & Trends			
	2013	2014	2015
GDP growth	2.9	0.5	0.4
GDP growth in region / Latin America and the Caribbean	3	3,2	3
GDP per capita (PPP) US\$	22,100	22,300	22,400
Human Development Index rank	40	40	n/a
Human Development Index score	0.83	0.83	n/a
Human Development Index score – Latin America and the Caribbean	0.7	0.74	n/a
HDI discounted for inequality	0.7	0.71	n/a



Gini coefficient	42.3	n/a	n/a
Percentage of population below national poverty rate	n/a	n/a	n/a
Percentage of population below absolute poverty rate (\$1.25 per day)	1.4 (2011)	n/a	n/a

## Political Context

### *Governance structures and political developments*

Argentina is a federal constitutional republic composed of 23 provinces and the autonomous city of Buenos Aires. The provinces have their own governments and courts. However, provinces are mandated by the constitution to adhere to federal laws with regard to nation-wide issues, such as foreign policy, defence and trade.<sup>1</sup> The president is at the same time the head of state and prime minister of the country for a four-years mandate, renewable once.<sup>2</sup>

Democratic and military rulings alternated until 1976, when the country was taken over by a military dictatorship, which lasted until 1983.<sup>3</sup>

In November 2015, Mauricio Macri, from the opposition, was elected president with 51.4 percent of the votes after winning a run-off election to Daniel Scioli from the ruling Front for Victory coalition.<sup>4</sup> Macri put an end to 12 years of ruling by the Kirchners that started with the government of Nestor Kirchner, followed by his wife Cristina Fernandez de Kirchner, for 2 consecutive terms. The elections were deemed transparent and conducted in a peaceful environment, and 75 percent of the electorate participated on it.<sup>5</sup> Although the Front for Victory coalition won a plurality of seats at parliament, it lost the absolute majority it previously had.<sup>6</sup>

Freedom of expression is granted by law, however Freedom House reported in 2016 accusations against Cristina Fernández de Kirchner's government on limiting press freedom in practice by relying on verbal attacks, disparaging critical media as political opponents.<sup>7</sup> Internet is widely-use in Argentina.<sup>8</sup> Human Rights Watch noted in 2015 that a law adopted in 2014 to regulate access to internet and telecommunications services granted the government broad regulatory powers, and created an implementing body that would have the authority to impose sanctions to service providers who do not comply with the law.<sup>9</sup>

Freedom House further reported that the rights to freedom of assembly and association were largely respected.<sup>10</sup>

## Socio-Economic Context

### *Human development indicators and trends*

Argentina was among the largest economies in Latin America and recorded significant growth over the last couple of years.<sup>11</sup> GDP reportedly grew at an average rate of 6% during the period 2003-2013.<sup>12</sup>

Its latest Human Development Index value for 2014 was 0.83, above the Latin America and Caribbean region's average, and its HDI ranking was 40 out of 188 countries, placing Argentina in the very high human development category. However, when the HDI value was discounted for inequality it fell to 0.7, below the figure for average loss due to inequality in the Latin America and Caribbean region.<sup>13</sup> Its latest

GINI coefficient, which measures income inequality, was 42.3, where a coefficient of zero means perfect equality and 100 perfect inequality.<sup>14</sup> The government reported that inequality between the most rich and poor people were reduced by 55 percent during the period 2002-2011.<sup>15</sup>

The World Bank noted in 2016 that during the period 2004-2008, Argentina substantially reduced poverty levels. Data from 2014 indicated that 12,7 percent lived in poverty (below US\$4 a day) while a third of the population lived between US\$4 and US\$10 a day.<sup>16</sup> The World Bank added in 2015 that a reduction in poverty levels was achieved due to an increase in labour earnings and employment rates. Higher salaries reportedly accounted for more than half of overall poverty reduction.<sup>17</sup>

Social indicators differed greatly among regions, being the Northwest and Northeast regions the ones showing the highest challenges in their access to basic social services.<sup>18</sup> Accordingly, the Northwest region had poverty rates two to three times higher than the national average, and lag behind the rest of the country in social services and basic infrastructure.<sup>19</sup> The World Bank indicated however in 2015 that the Patagonia region was far outpacing those two regions on its social indicators.<sup>20</sup>

In terms of the Millennium Development Goals, according to latest government report from 2012, Argentina achieved the indicators related to poverty reduction and access to education, and was close to achieving gender equality and HIV-AIDS incidence rate. However, challenges remained in terms of child and maternal mortality rates.<sup>21</sup>

## Development Frameworks

*Companies should consult affected communities and align their development initiatives with national and local priorities. The following section identifies existing strategies for poverty alleviation and community empowerment.*

### Argentina 2016 – National Development Policy and Strategy, and Spatial Planning

The policy has the objective of generating actions with special impact towards an integrated, sustained, socially fair and well-balanced Argentinian territory, and to create adequate mechanisms of intervention in order to take advantage of all development opportunities.

The following goals are identified in the policy:

- To develop a territorial and cultural identity, and a sense of belonging;
- To achieve economic progress in line with capabilities and personal projects without the need to give up the areas of origins;
- To achieve environmental sustainability;
- To fully participate in the democratic management of the territory;
- To access essential goods and services, allowing individual and collective development and a high standard of living throughout the country.<sup>22</sup>

### Inter-American Development Bank Country Strategy 2012-2015

The strategy is based on the following objectives:

- Alleviation of social obstacles to growth with a special focus in the Northern regions;
- Social and economic inclusion of the population, focused in the Northern regions and the Greater Buenos Aires area;

- Urban sustainability and habitat improvement, with particular emphasis on the Greater Buenos Aires area.<sup>23</sup>

The following priority areas of intervention were identified: Transportation, Electrical Energy, Agriculture-livestock and Rural Development, Private Sector Development, Tourism Development, Education, Health, Potable Water, Sanitation, and Solid Wastes and Urban Development. Cross-cutting areas include environmental sustainability and climate change, youth development and strengthening of country systems.

The strategy calls on the private sector to support in the delivery of basic services.<sup>24</sup>

## United Nations Development Assistance Framework 2010-2015

*A programme document between the government and the UN Country Team describing collective actions and strategies toward achieving national development*

The framework is the result of a broad participative process with national stakeholders and consultations with the government, and in line with the national priorities.

The following four areas of intervention were identified:

- Sustainable productive development: Deepen productive development with a focus on innovation and the incorporation of knowledge, fostering the creation of decent jobs and environmental sustainability.
- Inclusion and social equality: Substantial poverty reduction and improve the distribution levels and conditions of equality.
- Management and access to services for the protection of social rights: Develop national health and education systems that avoid sectorial fragmentation, and improve in the fulfilment of fundamental social rights with higher levels of equality.
- Institutional development: Strengthen institutional capabilities at all levels to effectively fulfil its central role as an agent of human development.<sup>25</sup>

## World Bank Country Partnership Strategy 2015-2018

*International priorities and activities to help end extreme poverty, increase shared prosperity and drive private sector growth.*

The strategy focuses on the need to sustain social gains achieved in recent years and expand social inclusion in an efficient and sustainable manner, while at the same time supporting Argentina in mitigating the risks to vulnerable groups from the effects of economic downturns and external shocks.

The strategy has identified three main themes:

- Employment creation in firms and farms;
- Availability of assets for people and household;
- Reducing environmental risks and safeguarding natural resources.<sup>26</sup>

## International Legal Commitments

*Accession and ratification of international human rights instruments*

### UN Conventions

International Covenant on Economic, Social and Cultural Rights	RATIFIED
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	<i>with objections</i>
International Covenant on Civil and Political Rights	<b>RATIFIED</b> <i>with declaration</i>
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty	<b>RATIFIED</b>
Convention Against Corruption	<b>RATIFIED</b>
Convention Against Torture	<b>RATIFIED</b>
Convention on the Elimination of All Forms of Racial Discrimination	<b>RATIFIED</b>
Convention on the Elimination of All Forms of Discrimination Against Women	<b>ACCEDED</b>
Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women (1995)	<b>ACCEDED</b>
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	<b>RATIFIED</b> <i>with declaration</i>
Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (1968)	<b>ACCEDED</b>
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	<b>ACCEDED</b>
Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (1992)	<b>NOT SIGNED</b>
Convention on the Rights of Persons with Disabilities	<b>RATIFIED</b>
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	<b>RATIFIED</b>
Convention on the Rights of the Child	<b>RATIFIED</b> <i>with declaration and reservation</i>
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	<b>RATIFIED</b> <i>with declaration</i>
Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	<b>RATIFIED</b> <i>with declaration</i>
International Convention for the Protection of All Persons from Enforced Disappearance (2006)	<b>RATIFIED</b>
International Convention on the Protection of All Migrant Workers and Members of Their Families	<b>RATIFIED</b>

	<i>with declaration</i>
Convention Against Transnational Organized Crime	<b>RATIFIED</b>
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime	<b>RATIFIED</b>
<b>Regional Instruments</b>	
American Convention on Human Rights	<b>RATIFIED</b> <i>with declaration and reservation</i>
Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights	<b>RATIFIED</b>
Protocol to the American Convention on Human Rights to Abolish the Death Penalty	<b>RATIFIED</b>
Inter-American Convention against Corruption	<b>RATIFIED</b>
Inter-American Convention on International Traffic of Minors	<b>ACCEDED</b>
Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities	<b>RATIFIED</b>
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women	<b>RATIFIED</b>
Inter-American Convention on the Forced Disappearance of Persons	<b>RATIFIED</b>
Inter-American Convention to Prevent and Punish Torture	<b>RATIFIED</b>
<b>International Labour Organization Conventions</b>	
ILO Hours of Work (Industry) Convention (C1, 1919)	<b>RATIFIED</b>
ILO Forced Labour Convention (C29, 1930)	<b>RATIFIED</b>
ILO Hours of Work (Commerce and Offices) Convention (C30, 1930)	<b>RATIFIED</b>
ILO Night Work of Young Persons (Non-Industrial Occupations) Convention (C79, 1946)	<b>RATIFIED</b>
ILO Labour Inspectors Convention (C81, 1947)	<b>RATIFIED</b>



ILO Freedom of Association and Protection of the Right to Organise Convention (C87, 1948)	<b>RATIFIED</b>
ILO Night Work of Young Persons Employed in Industry Convention (C90, 1948)	<b>RATIFIED</b>
ILO Protection of Wages Convention (C95, 1949)	<b>RATIFIED</b>
ILO Right to Organise and Collective Bargaining Convention (C98, 1949)	<b>RATIFIED</b>
ILO Equal Remuneration Convention (C100, 1951)	<b>RATIFIED</b>
ILO Social Security (Minimum Standards) Convention (C102, 1952)	<b>NOT RATIFIED</b>
ILO Abolition of Forced Labour Convention (C105, 1957)	<b>RATIFIED</b>
ILO Discrimination (Employment and Occupation) Convention (C111, 1958)	<b>RATIFIED</b>
ILO Social Policy (Basic Aims and Standards) Convention (C117, 1962)	<b>NOT RATIFIED</b>
ILO Equality of Treatment (Social Security) Convention (C118, 1962)	<b>NOT RATIFIED</b>
ILO Employment Policy Convention (C122, 1964)	<b>NOT RATIFIED</b>
ILO Minimum Age (Underground Work) Convention (C123, 1965)	<b>NOT RATIFIED</b>
ILO Medical Care and Sickness Benefits Convention (C130, 1969)	<b>NOT RATIFIED</b>
ILO Minimum Wage Fixing Convention (C131, 1970)	<b>NOT RATIFIED</b>
ILO Holidays with Pay (Revised) Convention (C132, 1970)	<b>NOT RATIFIED</b>
ILO Workers' Representatives Convention (C135 of 1971)	<b>RATIFIED</b>
ILO Minimum Age Convention (C138, 1973)	<b>RATIFIED</b>
ILO Migrant Workers (Supplementary Provisions) Convention (C143, 1975)	<b>NOT RATIFIED</b>
ILO Working Environment (Air Pollution, Noise and Vibration) Convention (C148, 1977)	<b>NOT RATIFIED</b>
ILO Occupational Safety and Health Convention (C155, 1981)	<b>RATIFIED</b>
ILO Workers with Family Responsibilities Convention (C156, 1981)	<b>RATIFIED</b>
ILO Termination of Employment Convention (C158, 1982)	<b>NOT RATIFIED</b>
ILO Indigenous and Tribal Peoples Convention (C169, 1989)	<b>RATIFIED</b>
ILO Night Work Convention (C171, 1990)	<b>NOT RATIFIED</b>
ILO Prevention of Major Industrial Accidents Convention (C174, 1993)	<b>NOT RATIFIED</b>

ILO Worst Forms of Child Labour Convention (C182, 1999)	<b>RATIFIED</b>
ILO Maternity Protection Convention (C183, 2000)	<b>NOT RATIFIED</b>
<b>Environmental Instruments</b>	
Stockholm Convention on Persistent Organic Pollutants (2001)	<b>RATIFIED</b>
Kyoto Protocol (1997)	<b>RATIFIED</b>
United Nations Convention on Biological Diversity	<b>RATIFIED</b>
United Nations Framework Convention on Climate Change	<b>RATIFIED</b>
Montreal Protocol on Substances that Deplete the Ozone Layer, 1987	<b>RATIFIED</b>
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, 1989	<b>RATIFIED</b>
<b>Other International Instruments</b>	
Declaration on the Rights of Indigenous Peoples	<b>SIGNED</b>
Rome Statute of the International Criminal Court	<b>RATIFIED</b> <i>with declaration</i>
UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	<b>RATIFIED</b>

# Rights Holders at Risk

*Societal groups particularly vulnerable to employment-related discrimination or poor development outcomes*

Operating Environment		
	Argentina	Latin America and the Caribbean
HIV/AIDS prevalence (ages 15-49)	0.01 (2013)	0.03 (2013)
Female labour participation rate	67 (2015)	52.9 (2010)
Percentage urban population	92 (2014)	80 (2014)
Percentage rural population	8 (2014)	20 (2014)
Human Development Index score	0.8 (2014)	0.74 (2014)
HDI adjusted for inequality	0.7 (2014)	0.57 (2014)
HDI Gender Equality Gap Index score	0.98 (2014)	0.97 (2014)
Population below PPP US\$1.25 per day (%)	1.4 (2011)	4.6 (2011)
Literacy rate, 15-24 years old (%)	99 (2012)	98.3 (2015)
Maternal mortality ratio (per 100,000 births)	52 (2015)	85 (2013)
Seats held by women in national parliament (%)	36 (2015)	27.4 (2015)
OECD Social Institutions and Gender Rank	0.01 (2014)	
Labour force	17.47 million (2015)	
Percentage of population who are 15-24 years	15.59 (2015)	

Law prohibits discrimination on the grounds of	The law prohibit discrimination on the basis of race, religion, nationality, ideology, political or union opinion, sex, economic status, social status or physical characteristics
Major ethnic groups	White (mostly Spanish and Italian) 97%, mestizo (mixed white and Amerindian ancestry), Amerindian, or other non-white groups 3%
Recognition of indigenous groups in law	The Constitution recognises indigenous peoples.
Major Indigenous groups	Mapuche (113,680), Kolla (70,505) and Toba (69,452).
Major religious groups	Nominally Roman Catholic 92% (less than 20% practicing), Protestant 2%, Jewish 2%, other 4%
Major migrant groups	Paraguayans, Bolivians, Chileans and Peruvians.
Persons with disabilities	12 percent of the population.
Relevant legislation	<ul style="list-style-type: none"> <li>• Constitution, 1994</li> <li>• Comprehensive Protection System for Persons living with Disabilities, 1981</li> <li>• Anti-Discrimination Act, 1988</li> <li>• Migration Law, 2004</li> <li>• Indigenous Communities Law, 2006</li> </ul>
Responsible agencies	<ul style="list-style-type: none"> <li>• Ministry of Health - Equal Opportunity and Treatment Commission</li> <li>• Ministry of Justice – Human Rights Secretariat</li> <li>• Ministry of Labour, Employment and Social Security</li> <li>• National Advisory Commission for the Integration of Persons with Disabilities</li> <li>• National Institute against Discrimination Xenophobia and Racism (INADI)</li> </ul>

	<ul style="list-style-type: none"> <li>• National Institute of Indigenous Affairs (INAI)</li> <li>• National Women's Council</li> </ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>• Afro Xango</li> <li>• Diáspora Africana de la Argentina</li> <li>• Fundación Huésped</li> <li>• Fundación Mujeres en Igualdad</li> <li>• Instituto Argentino para la Igualdad, Diversidad e Integración</li> <li>• Red Argentina de Jóvenes y Adolescentes Positivos</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The constitution<sup>27</sup> and the Anti-Discrimination Act prohibit discrimination on the basis of race, religion, nationality, ideology, political or union opinion, sex, economic status, social status or physical characteristics.<sup>28</sup>

### Afro-Argentines

For the first time since 1895, the 2010 census included questions to identify the number of African descendants in Argentina.<sup>29</sup> The 2010 census found that almost 150,000 people recognised themselves as Afro-Argentines,<sup>30</sup> though several organisations estimated that some two million people of African descent lived in Argentina.<sup>31</sup>

Minority Rights reported in 2015 that Afro-Argentines experienced discrimination,<sup>32</sup> including in their access to employment and health services.<sup>33</sup>

### Migrant Workers

The Migration Law includes standards for the protection of migrant's rights.<sup>34</sup> The Permanent Assembly of Human Rights reported in 2015 that many laws in Argentina discriminated against migrants in relation to their access to social rights granted to Argentinian citizens only.<sup>35</sup>

According to latest Census, from 2010, migrants accounted to 4.5 percent of the total population.<sup>36</sup> 84.6 percent of migrants were from neighbouring countries, namely Paraguay (550,713), Bolivia (345,272), Chile (191,147) and Peru (157,514).<sup>37</sup> A wave of immigrants from Africa, including Senegal, Ghana, Mali, Nigeria and Cape Verde reportedly migrated to Argentina in the 1990's.<sup>38</sup> There were reportedly an estimated 2,500 Senegalese citizens living in Argentina as of 2015.<sup>39</sup>

The Research Centre about Work, Distribution and Society noted in 2015 that five out of 10 migrants in Argentina worked under precarious conditions and received salaries that were 23 percent lower than Argentinian citizens.<sup>40</sup> The Permanent Assembly for Human Rights further reported in 2015 that migrants faced difficulties in accessing the labour market due to factors such as poor images of migrants, social segregation, lack of information and marginalisation, which resulted in jobs mainly in



the informal sector under precarious conditions.<sup>41</sup> Only 47 percent of migrant workers were covered by social security, compared to 66 percent in case of Argentinian workers, according to Esglobal in 2015.<sup>42</sup> Peruvians, Bolivians and Paraguayans migrant workers were particularly vulnerable to precarious working conditions, and most of them worked in the construction and textile sectors, especially in the informal sector.<sup>43</sup>

Afro-descendants were also particularly vulnerable to this situation, and in cases, ended up being working as street vendors despite their higher education.<sup>44</sup> The Argentinian Institute for Equality, Diversity and Integration added in 2013 that most African migrants worked in construction or in restaurants washing dishes, despite the fact that many had university degrees.<sup>45</sup>

In 2013 La Nación reported that young Colombians were employed informally in the restaurant industry and paid less than Argentinian workers.<sup>46</sup>

Latin-American migrants in particular faced difficulties accessing health and education services, and housing.<sup>47</sup> A 2013 survey conducted by the National Institute against Discrimination Xenophobia and Racism found that 71 out of 100 persons considered that in Argentina discrimination against migrants existed.<sup>48</sup> The survey also found that 27 per cent of respondents preferred not to live in a neighbourhood with migrants.<sup>49</sup>

## Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment.<sup>50</sup> The law also establishes a 4 percent employment quota for persons with disabilities in the federal government.<sup>51</sup> According to various NGOs in 2014, the quota was not often respected.<sup>52</sup> Access to public buildings and housing for persons with disabilities is mandatory by federal law.<sup>53</sup>

According to the latest Census, from 2010, 12 percent of the total population had some type of disabilities<sup>54</sup>, and in one out of five households in Argentina lived at least one person with disabilities.<sup>55</sup>

A 2015 Survey conducted by Inclúyeme found that 58,4 percent of persons with disabilities respondents felt discriminated against when looking for a job due to their condition. The respondents noted that it was a challenge for them to show recruiters their capabilities.<sup>56</sup> A 2012 shadow report by various Argentinian organisations reported that the unemployment rate among persons with disabilities was 80 percent.<sup>57</sup>

Another 2013 survey conducted by the National Institute against Discrimination Xenophobia and Racism found that 51 percent of persons with disabilities felt discriminated against in the public life.<sup>58</sup>

