

Business & Human Rights 2020

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Clifford Chance

Lexology Getting The Deal Through is delighted to publish the first edition of *Business & Human Rights*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Roger Leese, Anna Kirkpatrick and Jonathan White of Clifford Chance, for their assistance with this volume.



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Argentina

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LEGAL AND POLICY FRAMEWORK

International law

1 Which international and regional human rights treaties has your jurisdiction signed or ratified?

A fundamental change in Argentine law took place with an amendment to the Constitution in 1994: new rights and guarantees were established; and, by the provisions of article 75, paragraph 22 of the Constitution, the following 10 treaties were given constitutional hierarchy and were granted precedence over national laws:

- the American Declaration of Rights and Duties of Man, which was approved at the Ninth International American Conference, in Bogotá, Colombia in 1948;
- the Universal Declaration of Human Rights, which was adopted and proclaimed by Resolution 217A(III) of the United Nations (UN) General Assembly on 10 December 1948;
- the American Convention on Human Rights, which was adopted in San José, Costa Rica, on 22 November 1969. It was ratified by the Argentine Republic by Law No. 23,054, sanctioned on 1 March 1984 and promulgated on 19 March 1984;
- the International Covenant on Economic, Social and Cultural Rights, which was adopted in New York on 19 December 1966. It was ratified by the Argentine Republic by Law No. 23,313, sanctioned on 17 April 1986 and promulgated on 6 May 1986; and its Optional Protocol;
- the International Covenant of Civil and Political Rights, which was adopted in New York on 19 December 1966. It was ratified by the Argentine Republic by Law No. 23,313, sanctioned on 17 April 1986 and promulgated on 6 May 1986;
- the Convention for the Prevention and Punishment of the Crime of Genocide, which was approved by the UN General Assembly on 9 December 1948. It was ratified by the Argentine Republic by Decree-Law No. 6286 on 9 April 1956;
- the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted in New York on 21 December 1965. It was ratified by the Argentine Republic by Law No. 17,722 on 26 April 1968;
- the Convention on the Elimination of All Forms of Discrimination Against Women, which was approved by Resolution 34/180 of the UN General Assembly on 18 December 1979. It was ratified by the Argentine Republic by Law No. 23,179 on 17 July 1980, sanctioned on 8 May 1985 and promulgated on 27 May 1985;
- the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the UN General Assembly on 10 December 1984. It was approved by the Argentine Republic by Law No. 23,338, sanctioned on 30 July 1986 and promulgated on 19 August 1986; and
- the Convention on the Rights of the Child, which was adopted by the UN General Assembly in New York on 20 November 1989. It was

approved by the Argentine Republic by Law No. 23,849, sanctioned on 27 September 1990 and promulgated on 16 October 1990.

Article 75, paragraph 22 defines these as 'instruments', meaning that some are not treaties in the strict sense; for example, the American Declaration of the Rights and Duties of Man, and the Universal Declaration of Human Rights are – as their names suggest – declarations.

2 Has your jurisdiction signed and ratified the eight core conventions of the International Labour Organization?

Argentina signed and ratified the eight core conventions of the International Labour Organization (ILO) in the following years:

- the Forced Labour Convention (No. 29): 1930;
- the Freedom of Association and Protection of the Right to Organise Convention (No. 87): 1948;
- the Right to Organise and Collective Bargaining Convention (No. 98): 1949;
- the Equal Remuneration Convention (No. 100): 1951;
- the Abolition of Forced Labour Convention (No. 105): 1957;
- the Discrimination (Employment and Occupation) Convention (No. 111): 1958;
- the Minimum Age Convention (No. 138): 1973; and
- the Worst Forms of Child Labour Convention (No. 182): 1999.

The principles contained in the eight fundamental conventions are also included in the ILO Declaration on Fundamental Principles and Rights at Work (1998), which applies to all ILO member states, whether or not they have ratified the fundamental conventions. Argentina has been a member state of the ILO since 1919, and has ratified 81 conventions and two protocols.

