

Fondation Scelles

Connaître, Comprendre, Combattre
l'Exploitation Sexuelle

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Cautionary note: The terms ‘child prostitution’ and ‘prostituted children’ are used in this text to denote children that are sexually exploited and sexually trafficked. The connotative manner in which these definitions are perceived and analyzed may differ due to linguistic, cultural, and perceptual differences.

ARGENTINA

	POPULATION 44,3 million		GDP PER CAPITA 4,123.4 USD
	POLITICAL SYSTEM Federal Republic		HUMAN DEVELOPMENT INDEX 45 th rank among 187 countries
	GENDER INEQUALITY INDEX 77 th rank among 147 countries		CORRUPTION PERCEPTIONS INDEX 85 th rank among 180 countries

Human trafficking in Argentina remains a widespread form of crime in the country, and its effects should not be underestimated. According to Judge Diego Luciani of the Federal Prosecutor's Office, human trafficking violates human dignity while pursuing a lucrative purpose (*Luciani, 2015*).

Some mechanisms for fighting human trafficking and sexual exploitation have been established. The enactment of law n.26.364 of April 30th 2008, which concerns prevention, punishment of trafficking in persons, and victim assistance, has provided Argentina with a legislative framework, but the legislation does not provide for the penalization of sex buyers of victims of human trafficking.

As Argentina is a federal state, enforcement of the law at the provincial level has proven to be challenging (*ECPAT International, CASACIDN, April 12, 2018*). However, some provinces, such as the province of La Rioja, have adopted laws that specify national legislation.

Corruption among provincial officials can also hinder the enforcement of the law. In 2012, 13 people suspected of belonging to a sex trafficking network were acquitted by a court in San Miguel de Tucumán, even though the public prosecutor's office had called for prison sentences between 12-25 years. Judges cited a lack of evidence, despite victims' testimonies. The judges invoked a lack of evidence, despite the victims' testimonies. The decision sparked demonstrations and clashes with law enforcement in Buenos Aires due to the apparent corruption of the judges (*Le Monde, December 14, 2012*). The events lead to the amendment of the 2008 Law by the Law n.26.842 of December 26th 2012.

A legislative framework concerning human trafficking

The new 2012 law allowed for the creation of a synchronized denunciation system on the crimes of human trafficking and exploitation (*Sistema Sincronizado de*

Denuncias sobre los Delitos de Trata y Explotación de Personas), as well as an increase the levels of the fines. In addition, a common definition has been established concerning adults and minors, which was not previously the case. Methods of exploitation covered by the law have been extended to include the promotion, facilitation, and commercialization of prostitution and child pornography (including the presentation and production for the last element), as well as forced marriage. Since this law, the consent of the victim no longer exonerates responsibility from traffickers and procurers.

As a result, Argentina's Penal Code condemns the promotion or facilitation of the prostitution of others with a prison sentence of 4-15 years depending on the circumstances and age of the victim (articles 125bis, 126, and 127).

The offer, recruitment, transfer, and lodging of a person for sexual exploitation purposes, even abroad, are all punished by the same penalties (Articles 145bis and 145ter). It should be noted that the Migration Act (*Ley de Migraciones*) prohibits foreigners who have been convicted of participating in the prostitution of others (promotion, profit, encouragement), or who have been involved in human trafficking or sexual exploitation, from entering the country.

In order to more effectively prevent crimes of human trafficking and sexual exploitation, a decree promulgating the eradication of the spread of messages and images encouraging or supporting sexual exploitation was passed in 2011. A Surveillance Bureau (*Oficina de Monitoreo de Publicación de Avisos de Oferta de Comercio Sexual*) is responsible for enforcing this decree through the monitoring of the country's daily print media. In 2013, 80% of print media had stopped publishing offers of prostitution. However, in order to get around the law more easily,

an increase in the use of the internet, particularly through job offers, was noted. With regard to audiovisual media, the Bureau works in consultation with the Federal Authority for Audiovisual Communication Services (*Autoridad Federal de Servicios de Comunicación Audiovisual*) and carries out inspections of sex trade publications on the internet (*Ministerio de Justicia y Derechos Humanos*, 2013).