The Civil Association for Equality and Justice reported in 2014 that many persons with disabilities have difficulties accessing basic services.<sup>59</sup> According to the National Rehabilitation Service, the One Disability Certificate (*Certificado Único de Discapacidad*) was key for persons with disabilities to access social security, including rehabilitation.<sup>60</sup> A 2012 shadow report by various Argentinian organisations stated that despite the existence of the One Disability Certificate, the criteria to obtain a certification of disability varied in each province.<sup>61</sup>

The shadow reported added that persons with disabilities experienced discrimination and difficulties in accessing information on their rights. Despite the constitutional recognition of the right to inclusive education, only 14 percent of persons with disabilities, or about 727,500 people, had access to education, accordingly to the 2010 census.<sup>62</sup>

## Persons Living with HIV/AIDS

The law provides that medical exams conducted at the request of the employer to detect the presence of the virus can only be deemed admissible if the employee has expressed “duly informed consent”, and the employee is entitled to refuse to submit to such medical exams.<sup>63</sup>

UNAIDS reported that there were an estimated 130,000 persons living with HIV in 2014, amounting to 0.5 percent of the population.<sup>64</sup>

According to a 2010 study by the University of Buenos Aires, some doctors violated the right to privacy by informing employers or the public health authorities of positive HIV test results, which reportedly led to the dismissal of the employees concerned.<sup>65</sup> Nine percent of the respondents to the 2012 PLHIV Stigma Index reported having their HIV-positive status disclosed to employers or co-workers without their consent.<sup>66</sup>

A 2013 Fundación Huésped survey found that 24 percent of workers with HIV/AIDS have suffered from some type of discrimination at the workplace, including removing them from performing their duties and cases of physical isolation.<sup>67</sup>

## Indigenous Peoples

Indigenous peoples’ rights are recognised by the constitution.<sup>68</sup> It further recognises the ethnic and cultural identity of indigenous communities, provides for bilingual education, recognises communal ownership of ancestral lands, and enables their participation in natural resource management.<sup>69</sup> The law grants legal personality to indigenous communities registered in the National Registry of Indigenous Communities, managed by the National Institute of Indigenous Affairs (INAI).<sup>70</sup>

The INAI reported that according to the Additional Survey on Indigenous Populations 2004-2005 conducted by the National Institute of Statistics and Censuses (INDEC), Argentina’s indigenous population was 600,000 people.<sup>71</sup> The latest Census, from 2010, included a total of 955,032 persons self-identified as descending from or belonging to an indigenous people,<sup>72</sup> accounting to 2.4 percent of the total population.<sup>73</sup>

According to the 2004-2005 survey, Argentina’s main indigenous groups are: Mapuche, Kolla and Toba, with a population amounting to 113,680, 70,505 and 69,452, respectively. While the Kolla and Toba are located in the northern provinces, namely the Kolla in Salta and Jujuy, and the Toba in Chaco, Formosa and Santa Fe, the Mapuche live in the central-south provinces of Chubut, Neuquén, Río Negro, Santa Cruz y Tierra del Fuego.<sup>74</sup> They mostly lived in the provinces of Salta, Jujuy, Chubut, Neuquen, Tierra del Fuego, Chaco, Formosa, Santa Fe, Tucuman and Mendoza.<sup>75</sup>

The Confederation of Workers of Argentina noted that Indigenous people mostly worked in the informal sector including in textile and rural activities (fruit growing and horticulture), according to the International Labour Organization’s Committee of Experts for the Application of Recommendations and Conventions in 2016.<sup>76</sup>

Minority Rights Group International noted in 2015 that indigenous people suffered from great levels of discrimination.<sup>77</sup> The Ombudsman added in 2015 that indigenous people historically suffered from marginalisation, exclusion and the denial of their fundamental rights.<sup>78</sup>

In terms of social indicators, the World Bank reported in 2015 that they lagged behind the general population in many areas, namely: 23.5 percent of indigenous people had unsatisfied basic needs, compared to only 13.8 percent in the general population, illiteracy rate was 3.8 percent compared to 1.9 percent in the general population, and 47.7 percent of indigenous people did not have access to health insurance while only 10 percent over the age of 65 was covered by social security.<sup>79</sup> The International Work Group for Indigenous Affairs added in 2015 that indigenous people suffered from a health crisis, especially from Tuberculosis and Chagas disease, which increased deaths due to malnutrition among children and adults.<sup>80</sup>

## Sexual Minorities

In May 2012, the Parliament approved the Gender Identity Law, characterised as the most progressive legislation in this field by the International Gay and Lesbian Human Rights Commission. The law allows anyone to request a change of sex and name in identity cards and birth certificates and oblige both the public and private health system to provide comprehensive health care for transgender people, including hormone treatments and sex reassignment surgery. Moreover, in 2010 Argentina recognised the right of marriage to same sex couples by passing the Equal Marriage Act.<sup>81</sup>

In 2012, Americas Quarterly reported that various surveys indicated that majorities in Latin America tended to have little political tolerance for LGBT rights with the exception of Argentina and Uruguay.<sup>82</sup> In that line, according to a 2013 survey conducted by the National Institute against Discrimination Xenophobia, 77 percent of respondents accepted and respected sexual minorities.<sup>83</sup>

## Religious Minorities

In 2015, about 250,000 Jews were reported in the country and the U.S. Department of State noted that the Delegation of Argentine Jewish Associations received complaints of acts of discrimination against Jews during 2014.<sup>84</sup> Most Jewish colonies were located in General Campos, San Salvador Department.<sup>85</sup>

A 2011 BBC survey found that three out of ten people interviewed in Buenos Aires would not want to live in a Jewish neighbourhood and more than half of the sample believed there was discrimination against Jews in Argentina.<sup>86</sup> Another 2013 survey conducted by the National Institute against Discrimination Xenophobia and Racism found that 57 percent of Jews felt discriminated against due to their religion.<sup>87</sup>

## Rural Poor

Provinces that accounted for greatest levels of poverty included the Northeast and Northwest, at around 50 percent of its population, follow to a lower extent by Patagonia with 32 percent of poverty rate.<sup>88</sup>

According to the World Bank in 2015, the unemployment rate among 25-65 years of age living in poverty was 24 percent, compared to 7.4 percent for the general population, and their lacked of access to energy, transport, water and sanitation services limited their ability to access education and health services and to participate in economic activities.<sup>89</sup>

## Urban Poor

In the greater Buenos Aires area, approximately 5 million people lived in 1.500 settlements (villas miserias) with irregular land tenure situations and inadequate access to basic services including transportation, water and sanitation services.<sup>90</sup> Villas miserias reportedly grew by 50 percent during the period 2001 – 2010.<sup>91</sup>

According to a 2014 The Economist article, the state was absent from the villas miserias, leaving space for other power structures to take control over them.<sup>92</sup>

## Women

The law grants women and men same rights with respect to inheritance, access to land, and access to property other than land. In 2013 the Center for Human Rights and Environment (CEDHA) noted that land titling issues were not defined by gender in Argentina.

Although the constitution guarantees the right to equal pay for equal work, the international standard calls for equal pay for work of equal value.<sup>93</sup> The law also guarantees women 90 days of paid maternity

leave at 100 percent of their usual wage, which is in line with international standards.<sup>94</sup> The Employment Contract Act prohibits women from working from 45 days before birth until 45 days after, although the mother may choose to reduce leave prior to birth by 15 days and add to the leave after birth by 15 days. Mothers have a right to two half hour breaks per day for breastfeeding the child for a period of up to one year, extendable for medical reasons. In the case of larger businesses, a nursery must be provided for children during working hours. Although the law does not provide the same rights to adopting mothers, the courts have applied the same rights to them in judicial cases.<sup>95</sup>

According to a 2013 survey conducted by the National Institute against Discrimination Xenophobia, 35 percent of women suffered from at least one episode of discrimination, in particular in relation to their physical aspect and obesity.<sup>96</sup> Also 54 percent felt discriminated at work.<sup>97</sup>

Women participation rate in the labour market was 67 percent as of 2015.<sup>98</sup> The participation rate was reduced to 54 percent for married women and to 39 percent for women having at least one child.<sup>99</sup> According to IDESA in 2015, women living in poverty's participation rate in the labour market fell from 43.7 in 2004 to 35.6 as of 2013.<sup>100</sup>

According to the National Women's Council, women in Argentina faced difficulties entering the labour market mainly due to cultural stereotypes of women's role in society, especially in relation to domestic chores and child bearing. That situation of disadvantage was materialised by the fact that women tend to work in a reduced set of occupations that were typical "feminine" in terms of culture, which includes jobs such as teachers, nurses, secretaries, typist, sales persons, and hair dressers. In the private sector in particular, women tend to work in low-skilled jobs with reportedly low salaries and lack of stability.<sup>101</sup> Only two out of ten managerial positions in the private sector were occupied by women, according to a 2014 La Nacion report.<sup>102</sup> Most women in the private sector worked as administrative support.<sup>103</sup>

The United Nations Development Programme reported in 2014 that most women worked from 1 to 20 hours a week, compared to more than 45 hours a week in case of men.<sup>104</sup> Working women devoted on average 5.5 hours a day to domestic chores, compared to 4.1 hours devoted by unemployed men.<sup>105</sup> Overall, women devoted 76 percent of their time to unsalaried domestic chores, compared to only 24 percent in case of men.<sup>106</sup>

In terms of wage gap, women with completed primary education had a 30 percent wage gap while women with an university degree had a 18 percent wage gap.<sup>107</sup> Women received on average 3,501 pesos (approx. US\$249) per month, compared to 4,699 pesos (approx. US\$334) per month in case of men, as of 2014.<sup>108</sup> In the private sector in particular, women earned on average 7,500 pesos (approx. US\$533) per month, while men 9,900 pesos (approx. US\$703) per month.<sup>109</sup> Misiones, Salta and Chubut reported the highest wage gap as women earned on average 65 percent less than men.<sup>110</sup>

40 percent of women were working in the informal sector as of 2012, compared to 31 percent in case of men.<sup>111</sup>

In terms of gender violence, Law 26.485 penalises all types of violence, including in the workplace. Human Rights Watch noted in 2016 that gender violence was great in Argentina, especially femicides and homicides aggravated by gender.<sup>112</sup> The government established a hotline number in order to report on cases of violence. During 2015, around 4.000 calls were received. Most cases were related to physiological violence, followed by physical. Of all cases of violence reported, only .080 percent occurred in the workplace.<sup>113</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *February 2015, Noticias 24:* A Bolivian migrant reported that oftentimes public hospitals deny him appointments due to his migrant status, and required legal proof of residence, despite its prohibition.<sup>114</sup>
- *December 2015, El Litoral:* The Labour Tribunal condemned the security provider ADT Security Services for constant mistreatment of one employee from the management. The Tribunal stated that as a result, the employee suffered from moral and psychological disruptions.<sup>115</sup>
- *October 2013, Argenpress:* Alleged discrimination practices against migrant workers were reported in a textile factory, Elemento, in Buenos Aires.<sup>116</sup>
- *June 2013, In Sight Crime:* 202 Colombian migrant workers were exploited at plastic factories in 10 Argentinian provinces. The workers were reportedly held in inhuman conditions without registration, social security and healthcare.<sup>117</sup>
- *April 2013, Público:* A sweatshop making cloths for Zara in Buenos Aires was closed as workers, mainly migrants, were kept in slave-like conditions. Other illegal textile factories were identified and reported as making clothes for Argentinian companies, Ayres, Cara and Cruz. Workers were reported to work 13 hours per day in very precarious health and hygiene conditions.<sup>118</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**ManpowerGroup:** The company adopted a Human Rights and Fair Labour policy where it recognises that everyone should be treated fairly and without discrimination in regards to hiring and advancement of opportunities, and that diversity contributes to business success by bringing a broader range of perspectives and capabilities to the company.<sup>119</sup>

**Aguas Cordobesas:** The company, which provides water services to Cordoba province, conducts a series of training to its employees including on human rights issues. During 2014, 319 employees were offered 319 hours of training, accounting to 67 percent of total workforce.<sup>120</sup>

**Companies engaged in the HIV/AIDS response:** The initiative was established by Huésped Foundation with the support of UNAIDS to seeks private sector implementation of strategies and activities to contribute with the prevention of HIV/AIDS and the promotion of human rights. Companies commit to sign the “Businesses Ibero-American Declaration: Zero HIV/AIDS new infections, Zero AIDS new deaths and Zero discrimination”, and conduct at least two raising awareness activities and/or training of employees, communities and supply chain. As of 2014, 46 companies were taking part of the initiative.<sup>121</sup>

### Company Development Initiatives

**Committed Business Club:** 55 businesses in many provinces of Argentina work together to promote the employability of persons with disabilities throughout the country. The main focus is training and sharing of experiences and reflections. Civil society organisations also contribute to the cause.<sup>122</sup>

**Group Assa (2014):** The company, leader in business transformation, implements the initiative “Shaping Future” by which they provide young participants with tools to help them increase their chances to access the labour market. A total of 106 youth participated from 3 workshops held in Quilmes, Pacheco



and Pilar. The company also donated 5 computers and 76 volunteers provided 535 hours to conduct the trainings.<sup>123</sup>

**Arcor Argentina:** The food producer company conducted perception studies in 12 communities in order to assess its impacts in those communities.<sup>124</sup>

**DuPont:** The company developed a Human Rights Policy establishing that assessments be carried out to identify appropriate measures to prevent or mitigate adverse effects on local communities. The policy also highlights the need to engage with local communities, including indigenous peoples, to understand the implications of the company's operations, and support community investment projects. Employees and contractors are required to comply with it as part of their contract. The company reportedly commits to terminate a working relation with suppliers violating systematically these principles and not correcting those behaviours.<sup>125</sup>

## Stakeholder Recommendations

- ✓ **UNDP-Global Compact:** In a 2012 joint publication, UNDP and the Global Compact made the following recommendations to companies operating in Argentina:<sup>126</sup>
  - Carry out an assessment of the company's racial and religious context to detect the existence of discriminated minorities.
  - Develop affirmative action measures for the identified minorities.
  - Promote a culture of tolerance in the workplace through workshops, communication and similar activities.
  - Make grievance mechanisms available to victims.
  - Use the selection mechanisms for contractors and suppliers (i.e. tenders and bids) to promote diversity by rewarding firms that meet those standards.
  - Engage in activities promoting the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
  - Provide equal pay for work of equal value.
  - Consider the establishment of a specialised panel on gender issues.
  - Monitor statistics on recruitment, training and promotion of female employees.
  - Build female employees' capacity.
  - Establish family-friendly working conditions for all employees in terms of hours, working space and other similar aspects.
  - Ensure adequate participation of women (30 percent or more) in decision-making and management processes at all levels.
  - Adapt tools and the physical working environment to ensure the safety of employees with disabilities.
- ✓ UNDP and the Global Compact made recommendations to enable companies operating in Argentina to contribute towards the achievement of MDG 1 (eradicate extreme poverty & hunger):<sup>127</sup>
  - Generate more employment and opportunities.
  - Produce healthy goods and services at affordable prices.
  - UNDP-Global Compact recommendations to companies in Argentina to contribute towards the achievement of MDG 3 (promote gender equality and empower women), 2012<sup>128</sup>:
  - Establish non-discriminatory policies, promoting the role of women in society.
  - Build the capacity of women and young girls.

- ✓ UNDP and the Global Compact also made recommendations to enable companies operating in Argentina to contribute towards the achievement of MDG 4 (reduce child mortality):<sup>129</sup>
  - Improve access to information on prevention of diseases and its treatment.
  - Develop policies to transfer knowledge.
  - Implement CSR policies linked to this goal.
  
- ✓ UNDP and the Global Compact also made recommendations to enable companies operating in Argentina to contribute towards the achievement of MDG 5 (improve maternal health):<sup>130</sup>
  - Disseminate information on prevention and health care to pregnant women, helping to reduce unequal access to information.
  - Develop CSR policies linked to the provision of health services in poor areas.
  
- ✓ UNDP and the Global Compact also made recommendations to enable companies operating in Argentina to contribute towards the achievement of MDG 8 (develop a global partnership for development):<sup>131</sup>
  - Support educational, training, health, environmental and nutritional projects, in local communities targeting vulnerable groups.
  - Support the development of local leaders and interlocutors in the medium/ long-run representing their community on social and/or environmental issues.
  - Work with local, regional and national governments to develop and/or improve social infrastructures in several fields, including education and health.
  
- ✓ UNDP and the Global Compact also made recommendations to enable companies operating in Argentina to contribute towards the achievement of MDG 1 (eradicate extreme poverty & hunger):<sup>132</sup>
  - Prioritise CSR activities focusing on female entrepreneurship, for example through access to microcredit.

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

### Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

#### Discrimination

*Does the company ensure that employment-related decisions are based on relevant and objective criteria?*

- The company identifies different types of discrimination, including those rooted in formal structures and cultural traditions.

- It is company policy to ensure that decisions concerning hiring, wages, promotion, training, discipline, retirement and termination are based only on unbiased criteria, and are not linked to any of the discriminatory characteristics listed in the description for this question.
- Each job category in the company has a written description stating the salary level and the qualifications required for that job category.
- The company ensures that employment advertisements do not reference discriminatory criteria, such as race, gender or age (unless listed as part of a legal equal opportunities promotion).
- The company ensures that job applicants are not asked to give information about their marital status, pregnancy, intent to have children, number of dependents, or similar information that may lead to discriminatory hiring decisions.
- All hiring managers receive training regarding the company's non-discrimination policies.
- The company has established a procedure, accessible and known to all workers, where workers can safely report incidents of workplace discrimination.
- The company takes reasonable steps to enable qualified persons with disabilities or health conditions to gain employment opportunities with the company, for example by providing wheel chair access, flexible working hours, longer breaks etc.

### **Fair Treatment**

*Does the company protect workers from workplace harassment including physical, verbal, sexual or psychological harassment, abuse, or threats?*

- The company has a commitment to prevent workplace harassment.
- The company actively informs workers of their obligations to refrain from violent, threatening or abusive conduct.
- Managers receive training on how to identify and deal with instances of harassment in the workplace.
- The company investigates all complaints of workplace harassment and takes appropriate preventative and disciplinary action including reporting of criminal actions to the appropriate authorities.

### **Privacy**

*Does the company respect the privacy of its employees whenever it gathers private information or monitors the workplace?*

- The company has a procedure stating which kinds of workplace monitoring are allowed; what kind of personal worker information is retained; where it is stored; who has access; and why the information is necessary.
- Workers are made aware of all workplace monitoring, including cameras and Internet or e-mail monitoring, and the specific purpose of the monitoring.
- The company obtains the worker's prior written consent before gaining information from an individual with whom the worker has a privileged relationship, including a former employer, doctor or lawyer.
- Workers have access to all personal data collected about them, including data concerning disciplinary decisions and data obtained through monitoring, but excluding confidential

management specific information related to performance evaluations, salary negotiations, promotions, rotation and similar employment decisions.

## Community Engagement

*Does the company engage with local communities on the actual or potential human rights impacts of its operations?*

- The company has a commitment to engage openly with communities in and around its area of operations, prior to, during and after commencing activities that may negatively impact their access to resources (e.g. water, food, land) or livelihoods (e.g. fishing or hunting grounds).
- The company communicates and consults with local communities prior to, during and after commencing activities to prevent, reduce and mitigate impacts.
- The company takes steps to remedy the legitimate concerns of local communities regarding any negative impacts of the company's operations on the access to resources or livelihoods.

## Country Risk

*Does the company seek to avoid involvement in human rights abuses owing to government or societal practices?*

- If operating in a country or region with systematic human rights abuses, the company seeks to become aware of and avoid the risk of contributing to, endorsing or benefiting from such abuses.
- Where the company risks involvement in systematic human rights abuses owing to government or societal practices, the company seeks to identify solutions through dialogue with other businesses, civil society organisations, experts and other relevant stakeholders, including where possible with the authorities.
- The company ensures that it does not endorse any state imposed discriminatory limitations on the right to vote, and does not pass along information concerning religious, racial, political affiliations or other characteristics of employees which could be used by the government as a reason to restrict the right to vote.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- International Labour Organization Core Labour Standards on Non-discrimination and the ILO Bureau for Gender Equality: Non-discrimination comprises one of the four core areas of the ILO Declaration on Fundamental Principles and Rights at Work, which comprises the ILO core labour standards. The ILO integrates gender throughout its work, with the objective of achieving gender equality as an essential feature of decent work. This can include advisory services, research and information dissemination, training and capacity building.
- Oxfam Australia: Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment (2009): This Guide is intended to inform mining company staff of potential gender impacts of mining projects and introduces some tools and approaches that can be used to conduct a gender impact assessment.
- Women's Empowerment Principles (2010): Developed in collaboration between UN Women and the UN Global Compact, the Women's Empowerment Principles are a set of principles for

businesses offering guidance on how to empower women in the workplace, marketplace and community.