3 How would you describe the general level of compliance with international human rights law and principles in your jurisdiction?

Human Rights Council Decision 37/102 of 15 March 2018 approved the result of the review for Argentina, which comprised a report prepared by the Working Group on the Universal Periodic Review, the state views on the recommendations and conclusions made, and their voluntary commitments and answers.

In 2015, Argentina adopted a national action plan on human rights for the purpose of reinforcing a planification system for public policies. To stimulate a more comprehensive evaluation of human rights needs, promote articulation between the areas of government, civil society organisations and citizens, and generate social transformation, the national action plan has been structured in the following five priority areas:

- public security and non-violence;

- memory, truth, justice and compensatory policies;
- universal access to rights;
- inclusion, non-discrimination and equality; and
- civic culture and human rights commitment.

In this regard, the national action plan mid-term report for 2017–2018 has concluded the effectiveness of its implementation as a roadmap allowing the state to enhance its capacity to protect and promote human rights. Consequently, within two years of implementation of the plan, 17 provinces and 337 municipalities have acceded to it.

The national action plan has enabled the coordination of efforts and resources within organisations to better meet the set objectives. Additionally, it has enabled the generation of a systematic and integrated planification process within national agencies, allowing them to quantify and organise the public policies that require development.

4 | Does your jurisdiction support the development of a treaty on the regulation of international human rights law in relation to the activities of transnational corporations and other business enterprises?

The government has made declarations that it will support the enactment of local regulations on international human rights in relation to the activities of transnational corporations, but nothing has yet been done in this regard.

National law

5 | Has your jurisdiction enacted any of its international human rights obligations into national law so as to place duties on business enterprises or create causes of action against business enterprises?

On 8 November 2017, the Corporate Criminal Liability Regime (Law No. 27,401) for legal entities was approved. Although the initial draft provided for the criminal responsibility of the legal entity for all crimes of the Argentine Criminal Code (ACC), this regime is applicable only to the following cases provided that such crimes have been carried out directly or indirectly by a private legal entity of national or foreign capital, with or without state participation and with its intervention or in its name or interest, or to its benefit:

- bribery and influence peddling (national and transnational);
- negotiations incompatible with public office;
- illegal payments made to public officials under the guise of taxes or fees owed to the particular government agency;
- illicit enrichment of officials and employees; and
- falsification of balance sheets and reports.

The main penalty provided for these crimes is a fine of two to five times the undue benefit obtained, which may be enforced even if it has not been possible to identify or prosecute the natural person involved in the crime, provided that it is found that the crime could not have been committed without the assent of the entity's authorities. The almost exclusive approach to corruption offences is precisely because these regulations originated from the recommendations made by the Organization for Economic Cooperation and Development (OECD), which Argentina intends to join.

6 | Has your jurisdiction published a national action plan on business and human rights?

Argentina adopted a national action plan on human rights in 2015 for the period 2017 to 2020, which includes a specific section relating to human rights in business (section 5.6). This section includes as its strategic

objective the promotion of public policies intended to protect, respect and remedy human rights according to the UN Guiding Principles on Business and Human Rights (UNGPR).

CORPORATE REPORTING AND DISCLOSURE

Statutory and regulatory requirements

7 | Are businesses in your jurisdiction subject to any statutory human rights-related reporting or disclosure requirements? Which enterprises are subject to these requirements?

In principle, there are no specific national statutory human rights-related reporting or disclosure requirements. However, certain specific fields and industries may be subject to reporting or disclosure requirements depending on the provincial legislation of the jurisdiction within which they are either established or conduct their activity, in terms of health and safety and sanitation.

8 | What is the nature and extent of the required reporting or disclosure?

In principle, this is not applicable; however, some reporting or disclosure may be required by local legislation.

9 | Which bodies enforce these requirements, and what is the extent of their powers?

In principle, this is not applicable; however, the bodies enforcing local requirements, and the extent of their powers, will depend on the jurisdiction.

