



University of Oklahoma College of Law
International Human Rights Clinic

Report on the Republic of Argentina at the 14th Session of the Universal Periodic
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Executive Summary

The International Human Rights Clinic of the University of Oklahoma College of Law, U.S.A. (IHRC-OU) submits the following report to the 14th Session of the Universal Periodic Review Human Rights Council. This report pertains to indigenous people in Argentina and surveys compliance with Argentina's domestic and international human rights obligations. Argentina has demonstrated its commitment to protecting human rights by assuming international obligations under human rights treaties. The State has made significant progress in passing domestic laws pertaining to their international treaty obligations and has begun initial implementation. This report and attached annex focuses on four selected areas: (1) Land Rights, (2) Environmental Issues, (3) Education, and (4) Hate Crimes and Discrimination. While Argentina has made some progress, the IHRC-OU observes that significant work remains to achieve implementation of these obligations. This report provides Argentina with recommendations for continuing its domestic accomplishments and maintaining fidelity to its international obligations.

LAND RIGHTS

Normative Institutional Framework

International Provisions: Article 2 of the International Covenant on Economic Social and Cultural Rights (ICESCR) provides that people cannot be deprived of means of subsistence. Article 18(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that no one shall be subjected to coercion that would impair their religious freedom. The International Labor Organization (ILO) Convention No. 169 states that indigenous peoples shall have enjoyment of fundamental human rights without discrimination and that the government shall consult the indigenous peoples with respect to land exploration and exploitation. The United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) protects the right of indigenous peoples to use and control their lands. These provisions will be binding on Argentina if any or all are recognized as evidence of customary international law.

Domestic Undertaking: Chapter 4, Section 75, Point 17 of the Argentine Constitution recognizes indigenous nations in Argentina. Additionally, it imposes a duty on the State to recognize the indigenous peoples' legal capacity for communal possession and ownership of their traditional lands. Chapter 1, Section 17 provides that expropriation for reasons of public interest must be authorized by law and compensated.

Human Rights on the Ground

The Argentine Constitution acknowledges the indigenous peoples' ownership of their traditional lands. The No.16 Report of the Working Group on the Universal Periodic Review in 2008 recommended that indigenous peoples' land rights be further protected and respected. Many government obligations to indigenous communities continue to be unmet. Government policies and practices are inconsistent. Mechanisms have not been fully put into place to give communal title of the traditional lands to the indigenous communities. Indigenous peoples' land rights are violated by government sanctioned exploitation and exploration of traditional lands without consent or compensation. Business enterprises, operating under government sanction, have exploited surface and subsurface resources; contaminated waterways and land; and barred right of access to indigenous lands. This barred access also interferes with the indigenous peoples'

ability to practice their religion and visit their holy sites. Civil demonstrations protesting interferences with land rights have been met with violence.

Recommendations:

- Finalize the process of demarcation in all provinces.
- Assure mechanisms for the issuance of communal title for traditional lands.
- Strengthen the role of the Institution for Indigenous Issues (INAI) to promote an indigenous agenda at the provincial and national levels.
- Consult with communities affected by development and natural resource exploitation for the purpose of securing their free, prior and informed consent prior to any exploitation or expropriation.
- Incorporate indigenous peoples in decision making activities involving their traditional lands, utilizing a mechanism that allows them to participate in a manner consistent with their political processes.
- Take appropriate measures to fully implement ILO Convention No. 169.
- Institute necessary measures to ensure that indigenous peoples are not subjected to forced evictions from their traditional lands.

ENVIRONMENT

Normative Institutional Framework

International Provisions: Articles 4 and 7 of the ILO Convention 169 outline that measures shall be taken to protect the environment of indigenous peoples. Article 13 defines the environment as part of land. Article 12 of the ICESCR considers environmental and industrial hygiene in high standards of health. Articles 8 and 10 of the Convention on Biological Diversity CBD provide that signatories will promote the protection of native ecosystems and, that traditional lifestyles relevant to the conservation and sustainability of biological diversity will be respected, preserved, and maintained, subject to domestic legislation. Article 24 of the Convention on the Rights of the Child (CRC) provides the dangers and risks of environmental pollution will be considered in the obtaining the highest attainable health of the child. Articles 29 and 32 of UNDRIP provide that states shall protect indigenous peoples' environment and provide mechanisms for redress of adverse effects upon the environment if recognized as evidence of customary international law.

Domestic Undertaking: The Constitution of Argentina, specifically Chapter II section 41 and Chapter IV section 75 paragraph 17, ensures indigenous participation in the management of their natural resources and other interests affecting them. Argentina has passed environmental regulations and has an established body of environmental law, including remedies for redress. In 1985, Argentina created INAI, which is responsible for encouraging and subsidizing indigenous access to domestic courts. The Secretariat of Environment and Sustainable Development in the Ministry of Health and Environment has the authority over the environment. The Secretariat has the power to penalize violators of Argentine environmental law.

Human Rights on the Ground

Argentina has not fully enforced the right of the indigenous peoples to a healthy environment and to participate in decisions affecting their lands, natural resources, and environment.