- The Forest Peoples Programme: Established in 1990, the Programme is dedicated to supporting Indigenous Forest Peoples protect their land rights and human rights. The Programme works directly with indigenous communities, assisting them in building their own capacities and exercising their human rights.
- IFC Performance Standard 7: Indigenous Peoples (2012): The IFC PS7 and its accompanying guidance offer directions on how private sector projects can respect the human rights of Indigenous Peoples through following the stated requirements.
- International Council on Mining and Metals Good Practice Guide: Indigenous Peoples and Mining (2010): The ICMM is the industry organisation for the mining and metals sector. The Guidance provides advice to companies on how they can build effective relationships with Indigenous Peoples, as well outlining ways in which companies can effectively engage throughout the lifecycle of a project.
- International Working Group for Indigenous Affairs (est. 1968): IWGIA is an international human rights organization specialising in Indigenous Peoples' rights. IWGIA works to further the understanding, knowledge, and engagement with the rights of Indigenous Peoples through publications, advocacy programmes and support of local projects.
- The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples (2009): The Declaration is a statement on behalf of Indigenous Peoples and support organisations from 35 countries that calls on different stakeholder groups, such as extractive companies, communities and civil society organisations, to respect and uphold the recognised rights of Indigenous Peoples.
- Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research and Education): The Foundation's main purpose is to work for the respect, protection and fulfilment of Indigenous Peoples' rights and the operationalisation of Indigenous Peoples' self-determined sustainable development. The Foundation offers a number of relevant resources on issues such as traditional knowledge and traditional livelihoods, biodiversity and climate change.
- UN Permanent Forum on Indigenous Issues (est. 2000): The Forum was formed to advise the United Nations Economic and Social Council on a number of Indigenous Peoples' rights issues, such as economic and social development, culture, education, environment, health and human rights.
- UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (est. 2001): The Special Rapporteur mandate is to advise on and monitor the human rights situation of Indigenous Peoples. This includes country reports, promoting good practice, addressing relevant human rights violations and contributing to thematic study on topics related to Indigenous Peoples.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives



**“Line for Labour Inclusion of Transvestites, Trans-genders and Transsexuals”:** The Ministry of Labour implements the initiative that seeks to ensure equal access to the job market and decent job for sexual minorities. The initiative contemplates collaborations with NGOs, the private sector and provincial governments in order to develop activities such as training and the development of projects for self-employment and internships.<sup>133</sup>

**Observatory on Discrimination on Radio and Television:** The National Council of Women, the National Institute against Discrimination, Xenophobia and Racism and the Telecommunications Agency implement the initiative in order to among others, analyse and follow-up all media content that could include discrimination; disseminate conclusions on those analysis; and raise awareness on how discriminatory statements could affect all citizens.<sup>134</sup>

**Development of Indigenous Rural Communities:** The National Institute of Indigenous Affairs, in collaboration with the National Agricultural Technology Institute, implements the initiative in order to promote development of indigenous rural communities that is based on intercultural dialogue and participation.<sup>135</sup>

**Zero Discrimination (2014):** The government adhered to the UN initiative that seeks to prevent new HIV/AIDS infections on the principle of equality in the provision of comprehensive health care. The government dedicates every 1<sup>st</sup> of March to raise awareness about HIV/AIDS and the rights of persons living with HIV/AIDS.<sup>136</sup>

**National Day of Afro-Argentines and the Afro Culture (2013):** The government adopted the initiative by law and stated that each November 8<sup>th</sup> should be commemorated as Afro-Argentines and Afro-Culture day. The law also mandated the Ministry of Education to incorporate the theme in all school curricula.<sup>137</sup>

**Argentina and Bolivia cooperation agreement (2013):** The governments of the two countries signed an agreement against discrimination, including exchange of communication strategies, prevention and support to victims of marginalisation.<sup>138</sup>

**Youth with More and Better Work:** The programme was launched by the Ministry of Labour in October 2011 and aims at generating opportunities for employment and social inclusion for unemployed youth between 18 and 24 years.<sup>139</sup> Special attention is given to indigenous people in the employment and training insurance schemes under the programme.<sup>140</sup>

## NGO Initiatives

**Argentinian Institute for Equality, Diversity and Integration (IARPIDI):** The organisation promotes equal rights, non-discrimination and ethnic and cultural diversity in order to improve the process and chances of integration and insertion of Afro-Argentines, Africans and Refugees in Argentina.<sup>141</sup>

# Child Labour

*Work that interferes with the health, development, education or family life of persons under 18*

Operating Environment		
	Argentina	Latin America and the Caribbean
Net Enrolment Ratio in Primary Education (% both sexes)	99.1 (2015)	93.6 (2015)
Percentage of pupils starting grade 1 and reaching last grade of primary	97.1 (2011)	76.1 (2015)
One-year-old children immunised against measles (%)	91 (2013)	92 (2013 – Latin America)
Mortality rate of children under 5 years old (per 1,000 live births)	13 (2013)	18 (2013)
Percentage of population below 14	24.7 (2015)	
<a href="#">Legatum Prosperity Index</a> : Education	40 (2015)	
Restrictions on children under 18 from working	The law prohibits children less than 18 years of age to perform hazardous work.	
Minimum age of employment	16	
End of compulsory education	13 years of schooling.	
Relevant legislation	<ul style="list-style-type: none"> <li>• Constitution, 1994</li> <li>• General Education Law, 2006</li> <li>• Law on the prohibition of child labour, 2008</li> </ul>	
Responsible ministries	<ul style="list-style-type: none"> <li>• Ministry of Labour, Employment and Social Security</li> <li>• National Commission for the Eradication of Child Labour (CONAETI)</li> </ul>	

	<ul style="list-style-type: none"> <li>• Provincial Commissions for the Prevention and Eradication of Child Labour (COPRETI)</li> </ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>• Conciencia</li> <li>• Colectivo de Derechos de Infancia y Adolescencia</li> <li>• Un Sueño para Misiones</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The 2008 law on the prohibition of child labour sets the legal minimum age for employment at 16 and prohibits employment of children under 16 in domestic service.<sup>142</sup> The minimum age requirement was also incorporated in relation to agricultural work as well as on special contracts for workers in special cases, such as domestic work.<sup>143</sup>

In March 2013, the Penal Code was amended to include penalties from one to four years imprisonment for employers recruiting children under 16. Should more than three minors be hired, then penalties range from three to six years imprisonment, and this period doubles in case the employer holds public office.<sup>144</sup>

Latest official data available, from 2012, noted that approximately 2 percent of children between 5 and 13 years of age, and 7.5 percent of children between 14 and 17 years of age were engaged in child labour.<sup>145</sup> Figures reported a fifty percent decline in child labour rates since 2004 due to among others the rise in the minimum age for employment, social programs implemented by the government, an increase in inspections conducted and campaigns to raise awareness on the eradication of child labour, according to a 2015 El Pais report.<sup>146</sup>

Cases of child labour were highest in the informal sector (47.77 per cent) and the agricultural sector (15.90 per cent), according to the International Labour Organization's Committee of Experts for the Application of Recommendations and Conventions in 2015.<sup>147</sup> Most child laborers were located in Cuyo, the Northeast provinces and the Greater Buenos Aires area.<sup>148</sup>

Children of migrant workers were particularly vulnerable to child labour. The identification of child labour was reportedly challenged by the "invisibility" of the problem, linked to the social acceptance of it, especially in regard to child work in family farms.<sup>149</sup>

## Worst Forms of Child Labour

The law prohibits children under 18 years of age to perform hazardous work. The U.S. Department of Labor reported that as of 2015 Argentina had not adopted a comprehensive list of hazardous work for children.<sup>150</sup> In December 2012 a new law on human trafficking was adopted, increasing the years in prison for individuals forcing children under 18 into prostitution, which ranged from 10 to 15 years.<sup>151</sup>

The 2015 U.S. Department of Labor report on the Worst Forms of Child Labour noted that children worked in the agriculture, industry and service sectors.<sup>152</sup> In the agriculture sector in particular children were reportedly harvesting yerba mate, tobacco, corn and cotton, while in the industry sector they were producing garments, bricks, manufacturing aluminium pots and mining.<sup>153</sup>

Argentina was a destination country for trafficking for sexual exploitation of young girls.<sup>154</sup> Children were also involved in commercial sexual exploitation as a result of human trafficking and on forced labour in the production of garments. Bolivian and Paraguayan children were particularly vulnerable to that situation, according to the US Department of Labor in 2015.<sup>155</sup> The Fundación La Alameda added in 2013 that 10,000 Bolivian children were trafficked every year to work in the agricultural sector, in the production of garments, or for sexual exploitation.<sup>156</sup>

There were reportedly 599 labour inspectors in the country in 2014. The National Registry of Agricultural Workers and Employers supported the Ministry of Labour in the enforcement of laws in the agriculture sector and employed an additional 50 inspectors.<sup>157</sup> In 2013 UNICEF reported that once a situation of child labour was identified through a labour inspection, a lack of social support to the child and his/her family was reported, also due to a lack of coordination with the entities responsible for child protection. The same source also reported that provincial labour inspections lacked adequate territorial coverage.<sup>158</sup>

## Education

School attendance is free and compulsory for 13 years, starting at the age of 5.<sup>159</sup> The national legislation guarantees equal access to education for all migrants, regardless of having a National Identity Document.<sup>160</sup>

In urban areas, 98 percent of children ages between 5-13 were attending school while the percentage dropped to 81 when applied to the segment of ages between 14 to 17 years.<sup>161</sup>

Even though enrollment in educational centers has increased greatly over the last couple of years, an expert from FLACSO noted in 2016 that the quality of education in Argentina was low. Inequalities were seen throughout provinces as since the passing of a law in 1992, the administration and funding of schools were given entirely to local governments.<sup>162</sup> Discrepancies were also observed between public and private schools. Students from private schools were twice as likely to achieve higher scores than students at public institutions on international testing.<sup>163</sup> The OECD noted in 2015 that two out of three teenagers were qualified as “low performers” in math in particular.<sup>164</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *2016, Cuyo Noticias:* A 14-year old child was found working at the company Cabanillas Silva de San Martín.<sup>165</sup>
- *October 2015, Infórmate Salta:* Child labour was found in the facilities of the company Extraberries in Salta. The company is the largest blueberry producer in Argentina.<sup>166</sup>
- *September 2013, Agenzia Fides:* The Ministry of Labour of Salta province found children working on a farm in General Ballivián and involved in dangerous activities. As a result, activities were suspended on the 3,000 hectares farm.<sup>167</sup>
- *April 2013, In Sight Crime:* Five Bolivian children were freed by police from forced labour in five textile workshops in Buenos Aires.<sup>168</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

## Company Due Diligence Initiatives

**Arcor Argentina:** The food producer company adopted a policy on Children's Rights in which it sets out the company's commitment in the following areas: respect and promote children's right as part of its sustainability strategy, eradicate child labour on its operations and on its supply chain, provide decent job that can support workers on parenting, and use communication and marketing tools that respect and support children's rights.<sup>169</sup>

**Network of Businesses against Child Labour:** This initiative was established in 2007 as a result of the private-public cooperation among the Ministry of Labour, CONAETI and originally 58 companies, which are now more than 90. The network aims at creating synergies to implement activities to prevent and eradicate child labour.<sup>170</sup>

## Company Development Initiatives

**Randstat Argentina:** The company implements the initiative "Establishments to prevent Child Labour" in order to contribute to the prevention and eradication of child labour in rural areas by providing assistance, training and recreation activities to children between 1-11 years of age whose parents are employees at the company, or members of communities in the proximities of its operations.<sup>171</sup>

**Arcor Argentina:** The company, in collaboration with UNICEF, developed the initiative "Businesses for Childhood" that seeks to encourage the adoption of CSR initiatives in the private sector from a children's rights perspective.<sup>172</sup>

## Stakeholder Recommendations

- ✓ **UNDP-Global Compact:** In a 2012 joint publication, UNDP and the Global Compact made the following recommendations to companies operating in Argentina to help ensure the abolishment child labour:<sup>173</sup>
  - Understand the family and educational background of the victims to prevent the situation from recurring.
  - Assist children in the transition from work to school.
  - Fight against child labour within the company and within subcontractors and the supply chain.
- ✓ UNDP and the Global Compact also made recommendations to enable companies operating in Argentina to contribute towards the achievement of MDG 2 (achieve universal primary education):<sup>174</sup>
  - Fund international organisations working on this issue, such as UNICEF and UNESCO.
  - Play an active role in the promotion of primary education in the company's area of operation.

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

## Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

- The company does not employ workers under 15 years of age for full-time work, 13 years of age for light work and 18 years of age for hazardous work (please see the question description for exceptions).
- If the company employs minors below the age of 18, the company has a list of job functions that can safely be performed by minors.
- The company is aware of local age-levels for completion of compulsory education and does not employ workers under that age for work that may interfere with such education.
- The company has a reliable procedure to check the age of young job candidates by birth certificate, other official forms of identification, or by alternative means such as physical appearance or knowledge of historic events.
- Company apprenticeship programmes do not constitute the main portion of the workforce, are limited in duration, are performed in conjunction with a school programme (or supervised by Labour Ministers or Labour Organisations), and do not interfere with the child's compulsory education.
- If the company becomes aware that it is employing young workers below minimum age, it ensures that they are enrolled in education programme, and that their dependents are compensated for the resulting loss of income.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- Business and Human Rights Resource Centre, Business & Children Portal: The Portal is an information hub developed to give practical assistance to people from all business sectors in their work and decision-making, leading to better protection of the rights and welfare of children. The Portal has sections on: issues, positive initiatives, alleged abuses, lawsuits and guidance.
- Children's Rights and Business Principles (2012): Developed by UNICEF, UN Global Compact and Save the Children, these Principles are the first comprehensive set of principles to guide companies on the full range of actions that they can take in the workplace, marketplace and community to respect and support children's rights.
- ILO Programme on the Elimination of Child Labour (est. 1992): The Programme has the overall goal of the progressive elimination of child labour, to be achieved through strengthening the capacity of countries to address it and promoting a worldwide movement to combat child labour.
- UN Committee on the Rights of the Child General Comment No.16 on State obligations regarding the impact of the business sector on children's rights (2013): The Committee is the body of independent experts that monitors the implementation of the Convention on the Rights of the Child and the Optional Protocols. In April 2013, the Committee issued a general comment on business and children's rights. The objective of General Comment No.16 is to provide States parties with a framework for implementing the CRC, particularly with regard to the business sector.

- **Children's Rights in Impact Assessment – A Tool For Companies (2013):** Developed by UNICEF and the Danish Institute for Human Rights, this checklist is a practical tool intended to help companies to identify and manage their impact on children's rights. The checklist contains a set of questions and indicators covering the 10 Children's Rights and Business Principles, addressing different aspects of company policies and operations and the impact on children's rights.
- **Better Work (ILO, IFC):** Guidance Sheet on Child Labour (2009)

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**Capacity Building on Trafficking In Persons:** The government conducted 263 capacity-building exercises during the period 2009-2014 to raise awareness to the general public and enhance the capabilities of public officers and other community representatives on trafficking in persons, including children.<sup>175</sup>

**Child Labour Observatory:** The Ministry of Labour developed the tool in order to provide the general public with information regarding child labour in the country, including statistics and research papers. The initiative falls under a collaboration with the International Labour Organization.<sup>176</sup>

**Harvest Day Care and Future Programs:** The Provincial Commissions for the Prevention and Eradication of Child Labour, in collaboration with the Network of Businesses against Child Labour, implement the programme with the aim to reduce child labour in the production of crops, such as tobacco and blueberries, where labour is often performed by entire families. Children are placed in day care centres that have educational and recreational programmes.<sup>177</sup>

**MERCOSUR Southern Child Initiative:** The campaign was launched by the Ministry of Labour in 2012 and aims at the eradication of child labour with a focus on agriculture, domestic work, and sexual exploitation, specifically targeting communities along the border, including Paso de los Libres-Corrientes Province, Posadas and Puerto Iguazú- Misiones province.<sup>178</sup>

**Universal Child Allowance Programme:** The government provides a monthly cash transfer to unemployed parents and workers in the informal economy, provided that parents fulfil their children's health and education requirements.<sup>179</sup> In September 2011, the government announced a 22 percent increase in child benefits for children whose parents are unemployed.<sup>180</sup> As of 2015, the programme have benefited more than 3,2 million children and adolescents.<sup>181</sup>

### NGO Initiatives

**Un Sueño para Misiones:** The organisation that is located in Misiones promotes a country where education and children's rights are the ground of social development. By donating books to local communities' libraries, the organisation raises awareness on children's rights.<sup>182</sup>



# Forced Labour

*Debt bondage, human trafficking or other coercion that makes workers unable to freely leave employment*

Operating Environment	
U.S. Department of Labour Trafficking in Persons: Tier Placement	Tier 2
Relevant laws	<ul style="list-style-type: none"><li>• Constitution, 1994</li><li>• Law that prohibits human trafficking and forced labour, 2012</li></ul>
Responsible agencies	<ul style="list-style-type: none"><li>• Federal Council to Combat Trafficking and the Exploitation of Persons and to Protect and Assist Victims</li><li>• Ministry of Human Rights and Justice</li><li>• Ministry of Labour, Employment and Social Security</li></ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"><li>• La Alameda</li></ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

Forced labour is prohibited in Argentina. The 2012 law on human trafficking prohibits forced labour and sexual exploitation, and sets penalties for perpetrators ranging from four to 15 years imprisonment.<sup>183</sup>

According to the 2015 Global Slavery Index, there were an estimated 77.300 people in modern slavery in Argentina, especially in the garment sector.<sup>184</sup> La Alameda reported in 2016 that more than 3.000 clandestine textile workshops existed in the greater Buenos Aires area, supplying 80 percent of all textile industry in the country. Most workers in those shops were reportedly Bolivians and worked in precarious conditions including 16 working hours a day with a salary between 5.000 pesos (approx. US\$355) and 6.000 pesos (approx. US\$426) monthly.<sup>185</sup> Between 250.000 and 300.000 workers were estimated to be working in those clandestine workshops under slavery-like working conditions.<sup>186</sup> Most sweatshops were located in Flores and Floresta neighbourhoods, where the incidence rate was 198 per 100.000 inhabitants, compared to 26 per 200.000 inhabitants in all other areas of the country.<sup>187</sup>

Slavery –like working conditions were also reported in the agriculture sector, where almost 60 percent of workers were employed in the informal sector.<sup>188</sup>

## Trafficking

A 2012 law on human trafficking increased the years of prison sentences, which now range from 10 to 15 years and established a dedicated trafficking unit.<sup>189</sup> However, the newspaper *Público* reported that according to the Fundación La Alameda, that law failed to impose the seizure of the offender's assets and its reuse for social purposes.<sup>190</sup>

Argentina was a source, transit, and destination country for men and women subjected to sex trafficking and forced labour.<sup>191</sup> According to the government, the movement of workers followed a North-to-South path, and were originated in Bolivia and the northern areas of Argentina. The U.S. Department of State reported in 2015 that Argentinians, Bolivians, Paraguayans and Peruvians were trafficked for forced labour including in sweatshops and agriculture, charcoal and brick production, and small businesses, while Chinese citizens working in supermarkets were vulnerable to debt bondage.<sup>192</sup> Transgender Argentinians were also reportedly exploited in sex trafficking.<sup>193</sup> In terms of internal trafficking in particular, Salta and Santiago del Estero were reported as recruited centres and the great Buenos Aires area as a destination point.<sup>194</sup>

The government reported that most victims of trafficking for labour were women between 18-30 years of age, and in 70 percent of the cases, foreigners. Victims also reported unemployment in their countries of origin and low levels of education.<sup>195</sup>

The Ministry of Labour conducts labour inspections at federal level, while each province has separate entities.<sup>196</sup> During the period between 2010 – 2014, 3,338 inspections took place where, of the 24,352 workers present, 28 percent were not registered.<sup>197</sup> In the city of Buenos Aires alone, from 2008 to 2013 labour inspectors identified 1,150 clandestine sweatshops, according to the newspaper *Página 12*.<sup>198</sup> The National Registry of Agriculture Workers and Employers was also given the mandate to support in conducting inspections.<sup>199</sup>

