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Report on the Republic of Argentina to the 42nd Session of the Universal Periodic
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ARGENTINA

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TREATMENT OF INDIGENOUS PEOPLES

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Executive Summary.

The University of Oklahoma College of Law International Human Rights Clinic (OU-IHRC), United States of America submits the following report on the Republic of Argentina to the 42nd Session of the Universal Periodic Review, Human Rights Council. This report concerns Indigenous People of Argentina and how Argentina has implemented the recommendations received during its various reviews. Specifically, the report focuses on the selected areas of **(I)** Persistent Structural Discrimination; **(II)** Health, Safety and Wellbeing; **(III)** Land, Property, and Natural Resources; **(IV)** Education; **(V)** Freedom of Expression; **(VI)** Access to Justice; and **(VII)** Lack of Consultation and Prior Informed Consent. The purpose of this report is to provide a balanced view of Indigenous Peoples concerns in Argentina and recommend measures to address these concerns.

I. PERSISTENT STRUCTURAL DISCRIMINATION. The Argentine Constitution §16 states that, "All its inhabitants are equal before the law..." Additionally, in its Powers of Congress §75(23) of the Constitution, Congress is empowered to "legislate and promote positive measures guaranteeing *true equal opportunities and treatment*, the full benefit and exercise of the rights recognized by the Constitution and by the international treaties on human rights in force..." (emphasis added). Argentina's international obligations and standards include the CERD, ICCPR, UDHR, and ILO Convention No. 169.

The Argentine Government in the Report of the Working Group on the Universal Periodic Review (A/HRC/37/5) stressed its objective to build a country free of xenophobia, discrimination and racism. In the Working Group Report, many countries praised Argentina's proactive efforts to curtail this discrimination; however, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) expressed concern in its 2017 report (CERD/C/ARG/CO/21-23) that structural discrimination still exists in Argentina.

In the Report of the Working Group on the Universal Periodic Review (A/HRC/37/5) various countries recommended the development of a broad national multisectoral strategy to address the rights of indigenous people and other groups vulnerable to discrimination. Argentina has responded by creating a National Plan and committees to represent and aid indigenous individuals which is a step towards progress.

In the 2017 CERD Concluding Observations (CERD/C/ARG/CO/21-23 para. 7), the Committee recommended for Argentina to "adopt" a comprehensive policy to combat racism and racist discrimination..." Argentina responded by citing to Act No. 23.592 of 1988 on Discriminatory Actions and the Convention for national ways to address discrimination; however, during the third cycle of the Universal Periodic Review (UPR) of Argentina during the 28th session of the UPR Working Group in November 2017 received recommendation by Madagascar para. 107.32 "Put in place a robust legal and judicial instrument aimed at combating discriminatory practices against indigenous peoples and persons of African descent and promote their inclusion in the areas of human rights". Argentina has made some progress in its creation of the INADI and INAI; however, NGOs have criticized those strategies as falling short of the goals.

II. HEALTH, SAFETY AND WELLBEING. In 2012, the Special Rapporteur on the Rights of Indigenous Peoples expressed concern that while indigenous communities have access to hospitals and healthcare centers, these locations are often not open for accessible hours, and rural communities face limitations such as lack of healthcare professionals, medicine, and ambulances. (A/HRC/21/47/Add.2 para. 68). Additionally, the CERD Committee emphasized that in 2016 (CERD/C/ARG/Q/21-23 para. 19) rural areas needed to provide information on whether Indigenous people severely lacked adequate sexual and reproductive healthcare. It is unclear whether these concerns have been mitigated or addressed in any way.

Indigenous women face particular challenges to health and safety. Violence and sexual abuse, combined with the lack of free contraceptive methods and legal interruptions of pregnancy continue to be issues in this community. The CERD Committee commended Argentina for its creation of the National Institute for Women in 2019 to treat women's issues as a priority and its recognition that women and children are particularly vulnerable (CERD/C/ARG/24-26 para. 25)

Argentina during the 28th session of the UPR Working Group in November 2017 received recommendation by Czechia para. 107.148; Montenegro and Paraguay para. 107.149 recommended that Argentina should continue to prosecute, prevent and combat femicide.