The Regulation of Prostitution

Since 1936, the law aiming to limit the spread of sexually transmitted diseases prohibits, in its Article 15, establishments or premises engaged in prostitution activities. The regulation of prostitution itself is left to the discretion of the provinces. As a result, different models can be observed, depending on the region. The province of Tucumán chose to prohibit all activities related to prostitution, be it solicitation (Article 92), the purchase of sexual services (Article 93), or activities related to prostitution establishments (Article 94). The city of Buenos Aires (which is autonomous) adopted a regulationist model, prohibiting the supply of and apparent demand for sexual services in public spaces (Article 81 of the *Código Contravencional de la Ciudad Autónoma de Buenos Aires*) besides the conditions under which they are allowed. They are limited to *zonas rojas*, or red zones. Criminal activities are also occur in these specific areas where the police operates, notably in establishments involved in sexual exploitation. These measures, however, are difficult to enforce due to the need to prove the *flagrante delicto* of either an offer for or demand of sexual services, which requires a witness or the presence of a police officer. In addition, criticism has been made by the *Defensor del Pueblo*, who denounced the unconstitutional character of this regulationist law (AMADH, 2017).

Victims' profiles

The Ministry of Justice and Human Rights reported that 1,200 victims were rescued in 2017 under the *Programa Nacional de Rescate y Acompañamiento a las Personas Damnificadas por el Delito de Trata*. The majority of victims were foreigners (53%), of which 65% were of Bolivian nationality (*Comité de Lucha contra la Trata de Personas*, January-February 2018). These numbers are contested by another report, in which 52% of victims were of Argentinean origin, and, therefore, 48% of victims were foreigners, with 33% of those victims being Paraguayan in another report (*UFASE, INECIP*, 2012). These differences may be related to the fact that the operations were carried out in different regions. However, one can see that the majority of identified victims are from Latin America.

The majority of victims are adult women, living alone with their children, in precarious economic situations. To ensure the survival of their children, these women are forced to accept degrading and dangerous situations. They are trapped in networks of exploitation by several means (debt bondage, restriction of freedom, retention of wages, etc.) and are generally found in the province of Buenos Aires (*UFASE, INECIP*, 2012).

Transgender people make up a significant percentage of the prostituted population in Argentina (path of social exclusion, family breakdowns at a young age, regular discrimination, etc.). Yet the law does not take them into consideration, even though some are also victims of human trafficking (*AMADH*, 2017).

Child prostitution

The trafficking and sexual exploitation of minors is condemned by the general laws. The latter are supplemented by other

legislation, like the *Ley de Protección Integral de Los Derechos de las Niñas, Niños y Adolescentes* of 2005 on the integral protection of the rights of girls, boys, and adolescents, or the *Ley de Derechos del Niño* of 2003 on the rights of the child, which prohibits the selling of children, the prostitution of children, and child pornography (Article 1). The latter offense is punishable by a maximum of six years in prison (Article 128 of the Penal Code). However, this does not relate to the possession of child pornography. Sites publishing such content are not blocked, and the use of the internet in cyber cafes or public spaces is not regulated (*ECPAT International, CASACIDN*, March 30, 2017). Grooming (sexual solicitation of a minor by an adult) is punishable under Article 131 of the same Code by a prison sentence of up to four years.

Despite such legislation, several cases of prostitution of minors have been revealed. In March 2018, within the *Independiente* football club, teenage players were encouraged to prostitute themselves in Buenos Aires. According to the prosecutor in charge of the case, the prostitution ring involved other clubs in the region, such as *River Plate* and *Temperley*. Underage girls involved in other sports were also involved. In November 2018, in the province of Buenos Aires, women and underage girls, attracted through false advertisements by professional photographers, were subsequently held against their will and were prostituted in establishments. The photos were published on specific sexual offer websites. Suspects face punishments for sexual exploitation, exploitation of prostitution (including that of a minor), and child pornography (*El Independiente*, November 22, 2018).

In the provinces adjacent to Brazil and Paraguay, the prostitution of children seems to be widespread, mainly around hubs of

transport and migration such as the city of Puerto Iguazú. Although there is no data available on sex tourism, it appears that children are sexually exploited to satisfy tourists and travelers in these areas (ECPAT International, CASACIDN, March 30, 2017). In 2005, the Ministry of Tourism created a program related to responsible tourism in order to tackle the problem of sex tourism through awareness-raising measures within the sector and among tourists (ECPAT International, CASACIDN, April 12, 2018). In 2013, an awareness-raising campaign was carried out in airports and training was provided to personnel in the tourism sector. At the end of the same year, the Ministry of Human rights, alongside provincial governments and ITaipu Binacional (Itaipu hydropower plant, located between Argentina, Brazil, and Paraguay) conducted a campaign for the prevention of the sexual exploitation of children and adolescents on the borders of the three countries (ECPAT International, CASACIDN, March 30, 2017). In 2015, a federal law was enacted requiring international airports to display posters against sexual exploitation and the trafficking of minors (Ley 27.046, December 23, 2014).