Voluntary disclosure regimes and best practices

10 | What voluntary human rights-related reporting or disclosure regimes are applicable to businesses in your jurisdiction?

Most businesses in Argentina have joined the UN Global Compact, which commits members to report on the status of their compliance with the UN Sustainable Development Goals. Many entities are also reporting using the B Impact Assessment. Another disclosure regime that is commonly used in Argentina is the Global Reporting Initiative.

11 | What best practices should businesses consider when implementing policies to ensure compliance with human rights-related reporting or disclosure requirements?

The best practices most Argentine businesses consider are internal guides, codes of conduct and codes of ethics, which include guidelines on compliance with human rights and related reporting.

CORPORATE DUE DILIGENCE

Statutory and regulatory requirements

12 | Are businesses in your jurisdiction subject to any statutory human rights-related due diligence requirements? Which enterprises are subject to these requirements?

In principle, there are no mandatory standards or specific regulations that require businesses to conduct human rights-related due diligence. Notwithstanding, certain specific topics and industries may be subject to statutory due diligence requirements depending on the provincial legislation of the jurisdiction within which they are either established or conduct their activity, in terms of health and safety and sanitation.

13 | What is the nature and extent of the required due diligence?

In principle, this is not applicable; however, the nature and extent of the required due diligence will depend upon the jurisdiction.

14 | Which bodies enforce these requirements, and what is the extent of their powers?

In principle, this is not applicable; however, the bodies enforcing local requirements, and the extent of their powers, will depend on the jurisdiction.

Voluntary regimes and best practices**15 | What voluntary human rights-related due diligence regimes are applicable to businesses in your jurisdiction?**

There are no voluntary human rights-related due diligence regimes applicable to businesses in Argentina.

However, businesses could adopt international guidelines or standards such as the OECD's Guidelines for Multinational Enterprises; the International Organization for Standardization's human rights standards; the UN Global Compact principles; and the UNGP, among others, and still comply with Argentine regulations.

16 | What best practices should businesses consider when implementing policies to ensure compliance with due diligence requirements?

Businesses may consider implementing best practices adopted both within the company and outside the company.

In terms of best practices within the company, businesses may adopt codes of ethics and codes of conduct to establish general rules and statements relating to human rights. Additionally, businesses may carry out integrity programmes and include human rights topics in training exercises. However, not all codes of ethics and codes of conduct include human rights issues since there are no mandatory guidelines established for its inclusion.

On the other hand, regarding best practices outside the company, businesses could decide to perform due diligence processes along their supply chain; or carry out auditing or risk evaluation processes to contractors, subcontractors or any other parties within their supply chain. Additionally, businesses could request these parties to make human rights statements or adopt human rights policies.

Also, businesses may choose to adhere to the UN Global Compact or any other voluntary third-party or stakeholders' initiatives.

CRIMINAL LIABILITY**Primary liability****17 | What criminal charges can be asserted against business enterprises for the commission of human rights abuses or involvement or complicity in abuses by other actors? What elements are required to establish guilt?**

The general principle in Argentine legislation is that only persons, rather than companies, can commit crimes. Thus, under the ACC there is no specific offence that can be asserted against business enterprises for the commission of human rights abuses. Only persons can be held criminally liable for the commission of such crimes.

Pursuant to Law No. 27,401, penalties against legal persons are only intended for specific offences, such as corruption, money laundering, terrorist financing, insider trading, manipulation of financial markets and misleading offers, financial intermediation, financial fraud, financial

bribery, and tax, customs and currency-exchange offences, as well as offences relating to antitrust law and supply chain law. Therefore, to be held liable, legal persons should have carried out said offences, directly or indirectly, through their intervention, on their behalf, in their interest or for their benefit.

18 | What defences are available to and commonly asserted by parties accused of criminal human rights offences committed in the course of business?

Not applicable.

Director and officer liability**19 | In what circumstances and to what extent can directors and officers be held criminally liable for the business's commission of or involvement or complicity in human rights abuses? What elements are required to establish liability?**

Any person (eg, director, officer, manager) who participates in the commission of or involvement or complicity in human rights abuses shall be held criminally liable.