In terms of trafficking of persons in particular, since the adoption of the 2012 law, more than 9,000 persons were rescued, in particular women.<sup>200</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *October 2015, La Voz:* 13 women victims of trafficking for sexual exploitation were rescued in Corrientes. 3 persons were detained in connection to the crime.<sup>201</sup>
- *September 2015, La Nación:* A Tribunal in Tierra del Fuego condemned the leader of an organisation dedicated to women's exploitation to 7 years imprisonment and to the payment of 125,000 pesos (approx. US\$8,800) in fines.<sup>202</sup>
- *June 2013, In Sight Crime:* A police operation conducted across 10 provinces resulted in the arrest of 23 Colombians allegedly responsible for the exploitation of 202 Colombian workers at plastic factories. The workers were reportedly held in inhuman conditions without registration, social security and healthcare. The operation was reported as one of the biggest labour trafficking operations in recent years in Argentina.<sup>203</sup>
- *April 2013, Público:* A sweatshop making clothes for Zara in Buenos Aires was closed. Workers were reportedly kept in slave-like conditions. Other illegal textile factories were identified and reported as making clothes for Argentinian companies, Ayres, Cara and Cruz. Workers were reported to work 13 hours per day in very precarious health and hygiene conditions.<sup>204</sup>
- *April 2013, In Sight Crime:* 45 Bolivians were freed by police from forced labour in five textile workshops in Buenos Aires. An investigation was opened against a Bolivian couple that allegedly recruited the workers and stole their identity documents once they entered Argentina.<sup>205</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**ManpowerGroup:** The company signed the Athens Ethical Principles that declares a zero tolerance policy for working with any entity which benefits in any way from human trafficking. That includes clients, vendors and business partners.<sup>206</sup> The company also includes their commitment against human trafficking and forced labour in its Code of Business Conduct and Ethics, and its also committed to the UN Guiding Principles on Business and Human rights and on its anti-human trafficking initiatives. Against that background, the company developed two policies, one for its talent supply chain and another one for its procurement supply chain. Contracts with suppliers include the obligation to adhere to ManpowerGroup ethical standards, including zero tolerance on human trafficking and no use of any form of forced labour.<sup>207</sup>

**DuPont:** The company developed a Human Rights Policy stating zero tolerance for forced labour and human trafficking in its operations. Employees and contractors are required to comply with it as part of their contracts. The company reportedly commits to terminating a working relation with suppliers violating systematically these principles and not correcting those behaviours.<sup>208</sup>

### Company Development Initiatives

**App to Submit complaints on Slave Labour (2016):** The Argentine Confederation of Medium Size-Businesses created the application to allow individuals to report complaints about illegal work including trafficking and slave-like working conditions. The information received is then transmitted to the authorities.<sup>209</sup>

## Stakeholder Recommendations

- ✓ **UNDP-Global Compact:** In a 2012 joint publication, UNDP and the Global Compact made the following recommendations to companies operating in Argentina to help ensure respect for human rights:<sup>210</sup>
  - Put in place due diligence mechanisms to control and supervise the supply chain.
  - Build the capacity of suppliers and contractors by setting rules of conduct to maintain a business relation with the company.
  - Specify the procedures to be followed by the supply chain to ensure the absence of forced labour and support them in tackling it within their own subcontractors.
  - Require suppliers and contractors to refrain from using informal workers, taking into account its implications on undocumented migrants.
  - Monitor informal employment through the mechanisms provided by national laws, for example, the requirement of registering payrolls.
  - Require suppliers and contractors to provide information on contractual, working, housing, food, clothing, transportation and other similar conditions of their workers. Audit that information by conducting interviews with workers and managers under adequate guarantees, unannounced inspections and employment documentation control.
  - Verify that the supply chain costs are compatible with the absence of forced labour in accordance with the regulatory conditions of the specific market.
  - Promote the assistance and reintegration of victims of forced labour. Avoid by all means that the dismantling of those structures put victims in distress.

- Participate in national and international prevention and reintegration programmes by offering training and employment opportunities to victims of forced labour. Work in partnership with other companies, associations, NGOs and stakeholders to promote industry-wide actions against force labour.

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

### Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

- Workers can give notice and leave employment within a reasonable length of time. This is clearly communicated to workers prior to starting employment.
- The company (or its recruitment agencies) ensures that it does not withhold wages or bonuses and that it pays them in a timely and regular manner.
- The company ensures it does not make deductions from wages for disciplinary measures or other deductions not authorised by national law.
- Within normal working hours workers are able to earn a living wage sufficient to meet the basic needs of themselves and their closest dependents.
- Overtime work is paid, voluntary and not compelled through threat of pay deductions, termination or other sanctions.
- The company (or its recruitment agencies) ensures that it does not retain identity cards, passports, travel documents or other personal items without which workers cannot leave employment. If letters of release or other documents are needed for the worker to leave employment, such letters are issued without delay.
- All workers are allowed to leave company premises during breaks and at the end of their shifts, and workers in company housing may freely enter and exit their accommodation at any time.
- The company (or its recruiting agencies) ensures that it does not require workers to pay recruitment fees or lodge money deposits.
- Loans or salary advancements to workers are based on fair terms that are clearly explained to the worker, are not granted to cover basic living expenses, are limited in size, and do not require the worker to remain with the company until repayment is completed.
- If the company uses prison labour it ensures that all prison workers have been convicted by a court of law, and that the work is voluntary and supervised by a public authority.
- The company ensures that it does not use labour from agencies or firms involved in human trafficking or other forms of bonded labour.

# Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

## Public Sector Initiatives

**Anti-Trafficking Training Sessions (2014):** The government provided police, prosecutors, judicial officers and other officials with training on anti-trafficking measures.<sup>211</sup>

**Shared Social Commitment:** The initiative was established by the National Institute of Industrial Technology and aims to improve working conditions in the textile industry. Companies commit to adhere to the initiative in order to eradicate forced labour within its operations and in their supply chain.<sup>212</sup>

## NGO Initiatives

**La Alameda:** The organisation works on the promotion of decent work, free of slavery-like working conditions. The organisation also has a registry of businesses that use victims of trafficking in persons and servitude in their operations.<sup>213</sup>

# Occupational Health & Safety

*Unsafe or unhealthy working conditions that expose workers to the risk of accidents or occupational illnesses*

Operating Environment	
Relevant laws	<ul style="list-style-type: none"><li>• Constitution, 1994</li><li>• Labour Risks Law, 2012</li></ul>
Responsible agencies	<ul style="list-style-type: none"><li>• Ministry of Labour, Employment and Social Security - Labour Risks Superintendence</li></ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"><li>•</li></ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The Work Injury Act requires all employers to insure employees against accidental deaths and disability incurred at the workplace.<sup>214</sup> The Workers' Compensation Law requires employees' insurance coverage in cases of accidents at the workplace and when traveling to and from work to be provided by the employer.<sup>215</sup> The latter can provide insurance through one of the labour risks insurances (ART) or provide its own insurance providing that it meets the requirements established by the national insurance regulator.<sup>216</sup>

Labour risk insurances can be reportedly set up by insurance companies, banks and private hospitals and every worker is entitled to an ART coverage plan. Insurance companies are reported to have the faculty of choosing which industrial sector to cover, providing that coverage is provided to all sector employers requesting it.<sup>217</sup>

Workers can choose among one of the state health care providers (*obras sociales*), which have to comply with the mandatory standard plan (*Programa Médico Obligatorio*). After one year, employees can change to a plan by another state provider (*obras sociales*) or by a private medical company (*sistema prepago*).<sup>218</sup>

The Labour Risks Superintendence reported 792 worker fatalities in 2015, corresponding to 81.9 incidents per one million workers and a national average of accident incidence rate across sectors of 62.3.<sup>219</sup> In 2015, 669,401 cases of work-related accidents were reported, of which most corresponded to cases in the communal, social and personal services field, followed by the manufacturing industry sector and commerce.<sup>220</sup>

In terms of occupational illnesses, 55.000 were recorded during 2014.<sup>221</sup>

The government reported in 2015 that due to the implementation of the laws and a policy of accident prevention, over the last decade, the incidence rate of work fatalities were reduced by 28 percent and the incidence rate of workplace accidents by 22 percent.<sup>222</sup>

In the agricultural sector in particular, the lack of control over pesticides use and their application with no protective gears posed a serious concern for their health implications.<sup>223</sup> The newspaper La Nación added in 2014 that accidents were also as a result of long working hours under high temperatures and exhaustion from workers that resulted in them not paying attention when using heavy machinery, causing injuries and harms.<sup>224</sup>

The National Research Council reported the unhealthy working conditions in the Greater Buenos Aires' clandestine sweatshops were conducive to higher tuberculosis incidence, compared to the national average. Those figures were particularly high in the south-west part of Buenos Aires, where the majority of sweatshops were located, with 198 recorded cases of tuberculosis against the national average of 26 cases per 100,000 people. Poor hygiene conditions, together with overcrowded environments with little ventilation weakened the workers' immune system and increased the likelihood of contracting diseases, according to a 2015 El Diario report.<sup>225</sup>

The newspaper iProfessional reported in 2013 a study by the consulting company Regus indicating that 29 percent of Argentinian workers felt more and more stressed.<sup>226</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *May 2016, Prevención Integral:* Two inmates got injured while working at a metallic carpentry inside a Detention Centre in Entre Rios province. The inmates presented a claim at the Labour Court.<sup>227</sup>
- *August 2015, Misiones Online:* Workers at the company Arauco demanded the implementation of occupational health standards at the company's facilities in Misiones. The company reportedly did not implement the law on occupational health and safety, which negatively impacted on workers' health due to the presence of high levels of chlorine dioxide and high levels of noise.<sup>228</sup>
- *July 2015, Es Global:* A clandestine textile factory went on fire as a result of the lack of implementation of safety and security measures.<sup>229</sup>
- *October 2013, Safety News:* Three painters were injured after the fall of a service lift in Santa Fe province. The workers were subcontracted by the construction company Ingeconser.<sup>230</sup>
- *October 2013, Notimerica:* Five workers were injured by the abrupt fall of a slab in a construction site in Buenos Aires.<sup>231</sup>
- *July- August 2013, Buenos Aires Herald:* Alleged safety issues in two metro stops of the underground line B in Buenos Aires were reported to be the causes of several strikes.<sup>232</sup>
- *June 2013, CTA:* Five workers died in Misiones province after a road accident. The workers, employed in the yerba mate cultivation, were traveling with no protections in the back of an old truck.<sup>233</sup>
- *January 2013, iProfessional:* HSBC was condemned by a labour court to pay almost US\$731,000 to a manager for stress damages.<sup>234</sup>

## Company Initiatives



*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

## Company Due Diligence Initiatives

**Arcor Argentina:** The food producer company adopted a Programme to Manage Risks at Work with the objective to minimise the risks of occupational illnesses on its facilities by implementing a work methodology that includes an assessment between emerging illnesses and the analysis of workstations, and the organisation of labour based on a system of rotations, rests and breaks.<sup>235</sup>

## Company Development Initiatives

**Quadripartite Commission in the Construction Sector:** A joint initiative between the Trade Union of Construction Workers in Argentina, the Argentine Construction Chamber, the Labour Risks Superintendence and the Work Risk Insurance Agency with the overall objective to reduce workplace accidents in the sector. The following activities are implemented: daily talks with workers about OHS issues; visits to offices in charge of OHS in the company members; and issue of an special safety work permit for areas including digging, demolition and work at heights.<sup>236</sup>

**Emprendedor XXI (Argentina):** It is a network of universities, public entities and the Chamber of Commerce providing suggestions and policies on the prevention of workplace accidents.<sup>237</sup>

## Stakeholder Recommendations

**Organisation Name:** Text

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

### Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

*Does the company ensure that its workers are provided safe, suitable and sanitary work facilities?*

- Responsibilities for health and safety tasks are clearly defined.
- The company routinely monitors its production processes, machinery and equipment to ensure that they are safe and in good working order.
- Workers and managers are trained to respond to workplace emergencies; first aid kits and fire extinguishers are readily available; and escape exits are clearly marked and free from obstruction.
- The workplace is maintained to ensure clean and comfortable conditions including a suitable temperature, ventilation and lighting; suitable washing and sanitation areas appropriate for both genders.

- Residential or overnight facilities are safe and sanitary and meet the basic needs of workers including with regard to safety, space, temperature, lighting, ventilation, food, water, sanitary facilities, privacy, and affordability.
- The company provides safe drinking water for workers and facilities for clean and sanitary food storage and eating.
- Where relevant the company has put in place special health and safety precautions for pregnant women, employees with disabilities, night workers, young workers and other vulnerable groups.

*Does the company ensure that workers are provided with the protective equipment and training necessary to perform their tasks safely?*

- The company has a procedure to ensure that all workers are provided, free of charge or deposits, with the protective equipment necessary to safely perform their job functions.
- The company is committed to ensuring that workers use the protective equipment provided and understand why it is necessary to use the equipment.
- The company ensures that all workers have the necessary training to safely perform their job functions and keeps workers fully informed, in a language and form understandable to them, of the health and safety procedures.
- An accurate record is kept of who has been trained and for what tasks.
- On a regular basis and when assigned to new tasks, workers receive training in the safe use of equipment and processes.
- A company function or member of staff is responsible for keeping informed of scientific and technological developments regarding health and safety risks and protective equipment.

*Does the company actively involve workers in health and safety work?*

- The company consults employees on health and safety issues either directly or through a freely elected safety representative(s) for relevant groups of employees.
- A health and safety committee has been established including employee safety representatives and representatives from management.
- Health and safety accidents are reported and investigated including involving the relevant worker(s), and actions are taken to prevent recurrences.
- Health and safety near-misses (accidents not resulting in injury) are reported and investigated to help improve safety.
- Health and safety accidents are monitored including hours lost as a result of injury or illness and e.g. compared to total hours worked (lost time injury frequency).

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- IFC Performance Standard 2: Labour and Working Conditions (2012): FC PS2 is guided by the international labour standards as outlined by the ILO and covers health and safety.

- **Portal for Responsible Supply Chain Management:** The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.
- **Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009):** The Ethical Trading Initiative is an alliance of business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**12<sup>nd</sup> Week on Occupational Health and Safety (2015):** The Labour Risks Superintendence developed the initiative that includes seminars, conferences and activities to raise awareness on the importance of addressing labour risks.<sup>238</sup>

**II Argentinian Strategy on Occupational Health and Safety (2015-2019):** The strategy was signed by representatives from the government, private sector and trade unions and is based on the following three pillars: a greater development of basic prevention, maximizing the use of digital tools to support in the fulfillment of the national OHS law's objectives, and the promotion of a comprehensive worker's health approach.<sup>239</sup>

### NGO Initiatives

**Project (year):** Text

# Trade Unions

*Restrictions on the right of workers to collectively represent their interests*

Operating Environment	
Largest trade unions and union confederations  <i>Names, sectors and number of employees represented</i>	<ul style="list-style-type: none"><li>• General Confederation of Labour of the Argentine Republic (CGT)</li><li>• The Central Workers of Argentina (CTA).<sup>240</sup></li></ul>
Relevant laws	<ul style="list-style-type: none"><li>• Constitution, 1994</li><li>• Trade Union Law, 1988</li></ul>
Responsible agencies	<ul style="list-style-type: none"><li>• Ministry of Labour, Employment and Social Security</li></ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"><li>•</li></ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The International Trade Union Confederation (ITUC) noted that trade unions had a strong presence in local, provincial and national politics, and were strong actors in the relations between workers and employers on issues such as wages and workers occupational health and safety.<sup>241</sup>

## Barriers to Unionisation

The constitution guarantees the right to form and join trade unions without prior authorisation.<sup>242</sup> The national legislation sets that with the exception of military and law enforcement personnel, all workers are guaranteed the right to form and join "free and democratic labour unions," and workers are reportedly able to exercise this right in practice.<sup>243</sup>

In 2014 ITUC reported that only the most representative union in a given sector could enjoy official trade union status (*personería gremial*). To that end, a trade union is required to have 10 percent more paying members than the association already holding the official status.<sup>244</sup> The law grants certain benefits solely to trade unions with official status, including the right to collect union fees by means of deduction from the wages and can represent the collective interests, which, according to the ITUC, was too stringent.<sup>245</sup>

ITUC and the Confederation of Workers of Argentina reported unjustified delays in the administrative procedure to register a trade union or obtain trade union status, which could last between five and ten years, according to the International Labour Organization's Committee of Experts for the Application of Recommendations and Conventions in 2016.<sup>246</sup>

37 per cent of workers were unionised in Argentina, according to a 2014 Nueva Minería y Energía article.<sup>247</sup>

The Bertelsmann Foundation noted in 2016 that unions in Argentina played a significant role in politics and society, and were generally free from general restrictions and political pressure from the State.<sup>248</sup>

## Collective Bargaining

The right to collective bargaining is recognised by law, however collective bargaining agreements are binding only after ratification by the Ministry of Labour (homologation).<sup>249</sup> The ratification process made the collective agreements subject not only to considerations related to public order, but also productivity, investment, technology and vocational training, according to Education International in 2012.<sup>250</sup>

In practice, most collective bargaining agreements were signed between a worker's federation or a national trade union, on the one side, and an Employer's Chamber with national coverage on the other side.<sup>251</sup>

During 2015, The Ministry of Labour homologated 1.957 collective bargaining agreements, and as of 2015, more than 4 million workers were covered by those agreements.<sup>252</sup>

## Strikes

The right to strike is guaranteed by the Constitution.<sup>253</sup> However, due to the fact that only trade unions with official status can claim to represent the collective interests, registered trade unions without that status were reportedly denied the right to strike, according to a 2014 ITUC report.<sup>254</sup> Workers in essential services and civil servants could only strike after a mandatory 15-days period of conciliation and "minimum services" have to be provided.<sup>255</sup>

The Bertelsmann Foundation noted in 2016 that strikes were seen by the government as a political demonstration of support for the political enemy instead of being an instrument to negotiate better working conditions.<sup>256</sup>

During 2014, 71 labour conflicts were recorded in the private sector, involving 244.000 strikers and 670.000 of work-days not worked. Most strikes occurred in the transport and industry sectors, and were related to dismissals and demands for salary increases.<sup>257</sup>

## Anti-Union Discrimination

The national legislation prohibits anti-union discrimination.<sup>258</sup> The Labour Law identifies a number of unfair labour practices, which includes employer's interference in trade union activities and anti-union discrimination.<sup>259</sup>

In 2014 ITUC noted that union members were at times subjected to violence by security forces during demonstrations.<sup>260</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- April 2016, Thomas Reuters Foundation: A 48-hours strike was conducted to demand a halt of the layoffs in the banking sector in Buenos Aires.<sup>261</sup>

- *November 2015, La Prensa*: Unionised workers at the Argentino Hotel demonstrated against the dismissal of a worker on grounds of anti-union discrimination. The worker was reportedly the sister of a delegate of the Trade Union.<sup>262</sup>
- *August 2015, Misiones Online*: The Ministry of Labour ordered a compulsory conciliation process between employer and employees at the company Arauco due to illegal dismissals of unionised workers.<sup>263</sup>
- *June 2015, La Izquierda Diario*: The Labour Court mandated the company Finning Argentina to reintegrate a worker who was dismissed as a result of anti-union discrimination.<sup>264</sup>
- *June 2015, La Tercera*: A strike of public transportation services including buses, trains, airplanes and the metro was called to demand a rise in their salaries. The strike was supported by trade unions associated with the opposition party.<sup>265</sup>
- *October 2013, Argenpress*: Two union representatives were fired by a textile factory, Elemento, in Buenos Aires, for having organised workers in a trade union and having obtained the enforcement of basic working rights.<sup>266</sup>
- *September 2013, Col-Lectiu Rets*: Four workers were dismissed by a subcontractor of the company Telefónica, Rega group, after having submitted their names for the election as delegates of the telecommunications union UETel.<sup>267</sup>
- *August 2013, International Trade Union Confederation (ITUC)*: Anti-union dismissals was reported in several gas stations in Cordoba province.<sup>268</sup>
- *July 2013, Buenos Aires Herald*: A violent trade union confrontations took place between the teamsters' trade union, FEDCAM and laundry workers.<sup>269</sup>
- *May 2013, ITUC*: A subcontractor of Telefónica, Elecnor Argentina dismissed 300 workers belonging to the telecommunications union UETel. Following trade union pressure, Telefónica obliged the subcontractor to reinstate the dismissed workers.<sup>270</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Aguas Cordobesas**: The company, that provides water services to Cordoba province, maintains regular meetings with trade union representatives in order to discuss salary issues, renegotiation of collective agreements, capacity building sessions and trainings.<sup>271</sup>

**Acindar**: The company developed a human rights policy focusing on, among other things, the promotion of freedom of association.<sup>272</sup> The company is also engaged in a CSR capacity building programme on working relations, aiming at consolidating relations between company employees and business associations.<sup>273</sup>

### Company Development Initiatives

**Company Name:** Text

## Stakeholder Recommendations

- ✓ **UNDP-Global Compact**: In a 2012 joint publication, UNDP and the Global Compact made the following recommendations to companies operating in Argentina:<sup>274</sup>

- Promote the development of a peaceful working environment, free of pressure or threats against workers, and promote trade union activities.
- Work closely with business associations to secure these rights.
- Inform and build the capacity of contractors and suppliers on their duties regarding this matter.
- Establish separate, confidential and effective mechanisms for complaints and claims from workers not represented by a trade union.
- During collective bargaining, seek to agree without unnecessary delay and apply those agreements in good faith.
- Never retaliate against employees for exercising their rights, submit claims, participate in trade unions activities or report potential legal violations.

