

## **Universal Periodic Review 2022 of the Human Rights Council**

We address the Human Rights Council in the context of the Universal Periodic Review to bring to its attention the Ombudsperson's Office of Argentina's situation and request recommendations to the Argentine State in this regard.

### **1. The vacancy situation in the National Ombudsperson's Office and its severe impact on the protection of human rights**

#### **a. Background of the institution in Argentina**

In 1993, the National Ombudsperson's Office (hereinafter, NOO) was created by Law 24.284. Its first article stated that "[t]he Ombudsman's Office is created within the Congress, and exercises the functions established in this law, without receiving instructions from any authority. The fundamental objective of this institution is to protect the rights and interests of individuals and the community against the acts, deeds and omissions of the national public administration...".

The constitutional reform of 1994 included the figure of the NOO in the Constitution (art. 86), establishing that it would be an independent and autonomous entity within the scope of the National Congress. The Constitution provides the NOO with two main functions: 1) defending and protecting the rights of civilians against acts or omissions of Public Administration; and 2) controlling the exercise of public functions. Likewise, the Ombudsperson's Office plays a transcendental role as a key institution in the communication between the State and individuals.

Regarding the election of the person in charge, both the Constitution and the law establish that the Ombudsperson is appointed and removed by Congress with a qualified majority of two-thirds of the votes of the members present in the two chambers.

The first Ombudsman, Jorge Luis Maiorano, was appointed in 1994 and served a single term until 1999. That year Eduardo Mondino was elected and remained as the head of the institution until his resignation in 2009. Since then, the Congress has not performed the procedure for appointing a new Ombudsperson. At that time, it was decided to leave the NOO in the hands of the First Deputy Ombudsman, Anselmo Sella, who was authorized by law to exercise this role temporarily. Once the second mandate formally corresponding to Ombudsman Mondino (12/29/2004 - 12/29/2009) was completed, the Bicameral Commission extended the mandate of the Deputy Ombudsman until December 2013.

Following the end of the Deputy Ombudsman's mandate, the Commission appointed on an interim basis the most senior employee, Secretary Carlos Haquim, who held the position until 2015. In that year, after Haquim's resignation, the Ombudsman's Office was left in charge of Undersecretary Juan José Böckel. However, these lower authorities do not have the power to exercise the main functions of the institution, without which it loses its *raison d'être*.

#### **b. The situation resulting from the vacancy**

The institution has the power to control a broad universe of State agencies and conduct investigations of their activities to identify deficiencies or irregularities. Additionally, the rest of the public offices must collaborate with the Ombudsperson's requests. Thanks to this series of prerogatives, the Ombudsperson can promote horizontal and vertical accountability mechanisms and ensure the proper functioning of the different control institutions. Finally, it can create networks among the Ombudsperson's Offices of the different provinces to extend

its presence throughout the country.

However, the law assigns to the Ombudsperson and Deputy Ombudsperson powers that the lower authorities in charge of the institution since 2013 cannot exercise, such as *locus standi* in human rights cases. This situation has diminished the institution's capacities, which now can only perform activities related to promoting and disseminating good practices related to human rights.

Due to the precarious appointment of these temporary authorities, the NOO lost the power to exercise a series of crucial functions connected to the accountability of government.

In a document published in 2014<sup>1</sup>, a group civil society organizations highlighted the effects of not having authority in charge of the Ombudsperson's Office. In addition to the decrease in its activity (including enactment of resolutions, promotion of legal actions and impact in the public debate), the NOO became an irrelevant institutions when dealing with severe violations of human rights.

In a context where 37.3% of the population is poor<sup>2</sup>, and where the limitations of the State to guarantee equal access to public services, health, housing, and justice, among others, are evident, it is necessary to have an institution with the capacities and powers of the Ombudsperson's Office in full operation. The NOO is an irreplaceable institution in terms of watching over the rights of the most vulnerable groups and promoting effective and efficient public policies.

The problems described in the report deepened during the previous years, particularly during the COVID-19 pandemic. The pre-existing inequalities in our country deepened, primarily affecting the most vulnerable populations -such as women, children and adolescents, people with disabilities, the elderly, the poor, indigenous communities, and the LGBTIQ+ community, among others-.

## **2. Sustained and persistent non-compliance by the Argentine State.**

Since the NOO vacancy in 2009, civil society organizations have requested Congress to appoint the Ombudsperson, as article 86 of the National Constitution rules.

Without responses, a group of civil society organizations filled a class action before the federal courts. They also brought -in different ways- the claim before the Inter-American Commission on Human Rights, the United Nations Human Rights Committee, and the United Nations Committee on Economic, Social and Cultural Rights.