It is necessary to establish that the person participated directly in the offence and had the will to do so.

Piercing the corporate veil**20 | In what circumstances may the courts disregard the separate legal personalities of corporate entities within a group in relation to human rights issues so as to hold a parent company liable for the acts or omissions of a subsidiary? What defences apply and what remedies are available?**

For criminal acts, see question 17. For other liabilities, it is not piercing the corporate veil in the strict legal definition that might result in a situation of making the parent company liable for the acts of the subsidiary, but this situation could be very commonly seen in a value chain relationship whereby a company can be held liable for the acts performed by its suppliers or its dependants.

In defence, the contractual company could prove that it has carried out due diligence audits to identify, prevent and communicate the risks.

Available remedies range from fines to reparation of the damage that such behaviour might have caused.

Secondary liability**21 | In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties? What defences apply and what remedies are available?**

Not applicable.

Prosecution**22 | Who may commence a criminal prosecution against a business? To what extent do the state criminal authorities exercise discretion to pursue prosecutions?**

Anyone who is aware of the commission of a crime can file a criminal complaint. If necessary, the judge can keep the investigation secret.

23 | What is the procedure for commencing a prosecution? Do any special rules or considerations apply to the prosecution of human rights cases?

A criminal case may be initiated primarily in two ways:

- through a decision adopted by the government or any of its agencies or officers (ie, court, prosecutor, police) to prosecute a case, acting on its own initiative in cases of a public nature; or
- if a private party files an accusation, which can be of either a public or private nature, depending on the circumstances.

Criminal cases are categorised as being of a public nature (ie, crimes against life) or of a private nature (ie, crimes against honour). The difference between the categories is that in crimes of a public nature, society as a whole is considered to have been harmed, and the state then assumes the role of defence of society.

Allegations of human rights offences constitute cases of a public nature. Criminal cases of a public nature have three necessary parties: a court, a prosecutor and the defendant. The private party that filed an allegation against the defendant and deems itself to have been directly affected by the alleged crime may request to be considered as a party.

The first phase of the criminal proceeding is the investigation. This stage is pursued by an instructive judge who is in charge of verifying the existence of the facts through the relevant diligence processes and investigations; and individualising all the participants, etc. The judge may also decide that the investigation be conducted by the prosecutor.

Once the instructive judge estimates that the investigation has been completed, the case can be submitted to the second phase, which is the oral trial.

There are no special regulations, rules or considerations for the prosecution of human rights cases.

CIVIL LIABILITY

Primary liability

- 24 | What civil law causes of action are available against businesses for human rights abuses committed by the business? What elements are required to establish liability? What defences apply and what remedies are available?

Since there are no specific regulations, rules or considerations in terms of civil law causes of action for human rights abuses committed by businesses, a standard damages claim may be brought against a violating business.

Case law of the Argentine Supreme Court has created some common ground in relation to the interpretation of causes of action in the Argentine Constitution. However, different existing interpretations of human rights as personal rights and as collective rights must be taken into consideration.

To establish liability, the Civil Liability Principles established in the Civil and Commercial Code may be applied. Additionally, cases governed by the Code must be resolved in accordance with the human rights treaties signed or ratified by Argentina.

The defences available in relation to civil liability are justification for the action or omission that caused the damage if it was carried out in the regular exercise of a right, legitimate self-defence or in the defence of third parties, or if it was carried out to avoid current or imminent harm that was otherwise unavoidable or that threatened the agent of a third party, if the third party did not cause the danger. The dangerous act is justified only if the harm that is avoided is greater than the one that is caused. Also, civil liability could be excluded in the case of force majeure, except if otherwise provided.

Director and officer liability

- 25 | In what circumstances and to what extent are directors and officers of businesses subject to civil liability for the business's commission of or involvement or complicity in human rights abuses? What elements are required to establish liability? What defences apply and what remedies are available?