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

### Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

*Does the company recognise the rights of its workers to freedom of association and to bargain collectively?*

- The company has a commitment to recognise the rights of its workers to freedom of association and collective bargaining, including the right to freely form and/or join independent trade unions, and this commitment is clearly communicated to all employees.
- The company recognises workers' organisations for collective bargaining purposes and has procedures in place to ensure regular collective bargaining with authorised worker representatives concerning all workplace related issues.
- The company allows worker representatives access to collective bargaining agreements, company premises, employees and other relevant documentation needed to fulfil their duties.
- The company prohibits discrimination or adverse actions against worker representatives or employees for participating or refraining to participate in lawful trade union activities.
- The company has agreed with workers' representatives about the requirements of a fair hearing to be followed in relation to all disciplinary cases and employee grievances.
- The company has a committee, with participation of employee-elected representatives, which is responsible for hearing, processing, and settling disciplinary cases and employee grievances.

*If independent trade unions are either discouraged or restricted, does the company enable workers to gather independently to discuss work-related problems?*

- The company allows employees to engage in regular employee-only meetings within normal working hours, where employees can discuss concerns regarding working conditions.
- Where allowed by local legislation, and if independent trade unions are not present, the company informs employees of their right to form independent collective representation at the workplace.



- Where allowed by local legislation, the company informs workers of their right to engage in regular collective bargaining concerning all workplace issues.
- Company management meets regularly with worker representatives to discuss work-related problems and any concerns/complaints employees may wish to raise.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

### NGO Initiatives

**Project (year):** Text

# Working Conditions

*Employment status, wages, working hours and social security*

Operating Environment	
Minimum wage	6.060 pesos (approx. US\$430) (2016)
Relevant laws	<ul style="list-style-type: none"><li>• Constitution, 1994</li><li>• Employment Contract Act, 1976</li></ul>
Responsible agencies	<ul style="list-style-type: none"><li>• Ministry of Labour, Employment and Social Security</li><li>• National Administrator of Social Security</li></ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"><li>• </li></ul>

Working Conditions: National Law		
	Country	International Standard
Standard workweek	48	48
Overtime pay rate	1.5x	1.25x
Holidays with pay, per year	Minimum of 14 days and a maximum of 35 days	3 weeks
Maximum daily working hours	8	10
Maximum weekly working hours	48	48
Uninterrupted weekly rest period	24 hours per 7 days	24 hours per 7 days

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The constitution ensures the right to fair working conditions.<sup>275</sup> Those rights are further protected mainly by the labour code and the employment contract act.<sup>276</sup>

## Wages

The constitution establishes the right to a minimum wage, and the employment contract law regulates this right. In general, minimum wages are determined by collective agreements across sectors, which could be increased by company agreements or individual contracts.<sup>277</sup> The employment contract act states that workers are entitled to receive an additional monthly salary (13th month salary).<sup>278</sup> The official national minimum wage applies to workers not covered by collective bargaining agreements, workers of very small enterprises and those working in the informal sector.<sup>279</sup>

As of January 2016, the monthly national minimum wage was set at 6.060 pesos (approx. US\$430), a 28,5 increase from 2015 figures.<sup>280</sup> Wage Indicator noted that approximately 3 percent of registered workers received the minimum wage, accounting to 300.000 workers,<sup>281</sup> while the great majority of workers in the formal economy received salaries above the minimum wage.<sup>282</sup>

Argentina's minimum wage was reportedly the highest in the Latin American region, as noted by La República in 2015.<sup>283</sup> A 2016 study conducted by the Fundación de Investigaciones Económicas Latinoamericana found that a family of four needed 7.194 pesos (approx. US\$511) to remain above the poverty line.<sup>284</sup> A 2016 BBC report stated that the basic basket for a person was fulfilled with 20 percent of a minimum wage, situation that placed Argentina as one of the countries with the cheapest basic basket in Latin America.<sup>285</sup>

Medium Wage in Argentina was reportedly 13.906 pesos (approx. US\$988) as of 2015, with Santa Cruz reporting the highest salaries (26,600 pesos – approx. US\$1,900) and Santiago del Estero, the lowest (8,800 pesos – approx. US\$625).<sup>286</sup> Los Andes reported that salaries in the oil sector were six times higher than in the agriculture sector, which were among the reasons for great discrepancies on salaries between provinces.<sup>287</sup>

According to a 2015 World Bank report, the average monthly real earnings of men who completed primary schooling rose 80 percent between the period 2004 – 2012, and 40 percent for men with post-secondary schooling, as compared to between 16 and 30 percent in case of women with similar education level than men.<sup>288</sup>

## Working Hours

The maximum workday is eight hours, and the maximum workweek is 48 hours. The regular working week is reportedly 44 hours for daytime work, 42 hours for night work, and 36 hours for work in hazardous or unhealthy environments. Should an employee work longer hours, she or he is entitled to overtime pay at 1.5 times the normal salary on ordinary days and 2 times the normal salary on Saturday afternoons, Sundays, and holidays.<sup>289</sup> Employees having completed at least six months of work are entitled to a minimum of 14 days and a maximum of 35 days of paid holidays, depending on the years in service.<sup>290</sup>

In practice, the average working hours were 43 a week as of 2014.<sup>291</sup>

## Social Security

Ever since the nationalisation of social security in 2008, the public “pay on the go” system is the only pension plan available.<sup>292</sup> The payment of social security contribution is mandatory, for both employees and employers,<sup>293</sup> and channelled through the National Administrator of Social Security (ANSES).<sup>294</sup> The total employer contribution ranges between 23- 27 percent of the salary, depending on its activities, and the employee contributes with 17 percent, which consists of 11 percent to the pension fund, 3 percent to social health care and 3 percent to social services.<sup>295</sup>

The government reported that as of 2015, more than 11 million workers were contributing to the social security scheme.<sup>296</sup> In 2013, the Global Extension of Social Security reported that 90 percent of people older than 65 years received a pension or a form of retirement benefit.<sup>297</sup>

## Informal Sector

According to a 2014 International Labour Organisation (ILO) study, 48.6 of workers were employed in the informal sector. Workers in the highest earning 20 percent of the population were much more likely to be employed formally than workers in the lowest earning 20 percent.<sup>298</sup>

Workers in the informal sector were mostly employed in the construction sector, followed by trade and catering, transport and manufacturing.<sup>299</sup> Unemployed individuals, especially women and young people between 14 and 24 years of age, were reportedly more at risk of entering the informal sector.<sup>300</sup>

During the period 2000-2011, the share of the informal sector was reduced from 60 percent to 50 percent, according to the ILO in 2015.<sup>301</sup>

Written contracts are required only for part-time and fixed-term contracts, as well as casual employment, while no such requirement exists for permanent and full-time employment.<sup>302</sup>

A 2013 UNICEF study reported that migrant workers were particularly vulnerable to entering the informal sector, which was linked to their irregular entry in the country and a lack of documentation.<sup>303</sup> In 2012, Inter Press Service reported that rural workers, especially seasonal agricultural workers employed to harvest yerba mate, tobacco and cotton, as well as domestic workers, and those working in small and medium-size companies, were most affected by informal employment, resulting in no health or social security coverage for workers.<sup>304</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *March 2016, IPS Noticias:* A migrant worker in a clandestine textile workshop reportedly worked from 7.00 am to 9.00 pm, with a 30 minutes break.<sup>305</sup>
- *October 2013, Argenpress:* Alleged violations of basic working rights were reported in a textile factory, Elemento, in Buenos Aires. Those violations included 11-12 daily working hours six days per week and unhealthy working conditions in an overcrowded environment. A female worker set herself on fire in July 2013 due to the above mentioned conditions and past abuses, including a miscarriage because she was forbidden to leave the workplace and seek medical attention.<sup>306</sup>
- *September 2013, Col-Lectiu Rets:* Contract workers at Telefónica went on strike in Buenos Aires province asking to become permanent staff, entailing better working conditions, including higher salaries and better health care plans.<sup>307</sup>
- *August 2013, Buenos Aires Herald and China.org.cn:* Several strikes of Sarmiento train workers took place due to a lack of negotiations over salary increase demands.<sup>308</sup>
- *August 2013, Buenos Aires Herald:* A strike of private clinics, hospitals and ambulatories workers was called due to the fail of reaching an agreement on a 26 percent salary increase. The above-mentioned increase was agreed by the public healthcare insurance agency (PAMI) and other health case insurance schemes.<sup>309</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

## Company Due Diligence Initiatives

**Cargill:** The company implements the Sustainable Agriculture Programme by which it help farmers in Argentina to adopt and verify sustainable production practices to meet consumers expectations, including working conditions in the supply chain.<sup>310</sup>

## Company Development Initiatives

**Company Name:** Text

## Stakeholder Recommendations

- ✓ **UNDP-Global Compact:** In a 2012 joint publication, UNDP and the Global Compact made the following recommendation to companies operating in Argentina:<sup>311</sup>
  - Create decent jobs and promote stable and structured working relations between the employees and the company.

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

## Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

### Working hours

*Does the company ensure that the workweek is limited to 48 hours; that overtime is infrequent and limited; and that workers are given reasonable breaks and rest periods?*

- Normal company working hours are limited to 48 per week by both company policy and practice, or fewer if provided by national law, collective agreement or industry standards.
- Overtime is infrequent, remunerated at premium rate, and does not exceed 12 hours in any one week, or 36 hours per month.
- The company has a system to plan, record and monitor hours worked by each employee, and regularly evaluates whether the number of workers is sufficient to meet production targets without resorting to overtime.
- Where overtime per worker systematically exceeds 12 hours per week, the company increases its workforce to correspond to production targets, or puts in place measures to increase worker productivity and reduce overtime.
- Workers are allowed at least 24 consecutive hours of rest (or more if provided by national law or industry standards) in every seven day period.

- The company ensures that workers have no less than a 30-minute break for every 4 hours of work (or more if provided by national law or industry standards) and that workers are allowed to use toilet facilities whenever necessary and not just during designated breaks.

## Wages

*Does the company provide a living wage that enables workers to meet the basic needs of themselves and their dependents?*

- It is company policy to provide workers with a living wage sufficient to meet basic food, clothing and housing needs and provide some discretionary income for themselves and their dependents.
- The company is aware of whether the legal minimum wage in the country of operation meets the requirement for a living wage.
- If no national minimum wage is established, or if national minimum wage standards are insufficient to meet the basic needs of workers and their dependents, the company calculates a living wage based on the cost of living in its area of operation.
- Part-time workers receive wages and benefits that are proportionate to those of full-time workers, and receive overtime compensation at a minimum of 1.25 times their hourly salary.
- The company pays wages at regular intervals and does not take deductions from wages for disciplinary measures or other deductions not authorised by national law.
- Bonus and piece-rate payment systems are monitored to ensure that the total salary paid meets living wage requirements without resort to overtime.

## Leave

*Does the company ensure that workers are paid holiday leave, sick leave, and parental leave in accordance with international minimum standards?*

- Workers are granted at least three weeks of paid holiday leave per year or more if required by national law or collective agreements. Part-time and short-term workers are provided with paid holiday leave proportionate to the number of hours worked, at a rate equal to that of permanent full time employees.
- Workers are entitled to paid sick leave in accordance with the applicable national law. If sick leave is not provided for in national law, the company consults with union or worker representatives to establish alternative means of protection in case of illness or injury.
- The company ensures that sick leave is not deducted from workers' vacation time.
- Female workers are entitled to no less than fourteen weeks of paid maternity leave per child.
- The company grants compassionate or parental leave to workers who have recently adopted a child or children, or have taken on the responsibility to care for foster children or other dependent children.

## Employment status

*Does the company ensure that all workers have an official employment status?*

- The company ensures that all employees receive employment contracts prior to starting work for the company, and that contracts are understood by each employee.
- Contracts detail each employee's rights and obligations of employment, including clear job description, bonus and salary systems, and reasonable notice periods.

- Reference to company handbooks or other relevant documents on employment terms are integrated into the contract.
- The company ensures that contractors provide workers operating within company premises with an official employment status in line with company standards.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009): The Ethical Trading Initiative is an alliance of different business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.
- Institute for Human Rights and Business and Global Business Initiative on Human Rights, State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships (2012): The Report examines how the UN Guiding Principles can contribute and guide the complex network of business relationships that now exist in a global economy. It explores how companies of all sizes are now beginning to implement human rights considerations and the UN Guiding Principles into both traditional and contemporary business relationships.
- Portal for Responsible Supply Chain Management (est. 2008): The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.
- IFC Performance Standard 2: Labour and Working Conditions (2012): IFC PS2 is guided by the international labour standards as outlined by the ILO and covers a range of aspects, including: terms and conditions of employment, non-discrimination, health and safety, and forced labour. The Standard addresses employees, contracted workers and supply chain workers.
- International Labour Organization: The International Labour Organization (ILO) is the UN agency responsible for preparing and overseeing international labour standards. The mission and objectives of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.
- OECD Guidelines for Multinational Enterprises (2011): The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Chapter 5 is on employment and industrial relations, aligning with the international labour standards of the ILO.

## Engagement Opportunities



*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

## Public Sector Initiatives

## NGO Initiatives

**Project (year):** Text

# Environment

*Company impacts on the environment that affect the health or livelihoods of local communities*

Operating Environment	
Percentage of population with access to improved water sources	99 (2015)
Environmental Performance Index rank	43 (2016)
Food Security Index rank	37 (2015)
Relevant laws	<ul style="list-style-type: none"><li>• Constitution, 1994</li><li>• General Environmental Act, 2002</li><li>• Environmental Protection of Native Forests Law, 2007</li></ul>
Responsible agencies	<ul style="list-style-type: none"><li>• Secretariat of Environment and Sustainable Development</li><li>• Federal Council of the Environment</li></ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"><li>• Amartya</li><li>• Asociación de Superficiarios de la Patagonia</li></ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

The constitution recognises the right to a healthy and sustainable environment. The federal government is responsible for setting basic environmental protection standards, while provinces are responsible for implementing standards.<sup>312</sup> The General Environmental Act mandates an environmental insurance to guarantee the financing of a potential environmental harm as a result of any activity that could negatively impact the environment.<sup>313</sup>

The World Bank noted in 2015 that in Argentina, environmental degradation accounted to approximately 7 to 8 percent of GDP.<sup>314</sup>

In 2016, the Bertelsmann Foundation reported that challenges for the preservation of the environment included the expansion of genetically modified soil cultivation, pollution with urban areas affected by

harmful water-disposal practices, over-exploitation of mineral resources, erosion due to the inadequate flood controls and inappropriate land-use practices, deterioration of irrigated areas, and deforestation.<sup>315</sup>

Environmental laws were reportedly not generally implemented due to budgetary constraints and a lack of adequate control mechanisms. Environmental responsibilities were also scattered among federal, provincial and municipal levels, resulting in overlapping jurisdictions and low levels of control and compliance.<sup>316</sup>

## Participation & Access to Information

The constitution mandates that public authorities provide citizens with information and education on environment. All citizens have the right to access all environmental information administered by public authorities not legally regarded as “reserved” information.<sup>317</sup> However, according to the Environmental Democracy Index in 2015, only a few laws required that participation opportunities be provided at an early stage in the decision making process.<sup>318</sup>

The General Environmental Act mandates that companies have an obligation to provide environment-specific information in connection with their operations.<sup>319</sup> The law also mandates that an environmental impact assessment (EIA) be carried out for any work that may negatively impact the environment or the standard of living of the population.<sup>320</sup> The Global Legal Group noted in 2013 that procedures for EIAs differed by province. No enforcement powers are provided by law to environmental regulating authorities in the event of a violation of the terms of issued permits. However, several provincial laws provide those powers to the authorities.<sup>321</sup>

According to the Ombudsman in 2015, the Ministry of Industry did not enforce the implementation of EIAs on all projects it financed at the provincial level.<sup>322</sup> The Center for Human Rights and Environment (CEDHA) reported in 2013 that community mobilisation and awareness on environmental and health rights was a growing phenomenon in Argentina. Self-convened assemblies (*asambleas autoconvocadas*) were reported to extensively use technologies to carry out roadblocks and other forms of protest against industrial activities with a perceived adverse human rights impact.

In 2013 Americas Quarterly reported that local journalists were pressured by large mining companies in the northwest of Argentina to prevent the publication of articles on their operations’ adverse environmental impact. Newspapers reportedly relied on the resources received from large companies buying advertisement space to run their newspapers.<sup>323</sup>

## Food & Livelihoods

Environmental liabilities as a result of hydrocarbon exploitation in Neuquén were reported, impacting on the livelihood of local communities.<sup>324</sup> In Santa Cruz province, more than 13,000 inactive pits were found in 2012, while 524 environmental liabilities were reported in Mendoza.<sup>325</sup>

Indigenous peoples lost their livelihood due to the advancing agricultural and livestock frontier, according to the International Work Group for Indigenous Affairs in 2015.<sup>326</sup>

## Water

In 2010 Argentina passed a law on the preservation of glaciers, curbing mining and oil explorations on and around the nation's glaciers to protect water supplies.<sup>327</sup>

The Bertelsmann Foundation reported in 2016 that the expansion of genetically modified soil cultivation resulted in significant water contamination, and the increase use of pesticides and fertilizers polluted

rural rivers.<sup>328</sup> Agro-toxics use dramatically increased over the last decade (from 30 million liters in 2000 to 300 million liters in 2011, annually).<sup>329</sup>

IPS News reported in 2013 that underground aquifers provided water for agriculture, industry, mining and a significant share of household consumption. In Neuquén province and the south-west region of Patagonia, groundwater reserves were reported to supply the oil, gas and mining industries. In Mendoza and San Juan provinces, aquifers provided water to the wine industry and were protected and subject to continuous monitoring. However, in 2013 potential contamination of underground water was reported due to agrochemicals, industrial waste, wastewater and overexploitation.<sup>330</sup>

According to the University of Greenwich, water has been a source of conflict between mining companies and communities.<sup>331</sup> Most of the opposition was reportedly against open-pit mining with severe environmental impacts due to the use of cyanide for explosions and pollution of waters.<sup>332</sup>

Extraction of non-conventional hydrocarbons, known as hydraulic fracking, is a water intensive activity, according to the CEDHA. In 2013 a fracking well was reported to use within a period of two to five days the same amount of water used by 11,000 families, each composed of four individuals, in a day. Despite the lack of longitudinal information, CEDHA reported on the risk of underground waters contamination due to fracking. Another reported consequence was superficial water pollution due to the industrial effluents produced by the hydrocarbon wells.<sup>333</sup> The Observatorio Petrolero del Sur reported in 2015 that shale gas exploration in Neuquén would have negative impacts on drinking water for the local population that depended on it.<sup>334</sup>

High levels of lead, aluminium, mercury and manganese presence were found in La Palca river due to mining activities in the region.<sup>335</sup> Pollution was also found in the rivers Porterillo, Jachal, Blanco and Taguas as a result of cyanide spill from the Veladero mine in San Juan province.<sup>336</sup>

## Air Pollution

Argentina was amongst the most air-polluted countries in the Latin American region, according to a 2014 World Health Organization report.<sup>337</sup>

The World Bank noted in 2015 that outdoor air pollution was associated with 6,650 deaths and about 20 million days of illness a year.<sup>338</sup>

In 2011 the Unrepresented Nations and Peoples Organization reported that Mapuche communities experienced serious health issues due to pollution caused by resource extraction. In Loma de la Lata, Neuquén province, children in the Mapuche community residing on land rich in gas and mineral deposits suffered from learning disabilities, progressive eyesight loss, painful joints and kidney complaints.<sup>339</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *March 2016, Noticias AR:* A judge in San Juan prosecuted 8 managers from Barrick Gold on grounds of environmental pollution due to cyanide spill in the Veladero mine that occurred on September 2015. Members of local communities were not satisfied with the judge's resolution, as the prosecution did not include local government officials in charge of monitoring mining activities in the area.<sup>340</sup>
- *March 2016, Diario Pyme:* The Ministry of Mining in San Juan imposed the company Barrick Gold a fine of US\$9.3 million due to a cyanide spill in the Veladero mine that polluted 3 rivers in the province.<sup>341</sup>

