

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN ARGENTINA

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW
OF THE TRADE POLICIES OF ARGENTINA**

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EXECUTIVE SUMMARY

The Republic of Argentina has ratified the eight ILO core labour conventions on freedom of association and the right to organise and collective bargaining, on the elimination of discrimination in respect of employment and on equal remuneration, on the abolition of child labour, and those regarding the elimination of forced or compulsory labour. However, despite the fact that Argentina has transposed many of the principles of these international legal instruments into its national law, there are still restrictions to the effective exercise of these rights.

Despite the fact that national law grants workers the right to join and form trade unions, there are still restrictions in Argentina regarding freedom of association, collective bargaining and the right to strike.

National law prohibits discrimination. However, women, disabled and indigenous people suffer from serious discrimination regarding employment, access to education and equal remuneration for equal work.

Child labour remains a problem and more resources are needed, particularly to combat the worst forms of child labour including sex tourism and drug trafficking.

Trafficking of people exists in Argentina and young women and children are the groups most at risk. There is no comprehensive national policy framework to combat trafficking or to assist victims.

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Introduction

This report on the respect of internationally recognised core labour standards in Argentina is one of the series the ITUC is producing in accordance with the Ministerial Declaration of the World Trade Organisation (WTO) (Singapore 9-13 December 1996) and endorsed at the fourth WTO Ministerial Conference (Doha, Qatar, 9-14 November 2001) in which the ministers stated: “We renew our commitment to the observance to the internationally recognised core labour standards”. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

Argentina was a founding member of the WTO the 1st of January 1995 and thus became subject to the legal framework of this international body. Argentina participated in the ministerial conferences mentioned above and accepted the commitments adopted in these global meetings. Argentina equally supported the “Declaration on Fundamental Principles and Rights at Work” in the ILO in 1998.

An estimated 35 percent of the workforce is organised. The ITUC has two affiliates in Argentina, the “Central de los Trabajadores Argentinos” (CTA) and the “Confederación General del Trabajo de la República Argentina” (CGT).

Argentina has rich natural resources, a high level of literacy among its population, an export-oriented agricultural sector, and a diversified industry. Over the past decade, however, the country has suffered problems of inflation, external debt and capital flight.

Gross Domestic Product was estimated at \$13,700 billion in 2005, composed by 9.5 % in the primary sector, 35.8% in industry and 54.7% in services. This rate increased by 8% in 2006 and there are estimations of a further increase of 7% in 2007. The labour force is estimated at 15.34 million people.

Argentina’s main agricultural products are sunflower seeds, lemons, soybeans, grapes, corn, tobacco, peanuts, tea and wheat. Its main industries are food processing, motor vehicles, consumer durables, textiles, chemicals and petrochemicals, printing, metallurgy and steel.

Argentina’s main import commodities are machinery and equipment, motor vehicles, chemicals, metal manufacturers and plastics, its main import partners being Brazil, USA, China and Germany.

Argentina’s main export commodities are edible oils, fuels and energy, cereals, feed and motor vehicles, its main export partners being Brazil, USA, Chile and China.

In 2005 exports rose to \$40 billion and imports to \$28.8 billion, giving Argentina a positive balance of trade.

Argentina is a member of the MERCOSUR customs union, which is in the process of negotiation of bilateral agreements with the European Union, Cuba, Egypt, Panama, Israel and Morocco and with the Central American Integration System

(SICA), the Caribbean Community and Common Market (CARICOM), and South African Customs Union (SACU), as well as in negotiations for the Free Trade Agreement of the Americas (FTAA). Argentina is a member of the Cairns lobbying group at the WTO.

I. Freedom of Association and the right to collective bargaining

Argentina ratified ILO Convention 87 (1948), the Freedom of Association and Protection of the Right to Organise Convention in 1960 and ILO Convention 98 (1949), the Right to Organise and Collective Bargaining Convention in 1956.

Freedom of Association

Under the Argentinean Constitution, workers have the right to join and form free democratic trade unions. All workers, with the exception of military personnel are free to join and form trade unions, without prior authorisation, at industry, company or branch level, as well as craft unions.

Trade unions are regulated by the Trade Union Law, Act No. 23551, adopted in 1988. Two or more unions have the possibility of establishing a federation and two or more federations can create a confederation. The Trade Union Law prohibits certain unfair labour practices, including employers' interference in trade union activities, anti-union discrimination, dismissal of workers who engage in trade union activities, refusal to engage in collective bargaining and obstruction of the collective bargaining process. Complaints for unfair labour practices can be lodged with the judiciary. Unfair practices are precluded under Article 55 of Act 23551, which authorises judges to order the cessation of the unfair practice or to take measures to that effect, including fines.