Pursuant to the General Companies Law, the type and extent of civil liability for which directors can be held liable depends on the legal type of the business (eg, limited liability company, stock company).

Additionally, the extent of said liability in virtue of the commission of or involvement or complicity in human rights abuses will depend on the type of violation committed or omitted and the right infringed.

Directors of Argentine companies are expected to apply the Business Judgement Rule as established in the General Companies Law, for each of the decisions they adopt.

The elements required to establish liability are the breach of duties of the directors set forth in the General Companies Law (Business Judgement Rule and Duty of Care). Such breach of duties may be by act of omission.

As the responsibility regime for directors falls within the civil liability notion, the Civil Liability Principles established in the Civil and Commercial Code must additionally be applied to establish the existence of harm or damage caused. In this way, the attribution of liability and causal link should be added, where harm or damage has been caused, to establish liability.

See question 24 regarding available defences.

Piercing the corporate veil

- 26 | In what circumstances may the courts disregard the separate legal personalities of corporate entities within a group in relation to human rights issues so as to hold a parent company liable for the acts or omissions of a subsidiary? What defences apply and what remedies are available?

Pursuant to the General Companies Law, in the event of action taken by a company to conceal the attainment beyond the scope of corporate purposes constituting a mere means to breaking the law, violating public policy or good faith, or injuring the rights of third parties, the partners or controlling parties who made such action possible shall be jointly, severally and unlimitedly liable for the ensuing damages. In addition, equal assumptions are established in the Civil and Commercial Code.

In this sense, although the General Companies Law does not establish assumptions relating to human rights that can cause the separate legal personalities of corporate entities, there is no considerable judicial precedent that can serve to interpret the extent to which the law applies.

Secondary liability

- 27 | In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties? What defences apply and what remedies are available?

There are no current regulations regarding the extended civil liability in relation to a company's supply chain. In this regard, the defences that apply and the remedies that are available are those established for the civil liability regime by the Civil and Commercial Code (see question 24).

Notwithstanding, pursuant to Law No. 27,401, businesses may implement integrity programmes containing procedures that verify the

integrity and track record of third parties or business partners, including suppliers, distributors, service providers, agents and intermediaries, when hiring their services in the course of a business relationship. In this manner, the content of integrity programmes should be extended to relate to third parties that hold a commercial relationship with businesses that choose to implement them.

In relation to social security liability pursuant to the Employment Agreement Law, in cases of total or partial cession of the establishment or when contracting or subcontracting, regardless of the nature of the acts in respect of the normal and specific activity of the establishment, within or outside its scope, businesses shall require their contractors or subcontractors to comply with labour and social security regulations.

Failure to comply with any of the requirements of the law for the obligations of the assignees, contractors or subcontractors will hold the principal jointly and severally liable with respect to the staff that participate in the provisions of the works or services.

Shareholder liability

28 | In what circumstances can shareholders be held liable for the business's commission of or involvement or complicity in human rights abuses? What defences apply and what remedies are available?

See question 25 in relation to the elements required to establish civil liability, the applicable defences and the available remedies, as shareholders' responsibility falls within these principles.

The General Companies Law provides, as a general principle, that shareholders' liability is limited to the nominal value of their shares in the company. Notwithstanding this, the Law establishes exceptions to this principle, including that stated in question 26 in relation to a company acting beyond the scope of its corporate purpose. Additionally, any shareholders who vote in favour of resolutions that are in violation of the law or of the company's by-laws may be jointly and severally liable for the consequences thereof.

Nevertheless, the above must be analysed on a case-by-case basis in consideration of the conduct of the company. Additionally, there is no considerable judicial precedent that can serve to interpret the extent to which the law applies.

JUDICIAL REDRESS

Jurisdiction

29 | Under what criteria do the criminal or civil courts have jurisdiction to entertain human rights claims against a business in your jurisdiction?

Although a business cannot be prosecuted for the commission of human rights abuses, the ACC mainly follows the 'territoriality' principle, which means that the ACC applies to all crimes committed in Argentina, without distinguishing whether the criminal perpetrators are Argentine nationals or residents.