- *March 2016, No a la Mina:* Members of local communities in Esquel rallied to request the government to stop mega-mining projects in the region due to its adverse impacts to the environment.<sup>342</sup>
- *February 2016, Observatorio Petrolero del Sur:* Members of local communities in Neuquén requested the removal of oil debris as a result of hydrocarbon activities by the company Comarsa.<sup>343</sup>
- *July 2015, Adital:* The companies Shell, CAPSA, YPF and Dapsa reportedly spilled hydrocarbons particles in the Matanza riachuelo basin, polluting ground and surface water sources, as well as soil in the area.<sup>344</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Quilmes (2016):** On the occasion of World's Water Day, the brewery company reported on its successful experience to reduce by 35 percent its water use during the period 2009-2014 as a result of the implementation of initiatives aimed at the reduction and the re-utilisation of water resources on its operations.<sup>345</sup>

**Group Assa (2014):** The company, leader in business transformation, is committed to the environment and in that line it implements a series of initiatives including the sound use of resources by saving in the use of paper, water, plastic and energy; and waste reduction by reutilization of material and recycling. In Argentina in particular, it conducted recycling campaigns to raise awareness on the issue.<sup>346</sup>

**Cargill:** The company implements the Sustainable Agriculture Programme by which it help farmers in Argentina to adopt and verify sustainable production practices to meet consumers expectations, including compliance with rules limiting deforestation and reducing GHG emissions. The Programme is aligned to the Biomass and Biofuel Sustainability and the International Sustainability and Carbon Certification standards.<sup>347</sup>

**Aguas Cordobesas:** The company, that provides water services to Cordoba province, is committed on reducing the environmental impact of its operations, in particular of river basins that supply the province.<sup>348</sup>

**Sancor:** The dairy company 's commitment to the environment is based on the following grounds: energy saving, minimising impacts to the environment through water re-utilisation in all productive processes, and reduction in waste by maximising recycling. The company is also committed to promote sound environmental management on its supply chain.<sup>349</sup>

**Johnson & Johnson:** In 2011, the company developed the Sustainable Future 2015 programme. The Argentinean subsidiary implemented the strategy through three pillars: Healthier People, Healthier Business and Healthier Planet. The first pillar focuses on reducing waste and encouraging recycling and the third pillar focuses on the development and implementation of a Supplier Code throughout operations.<sup>350</sup>

### Company Development Initiatives

**Argentinian Confederation of Middle Sized – Enterprises:** The Confederation launched a contest among micro, small and medium-sized enterprises on projects on renewable energy and energy efficiency in

their operations. The award consisted of 80,000 pesos (approx. US\$5,700) for the company showing the best practices.<sup>351</sup>

**Novartis:** The company launched a forestation project in Santo Domingo in 2007 to capture carbon dioxide. The project aims at planting 75 percent of native tree species in 3,400 hectares. As of November 2013, about 3 millions trees were planted in approximately 2,500 hectares.<sup>352</sup>

## Stakeholder Recommendations

- ✓ **UNDP-Global Compact:** In a 2012 joint publication, UNDP and the Global Compact made the following recommendations to companies operating in Argentina:<sup>353</sup>
  - Apply the precautionary principle: where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. Despite the lack of conclusive scientific evidence, any activity threatening an irreparable damage to the environment should be suspended or terminated until more data will be available.
  - Take into account that, even when measures for preventing environmental damages entail additional expenses for the company, the costs of repairing damages already caused, including the costs associated to repairing the company's reputation, could be higher.
  - Invest in sustainable methods and facilities. The use of production systems that deplete resources and degrade the environment results in a lower long-term profitability. Moreover, improved environmental performance entails a lower financial risk, an important aspect considered by insurance companies.
  - Do not lean on the shortcomings of national or local laws to avoid taking actions promoting greater environmental responsibility. Apply the same operational standards regardless of the location of the activities.
  - Ensure environmental management throughout the supply chain.
  - Strengthen environmental awareness in the areas where the company operates.
  - Engage in dialogue with the local community to promote greater environmental responsibility.
  - Replace polluting raw materials with more environmentally friendly ones.
  - Recycle materials used in company operations.
- ✓ UNDP and the Global Compact also made recommendations to enable companies operating in Argentina to contribute towards the achievement of MDG 6 (combat HIV/AIDS, malaria and other diseases):<sup>354</sup>
  - Promote the non-discrimination of people infected with those diseases, employees and beyond.
  - Disseminate information on access to antiretroviral treatment and drugs.
  - Develop CSR policies funding or developing researches on those diseases, especially in developing countries.
- ✓ UNDP and the Global Compact also made recommendations to enable companies operating in Argentina to contribute towards the achievement of MDG 7 (ensure environmental sustainability):<sup>355</sup>
  - Implement policies minimising wastes.
  - Develop energy saving measures.
  - Raise the awareness on the importance of preserving the environment.
  - Support development and transfer of environmentally friendly technologies in the area the company operates.

- Invest in environmentally sustainable products and processes.

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

## Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

### Precautionary Approach

*Does the company support a precautionary approach to environmental issues?*

- The company provides information to stakeholders about uncertainties and potential risks to workers, consumers, the public and the environment of the company's products and processes.
- The company identifies any soil and water contamination at its site or sites, assesses the environmental impacts and remedies any significant contamination.
- The company tries to avoid environmental damage by regular maintenance of production processes and environmental protection systems (air pollution control, waste water treatment systems etc.).
- The company conducts systematic risk assessments of materials used, products and processes to apply the precautionary approach.
- The company ensures transparency and engages in regular stakeholder dialogue with neighbours, civil society organisations and others with an interest in the company on critical environmental issues.
- If relevant, the company supports scientific research on environmental issues relating to the company's products and processes.

### Emergency Response

*Does the company have emergency procedures in place to prevent and address accidents affecting the environment and human health?*

- The company has identified the hazardous operations and the potential consequences on human health and the environment if an accident occurs.
- The company has detailed procedures, plans, equipment and training programmes to prevent accidents and emergencies.
- The company has detailed procedures, plans and equipment to effectively respond to accidents and emergencies if they occur.
- The company trains workers to respond to accidents and emergencies, including carrying out emergency drills at least once a year involving all workers.
- Where there is significant risk of impacts on local communities, the company has a procedure that enables it to immediately notify affected local communities about industrial emergencies, and informs about emergency response, evacuation plans and medical response.

### Energy Consumption and Climate Change

*Does the company take measures to reduce energy consumption and emissions of greenhouse gasses?*

- The company complies with regulation regarding use of energy resources and emissions of greenhouse gases.
- The company has a climate strategy that identifies opportunities to reduce the company's energy consumption and/or emissions of greenhouse gases.
- The company has initiated practical activities to reduce energy consumption and/or greenhouse gas emissions.
- The company provides information and trains employees to implement energy reduction measures.
- The company monitors its energy consumption and/or emissions of greenhouse gases.
- The company has defined a baseline for its greenhouse gas emissions, which includes a definition of the business operations and activities, and the greenhouse gases that are accounted for e.g. as described in the Greenhouse Gas Protocol.
- The company has targets for reducing its energy consumption and/or emissions of greenhouse gases.
- The company engages with the government and civil society organisations to develop policies and measures that provide a framework for the business sector to contribute to building a low carbon economy.

## Water and Waste Water

*Does the company take measures to reduce water consumption and treat waste water?*

- The company has the necessary permits to extract water or obtain water from the public water supply and for any waste water discharges.
- The company treats waste water before discharge to reduce adverse environmental impacts. If waste water treatment takes place outside the company's premises, the company is aware of the effectiveness of the treatment.
- The company monitors waste water discharges, including types, limit values and quantities of pollutants in the waste water.
- The company has targets for reducing water consumption and/or increasing the amount of water reused or recycled in different business operations and activities.
- The company provides information and trains workers to implement measures to reduce water consumption and reduce the need for waste water treatment.
- The company's use of water and its waste water discharges do not negatively affect the sustainability of water resources, the natural environment or the availability of water for drinking and sanitation purposes.
- The company engages with national, regional and local public authorities, and civil society organisations to address water sustainability issues related to affected water resources.

## Waste Management

*Does the company take measures to prevent and reduce the production of waste and ensure responsible waste management?*

- The company has the necessary permits for the handling, storage, recycling and disposal of waste, and, if relevant, complies with requirements for transporting hazardous waste across borders.
- The company has a strategy to manage waste responsibly and continuously attempts to prevent and reduce the production of waste.
- The company ensures that waste relevant for recycling is sorted and handed over to a recycling company.



- The company monitors the types and quantities of waste produced, including where and how waste is recycled, treated or disposed of.
- The company has targets for reducing waste production and/or increasing waste reused/recycled and measures its progress against these targets.
- The company provides information and trains workers on the safe handling, storage, transport and disposal of hazardous and special waste types.
- The company marks areas used for storage of waste, and properly labels all containers for storing waste, including a relevant symbol of danger for hazardous waste.
- The company requests recycling/treatment/disposal receipts from transport contractors.
- The company uses licensed contractors for the transport, recycling, treatment and disposal of hazardous waste.

### Air Emissions

*Does the company prevent, reduce and treat air emissions?*

- The company has the necessary permits for emissions to air, and complies with legal requirements (e.g. air pollution standards and limit values).
- The company provides information and trains workers on how to manage air emissions.
- The company monitors the types and quantities of relevant emissions to air.
- The company treats relevant pollutants before they are emitted to the atmosphere (e.g. by using filters).
- The company continuously attempts to prevent and reduce air emissions.

### Noise, Odour, Light and Vibrations

*Does the company prevent and reduce impacts on the surrounding environment from noise, odour, light and vibrations?*

- The company has the necessary permits for levels of noise, odour, light and vibrations, and complies with legal requirements (e.g. standards or procedures).
- The company provides information and trains workers to manage noise, odour, light and vibrations.
- The company monitors levels of noise, odour, light and vibrations on the surrounding environment.
- The company treats/minimises impacts to ensure that there are no significant levels of noise, odour, light and vibrations.
- The company continuously attempts to prevent and minimise the levels of noise, odour and light (e.g. enclosed production, shielding, etc.).
- Chemicals and Other Dangerous Substances
- Does the company minimise the use and ensure safe handling and storage of chemicals and other dangerous substances?
- The company has the necessary permits and complies with legal requirements for the handling, use and storage of chemicals and other dangerous substances.
- The company does not manufacture, trade and/or use chemicals and other dangerous substances subject to national or international bans or phase-outs.
- The company provides information and trains workers on the safe handling and use of chemicals and other dangerous substances.
- The company monitors the quantities of all chemicals and other dangerous substances used in production and maintenance.
- The company marks areas used for storage of chemical substances and products.

- The company properly labels all chemical substances and products including name of the chemical and a relevant symbol of danger.
- The company considers substitution important and continuously tries to use less harmful chemicals and substances.

## Biodiversity

*Does the company prevent, minimise and remedy significant impacts on biodiversity?*

- The company has the necessary permits to operate in or alter the natural environment, and complies with legal requirements.
- The company is committed to operating within the framework of international conventions addressing biodiversity (e.g. the Convention on Biological Diversity, Cartagena Protocol on Bio-safety and the CITES Convention).
- The company has assessed important positive and negative impacts of its operations and activities on the natural environment and biodiversity (e.g. IUCN's Red List of Threatened Species and no alien invasive species).
- The company has previously and/or is currently taking measures to prevent and reduce the impacts of its operations and activities on biodiversity.
- The company clearly labels products containing GMOs and indicates if GMOs have been used in the production process.
- The company ensures that it has not had any unintended releases of GMOs.
- The company documents that workers have been adequately trained to handle GMOs.

## Natural Resources

*Does the company ensure that natural resources are used in a sustainable manner?*

- The company has the necessary permits and complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc).
- The company complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc.).
- The company ensures that workers are trained in the sustainable cultivation, harvesting, extraction and/or use of natural resources.
- The company continuously attempts to prevent, minimise and remedy significant impacts on natural resources through environmentally friendly methods and alternative resource use.
- The company ensures that its use of renewable resources does not negatively affect the sustainability of the resource (i.e. the resource's ability to regenerate).
- The company demonstrates efforts to substitute non-renewable resources used in production with renewable resources.
- The company works with local and national public authorities as well as with international institutions to address sustainability issues related to natural resources (e.g. wood, water, fish, metals, oil etc.).

## Environmentally Friendly Technologies

*Does the company encourage the development and use of environmentally friendly technologies?*

- The company uses environmentally friendly technology.
- The company regularly evaluates its processes and technologies to see if there are more environmentally friendly alternatives.

- When developing new technologies and products, the company focuses on developing environmentally friendly technology e.g. by using life cycle assessments (LCA), design for sustainability or a cradle-to-cradle approach.
- When planning new investments in technology, the company considers the best available technology and stipulates minimum environmental criteria.
- When investing in new buildings, the company implements environmentally responsible and resource-efficient materials and/or technologies.
- The company makes information describing the environmental performance and benefits of using environmentally friendly technologies available to stakeholders.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- **CEO Water Mandate (2011):** Launched as a collaborative initiative of the UN, UN Global Compact, the Government of Sweden and a dedicated group of companies, the CEO Water Mandate is a public-private initiative designed to assist companies with the development, implementation and disclosure of policies and practices relating to water sustainability. It covers six core elements: direct operations, supply chain and watershed management, collective action, public policy, community engagement and transparency.
- **IFC Performance Standards on Environmental and Social Sustainability (2012):** The IFC Performance Standards provide directions to businesses on due diligence on environmental and social matters. Several of the standards are pertinent to environment, including: Assessment and Management of Environmental and Social Risks and Impacts (PS1), Resource Efficiency and Pollution Prevention (PS3), Community Health, Safety, and Security (PS4), and Biodiversity Conservation and Sustainable Management of Living Natural Resources (PS6).
- **Institute for Human Rights and Business, Business, Human Rights & the Right to Water—Challenges, Dilemmas and Opportunities:** This report summarises the views of various stakeholders on issues pertaining to the right to water, including consideration of the scope of a company's responsibility to respect the human right to water; the applicability of the human rights-based approach to management of water-related issues; and the business case for engaging with water-related issues.
- **ISO 14000 Standards on Environmental Management Systems:** Developed by the International Organisation for Standardisation, the ISO 14000 Standards provide businesses and organisations with a number of tools to assist in their environmental management systems. The key objective of the standards is to encourage different actors to reduce the negative impact that their activities may have on natural resources such as air, water or land.
- **United Nations Special Rapporteur on the Human Right To Safe Drinking Water and Sanitation (est. 2008):** Amongst a range of issues, the mandate of the Special Rapporteur includes consideration of the regulation of the private sector in the context of private provision of safe drinking water and sanitation.
- **Global Water Tool (2007):** Developed by the World Business Council for Sustainable Development, this tool is designed for companies and organisations to map their water use, including risks associated with water use in global supply chains.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

## Public Sector Initiatives

**Native Forest and Community Project:** The government, with the collaboration of the World Bank, developed the project that seeks to protect biodiversity in native forests and strengthen sustainable agriculture practices in those communities, raising the living standard of inhabitants who will not need to emigrate in search of economic opportunities. The programme targets small producers and native communities in Santiago del Estero, Chaco, Salta, Jujuy and Misiones. Activities include support for forestry management, access to water, cattle ranching, and family farming.<sup>356</sup>

**Workshop on Best Practices for Sustainable Fishing (2015):** The Ministry of Environment hosted the event in order to identify measures that can be implemented to reduce mortality of dolphins and other species of artisanal fishing in Samborombon and San Antonio Cabe.<sup>357</sup>

**National Action Plan against Desertification:** The initiative was developed by the Secretariat of Environment and Sustainable Development and aims at mitigating drought and desertification effects, as well as contributing to the socio-economic development of affected areas.<sup>358</sup>

**National Strategy on Climate Change:** The strategy was developed by the Secretariat of Environment and Sustainable Development and established a Governmental Committee on Climate Change. In November 2011, the second phase of this strategy started and identified actions aiming at reducing greenhouse gas emissions.<sup>359</sup> The initiative is linked to the National Programme to Promote the Production of Energy from Biomass aiming at the reduction of fossil fuels use together with an increased use of forestry, agriculture and industrial sub-products.<sup>360</sup>

## NGO Initiatives

**Amartya:** The organisation has the mission to promote a culture of sustainability by means of education that coordinates civil society, and the public and private sector.<sup>361</sup> The organisation has the following objectives, among others: to develop educational programmes on sustainability by networking with similar organisations, to promote both the concept and practice of responsible consumption in order to bring about a model of sustainable development in the society, and to generate new knowledge in the field of sustainability by conducting research.<sup>362</sup>

# Land & Property

*Human rights impacts related to company acquisition, use and management of land*

Operating Environment	
International Property Rights Index rank	107 (2015)
Heritage Foundation: Economic Freedom Index Property Rights score	169 (2016)
Relevant law	<ul style="list-style-type: none"><li>• Constitution, 1994</li><li>• Civil Code, 1871</li></ul>
Responsible ministries	<ul style="list-style-type: none"><li>• National Registry of Rural Land</li></ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"><li>• Mujeres Campesinas e Indígenas Argentinas</li><li>• Red Agroforestal Chaco Argentina</li></ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

### Land Administration

The law grants women and men the same rights with respect to inheritance and access to land.<sup>363</sup>

The most frequent land tenure regimes are: individual ownership, leasing, and undivided estates, which is a form of joint tenancy.<sup>364</sup>

The constitution recognises the right of indigenous communities to own traditional lands. Despite laws advancing communal ownership of ancestral lands, the implementation of laws have been delegated to the 23 provinces, of which only 11 had constitutions recognising indigenous rights as of 2015, according to the U.S. Department of State.<sup>365</sup> Approximately 70 percent of the countries' rural indigenous people lacked title to their land.<sup>366</sup> According to a 2013 Rights and Resources Initiative report, 84 percent of soybean concessions overlapped with community-claimed land.<sup>367</sup>

In 2013 Telam reported that 95 percent of the national territory was rural land.<sup>368</sup> On its latest report, from 2011, the International Fund for Agricultural Development (IFAD) reported “two percent of farms controlled 50 percent of the country's land, while 57 percent of farms controlled only 3 percent of it.” The same report stated that individual ownership accounted for 75 percent of land, leasing for 12 percent, occupation and squatting for 7 percent and a significant percentage was also held by undivided estates.<sup>369</sup>

The Business Anti-Corruption Portal reported in 2016 that the enforcement of property rights was hampered by corruption and politicisation of the judiciary and public administration.<sup>370</sup>

The Center for Human Rights and Environment (CEDHA) stated in 2013 that land titling issues were related to class, involved subsistence residents and wealthier owners, who purchased large portions of land, and land traditionally occupied by indigenous communities.<sup>371</sup>

## Land Acquisition

The right to private property is protected in the constitution and any expropriation must be authorised by law, in the public interest, and previously compensated.<sup>372</sup> Most common land acquisition forms are: purchase, inheritance, donation, legacy, and by prescription.<sup>373</sup>

In 2012, a law was passed limiting foreigners' rights to acquire rural lands, imposing, among other things, a 1,000-hectare limit per buyer.<sup>374</sup>

On its latest report from 2012, the Special Rapporteur on the rights of indigenous peoples stated the lack of measures to protect indigenous peoples' rights to land and natural resources. The Emergency Law 26.160, approved in 2006, prohibits the eviction of indigenous communities from their ancestral land pending a nation-wide survey to identify those territories until 2017.<sup>375</sup> The government reported in 2015 that more than 7 million hectares of land have been surveyed, accounting to approximately 80 percent of total land estimated, covering a total of 662 communities distributed through 20 provinces.<sup>376</sup> The International Work Group for Indigenous Affairs (IWGIA) noted in 2015 that the law was yet to be fully implemented.<sup>377</sup>

In practice, agri-business companies were reportedly involved in forced evictions of rural communities in order to access their land, and in many cases, with support from the national police.<sup>378</sup> Conflicts between farmers and agribusiness companies in the north of the country, especially in Santiago del Estero province, were reported in 2012 due to the evictions of farmers from their land for the expansion of soya production.<sup>379</sup> Evicted farmers were reported to either move to urban slums or in some cases work for agribusinesses under slave-like conditions.<sup>380</sup>

The Observatory of Human Rights of Indigenous Peoples noted in 2013 that evictions of indigenous peoples' from their land was the main challenge to their subsistence and development.<sup>381</sup> Oil and Gas exploration have reportedly occurred on indigenous land, especially on the Mapuche's territories.<sup>382</sup> Threats and harassment of indigenous peoples by criollos (settlers) were also reported by IWGIA.<sup>383</sup>

## Free, Prior & Informed Consent

Participation and prior consultation of indigenous territories is guaranteed in the Constitution. Argentina has also ratified ILO convention 169 on indigenous and tribal peoples. However, there were no legal mechanisms that regulated the consultation process, which, according to the Ombudsman in 2015, contributed to the violations of indigenous peoples rights.<sup>384</sup> The Confederation of Workers of Argentina noted in 2015 that there was a lack of legislative measures to ensure observance of the rights of indigenous people over natural resources and to facilitate prior consultation.<sup>385</sup>