In 2011, the Committee on Economic, Social and Cultural Rights, in its general observations on Argentina, expressed its concern about the delay in the appointment of the NOO and

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<sup>1</sup> ACIJ, ADC, FARN, INECIP, Poder Ciudadano (2014) "*Impacto de la falta de nombramiento del Defensor del Pueblo sobre la vigencia de los derechos humanos en Argentina. Informe presentado en el 153º período de sesiones de la Comisión Interamericana de Derechos Humanos*" (Impact of the lack of appointment of the Ombudsperson on the enforcement of human rights in Argentina. Report submitted to the 53rd session of the Inter-American Commission on Human Rights). Available at: <http://poderciudadano.org/wp-content/uploads/2014/10/Impacto-de-la-falta-de-nombramiento-del-DP.pdf>

<sup>2</sup> INDEC (2022), "*Incidencia de la pobreza y la indigencia en 31 aglomerados urbanos segundo semestre de 2022*", *Condiciones de vida*, Vol. 6 N° 4, p. 5. Available at: [https://www.indec.gob.ar/uploads/informesdeprensa/eph\\_pobreza\\_03\\_22F5E124A94B.pdf](https://www.indec.gob.ar/uploads/informesdeprensa/eph_pobreza_03_22F5E124A94B.pdf)

recommended the State modify the appointment procedure. It said that "[t]he Committee recommends that the State party consider modifying the procedures for appointing the Ombudsman to be able to fill that position now and avoid delays in that process in the future."<sup>3</sup> In 2016, the same Committee again pronounced itself on the vacancy of the NOO. Thus, in its report, it held that "[t]he Committee regrets that the vacancy of the Ombudsperson, who has key responsibilities for economic, social and cultural rights, has not been resolved despite a recommendation of this Committee in 2011 (E/C.12/ARG/CO/3, para. 7) (art. 2, para. 1)." Accordingly, it "recommends that the State party activate the selection mechanism and proceed with the nomination of the Ombudsperson, giving due consideration to the recommendations issued in 2017 by the subsidiary committee of the Global Alliance of National Human Rights Institutions (GANHRI), which includes the implementation of a clear, transparent and participatory selection and nomination process, as well as continuing to interpret its mandate broadly, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles)."<sup>4</sup>

In 2014, a group of civil society organizations submitted a request for a thematic hearing before the Inter-American Commission on Human Rights (IACHR) to report on the irregular situation of the institution and to highlight the impacts of such acephaly in the face of human rights violations that existed in the country. During the hearing held during the 153rd Period of Sessions of the IACHR, the international organization recalled the importance of the institution in the exercise of the role of protecting human rights and in the consolidation of democratic institutions. Subsequently, it urged the Argentine State to "adopt all necessary measures to initiate the process of selection of the Ombudsman"<sup>5</sup>.

In turn, this organizations sent a report to the UN Human Rights Committee, which stated that "[a]lthough it notes with satisfaction the information provided by the State party's delegation expressing its commitment to the promotion and protection of human rights, the Committee notes with concern the lack of appointment of the Ombudsman and the adoption of recent measures to reduce personnel and institutional changes in areas intended for the protection of human rights, particularly concerning institutions intended for the process of memory, truth and justice (art. 2)". Consequently, it recommended that "[t]he State party should ensure the strengthening of institutions for the promotion and protection of human rights, particularly institutions for the process of memory, truth and justice, through the participation of civil society and the allocation of sufficient material and human resources.

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<sup>3</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights, Argentina. Distr. General. 14 December 2011. Forty-seventh session. E/C.12/ARG/CO/3. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=E%2FC.12%2FARG%2FCO%2F3&Language=E&DeviceType=Desktop&LangRequested=False>

<sup>4</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Argentina. Distr. general. 1 November 2018. Adopted by the Committee at its sixty-fourth session. Available at: <https://daccess-ods.un.org/tmp/7196857.33318329.html>

<sup>5</sup> Inter-American Commission on Human Rights, Report on the 153rd Session of the IACHR, December 29, 2014. Available at: [https://www.oas.org/en/iachr/media\\_center/PReleases/2014/131A.asp](https://www.oas.org/en/iachr/media_center/PReleases/2014/131A.asp)

Moreover, the Ombudsman should be appointed as soon as possible"<sup>6</sup>.

Because of the extended vacancy, a class action was filed against the National Congress, which the Federal Contentious Administrative Chamber favorably judged in 2016<sup>7</sup>. The Judiciary urged both Legislative Chambers to initiate the appointment procedure contemplated in the law. Despite repeated complaints of non-compliance and the appeals issued by the Judiciary to the Congress, the NOO remains vacant.

The Supreme Court of Justice urged Congress to comply with its constitutional mandate several times. In the ruling "Centro de Estudios para la Promoción de la Igualdad y la Solidaridad y otros el Ministerio de Energía y Minería s/ amparo colectivo" dated August 18, 2016, it indicated that "[...]it is appropriate to exhort the Congress of the Nation to proceed with its appointment following the provisions of the aforementioned Article 86". Similarly, in the sentence "Mendoza, Beatriz Silvia y otros e/ Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza Riachuelo)", in the judgment issued on November 1, 2016, it decided to "[e]xhort the Congress of the Nation to comply with its constitutional duty and appoint the Ombudsperson of the Nation within a reasonable period of time[...]".