Notwithstanding, section 1 of the ACC sets forth two exceptions to the territoriality principle:

- crimes whose 'effects must be produced in the territory of Argentina'; and
- 'crimes committed abroad by agents or employees of Argentine authorities while performing their duties'.

Regarding civil actions, the jurisdiction would be applicable depending on the claim initiated and the violated right (right related to a labour claim or a health claim, in principle).

30 | What jurisdictional principles do the courts apply to accept or reject claims against businesses based on acts or omissions that have taken place overseas and parties that are domiciled or located overseas?

See question 29.

Class and collective actions

31 | Is it possible to bring class-based claims or other collective redress procedures against business enterprises for human rights abuses?

There are precedents in Argentina regarding class-based claims or other collective actions, and their requirements have been established by the Supreme Court. Human rights are considered personal rights but recent class actions have been accepted for collective advocacy rights (ie, the right to protect the environment, competition, the user and the consumer). There are no judicial precedents for class actions against business enterprises for human rights abuses.

Public interest litigation

32 | Are any public interest litigation mechanisms available for human rights cases against business enterprises?

The Constitution enshrines the notion of 'protective action' (*amparo*) as the litigation mechanism of excellence to safeguard against any act or omission of public authorities or individuals that currently or imminently injure, restrict, alter or assist, with arbitrariness or manifest illegality, the rights and guarantees recognised by the Constitution, a treaty or law.

This notion, established in National Law No. 16,986, is the most efficient cause of action that any affected individual or party, the ombudsman or rights-related associations can bring against business enterprises.

The court with jurisdiction over where the act is or may be carried out, or where it causes its legal effect, will be competent to hear the case.

STATE-BASED NON-JUDICIAL GRIEVANCE MECHANISMS

Available mechanisms

33 | What state-based non-judicial grievance mechanisms are available to hear business-related human rights complaints? Which bodies administer these mechanisms?

In principle, there are no state-based non-judicial grievance mechanisms available for human rights complaints specifically against corporations; however, there are state-based non-judicial grievance mechanisms available to hear human rights complaints in general, such as the ombudsman.

The notion of the ombudsman is established by the Constitution as an independent body instituted within the scope of the National Congress that acts with full functional autonomy. Its duties include the defence and protection of human rights and other rights, guarantees and interests protected by the Constitution and laws, in terms of events, actions or omissions of the administration and control of public administrative functions. This notion is also replicated in different provincial jurisdictions across the country.

Additionally, the National Institute against Discrimination, Xenophobia and Racism, a decentralised body acting within the scope of the Ministry of Justice and Human Rights, is available to receive and process claims of discriminatory, xenophobic or racist behaviour. The Ministry has its own complaint mechanisms in virtue of the infringement of different rights.

Furthermore, under National Law No. 25,212, the Ministry of Labour, Employment and Social Security has the power to intervene in cases of breach of labour obligations in relation to labour, health, sanitation and safety matters, among others.

In some provincial jurisdictions there are administrative bodies available for non-judicial grievances regarding environmental matters.

In addition, state-owned companies must comply with certain requirements (depending on the percentage of ownership) such as having their own complaints channels.

Filing complaints

34 | What is the procedure for filing complaints under these mechanisms?

The procedure regarding the ombudsman grievance mechanism, as well as its jurisdiction and legitimation, are set forth in National Law No. 24,284, which specifies that complaints must be filed in written form and signed by the interested party within one year of the event, act or omission.

If a complaint does not comply with the necessary requirements, the ombudsman has enough power to refer it to the competent authority, and must inform the interested party of this. Filing a complaint under this mechanism does not interrupt the term of initiating administrative or judicial action. Notwithstanding, if such actions are initiated thereafter, the ombudsman must suspend his or her intervention.

If the complaint is admitted, the ombudsman must carry out a summary investigation in the manner established by the above-mentioned Law.