Any action that impedes or obstructs the regular exercise of the legal rights related to freedom of association is prohibited. Article 47 of Act No. 23551 provides that all workers' or trade union associations prevented or hindered from normal exercise of the rights of freedom of association guaranteed by this Act may have recourse to the competent law court with a view to obtaining the recognition of those rights, in accordance with the procedure established in Article 498 of the National Code on Civil and Commercial Procedures or in the corresponding codes at provincial level, so that said court may order the immediate cessation of the anti-union behaviour.

However, there are certain legal restrictions on freedom of association in Argentina. Only the most representative trade union in a given industrial sector and within a specific geographical region can be certified as having "union personality" (*personería gremial*) enabling it to negotiate wages and collect dues. To be certified as having "union personality", a union must: a) be officially registered and have been operating for at least six months b) have a membership covering not less than 20 percent of the workers it intends to represent and c) be the most representative trade union in the relevant industry or branch, within a geographical area (generally a city or province, but in some cases, the whole country). These requirements for legal recognition are incompatible with certain provisions of ILO Convention 87. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stated on several occasions that the requirements trade unions that are merely registered as representing enterprises, trades or categories have to meet in Argentina in order to obtain "union personality" are excessive and in contradiction

with the abovementioned Convention 87. In practice, these requirements restrict their access to trade union status and give preferential treatment to existing organizations even where unions representing workers in enterprises, trades or categories of workers are more representative. Various difficulties that result from the lack of trade union status include the inability to undertake check-off of trade union dues under the same conditions as unions with “union personality”, and a lack of employment protection (trade union immunity or protection) for trade union representatives.

According to the ILO, trade unions with “union personality” have privileges that those applying for that status (but are merely registered) do not enjoy, unrelated to the requirement of being “more representative” but which serve to the benefit of some organisations and, hence, constitute prejudice or discrimination against others (cf. Committee on Freedom of Association, 208th Report, Case N° 981, para. 115; and 211th Report, case numbers 1035 and 1050, para. 115 inter alia).

In addition to ILO procedures, a case remains pending before the Inter-American Commission on Human Rights (an autonomous organ of the Organisation of American States) regarding this matter.

Cases of Anti-Union Discrimination

A number of examples of anti-union discrimination in recent years include the occasion on 29 March 2005, five engineers from Telefónica, members of Ce.PE.Tel, filed legal proceedings against the company for exerting pressure on them to leave their union. On 30 December 2003, they had been called in by a manager who explained that if they wanted a pay increase they should leave the union. One of the engineers was beaten up by two thugs who warned him that if the newspapers continued to publish this issue they would kill him.

In another example of anti-union discrimination in November 2005, the firm Pizza Libre ordered various dismissals and created a climate of harassment and repression while its workers were setting a date for electing a union delegate.

In August 2006 the Fábrica Neumáticos de Avanzada (NA), a competition tyre making company in Córdoba, started to dismiss staff members for becoming “Sindicato Único de Trabajadores del Neumático Argentino” (SUTNA) members. Trade union members were harassed and intimidated, as were their family members, SUTNA union representatives and the union’s attorney. NA refused to participate in mandatory reconciliation efforts, turning down any possibility for dialogue. The police in Córdoba refused to investigate any of the complaints made about the intimidation.

Collective Bargaining Rights

The law provides unions with the right to negotiate collective bargaining agreements and to have recourse to conciliation and arbitration. The Ministry of Labour, Employment, and Social Security ratifies collective bargaining agreements, which cover roughly 75 percent of the formally employed work force. According to the ILO, the ratification process impedes free collective bargaining because the Ministry considers not only whether a collective labour agreement contains clauses violating public order standards but also whether the agreement complies with productivity, investment, technology, and vocational training criteria.

The Right to Strike

Unions have the right to strike, although those representing civil servants and workers in essential services are subject to the condition that minimum services are rendered. A 15 day conciliation process can be imposed on all union organisations in a strike. Equally, either side in a dispute can request conciliation. The conciliator can extend the conciliation period for a further five days.

Trade unionists trying to defend their rights through strike action have faced dismissal or court action sometimes. There is generally little tolerance of strike action.

Decree no. 272/06 specifies a series of restrictions on the right to strike in areas considered as essential services, in contravention of the case law principles of the ILO's Committee of Experts on the Application of Conventions and Recommendations. Indeed, the decree broadens the discretion of the administrative authority, allowing it to decide unilaterally what constitutes a basic service; extends the powers of managers to punish workers for failing to carry out their duties; and reduces the remit of the Independent Committee (socalled "Guarantees Committee") to that of a purely advisory and subordinate body (according to reports on that Decree).