There is few data concerning child marriage, but according to the 2010 census, about 8% of adolescents aged 14-19 were married or in a serious relationship. Yet, the Civil Code stipulates that marriages for those under 16 years of age require judicial approval, and marriages for minors between the ages of 16 and 18 requires the authorization of a legal guardian (Article 404) (ECPAT International, CASACIDN, April 12, 2018). This is directly related to the fact that, every year, about 16% of births are to mothers under the age of 20 (in 2014, close to 15% of teenage mothers were between 15 and 19, including 0.3% under

the age of 15). Although this phenomenon is observed mainly among disadvantaged populations, it does affect all social classes (Fundación para estudio e investigación de la mujer, November 2016).

Assistance and Protection of Victims

The anti-trafficking law of 2012 provides special rights for victims (Article 6), regardless of their involvement in the judicial process. The rights and protections granted are very broad. They include the right to information about their rights (depending on their language, age, level of education, etc.), full medication and psychological assistance, legal assistance, and full protection against the risk of reprisals against them or their families. In addition, the law provides for basic needs such as food, decent housing, vocational training, assistance in job searching, and integration in the education system.

While at trial, testimonies of victims are subject to special conditions of protection. Minors under the age of 16 must be interviewed in a suitable place, by a specialized psychologist appointed by the court (Article 250bis). The same procedure applies to victims who were under the age of 16 at the time of the offense (Article 250ter) and may be extended to all victims, “whenever possible” (Article 250quater) (ECPAT International, CASACIDN, April 12, 2018).

The National Program of Assistance and Support for Victims of Trafficking in Persons was established through Resolution n.713/2012. The program is implemented as soon as the victim leaves the place of exploitation and lasts until their testimony at the trial. The victim benefits from a team of psychologists, social workers, lawyers, and doctors, associated with a group of non-commissioned officers of the Federal Police. The team assures the protection and security of the victims and professionals

that are involved in the judicial process. They also support and assist the victims during interviews, especially their trial testimonies (*Ministerio de Justicia y Derechos Humanos, 2017*). Within the framework of the program, the National Administration for Children, Adolescents, and the Family is responsible for providing suitable assistance and protection to underage victims (*Ministerio de Justicia y Derechos Humanos, Infojus, 2013*).

The fight and means of action against human trafficking and sexual exploitation

Resolution PGN n.805/13 of April 30th, 2013 by the Attorney General established the Prosecutor's Office in charge of human trafficking and the exploitation of individuals, the *Procuraduría de Trata y Explotación de Personas* (PROTEX). This Office provides assistance to the Attorney General in the handling of cases of kidnapping, sequestration, and human trafficking, and assists in developing policies against these crimes. In its 2017 report, PROTEX listed more than 2,000 tips from the *hotline 145* (1,800 in 2016), of which 60% were sent to the relevant courts for investigation within the timeline set by the law (48 hours) (PROTEX, 2018). Anonymity allowed for a significant number of reports of human trafficking to be made involving the complicity or participation of public officials (around 10% of the total in 2016) (PROTEX, 2017). Another telephone line was created as part of the Girls' Brigade against Sexual Exploitation and Grooming (*Equipo Niñas contra la explotación sexual y grooming*), whose main purpose is to provide advice and information on the sexual exploitation of minors, grooming, child pornography, and sexual tourism involving minors. It can also receive reports.

In 2016, the arrival of a new administration strengthened the fight

against corruption with the reopening of investigations as well as reports made against members of the previous administration (including Cristina Fernández de Kirchner, the outgoing president). The chronic corruption in the country is especially observable at the provincial level (*Poder Ciudadano, 2017*). 8% of people convicted of human trafficking-related crimes are government officials (ECPAT International, CASACIDN, April 12, 2018). There would be significant collusion between senior regional officers and criminal groups, the latter of which *de facto* essentially control parts of the territory or administration (*Poder Ciudadano, 2017*).

Despite significant political intervention in judicial affairs, some court cases are ongoing or have been conducted against important public figures. For example, Benito Pont, former Federal Prosecutor of the city of Paso de los Libres, and 18 others were charged with the human trafficking for sexual exploitation purposes of 38 women in vulnerable situations (PROTEX, 2018). Similarly, the Major and Commissioner of the city of Lonquimay were sentenced to five years in prison in June 2017 (*Infobae, June 29, 2017*) for involvement in human trafficking for sexual exploitation purposes (PROTEX, 2018).