In 2017, the Bicameral Commission of the Ombudsperson proposed a shortlist of candidates that did not meet the requirements of technical and moral suitability, independence and proactivity in the defense of rights. This scenario, coupled with the lack of female candidates and the absence of public participation, raised criticism from civil society, which caused this election process to fail<sup>8</sup>.

After that, there were no further attempts to implement a proper process to appoint the authority of the NOO. Additionally, 2018 was the last time the Bicameral Commission was created. The facts listed above show both Chambers' lack of proactivity in fulfilling their constitutional duty. There continues to be a non-compliance that has far exceeded any reasonable limit.

### **3. Context of vacancies in relevant institutions for the defense of rights and control of Public Administration**

The unconstitutional omission by the Argentine Congress regarding the NOO is part of a larger picture of prolonged vacancies in central institutions for the democratic system. Institutions connected to the defense of rights and control, such as the Attorney General's Office of the Nation, the Supreme Court of Justice, and the National Penitentiary Attorney General's Office, have seats waiting for an appointment.

The Supreme Court of Justice is currently missing one of its five members, due to the resignation of former justice Elena Highton de Nolasco, in October 2021. The Executive

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<sup>6</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Argentina, 10 August 2016. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2FARG%2FCO%2F5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2FARG%2FCO%2F5&Lang=en)

<sup>7</sup> ACIJ, ADC, FARN, Fundación Sur Argentina, INECIP, Poder Ciudadano, "Fallo Judicial: el Congreso de la Nación deberá nombrar al Defensor/a del Pueblo". Available at:

<https://acij.org.ar/fallo-judicial-el-congreso-de-la-nacion-debera-nombrar-al-defensora-del-pueblo/>

<sup>8</sup> "Carta Pública a los candidatos a Defensor del Pueblo de la Nación". Available at:

<https://acij.org.ar/organizaciones-solicitan-a-los-candidatos-a-defensor-del-pueblo-declarar-la-postulacion/>

Branch has not yet submitted to the Senate any nomination for her replacement.

Likewise, the Attorney General's Office has been vacant since 2018. This authority is the head of the Public Prosecutor's Office of the Nation, the institution in charge of promoting the protection of the legality of the general interests of society. Since the resignation of former Attorney General Alejandra Gils Carbó in December 2017, prosecutor Eduardo Casal has occupied the role temporarily. By the beginning of 2020, the Executive Branch submitted to the Senate a new candidate. However, the latter never discussed this candidacy.

Finally, the National Penitentiary Prosecutor's Office, the body in charge of protecting the human rights of imprisoned people by the federal jurisdiction, has been led by an authority whose mandate expired almost 20 years ago. This person was appointed in 2000 by the president before a new law determined that this is the Congress' duty -by 2/3 of its votes-. As Congress never appointed a new head of the National Penitentiary Prosecutor's Office, it never replaced the person designated 20 years ago.

#### **4. Recommendations to the State**

The Ombudsperson's lack of appointment seriously impacts the promotion and protection of human rights and Argentina's public control system. Therefore, we request the Human Rights Council to recommend to the Argentine State:

- Urgently establish the creation of the Congress Bicameral Commission of the National Ombudsperson's Office;
- Specify objective selection criteria to evaluate the technical and moral suitability, the trajectory in the defense of rights, and the independence of criteria of the candidates. To this end, the Commission must define objective selection criteria subjected to the review of society.
- Provide an open mechanism that allows citizens to propose candidates for the selection process.
- To regulate an appointment procedure that ensures the effective and informed participation of citizens, through the prior publication of the candidates' backgrounds within a reasonable time and the possibility for organizations and citizens to submit objections and endorsements.
- Establish public hearings with broad participation of citizens, government institutions and civil society organizations, ensuring federal participation and the obligation that the final selection is grounded.
- Ensure that the shortlist of candidates includes the participation of women.
- Finish the current vacancy and appoint, as soon as possible, a person who meets the requirements of technical and moral suitability, experience in the defense of rights and independence of criteria.
- Report periodically on the progress made in the regulation of the procedure and the stages of the selection process.
- To urge the Argentine State to fill the various vacancies in all bodies responsible for protecting human rights and controlling the administration in the country.

#### **Subscribing organizations**

Amnistía Internacional

Asociación Civil por la Igualdad y la Justicia (ACIJ)

Asociación por los Derechos Civiles (ADC)

Fundación Ambiente y Recursos Naturales (FARN)  
Fundación Sur Argentina  
Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP)  
Fundación Poder Ciudadano