Government sanctioned exploitation activities occurring on the lands of indigenous peoples create unaddressed environmental concerns. Drilling activities in Neuquén have adversely affected the lives of Neuquén's indigenous population because of the harmful environmental impact. Oil exploration and exploitation in Neuquén are claimed to have negative environmental impacts on the water and soil, which in turn affects indigenous health.

Environmental degradation adversely impacts traditional indigenous culture, which simultaneously threatens food security and increases the possibility of malnutrition. The Pewen tree is of great cultural significance to the Mapuche people. Activities by non-indigenous people have caused the Pewen tree population to decline. These activities include the introduction of non-native plant species, drilling activities, and barring indigenous peoples from their traditional lands.

Recommendations

- Take measures to fully implement the environmental provisions of international agreements.
- Create mechanisms to give the indigenous communities a voice in the determination of the use of land resources.
- Ensure the elimination of soil and water contamination from drilling activities.
- Implement efforts to revitalize the Pewen tree.
- Empower indigenous people with means to protect the Pewen.

EDUCATION

Normative Institutional Framework

International Provisions: Articles 27-28 of Covenant 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO) guarantee the right to bilingual and culturally relevant education. Article 29 of the Convention on the Rights of the Child (CRC) requires member States to provide indigenous children with an education that teaches respect for their cultural identity and language. Article 14 of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) declares that member states should attempt to provide indigenous peoples the right to a culturally relevant education, to participate in developing and controlling educational systems, and, where possible, to have materials in their native language.

Domestic Undertaking: Article 75 Section 1 Paragraph 17 of the Argentine Constitution guarantees the right to bilingual and intercultural education. Law 26.206 establishing the procurement of bilingual and intercultural education as a State objective.

Human Rights on the Ground

Argentina has succeeded in providing access to primary education of indigenous children. The government of Argentina has also taken positive steps to promote bilingual education of indigenous children. It has provided translators on a limited basis in indigenous classrooms. It has instituted mentoring and scholarship programs in some indigenous schools. Argentina does not provide indigenous populations with the guaranteed bilingual and intercultural education. It does not provide books and teaching resources in indigenous languages. There is a lack of qualified indigenous instructors. The indigenous pedagogical model and relevant cultural knowledge are not incorporated into classroom instruction. It is difficult for certain indigenous groups to fully implement a bilingual and intercultural education without access to their ancestral lands because important linguistic concepts and cultural knowledge are closely tied to their

interaction with ancestral land. Instruction and education relating to that cultural knowledge requires access to their lands.

Recommendations

- Train and hire indigenous persons with the appropriate language and cultural background for teaching positions.
- Consult and include indigenous communities to develop an appropriate curriculum that incorporates indigenous culture, knowledge, and pedagogical techniques.
- Ensure that indigenous peoples have access to their ancestral lands to promote the preservation and instruction of language and culture.
- Take steps to provide indigenous communities with educational materials in their native languages.

HATE CRIME AND DISCRIMINATION

Normative Institutional Framework

International Provisions: Argentina has accepted the American Convention on Human Rights (ACHR), the American Declaration of the Rights and Duties of Man (ADRDM), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR) , and ILO Convention No. 169 concerning Indigenous and Tribal People. These instruments provide that all people are equal before the law, have the right to be secure in their persons, and have the right to enjoy those liberties endowed to the citizenry of that State.

Domestic Undertaking: Section 16 of the Constitution of Argentina provides that: “...the Argentine Nation admits neither blood nor birth prerogatives: there are neither personal privileges nor titles of nobility. All its inhabitants are equal before the law, and admissible to employment without any other requirement than their ability. Equality is the basis of taxation and public burdens.” Argentina has two governmental entities to combat racial discrimination: the Institution for Indigenous Issues (INAI) and The National Institute against Discrimination, Xenophobia and Racism (INADI). Argentina has created a National Plan Against Discrimination.

Human Rights on the Ground

The No. 2 Report of the Working Group on the Universal Periodic Review in 2008 recommended that Argentina take further action to combat racial discrimination. Argentina accepted the recommendation. Prior to the 2008 report, it created a National Plan Against Discrimination and established of the INAI and INADI. Since the 2008 report, Argentina has allocated more funding for the INAI.

Racial violence against indigenous communities continues to be prevalent. There have continued to be reports of acts of violence. These acts include physical violence. Indigenous representatives claim that acts of violence against indigenous communities are not investigated. The violent activity escalates when there is territorial dispute.

Argentina has not provided indigenous criminal defendants with full legal protections reflective of their cultural norms and values. The indigenous defendant often lacks defense counsel.

Forced removal from land impedes the free practice of religion due to the importance placed on holy sites.

Recommendations

- Actively investigate acts of racial violence and pursue lawful remedies for wrongdoing.
- Provide adequate police protection to prevent acts of racial violence toward the indigenous communities.
- Develop policies and guidelines about the use of force by provincial police in crowd management and civil demonstrations to minimize the use of force by police officers.
- Delineate and demarcate indigenous lands clearly in order to minimize conflict over disputed territories.
- Disseminate information concerning the investigations and cases heard and on the penalties imposed for crimes of racial violence.
- Expand cultural education to facilitate a national understanding of indigenous cultures.
- Incorporate instruction of indigenous cultural norms regarding the family unit, religion and land ownership in judicial training programs.