In all cases, the ombudsman must report the findings of his or her investigation to the relevant administrative body or entity to obtain a written report from such responsible body within 30 days. If the reasons given for the violation were justified at the ombudsman's discretion, he or she will terminate the intervention and communicate this to the interested party.

If the ombudsman becomes aware of a presumably criminal offence, he or she must report it to the Attorney General.

Additionally, in virtue of the different provincial jurisdictions, the procedures may vary according to each regulation and matter.

The procedure for filing complaints with the National Institute against Discrimination, Xenophobia and Racism is simple, to facilitate its accessibility.

Enforcement

35 | What powers do these mechanisms have? Are the decisions rendered by the relevant bodies enforceable?

The ombudsman does not have power to modify, replace or declare invalid any administrative decisions. Nevertheless, he or she can propose amendments to the criteria used in reaching such decisions.

If, as a result of an investigation, the ombudsman understands that the strict compliance of a regulation may cause an unfair or harmful situation, he or she may propose an amendment to the legislative power or the public administration.

Additionally, under the investigations carried out, the ombudsman may formulate warnings, recommendations or reminders of the business' legal and functional duties and make proposals for the adoption of new measures. In each case, the responsible authorities are required to respond in writing within a maximum period of 30 days.

If recommendations are formulated by the ombudsman within a reasonable period of time, and the administrative authority does not adopt the recommended adequate measures or respond to the proposals, the ombudsman may inform the highest authority of the body involved.

If no justification for this omission is obtained, details of the matter, including the names of the relevant authorities, must be included in the ombudsman's annual or special report.

Additionally, decisions of the National Institute against Discrimination, Xenophobia and Racism are non-binding.

Notwithstanding, the interpretation of administrative decisions is subject to the judiciary, in the final instance.

Remedies

36 | What remedies are provided under these mechanisms?

See question 35.

Publication

37 | Are these processes public and are decisions published?

In certain cases, the ombudsman must inform the National General Auditing Office of the results of investigations carried out for the bodies under its control, and must provide an annual report of work carried out in relation to complaints received and investigations executed to the National Congress' Chambers. The ombudsman's annual report is published on its website.

NON-JUDICIAL NON-STATE-BASED GRIEVANCE MECHANISMS

Available mechanisms

38 | Are any non-judicial non-state-based grievance mechanisms associated with your jurisdiction?

The following administrative offices are available to hear all human rights complaints, including those relating to businesses:

- Amnesty International;
- the Human Rights Action Center;
- the Simon Wiesenthal Center;
- the Children's Defense Fund;
- UNICEF; and
- Human Rights Watch.

UPDATE AND TRENDS

Recent developments

39 | What are the key recent developments, hot topics and future trends relating to business and human rights in your jurisdiction?

The debate regarding the interpretation of human rights as personal rights and collective rights, as well as in differentiating between natural and legal persons, is gaining momentum given recent case law of the Inter-American Court of Human Rights and the Supreme Court of Argentina.

Compliance with the UN Sustainable Development Goals is in accordance with the UN's 2030 Agenda for Sustainable Development. In this regard, the National Coordination Council of Social Policies is the body responsible for the coordination of actions necessary for the effective implementation of this Agenda.

Under Administrative Decision No. 85/2018, the Guidelines for Good Governance for companies with majority state ownership were approved. The Good Governance Guidelines constitute a set of good governance and business management practices, the main objective of which is to communicate the expectations the state has in relation to how the companies should be organised and function with the aim of pursuing better management and governance standards.

In the same sense, more legal entities in Argentina are becoming signatory parties to the UN Global Compact and are participating in different national committees (eg, value chain committee, business and human rights committee).

In addition, Argentina has recently changed its government, and the new administration has created the Ministry of Women, Gender and Diversity.

Notwithstanding the fact there are no current regulations regarding business and human rights matters, we are noticing certain growth in this regard, with the introduction of binding sustainable clauses in agreements relating to human rights within companies' supply chains and commercial relationships. Additionally, private due diligence processes in relation to these topics are beginning to be carried out.



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