Accordingly, as part of the follow-up to the recommendations by the CFA and the Governing Body of the ILO that the Argentinian case (number 2377) be examined at its latest meeting in March 2006, the Committee on Freedom of Association stated that although the "Guarantees Committee" was composed of representatives of workers' and employers' organisations, together with other independent persons, and despite its evaluation tasks: *"the final decision as to what constitute essential services lies with the administrative authority."*

In 2005, due to the dismissal of 50 school heads in the province of Neuquén for taking part in a strike, the "Asociación de Trabajadores de la Educación de Neuquén" (ATEN) and the national confederation, "Confederación de Trabajadores de la Educación de la República Argentina" (CTERA) filed a complaint against this violation of the right to strike with the ILO.

There are no special laws or exemptions from regular labour laws in Argentina's three functioning export processing zones.

A further concern – which the CEACR has pointed out – is the pending status of the application by the CTA for union personality.

Conclusions: *Argentina has ratified both ILO conventions 87 and 98. But despite the fact that national law grants workers the right to join and form trade unions, there are still restrictions regarding freedom of association and collective bargaining in Argentina, with particular regard to the requirements for the granting of union personality to the most representative trade union; to the equality of all unions with respect to the right to check off union dues and the right of all trade union representatives to trade union protection; to the ratification process for collective bargaining agreements and the low tolerance of strike action in Argentina; to the excessive restrictions on the specified essential services, which have led in some cases to dismissal of strikers. A further concern – which the CEACR has pointed out – is the pending status of the application by the CTA for union personality. All the above problems have been the subject of complaints and other procedures at the ILO and have resulted in criticism by the ILO's supervisory bodies.*

II. Discrimination and equal remuneration

Argentina ratified ILO Convention 111 (1958), Elimination of Discrimination in respect of employment and occupation in 1968, and ILO Convention 100 (1951), the Equal Remuneration Convention in 1956.

The law prohibits discrimination based on race, gender, disability, language, or social status. National law gives women equality under the law, including property rights.

Nonetheless, women encounter economic discrimination and hold a disproportionately higher number of lower paying jobs. Men earn on average 38 percent more than women for equivalent work despite this being prohibited expressly by national law.

The law prohibits sexual harassment in the public sector, imposing disciplinary or corrective measures. Depending on the jurisdiction, sexual harassment can lead to the abuser's dismissal or to a penalty of five days imprisonment. There is no federal law that expressly prohibits sexual harassment in the private sector. Despite the fact that sexual harassment often occurs, few complaints are lodged.

National law in Argentina prohibits discrimination against people with physical or mental disabilities in employment, education, access to health care, or the provision of other state services; however, the government has not effectively enforced these rights in practice.

Poverty rates are higher than average in areas with large indigenous populations. Indigenous people have higher rates of illiteracy and unemployment.

Migrant workers are often subject to serious exploitation, as was shown when in March 2006, six Bolivian workers died after a fire in a workhouse in Caballito. These workers lived and worked in an extremely precarious situation and drew attention to the existence of a clandestine workforce in clothing and garment factories in Argentina. It is estimated that clandestine textile factories make profits of more than 700 million dollars a year. The CGT trade union centre reports that the practice is very common among employers in order to avoid paying taxes and to reduce wages, hence achieving high profit margins.

Conclusions: Argentina has ratified both ILO conventions 100 and 111. Despite the fact that these international legal instruments have been transposed into national law, discrimination in Argentina exists and affects women as well as disabled and indigenous people. Sexual harassment is prohibited in the public sector but no national law prohibits this practice in the private sector.

III. Child Labour

Argentina ratified ILO Convention 138 (1973), the Minimum Age Convention in 1996 and ratified ILO Convention 182 (1999), the Worst Forms of child labour in 2001.

National law protects children from exploitation in the workplace and sets a minimum age for employment at 14 years; the Ministry of Education can authorise a younger child to work as part of a family unit but it is quite rare. Children between the

ages of 14 and 18 can work in a limited number of job categories and for limited hours providing they have completed compulsory schooling, which normally ends at age 15.

Education is free and compulsory for 10 years, beginning at age 5. However, attendance rates are much lower among children belonging to low-income households or family units. Access to schooling is limited in some rural areas of the country. Overall, school enrolment rates for girls are slightly higher than for boys.