In the 2017 National Report (A/HRC/WG.6/28/ARG/1 para. 128), Argentina referenced a National Health Programme for Indigenous Peoples that was created in 2016 to reduce inequalities in the health status of indigenous peoples and reduce morbidity and mortality among that group. Additionally, the Secretariat for Housing & Habitat's Urban Development Plan in 2016 was a progressive step in providing rural settlements with fewer than 10,000 inhabitants with water, sanitation, energy infrastructure, housing, schools, and health facilities. It is unclear how successful these programs have been.

III. LAND, PROPERTY AND NATURAL RESOURCES. According to Article 2 of the ICESCR, Article 18(2) of the ICCPR, UNDRIP, and the ILO Convention No. 169 Articles 4 and 7, indigenous peoples rights to land, property and natural resources should be protected. This is echoed in domestic legislation in Chapter 1, §17 of the Argentine Constitution whereby expropriation for reasons of public interest must be authorized by law and compensated. Additionally, Chapter 4, §75 Point 17 imposes a duty on the state to recognize indigenous peoples' legal capacity for communal possession of ownership of their traditional lands. The Argentine Constitution further ensures indigenous participation in management of their natural resources and interest affecting them. It has been shown in previous reports that Argentina is commended for its implementation of Act No. 1.552 of 2010 which established a land management program to hold public

hearings and consultations and to disseminate environmental information regarding projects that entail changes in land use.

The CERD Committee in 2017 recommended that the survey of ownership of indigenous lands must be concluded to fully guarantee the rights of indigenous peoples in compliance with international treaties ratified by Argentina, as well as its Constitution. It is unclear what progress has been made since 2016. In previous years, the International Working Group for Indigenous Affairs (IWGIA), a global human rights organization that still exists today, has noted the Mapuche, Tehuelche and Rankulche people in the central-south regions have complained of "moving the fences at night" which was allegedly a common practice whereby the local governments offer and sell state lands with indigenous communities still living on them. According to the communities, some lands have been sold to corporations which further distances their ability to regain title. Argentina never addressed these concerns, so it is unclear whether progress has been made.

Deforestation also raised concerns in areas such as the Chaco region where nine different ethnic groups reside, and most are hunters and gatherers. According to IWGIA, logging companies and non-indigenous expropriators have consistently felled native forests and reared cattle which has caused desertification, soil impoverishment and loss of biodiversity thereby affecting indigenous food sources. Further issues have been noted by IWGIA such as the contamination of rivers like the Pilcomayo River, which affects both fishing and water sources. These activities have contributed to malnutrition and poverty, and it is unclear whether Argentina has spoken with this group or made efforts to address their concerns. According to the 2017 National Report (A/HRC/WG.6/28/ARG/1 para. 154) the Argentine Government announced the National Action Plan in 2016 which was aimed at constructing infrastructure for water, sanitation, energy, sewage, housing, schools and health centers and urban development. It is unclear whether this plan has been successful.

IV. EDUCATION. Under the ILO Convention No. 169 Articles 27-28, UNDRIP Article 4, the Argentine Constitution Article 75 §1 Point 17, and domestic law 26.206, indigenous communities have a right to bilingual and culturally relevant education that respects their cultural identity and language. Indigenous people also have the right to participate in the development and control of their education systems.

In 2012, the Special Rapporteur on the Rights of Indigenous Peoples (A/HRC/21/47/Add.2 para. 65) expressed concern that only language classes were provided in indigenous languages. According to the 2017 National Report (A/HRC/WG.6/28/ARG/1 para. 152) Argentina has implemented the National Education Act which introduced bilingual education; however, the quality and breadth of such education is unknown in whether it addressed this issue. Additionally, in Section M concerning "Access to Education" in Argentina's 2020 CERD Report (CERD/C/ARG/24-26) the Government showed that efforts have been made to implement

bilingual and intercultural education in accordance with international standards and recommendations.

Indigenous girls face a unique barrier to safe and equal education. In 2012, the Special Rapporteur on the Rights of Indigenous People (A/HRC/21/47/Add.2) expressed grave concern about young female students migrating to cities to gain access to education who are often required to stay in male-run hostels where they face rampant sexual abuse and forced pregnancy resulting in the sacrifice of their education. Argentina has been largely silent on both the existence of this issue, and on any remedial action that has been taken to protect these young girls and their efforts to gain education. It seems that Argentina has been largely silent on this issue.