In 2014, to fight against the phenomenon of human trafficking in South America, the member states of *Mercado Común del Sur* (MERCOSUR) adopted a plan of action to increase cooperation and to implement measures of general awareness and standardized training (ECPAT International, CASACIDN, March 30, 2017). As part of this international cooperation, the national assistance program conducts prevention and training programs, including within the United Nations Office on Drugs and Crime or joint actions with MERCOSUR (*Ministerio de Justicia y Derechos Humanos, Infojus, 2013*).

In conclusion, the fight against sexual exploitation in Argentina involves important means and numerous actions, though it is hindered by various factors such as corruption. With regard to prostitution, the debate between “prostituted women” and those calling themselves “sex workers” is important. While the first group considers themselves in a forced, violent situation, the latter consider prostitution a choice allowing them a way of life they would not otherwise have. Despite tensions between these two groups, points of agreement have been established regarding their shared vulnerability and the need for public policies in their favor. Action taken in regards to these common positions could improve the protection of prostituted people in the country.

Certain recommendations can be made in order to provide elements to improve the fight against human trafficking and sexual exploitation. Concerning the legal framework, penalizing sex buyers of adults and children victim with dissuasive sanctions will decrease demand, leading to a smaller number of victims in the country. Although sex tourists can be charged under existing laws, legislation specifically outlawing sexual tourism should be established. This would make it possible to explicitly define the penalties incurred, facilitate convictions, and deter potential sex tourists. In order to strengthen the fight against child pornography, Article 128 of the Penal Code could be supplemented so as to criminalize the possession of child pornography. In this context, the law would be more effective if websites were better monitored in order to permanently block child pornographic content.

To improve the enforcement of federal laws at a provincial level, greater surveillance or more frequent lower-level government

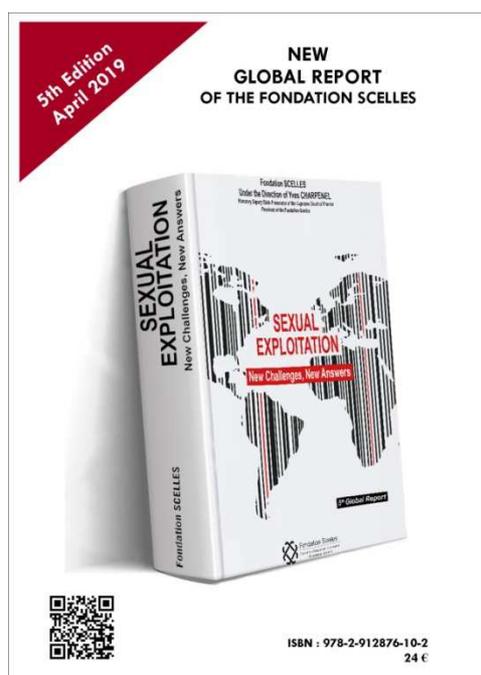
turnover (as is the case in La Rioja province) could be useful. Finally, strengthening the autonomy of provincial judiciaries would allow for better enforcement of penalties. (*ECPAT International, CASACIDN, March 30, 2017*).

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The **Fondation Jean et Jeanne Scelles**, recognized as a public utility since 1994 and as a consultative status with ECOSOC, is an independent, non-profit organization based in Paris (France) dedicated to fight the system of prostitution and the exploitation of prostituted persons, through information, analysis, advocacy, trainings, awareness initiatives and legal actions. The **Fondation Jean et Jeanne Scelles** is a co-founding member of the Coalition for the Abolition of Prostitution (CAP International) which was launched in 2013 and today brings together 28 abolitionist NGOs from 22 countries.

The **International Observatory on Sexual Exploitation** (Observatoire international de l'exploitation sexuelle) is a worldwide hub which allows for information exchange on the system of prostitution. The hub is regularly consulted by French and foreign experts including NGOs, institutions, journalists, lawyers, researchers and those involved in the defense of human rights. The goals of the **International Observatory on Sexual Exploitation** are:

- to analyze all the aspects of the phenomenon: prostitution, sex tourism, procurement, child pornography, sex buyers, human trafficking for the purpose of commercial sexual exploitation...
- to encourage reflection and to take a stand
- to inform the public who are interested in these issues

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