However, according to the most recent data provided to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), over 482,000 children between the age of 5 and 14 were engaged in work (some 395,000 in urban areas and 87,000 in rural areas), out of a total of 5.7 million. The school drop-out rate of child workers was 7.8 percent. At its 2005 session, the CEACR expressed its deep concern at the situation of children under 14 who were compelled to work through personal need, and called on the government to renew its efforts to improve the situation progressively.

Most child labour is on an informal and unprotected basis, as inspectors have limited ability and resources to enforce the law properly. Child labour in urban zones includes work in small-scale garment production, garbage recycling, street sales, domestic service and food preparation. Children are also often involved in the worst forms of child labour including prostitution, sex tourism and drug trafficking.

***Conclusions:** Despite the fact that Argentina has ratified both ILO Conventions 138 and 182, child labour takes place in the country and is common in the informal economy. Inspectors lack the resources to implement and enforce the law adequately. Children are often involved in practices such as prostitution, sex tourism or drug trafficking.*

IV. Forced Labour

Argentina ratified ILO Convention 29 (1930), the Forced Labour Convention in 1950 and ratified ILO Convention 105 (1957), the Abolition of Forced Labour Convention in 1960.

The national law prohibits forced or compulsory labour, including by children; nevertheless, there are reports that such practices occur.

An investigation into an apparent case of forced labour involving potentially hundreds of Bolivian citizens working in clothing sweatshops in Flores Sur, a neighbourhood in Buenos Aires, was undertaken over 2005-06. A federal judge declined to review the case, citing lack of jurisdiction, and referred the case to the “National Court of First Instance”.

The national law prohibits trafficking in persons for the purpose of prostitution through fraud, intimidation, or coercion, or in the case of minors; alien smuggling, indentured servitude, and similar abuses; and offences often associated with trafficking, such as kidnapping, forced labour, the use of false documents, and prostitution.

Trafficking in persons primarily involves citizens, mainly young women and children, trafficked within the country, mostly from the northern provinces to the central provinces and Buenos Aires, and from Buenos Aires to several southern

provinces. To a lesser degree, the country is a destination for victims, principally women and minors coming from Paraguay and Brazil. The country lacks a comprehensive nationwide policy of victim assistance or a comprehensive policy to prevent trafficking.

***Conclusions:** Argentina has ratified both ILO conventions 29 and 105 and national law prohibits expressly forced labour and trafficking. Nevertheless, these practices occur in the country. Children and young women are the groups at most evident risk. Argentina does not have a comprehensive national policy to prevent trafficking.*

FINAL CONCLUSIONS AND RECOMMENDATIONS

1. The Government must implement effective measures to ensure the active implementation of the provisions of the trade union law regarding non-interference in trade union activities by employers and the prohibition of anti-union discrimination, obstruction or refusal of collective bargaining processes and dismissal of workers engaging in trade union activities, and in particular strike action. It must ensure that all sectors are protected by the right to collective bargaining.
2. The Government must amend its national law to implement the recommendations of the ILO with regard to the granting of union personality, the right of trade unions to check off union dues and the right to trade union protection for the leaders of all trade union organisations.
3. The Government must implement measures to ensure the effective ability to undertake strike action in the country.
4. In line with the recommendations of the ILO, the Government must cease to consider criteria such as investment, productivity, technology or vocational training within its processes for ratification of collective bargaining agreements, so as not to impose unreasonable obstacles to collective bargaining.
5. The Government must implement affirmative action measures to tackle problems of discrimination towards women with regard to employment opportunities and achieving equal remuneration for work of equal value.
6. The Government must adopt legislation combating sexual harassment at the workplace in the private sector.
7. Effective measures are required to assist people with physical or mental disabilities in employment. Affirmative actions are further needed to eliminate discrimination against indigenous people.
8. More resources are required to combat child labour in the informal economy, with an increase in the numbers of inspectors dealing with this issue and in the resources at their disposal. More schools are needed in rural areas.
9. The Government must enforce effective measures to end the worst forms of child labour including prostitution, sex tourism and drug trafficking.
10. Effective measures to combat trafficking in the country are required. Better and increased bilateral cooperation with neighbouring countries such as Brazil or Paraguay is needed.
11. The Government must implement a comprehensive national policy framework to prevent trafficking within the country, accompanied by a comprehensive nationwide assistance policy for victims of trafficking.
12. In line with the commitments accepted by Argentina at the Singapore, Geneva, and Doha WTO Ministerial Conference and its obligations as a member of the ILO, the government of Argentina must therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation of all core labour standards.
13. The WTO should draw to the attention of the authorities of the Republic of Argentina the commitments they undertook to observe core labour standards at the

Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the government of the Republic of Argentina in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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