V. FREEDOM OF EXPRESSION. According to the Special Rapporteur on the Rights of Indigenous People (2012) the lack of communication and consultation of indigenous populations has led to the need to protest in order for their voices to be heard, and that they are being further silenced by violent efforts to criminalize protests. In 2018, a Letter from the High Commissioner to the Foreign Minister, stated that Argentina has claimed freedom of expression and access to information were pillars of their democratic system; however, the freedom of expression only seems to be guaranteed to non-minority groups. Argentina's 2020 State Report to the CERD (CERD/C/ARG/24-26) was largely silent on indigenous protests and the right to freedom of expression.

These issues are still ongoing. On September 24, 2021, Civicus, a civil society reporter, documented police in Neuquén evicting a Mapuche Lof Quemquemtreu community from territory they had occupied near El Bolson, Rio Negro Province. It was reported that 30 indigenous people who peacefully protested in the area where were violently evicted by police using disproportionate force, including rubber bullets and firearms or were arrested. For those who continued to protest under surveillance, it is claimed that police cut off access to remaining groups, denying attempts to support them with food and clothing. Allegedly, additional violence and arrests were made when the President and members of the *Coordinadora por los Derechos y la Justicia* were violently detained while accompanying a court-ordered eviction. Activists were reportedly beaten and detained for 24 hours without charge. Civicus indicates that protests in Chubut where almost 600,000 residents protested attempts to modify mining legislation in December 21, were met with overnight police using tear gas and rubber bullets.

VI. ACCESS TO JUSTICE. After concerns were raised relating to indigenous communities' access to justice, Argentina has taken considerable steps to address the issue. The Government of Argentina is commended for its detail in reporting cases involving access to justice and the National Institute of Indigenous Affairs' request for guaranteed access to justice for members of indigenous communities. The State is deserving of particular praise for the Institute's financing of lawyers, anthropologists, notaries, and other

professionals for indigenous communities to have access to justice (CERD/C/ARG/24-26). Argentina has also notably launched the Justicia 2020 Programme as a forum for institutional and civil dialogue aimed at improving accessibility, transparency and independence of the justice system and facilitating the prompt resolution of conflicts.

VII. LACK OF CONSULTATION AND PRIOR INFORMED CONSENT. As admitted in Argentina's 2020 CERD Report (CERD/C/ARG/24-26 para. 99), "there are not yet any specific regulations governing the consultation procedures for obtaining free, prior, and informed consent..." however, the government expressed desire to develop such procedures.

RECOMMENDATIONS

- In responding to concerns raised about persistent structural discrimination and lack of participation, Argentina should raise awareness and establish quantitative measures to promote the participation of indigenous peoples in the highest levels of decision-making processes.
- Argentina should clearly define and criminalize all forms of racial discrimination.
- Every person, including public figures, must be held legally accountable for xenophobic and stigmatizing discourse, and the State should provide information on the complaint systems, procedure and responses to complaints received for discrimination.
- The State should prioritize effectively communicating with indigenous communities in outreach programs such as surveys to audit how legislation and policy changes have affected the communities and could be improved.
- Argentina should provide statistics and information regarding the success of the programs and legislation regarding indigenous peoples.
- Argentina should enhance its efforts to address intersectional discrimination.
- Government should incentivize healthcare workers and teachers to speak indigenous languages and both hospitals and schools in indigenous communities should be equipped and staffed to serve the needs of the population. This includes providing education and healthcare concerning reproductive and sexual health.
- The state should be transparent in its measures taken to guarantee the effective access to basic services such as housing, drinking water, healthcare, employment opportunities, quality education and reduction of poverty in indigenous communities.
- Prompt and effective action must be taken in response to complaints received concerning police abuse or misconduct, violence, forced eviction, and destruction of resources.
- Indigenous communities must be consulted prior to extraction of natural resources or changes in their land status, and compensation of adequate remedies must be available.
- The Government should redouble efforts to build and maintain safe primary and secondary education opportunities in rural areas where bilingual education is provided in all core

subjects.

- The Government should provide information on the number of persons who have availed themselves of free legal representation, the disaggregated information on how due process was ensured, and any remedial actions taken.
- Indigenous peoples must be involved in the creation, development and implementation of legislation and policies that involve them. The Government should provide annual reports on how indigenous communities have been involved in decision-making processes.
- The State must implement law ensuring prior and informed consent.
- The Government should provide statistical data on instances of reported discrimination, exclusion, ill-treatment and abuse committed against indigenous peoples in accordance with the CERD Committee's 2016 and 2017 recommendations.