IWGIA reported in 2015 that indigenous communities were not consulted in government decisions, and that provincial government oftentimes only recruited representatives of indigenous communities to attend meetings instead of conducting a proper consultation process.<sup>386</sup>

FUNDAPAZ added that extractives companies in the Chaco region in particular did not consult with indigenous peoples in relation to impacts of lithium exploration in the proximities of their territories.<sup>387</sup> The Bertelsmann Foundation also reported in 2016 that indigenous people, especially in Formosa, were not guaranteed their right to free, prior and informed consent to projects related to the exploitation of natural resources in their land.<sup>388</sup>

Hydrocarbon exploitation in indigenous territories in Santa Cruz was done without consultation processes, according to the Observatorio Petrolero del Sur in 2015.<sup>389</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *December 2014, Cultural Survival:* Organisations representing local farmers, indigenous communities and environmentalists demonstrated in Corrientes against land grabbing by foreign investors, situation that left communities unable to continue with their traditional agriculture practices and animal grazing.<sup>390</sup>
- *July 2014, Rio Negro:* Mapuche Indigenous communities demonstrated in the Vaca Muerta area to demand the application of free, prior and informed consent in relation to the YPF gas project in the area.<sup>391</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Company Name:** Text

### Company Development Initiatives

**Company Name:** Text

## Stakeholder Recommendations

**Committee on the Elimination of Racial Discrimination (2010):** The Committee recommended taking the necessary measures to consult with the communities affected by development and natural resource exploitation projects, with the aim of obtaining their free, prior and informed consent.<sup>392</sup>

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

### Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

*Before buying, renting, acquiring or otherwise accessing land or property, does the company ensure that all affected owners and users of the land or property, have been adequately consulted and compensated?*

- Prior to buying, renting, acquiring or otherwise accessing land or property, whether directly or through a third party, the company identifies all existing owners and users of the land or property, including information land users and customary owners.
- The company investigates the past usage and ownership of the land or property to ensure that past users and owners have not been wrongfully removed, and that any expropriations by the authorities have been conducted in accordance with international law.
- The company consults with affected users and owners of the land or property (including women, tenants, settlers, minorities and other vulnerable groups including indigenous peoples) and seeks their free, prior and informed consent before continuing to acquire or access the land or property.
- The company ensures that its lease or purchase of residential property and sourcing of food commodities does not considerably make housing and food scarce or too expensive for the local people.
- The company ensures that affected owners and users of the land or property are adequately compensated to help them restore their standards of living or livelihoods to the same or higher than before, and that the compensation standards are transparent and applied consistently to all communities and persons affected.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- FAO Voluntary Guidelines on the Responsible Governance of Tenure (2012): Developed by the Food and Agriculture Organisation of the UN (FAO), the Guidelines promote responsible governance of tenure of land, fisheries and forests by outlining the principles and internationally accepted standards for the responsible governance of tenure. The Guidelines inform States and non-government actors on relevant policies, strategies and activities.
- IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement, and IFC Handbook for Preparing a Resettlement Action Plan (2002): The IFC Performance Standards are contractually binding on certain projects receiving IFC finance. PS5 is accompanied by a Guidance Note and a Resettlement Handbook that gives detailed guidance on managing resettlement and associated impacts.
- Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (2010): A joint initiative of UNCTAD, FAO, IFAD and the World Bank, these seven principles cover all types of investment in agriculture, including between principal investors and contract farmers. The Principles provide a framework for national regulations, international investment agreements, global corporate social responsibility initiatives, and individual investor contracts.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives



**Training Session on Land Management on Native Forests:** The Secretariat of Environment and Sustainable Development conducted the training that targeted public and private actors in Catamarca. The session stressed the need of holding participatory sessions with members of local and native communities when managing land in their territories.<sup>393</sup>

## NGO Initiatives

**Project (year):** Text

# Revenue Transparency & Management

*Human rights impacts related to transparency of government revenues received from business and the distribution of such revenues*

Operating Environment	
World Economic Forum Global Competitiveness Ranking	106 (2015-2016)
Legatum Prosperity Index rank: Governance	104 (2015)
Ease of Doing Business Index <i>(where 1 indicates greatest ease for doing business)</i>	121 (2015)
Transparency International: Corruption Perceptions Index rank <i>(where 1 indicates the lowest level of corruption)</i>	107 (2015)
<b>World Bank Good Governance Indicators</b>	
Voice and Accountability	58.6
Political Stability	49
Government Effectiveness	45.7
Regulatory Quality	13
Rule of Law	18.3
Control of Corruption	33.2 (2014)
Government revenue	143.4 billion (2015)
Government expenditure	170.4 billion (2015)
EITI Country	no
Relevant law	<ul style="list-style-type: none"> <li>• Constitution, 1994</li> <li>• Criminal Code, 1984</li> </ul>

	<ul style="list-style-type: none"> <li>Federal Fiscal Responsibility Law, 2004</li> </ul>
Responsible ministries	<ul style="list-style-type: none"> <li>Inspector General of the Nation</li> <li>Ministry of Economy - Federal Administration of Public Revenues</li> <li>Ministry of Justice - Anti-Corruption Office</li> <li>National Contracting Office</li> <li>Tax Revenue Agency</li> </ul>
Local NGOs addressing this issue	<ul style="list-style-type: none"> <li>Asociación Argentina de Ética y Compliance</li> <li>Agenda Transparencia</li> <li>Poder Ciudadano</li> </ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

### Corruption

The Criminal Code contains provisions that prohibit corruption, extortion, active and passive bribery of public officials and bribery of foreign public officials. Facilitation payments and gifts are further prohibited. The law does not penalise private sector corruption, but individuals can be prosecuted for conduct that results in economic detriment such as fraud and embezzlement. According to the 2016 Business Anti-Corruption Portal, enforcement of the laws was weak.<sup>394</sup>

The Latest Corruption Barometer, from 2013, noted that political parties and public officials were perceived as the most corrupt, followed by the Parliament, the police and the judiciary.<sup>395</sup>

An OECD representative stated in 2016 that Argentina has set as a priority the fight against corruption.<sup>396</sup> In that line, the Attorney's General Office started in 2016 a series of investigations against former President Cristina Fernandez de Kirchner and allies in relation to alleged cases of corruption including money laundering and counterfeiting of public documents.<sup>397</sup>

According to various Argentinian NGOs in 2015, the Anti-Corruption Office lacked functional autonomy or financial self-sufficiency, which negatively impacted on its independency from the executive branch.<sup>398</sup>

### Public Procurement

Argentina does not have a law regulating public procurement; instead, the executive power adopted a decree that is limited to the procurement of goods and services, excluding public works.<sup>399</sup> According to Infobae in 2016, only Argentina, Chile, Mexico and Surinam had such an exemption. The decree does not apply to state-owned companies and to certain non-commercial state organisations.<sup>400</sup>

All public procurement procedures are required to be published on the National Contracting Office's website and competitive bidding is required for tenders with a value of more than 75,000 pesos (approx.

US\$5,300). The law contains provisions for blacklisting violators of procurement regulations.<sup>401</sup> In practice, Infobae further noted in 2016 that the implementation of those requirements was weak, and when the information was published, it was incomplete and not accurate.<sup>402</sup>

In 2016 the Business Anti-Corruption Portal reported that tender procedures of procurement contracts were subjected to bribery and irregular payments, and government officials showed favouritism to well-connected firms and individuals when awarding those contracts.<sup>403</sup> La Nación added in 2016 that the great majority of corruption cases in Argentina involved public procurement processes.<sup>404</sup>

According to various Argentinian NGOs in 2015, direct procurement was misused, gave increased discretion power and reduced transparency.<sup>405</sup>

The National Contracting Office is not independent, does not have a monitory role, cannot apply sanctions and lacks economic resources and personnel to fulfil its mandate, according to Infobae in 2016.<sup>406</sup>

## Revenue Transparency

While the constitution recognises the right to access public information, there is no federal law guaranteeing this right.<sup>407</sup> A presidential decree adopted in 2003 ensures access to information but is limited to the federal executive branch, however, as of 2015, several provinces and local governments adopted regulations in that regards.<sup>408</sup>

According to the federal fiscal responsibility law, every province must publish the annual budget and the projections for the multi-annual budget on its website.<sup>409</sup> According to the Center for the Implementation of Public Policies for Equality (CIPPEC), in 2013 some provinces did not fully comply with all provisions of the law, with La Pampa, La Rioja and Santa Cruz reportedly the least transparent provinces, and Mendoza, Córdoba, Tierra del Fuego and Entre Ríos the most. The 2015 Open Budget Survey noted that Argentina provided the public with limited budget information.<sup>410</sup>

All stages of the budgetary cycle (production, approval, execution and monitoring) were done without public participation, and the information that was published on each one of those stages was limited and of little access, according to various Argentinian NGOs in 2015.<sup>411</sup>

## Revenue Sharing

Corporate Income Tax in Argentina was set at 35 percent.<sup>412</sup> Provinces collect mining royalties of up to 3 percent of the value of the mineral before commercialisation (mine head value),<sup>413</sup> and the hydrocarbon law establishes that revenues are collected through royalties and canons by the provinces.<sup>414</sup> Various provincial laws establish how revenues are to be used such as for the promotion and development of certain regions, including infrastructure projects, capacity building and technical assistance for productive purposes.<sup>415</sup> The provincial law on resources and mining royalties establishes that 35 percent of revenue is to be distributed to the departments where the mineral is located. In case the mineral is located in one department only, the percentage goes down to 25 percent, and the 10 percent extra is to be distributed to the East, West and Central regions. Departments that received the highest mining revenues were Belen and Andalgala.<sup>416</sup>

A CXC Global report noted in 2015 that Argentina was the second country within the OECD members that implemented tougher regulations against tax evasion, only after Spain.<sup>417</sup>

A 2014 Inter-American Development Bank study found that local impacts of revenues gained through the exploitation of natural resources did not relate to elevating the standard of living of certain northern regions, as was the case in other countries, such as Peru.<sup>418</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *April 2016, Ultima Hora:* Former President Cristina Fernandez de Kirchner was investigated in a money laundering case involving as well a businessman closer to the family. The businessman reportedly was awarded numerous contracts for infrastructure projects in Santa Cruz. A video that was released to the public showed various men, including the businessman's son, transferring large bags containing dollar bills that were previously counted by a machine. The video became the most important evidence in relation to the money laundering case that is being investigated.<sup>419</sup>
- *April 2016, Página 12:* A federal Attorney requested the investigation of President Macri in relation to the alleged omission of information on his sworn statement to the Nation about his participation in off-shores firms in Bahamas.<sup>420</sup>
- *March 2016, Noticias Terra:* A judge ordered raids in the facilities of Indalo Group, a conglomerate of media companies, casinos and oil exploration company, in connection with an alleged case of tax evasion that amounted to US\$118 million. The owner of the Group reportedly had strong connections to the former government.<sup>421</sup>
- *February 2015, Radio Canada Internacional:* Tax Authorities in Argentina requested an international arrest warrant of an auditor involved in a money laundering case related to HSBC bank.<sup>422</sup>
- *November 2013, Terra:* Argentina Central Bank filed a complaint against several companies (i.e. stock exchange company Forexbursátil, Capsa and Capex) for tax evasion.<sup>423</sup>
- *May 2013, La Nación:* The U.S. Department of Justice conducted investigations on corruption allegations against IBM in Argentina.<sup>424</sup>
- *April 2013, Terra:* Accusations of tax evasion against five companies in the Buenos Aires province for more than 7 million pesos (approx. US\$4 million) were made by the Revenue Department of the Province of Buenos Aires.<sup>425</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**YPF:** The state-owned oil company adopted a Code of Ethics on which it includes among others measures against the payment or receipt of bribes in order to obtain an illicit business or otherwise advantage. Facilitation payments are also prohibited. It has also set an Ethics Line in order to report any breach to the Code.<sup>426</sup>

**BHP Billiton:** The company is committed to the EITI initiative and it that line reports publicly on all payments made to the government.<sup>427</sup>

**DuPont:** The company developed a human rights policy stating no tolerance to bribery. Employees and contractors are required to comply with it as part of their contract. The company reportedly commits to terminating a working relation with suppliers violating systematically these principles and not correcting behaviours.<sup>428</sup>

### Company Development Initiatives

**Company Name:** Text

## Stakeholder Recommendations

- ✓ **UNDP-Global Compact:** In a 2012 joint publication, UNDP and the Global Compact made the following recommendations to companies operating in Argentina:<sup>429</sup>

Establish an anti-corruption policy that:

- Is implemented and monitored at the highest level in the company
  - Includes subsidiaries and affiliated companies
  - Contains due diligence processes prior to participation in projects and the selection of contractors and suppliers, considering the risk level of the relationship and the integrity of the potential partner
  - Includes contractual obligations of adherence to the company's ethical standards or similar ones
  - Determines the termination of contract when corrupt behaviours are detected
  - Ensures fair and transparent procedures when selecting contractors and suppliers
  - Establishes codes of conduct for employees sanctioning bribery, extortion and similar practices
  - Provides continuous training and awareness raising opportunities tailored to the cultural context of the country where operating
  - Provides contact points as well as protection and advice mechanisms for those providing information within the company
  - Keeps detailed and accurate records of all financial transactions, considering the possibility of disseminating the payments to governments in relation to obtaining licenses and permits, as well as the revenues from public procurement
  - Provides external control mechanisms of the anticorruption policy performance
  - Promotes and engage in integrity pacts in public procurement.
  - Promote an equitable distribution of benefits.
- ✓ UNDP and the Global Compact also made recommendations to enable companies operating in Argentina to contribute towards the achievement of MDG 1 (eradicate extreme poverty & hunger):<sup>430</sup>
    - Generate income and investments through salaries, taxes, and dividends and payments to local subcontractor.
  - ✓ UNDP and the Global Compact also made recommendations to enable companies operating in Argentina to contribute towards the achievement of MDG 8 (develop a global partnership for development):<sup>431</sup>
  - ✓ Work with governments and civil society representatives at the local, regional and national level to develop and/or improve the existing regulatory framework in several fields (i.e. environment, taxation, etc.), eliminate corruption and achieve a transparent and effective public administration.

## Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

## Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

### Signalling a Non-Corrupt Environment

*Does the company take a clear stand against corruption?*

- The company's CEO, director or president has declared that the company will not engage in corruption at any time or in any form.
- The company has a policy rejecting corruption and requiring all directors, managers and workers worldwide to behave ethically and in conformity with the law.
- The company anti-corruption policy includes how to handle requests for facilitation payments, giving and receiving gifts, engaging in sponsorships, giving political contributions, and how to conduct responsible lobbying.
- The company has defined benchmarks and indicators regarding its anti-corruption initiatives and reports these to the public (e.g. in its annual CSR report)

### Anti-Corruption Risk Assessment

*Does the company assess the risk of corruption when doing business?*

- The company evaluates the potential areas of corruption including factors such as type of transaction, countries of operation, industries, and customers or business partners involved.
- The company evaluates the risk of corruption when workers, agents, intermediaries or consultants deal with public officials (including workers of state owned companies).
- The company evaluates the risk of internal and external conflicts of interest in relation to business partners.
- The company has developed an action plan to address the risk of corruption, and has defined responsibilities for each task, as a minimum for high-risk areas.
- The company has identified internal functions with the highest risk of corruption within the company and seeks to address these weaknesses.

### Awareness Raising

*Does the company ensure that relevant workers are properly trained?*

- The company informs all workers about its anti-corruption commitment.
- The company provides regular anti-corruption training for all relevant workers within the organisation e.g. procurement and sales staff.
- Information on disciplinary procedures for violations of company anti-corruption policies is available to workers.
- The company actively seeks worker feedback and dialogue on its anti-corruption initiatives.

- The company has and promotes a function by which workers can safely report suspicion of corruption related cases (e.g. hotline or mailbox) and allocates resources to systematically address the issues that are identified.

### Anti-Corruption Procedures

*Do the company's internal procedures support its anti-corruption commitment?*

- The company has assigned different individuals or departments to be responsible for handling contracts, placing orders, receiving goods, processing invoices and making payments.
- The company mentions 'anti-corruption' and/or 'ethical behaviour' in its contracts with business partners.
- The company prohibits informal employment and any 'off the books' record-keeping
- The company performs internal audits and has checks in place in connection with all anti-corruption commitments.
- The company's procurement, financial and internal audit personnel have clear instructions to look for and to identify alarms, report them to management, and follow-up counter measures.
- The company requests external auditors to maintain a critical eye and follow all alarms and irregularities.
- Any alarm or irregularity reported by external auditors is systematically addressed by management.
- The company monitors compliance and continuously identifies strengths and weaknesses in the anti-corruption initiatives to remain effective and up-to-date in addressing changing risks.

### Agents and Other Associates

*Does the company's anti-corruption initiative cover agents, intermediaries and consultants?*

- The company conducts an inquiry and/or attentiveness (e.g. financial, legal, labour, tax, IT, environment, market/commercial) on all agents, intermediaries and consultants.
- All agreements with agents, intermediaries and consultants are fully documented in written, signed contracts.
- The selection and terms of reference of agents, intermediaries or consultants are approved at the senior management level or at a level above that of the management involved in the operations for which the intermediary is hired.
- Contracts with agents, intermediaries and consultants include a section on anti-corruption and that the contract-holder must comply with all applicable laws and regulations.
- Agents, intermediaries and consultants are provided with information on the company's anti-corruption commitment, anti-corruption policies, training material on anti-corrupt behaviour and information on disciplinary procedures for violations of company anti-corruption policies.
- The company ensures that payment to agents, intermediaries and consultants are in line with standard payments for other service providers of similar ranking.
- The company only makes payments by bank transfer or check – never in cash – in the country of the agent, intermediary and consultant and never to a third party without prior examination.

### Communicate

*Does the company communicate progress on the Global Compact principles with stakeholders?*



- The company identifies stakeholders who affect or can be affected by the company's activities, products and services e.g. a person, group, organisation, authority.
- The company communicates progress openly about how issues covered by the Global Compact principles are managed, including performance results as well as forward-looking information on strategy and management approach, challenges, and dilemmas.
- The company regularly engages in dialogue with stakeholders to keep up-to-date with stakeholder expectations.
- The company communicates openly about how issues covered by the Global Compact principles are managed including challenges, dilemmas, success and failures.
- The company's communication on progress and other performance reporting on issues covered by the Global Compact principles is publically available and communicated to external stakeholders e.g. via the company's and Global Compact website.

### Joint Actions

*Does the company take joint actions with others to engage in and promote anti-corruption initiatives?*

- The company shares experience, procedures and challenges of corruption with other organizations i.e. the local business community, sector initiatives, networks etc.
- The company has initiated or joined initiatives with other companies in the same sector for the purpose of promoting a fair business environment.
- The company stimulates multi-stakeholder dialogue on challenges of corruption.
- The company encourages the local business community and business partners to initiate cooperation to fight corruption.

### Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- Transparency International Business Principles for Countering Bribery provide a checklist for companies to identify and reduce bribes and facilitation payments in their operations.
- The OECD Guidelines for Multinational Enterprises, applicable to enterprises in OECD Member States (and some others), require companies to respect human rights, including through due diligence. The OECD Guidelines constitute recommendations by OECD member states to multinational enterprises operating in or from adhering countries. The OECD Guidelines include competition, fiscal systems and anti-corruption.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**Federal Public Oversight Network:** The initiative was developed by the Inspector General of the Nation to form part of and complement national, provincial and municipal State Inspection and Audit Units, with a view of assessing the performance of social programs.<sup>432</sup>

**Training Sessions on Public Ethics:** The Anti-Corruption Office conducted distance-training courses for government officials through the Public Ethics Training System on public ethics-related topics. The Office also disseminates corruption prevention policies through publications containing guidelines on key related aspects including the prevention of conflicts of interest, public officials' sworn statements, citizen participation and government procurement.<sup>433</sup>

**Judicial Information Centre:** The Supreme Court created the Centre to encourage citizen participation in the administration of justice via the internet and to promote transparency.<sup>434</sup>

**Open Government Action Plan:** As a member of the Open Government Partnership since November 2012, Argentina developed its first action plan, which include components on: e-government and public services; transparency and access to public information; and citizen participation.<sup>435</sup>

**Argentinian Network of Participatory Budgeting:** This network is composed by the President's Cabinet, Ministry of Interior and is opened to all municipalities willing to have a participatory budget approach.<sup>436</sup>

## NGO Initiatives

**Argentinian Association of Ethics and Compliance:** The organisation has the mandate to support ethical practices and regulatory compliance in all organisations and to provide the adequate resources to offer guidance in that regards. The organisation also advocates good practices, ethics, social responsibility and respect and fulfilment of rights.<sup>437</sup>

# Security & Conflict

*Human rights impacts related to company interaction with public and private security providers and related to the impact of business on societal conflict.*

Operating Environment	
Failed States Index	141 (2015)
Legatum Prosperity Index: Safety & Security	50 (2015)
Freedom House: Map of Freedom - Political Rights <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	2 (2015)
Freedom House: Map of Freedom - Civil Liberties <i>(On a scale of 1 through 7, where 1 indicates the highest level of freedom)</i>	2 (2015)
Relevant law	<ul style="list-style-type: none"><li>• Constitution, 1996</li><li>• Federal Law on Private Security Companies, 2006</li></ul>
Responsible agencies	<ul style="list-style-type: none"><li>• Ministry of Security</li></ul>
Local NGOs addressing the issue	<ul style="list-style-type: none"><li>• Asociación por los Derechos Civiles</li><li>• Coordinadora contra la represión policial e institucional</li><li>• Memoria Abierta</li></ul>

## Country Context

*Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.*

Argentina abolished the death penalty in 2008.<sup>438</sup> The constitution prohibits torture,<sup>439</sup> with penalties similar to those for homicide.

## Public Security Forces

The law prohibits arbitrary arrest and detention.<sup>440</sup>

The Secretariat for Security has the mandate to preserve the freedom and life of citizens, their rights and guarantees in the framework of a democratic system.<sup>441</sup> All federal police fall under the Secretariat, and each province has its own police force that responds to a provincial (municipal) security ministry or secretariat.<sup>442</sup>

Human Rights Watch reported in 2015 on episodes of security forces using excessive force against demonstrators.<sup>443</sup> During 2014, 154 deaths were reported as a result of police using unwarranted or excessive force.<sup>444</sup> In 2015 the International Work Group for Indigenous Affairs reported that the police used excessive force, resulting in deaths, during protests by indigenous communities.<sup>445</sup>

The Inter-American Commission on Human Rights noted in 2015 a pattern of criminalisation of social protests of indigenous people's leaders against the development of extractive or development projects.<sup>446</sup>

The latest Global Corruption Barometer, from 2013, noted that the police was perceived to be the most corrupt institution in Argentina.<sup>447</sup>

Detention facilities were overcrowded; instances of violence were reported among prisoners, and security guards reportedly ill-treated detainees.<sup>448</sup> Amnesty International noted in 2016 that torture occurred in detention centres, especially in Buenos Aires, Santa Fe and Chubut.<sup>449</sup>

A joint 2015 Centre for Legal and Social Studies, FLASCO and the Ministry of Justice and Human Rights study found that owners, executives and managers of companies actively participated in human rights violations committed during Argentina's dictatorship (1976-1983). Workers were reportedly forcibly disappeared and murdered as a result of conflicts arisen or their participation in labour organisations. The report also found that some companies installed clandestine detention and torture centres on their facilities.<sup>450</sup>

## Private Security Forces

At federal level, the 2006 law on Private Security Companies regulates the provision of private security services when more than one region is involved. At the provincial level, laws vary according to the province.<sup>451</sup> In 2009 the Provincial Government of Buenos Aires adopted a transparency law in relation to security firms, requiring that all records (including background) of owners and employees of security firms be published online for public scrutiny.<sup>452</sup>

In 2011 UPI reported that the use of private security forces had increased in Argentina in previous years. That same year the Notre Dame Journal of International, Comparative and Human Rights Law noted that the number of private security personnel was higher than the number of police officers.<sup>453</sup>

## Social Conflict

FUNDAPAZ reported in 2015 land conflicts between rural local communities, indigenous people and private companies in relation to agribusiness, cattle ranching and oil exploration projects.<sup>454</sup> Conflicts related to soy cultivations dates back to 2000, and as of 2013, more than 238 land conflicts were reported, involving around 1,5 million people in an area of 11 million hectares in Northern Argentina (Formosa, Santiago del Estero, Chaco, Salta, Santa Fe and Cordoba), according to a 2016 Página 12 article.<sup>455</sup>

## Cases

*Reports of business-related human rights issues from NGOs, multilateral institutions and the media.*

- *October 2015, Centre for Human Rights and Environment (CEDHA):* Two persons got injured and 23 arrested as a result of clashes with the police in connection with a peaceful demonstration of protesters demanding information about pollution at Barrick Gold's mine in Veladero.<sup>456</sup>
- *March 2016, Página 12:* A Tribunal in Salta condemned a businessman to 12 years imprisonment as a result of his connections with state terrorism during the Argentine dictatorship. The businessman, owner of La Veloz del Norte Transportation was found guilty of the crimes of illegal deprivation of liberty and torture committed against an employee who was a member of the UTA union. UTA was reportedly organised in many northern provinces to demand better working conditions. The businessman used repressive methods to guide employees and as a reward, obtained benefits from the government such as expanding trading routes.<sup>457</sup>
- *October 2013, Terra:* Protests against the construction of a plant for the processing maize transgenic seeds in Malvinas Argentinas, Córdoba province, by Monsanto were suppressed through an alleged use of force by the police.<sup>458</sup>
- *August 2013, International Trade Union Confederation:* The police used force to repress workers demonstrating in front of Ingenio San Martín del Tabacal in Salta province. The use of tear gases in workers' homes was reported in Villa Las Rosas neighbourhood, as well as the injury of a two-year-old girl by police buckshot.<sup>459</sup>
- *August 2013, CEDHA:* Protests against the agreement between YPF and Chevron on the exploitation of the country's biggest non-conventional hydrocarbon reservoir in Neuquén province were allegedly suppressed through use of force by the police.<sup>460</sup>
- *May 2013, Human Rights Watch:* Alleged excessive use of force by the capital's metropolitan police when dispersing a demonstration at a public psychiatric hospital.<sup>461</sup>

## Company Initiatives

*Private-sector programmes that aim to ensure respect for human rights or contribute to development*

### Company Due Diligence Initiatives

**Barrick Gold:** The company adopted a Security Policy by which it commits to treat all people with respect and dignity, and guided on its approach and actions by the Voluntary Principles on Security and Human Rights. It also commits to provide the security expertise and resources required to develop a safe and secure working environment.<sup>462</sup>

**Goldcorp:** The mining company, with operations in Catamarca, states on its Human Rights Policy that when the company or its own subsidiaries hire private security forces to protect employees, contractors, partners, resources and company property, such contractors must comply with local and international law, and with the Voluntary Principles on Security and Human Rights.<sup>463</sup>

### Company Development Initiatives

**Company Name:** Text

## Stakeholder Recommendations

**Organisation Name:** Text

# Human Rights Guidance for Businesses

*Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context*

## Due Diligence Library

*The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies*

*Does the company take steps to ensure that company security arrangements are in accordance with international principles for law enforcement and the use of force?*

- The company regularly conducts security risk assessments, and ensures that company security arrangements, including the deployment of private guards or public security personnel, are proportionate to the security risk.
- Company security risk assessments include the risk of human rights abuses by private and public security personnel.
- The company selects private security firms based on information about professional ability, level of staff training, quality of equipment, past involvement in human rights abuses, links with political factions or organisations and other relevant criteria.
- Contracts with private security firms include requirements related to international human rights standards for law enforcement and use of force; require the investigation and discipline of any unlawful or abusive conduct by security guards; and allow for termination of the contract in case of such conduct.
- There is a manual defining the duties of security personnel, and all security personnel receive training on rules of conduct based on international human rights standards for law enforcement and the use of force.
- Where public security personnel are assigned to company facilities, the company seeks to ensure transparency concerning its interactions with public security agencies, and the company communicates to the relevant public security agencies its desire that security functions be conducted in accordance with international human rights standards for law enforcement and the use of force.
- The company has a procedure for recording security-related incidents, including a mechanism for handling complaints from staff or local communities related to the conduct of security personnel, and forwards credible allegations of human rights abuses to the relevant authorities.
- The company has a procedure for monitoring and evaluating its security arrangements, including the proportionality of the security arrangement; impact on local communities; impact on existing local tensions or conflicts; security incidents recorded; and credible allegations of human rights abuses by company security personnel. Representatives from the local community are consulted as part of the monitoring.

## Standards & Guidance

*NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre*

- International Alert, Conflict Sensitive Business Practices: Guidance for Extractive Industries (2005): International Alert is a peace-building NGO working with civilians and other affected stakeholders in conflict areas. This Guidance is intended for companies in the extractive industries sector, providing advice on conflict-sensitive business practices and the ways in which they can contribute to peace-building.
- International Alert and Fafo Institute, Red Flags: Liability Risks for Companies Operating in High-Risk Zones (2008): The Red Flags address illicit business activities under international and national law. The initiative's objective is to clearly define what types of activities, when committed or aided by businesses, represent breaches of international humanitarian law and international criminal law.
- International Commission of Jurists, Report of the Expert Legal Panel on Corporate Complicity in International Crimes (2008): This three volume report outlines the ICJ Expert Legal Panel's findings and recommendations with regard to corporate legal responsibility for complicity in international crimes, under both civil and criminal law.
- The Dodd-Frank Wall Street Reform and Consumer Protection Act (2010): Section 1502 of the Act requires public and private companies to disclose the use of any conflict minerals in their products. This promotes greater transparency and dissuades companies from engaging in trade that may support regional conflicts.
- International Committee of the Red Cross, Business and International Humanitarian Law (2006): The Guidance explains the obligations of businesses under international humanitarian law, including noting relevant distinctions between international human rights law and international humanitarian law.

## Engagement Opportunities

*Development initiatives by public and private actors that provide opportunities for companies to contribute to human development*

### Public Sector Initiatives

**Project (year):** Text

### NGO Initiatives

**Project (year):** Text

# Access to Remedy

*Bodies to which victims of corporate human rights abuses can file grievances and seek redress.*

## Judicial Mechanisms

Argentina is a federal country with a federal and provincial level court system.<sup>464</sup>

There were as of 2013, 437 lower courts and 972 judges in the country. Despite the increase in funds to the judiciary over the last decade, La Nación noted in 2013 that it did not contribute to its efficiency in dealing with an increase number of cases reported due to social conflicts in Argentina over the last couple of years.<sup>465</sup>

Argentina's judiciary was reportedly institutional differentiated and general independent.<sup>466</sup> The Business-Anti Corruption Portal noted however in 2016 corruption and political interference in lower courts, in particular in provincial courts.<sup>467</sup>

FUNDAPAZ stated in 2015 that access to justice of indigenous communities in particular was limited due to the large distance of rural communities from courts, and the economic resources needed to cover transportation expenses to those jurisdictions.<sup>468</sup> The UN Committee on the Rights of Persons with Disabilities noted on its latest report from 2012 that various Argentinian organisations reported that persons with disabilities experienced difficulties in accessing information on the available legal tools to access remediation, and that public defenders representing persons with disabilities took arbitrary decisions during the legal proceedings without consulting their clients.<sup>469</sup>

## Labour Tribunals

According to the International Labour Organization, tribunals made up of magistrates set up under the jurisdiction of the provinces deal with individual labour disputes, while in Buenos Aires national judges handled disputes. A conciliatory phase is mandatory in the capital before a case may be submitted to a labour court.<sup>470</sup> Some provinces require undertaking a conciliatory procedure before filing the case in a court.

Victims of discrimination in the workplace can go to the Labour Court and ask for "moral and material damages," the nullity of dismissal and reinstatement to the position or working conditions they had before the act of discrimination occurred, modification of certain situations at work, damages, as well as all wages due.<sup>471</sup> In labour related judicial proceedings, employees must only be able to show a first evidence of discriminatory treatment, and the burden of proof lies with the employer to prove that its conduct was not discriminatory.<sup>472</sup>

Employers who discriminate against employees can be required to pay fines of between 1,000 pesos and 5,000 pesos (US\$71 to US\$355) to each affected worker. Should a pregnant woman be dismissed for her status, the employer must indemnify the worker in an amount equal to one year's remuneration, plus an indemnity for dismissal without cause.<sup>473</sup>

According to the law, compensations obtained in labour courts can be in cash, services or goods.<sup>474</sup> In 2015 the newspaper Clarín reported a nation-wide trend of increased judicial causes regarding occupational health and safety matters as a result of changes to the law that allow direct access to labour courts without having to exhaust other instances such as Medical Commissions.<sup>475</sup>

The International Comparative Legal Guides reported in 2013 that labour disputes took between one and two years, and an additional six to 12 months in case of appeals.<sup>476</sup>



## Civil Courts

Environmental law violations can be brought to Civil Courts. The constitution establishes the “polluter pays” principle.<sup>477</sup> The entity responsible for causing environmental damage must restore the environment to its previous condition; should this not be possible, then the polluter must pay an amount decided by the court into the Environmental Compensation Fund.<sup>478</sup>

According to a 2013 Global Legal Group report, courts required companies to remediate when the impact of pollution extended over time. In some cases, the courts decided that there was no statute of limitations for environmental damages. Although no exemption from paying the costs related to environmental litigations is foreseen, courts had often granted waivers for plaintiffs.<sup>479</sup>

## Attorney General’s Office

The Office has set the following 6 Specialised Units: Office on crimes against humanity, Office on Money Laundering and Economic Crimes, Office on Exploitation and Trafficking In Persons, Office on Narcotic-crime, Office on Institutional Violence, Office on Violence against Women, and Office on Administrative prosecutions.<sup>480</sup>

The Unit on Exploitation and Trafficking in Persons investigated 1.226 cases during the period 2008 – 2014. Most cases related to sexual exploitation (72 percent), followed by labour exploitation (28 percent), and most of them were reported in the greater Buenos Aires area.<sup>481</sup>

The Attorney’s General Office also implements a programme for communitarian access to justice with the objective to facilitate access to justice to the most vulnerable people. In that line, it has set Territorial Agencies for Access to Justice in the largest shantytowns (villas miserias) of Buenos Aires that are able to receive claims and can facilitate alternative conflict resolution methods.<sup>482</sup>

## Non-Judicial Mechanisms

### Ombudsman

The Ombudsman is the National Human Rights Institution in Argentina.<sup>483</sup>

The Ombudsman can receive complaints and investigate cases of human rights abuses committed by the public administration or any company providing public services, including the ones that were privatised. It can also intervene in cases of environmental pollution. Citizens may submit their complaint by mail, telephone, web and in person.<sup>484</sup> During 2014, the Ombudsman intervened in more than 11.000 cases. Most of them related to the use of public services (62%); followed by social security and employment (16%); health, social issues, education and culture (11%), and human rights, access to justice, women, children and adolescents (7%).<sup>485</sup>

### Administrative-based Mechanisms

Periodic inspections to verify compliance with the law on discrimination are undertaken both by the Ministry of Labour and the ministries of each province. Whenever an infringement is found a summary proceeding is started and the employer is required to provide relevant evidence.<sup>486</sup>

In case of environmental law violations, polluters could face a series of administrative penalties, such as warnings, fines and closure of facilities. When hazardous waste pollutes the environment in such a way that it poses a risk to human health, then the responsible party faces criminal liability.<sup>487</sup>

Child labour complaints can be registered through the Ministry of Labour’s website or by phone and can be individual or collective. The Ministry of Labour can file the complaints to the responsible prosecutor’s office in the province where the situation occurred.<sup>488</sup>

The Ministry of Security has set an online mechanism to inform on cases of trafficking.<sup>489</sup> Likewise, the Ministry of Justice and Human Rights has set a hotline to report on cases of trafficking and child labour.<sup>490</sup>

In addition to that, the Ministry of Justice and Human Rights established Centers for Access to Justice with the mandate to support communities by offering counseling services and professional guidance for the full exercise of their rights and equal opportunities. There were more than 30 centres throughout the country.<sup>491</sup>

The National Council of Women has set a hotline number in order to present claims of acts of violence against women.<sup>492</sup> During 2015, more than 36.000 calls were reported.<sup>493</sup>

The National Institute against Discrimination, Xenophobia and Racism handles all cases of discrimination by means of an administrative procedure.<sup>494</sup> Once the procedure is complete, the Institute would issue a legal opinion that, although not binding, is regarded as conclusive proof if the case later goes to the Labour Court.<sup>495</sup>

The National Directorate for Human Rights within the Ministry of Security can receive and process complaints by police forces on abuse of power, discrimination and harassment, that occurred within the police.<sup>496</sup>

## Police-based Mechanisms

The National Police established a Trafficking in Persons' Division with the mandate to conduct trafficking investigations.<sup>497</sup>

## Anti-corruption Mechanisms

The Anti-Corruption Office at the Ministry of Justice and Human Rights can receive complaints of corruption in the public sector online or by email, phone or post mail.<sup>498</sup>

Public procurement complaints should be channelled first to the administrative authority in charge of the awarding procedure, after which it should be brought before the courts. In 2013 administrative and judicial procedures of procurement cases reportedly took several years.<sup>499</sup>

## Mediation-based Mechanisms

The Ministry of Labour conducts a mandatory Conciliatory Process for labour conflicts before those claims could be heard in a labour tribunal.<sup>500</sup>

The Ministry of Labour reported that 1.335 labour conflicts occurred during 2014, an increase from 1.211 conflicts during 2013. Most conflicts were reported in the public sector and were related to salary wage claims, while in the private sector conflicts were related to dismissals and wage claims.<sup>501</sup>

## International Mechanisms

### UN Human Rights Council

The Human Rights Council has set Special Procedures that are independent human rights experts with the mandate to report on human rights from a thematic or country-specific perspective. They can act upon information received on alleged violations of human rights and send communications to States and non-State actors asking for clarification and action.<sup>502</sup> On its latest report, from 2013, the Council informed that Argentina was among the countries where communications were sent.<sup>503</sup> One of those

Special Procedures is the Working Group on the issue of human rights and transnational corporations and other business enterprises.<sup>504</sup>

## Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights is a principal and autonomous organ of the Organization of American States whose mission is to promote and protect human rights. In that line, it has set an individual petition system,<sup>505</sup> by which the Commission investigates a human rights violation and makes recommendations to the State responsible to restore the enjoyment of rights whenever possible, to prevent a recurrence of similar events, to investigate the facts and make reparations.<sup>506</sup>

Victims of human rights abuses related to business have used the Commission over issues including on security forces' violence and forced eviction of indigenous peoples.<sup>507</sup>

## The World Bank Inspection Panel

The Panel has the mandate to receive complaints from communities who have been or are likely to be affected by a World Bank-financed project.<sup>508</sup> The Panel was used numerous times including in relation to Santa Fe infrastructure project and provincial road infrastructure project;<sup>509</sup> the Norte Grande Water Infrastructure Project<sup>510</sup> and Yacyreta Hydroelectric Project.<sup>511</sup>

## The Inter-American Development Bank Independent Consultation and Investigation Mechanism

The ICIM is an independent accountability mechanism that investigates allegations by groups or persons of communities that believe have been harmed by Bank-financed projects due to non-compliance with the IDB's operational policies.<sup>512</sup> The Mechanism was used in various occasions including in relation to the Integrated Urban Solid Waste Management Program, Agrifood Health and Quality Management Program, and Multiphase Development Infrastructure Project and Support Production in Entre Rios.<sup>513</sup>

## The Organization of Economic Cooperation and Development National Contact Point

Argentina, as a candidate for membership in the Organization for Economic Cooperation and Development, has established a National Contact Point (NCP) at The Ministry of Foreign and Religious Affairs, in its capacity of National Contact Point at the OECD has the authority to receive complaints about breaches of the OECD Guidelines for Multinational Enterprise.<sup>514</sup>

The Guidelines are recommendations addressed by governments to multinational enterprises and they provide voluntary principles and standards for responsible business conduct. The Guidelines include chapters on the following topics: Human Rights (Chapter IV); Employment and Industrial Relations (Chapter V); Environment (Chapter VI); Combating bribery, bribe solicitation and extortion (Chapter VII); Consumers Interests (Chapter VIII); Science and Technology (Chapter IX); Competition (Chapter X); and Taxation (Chapter XI).<sup>515</sup>

This body has been used in numerous times, and as of 2016, two cases were pending: the first one related to breaches of general policies and bribery in Argentina by the company MAN Ferrostaal Argentina S.A.,<sup>516</sup> and the other one related to breaches of general policies by BNP Paribas.<sup>517</sup>

## The International Finance Corporation Compliance Advisor Ombudsman

Adverse impacts related to projects financed by the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). CAO's mission is to address complaints by people affected by IFC/MIGA projects, and to enhance the social and environmental accountability of both institutions. The CAO has both a dispute resolution function and an investigatory one.<sup>518</sup>

The mechanism has not been used as of 2016.<sup>519</sup>

## International Labour Organization

Trade unions and employers' organisations can submit complaints to the International Labour Organization's Committee on Freedom of Association.<sup>520</sup> As of 2016, 8 cases were active and 10 on follow-up.<sup>521</sup>

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