

**Convention on the Elimination  
of Racial Discrimination**  
**Shadow Report Submission**  
*Indigenous Rights Violations in  
Argentina*

**Submitted for 91st Session  
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Submitted by:  
Cultural Survival  
2067 Massachusetts Avenue  
Cambridge, MA 02140  
Tel: 1 (617) 441 5400  
agnes@culturalsurvival.org  
[www.culturalsurvival.org](http://www.culturalsurvival.org)

**CERD Shadow Report Submission: Argentina**

**I. Reporting Organization**

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: [www.cs.org](http://www.cs.org). Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civil participation.

## **II. Background Information**

The total population of Argentina is calculated to be around 43,886,748. Out of these forty three million, about 955,032 persons, 2.4% of the total population, have been reported to self-identify as descending from, or belonging to, an Indigenous Peoples.

There is a long history of Indigenous Peoples' struggle against Argentina's state oppression, exclusion, and discrimination; and these violations have a direct effect on the communities as a whole. A comprehensive report on the status of Indigenous people in Argentina has yet to be published by the state. Reporting on Indigenous Peoples in Argentina often fails to disaggregate data to cast light on the particular challenges faced by Indigenous Peoples. The 2015 State report to CERD by Argentina fails to adequately cast a voice for, or working solutions to Indigenous Peoples' issues.

A major difficulty in assessing and addressing persistent forms of discrimination in Argentina is the lack of adequate and accurate information gathered about the population, particularly the Indigenous community. Argentina is reported to be home to at least 35 different Indigenous groups, the largest of these groups being the Mapuche with a population of 205,009, (21.5% of the total), the Qom with 126,967, and the Guaraní with 105,907. These three peoples jointly account for 45.9% of the entire Indigenous population of Argentina. In addition, 62,642 households reported having one of their members who self-identified as Afro-descendent: 92% of this population was born in Argentina, and 8% abroad.<sup>1</sup>

## **III. Situation analysis- Continuing Rights Violations of Indigenous Peoples**

### ***A. Violations of Indigenous People's Constitutional Rights (CERD Articles 1, 2, 3, 5, 6 ).***

Argentina has recognized multi-ethnicity since 1994 and acknowledged the presence of Indigenous customary law. However, customary Indigenous law differs considerably from Argentine civil law. It offers tradition, as well as a combination of values, concepts and rationality, but lacks the specific organizations for the production of norms that are found in formal legal systems. In practice, there is very little incorporation of and respect for Indigenous customary law within the Argentine system.<sup>2</sup>

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<sup>1</sup> "2016 yearbook article (pdf 98 KB) - iwgia." 2016. 16 Sep. 2016  
<[http://www.iwgia.org/images/stories/sections/regions/latin-america/documents/IW2016/Argentina\\_IW2016\\_web\\_redu.pdf](http://www.iwgia.org/images/stories/sections/regions/latin-america/documents/IW2016/Argentina_IW2016_web_redu.pdf)>

<sup>2</sup> "Indigenous rights in Argentina - FOCAL." 2011. 17 Oct. 2016  
<<http://www.focal.ca/publications/focalpoint/413-march-2011-maria-delia-bueno-en>>

The rights of Indigenous Peoples were incorporated into Argentina's National Constitution in 1994, following the 1985 law on Indigenous Policy and Aboriginal Community Support.<sup>3</sup> But even with the existing comprehensive legal and institutional framework, effective implementation and dissemination of data is lacking. Many of the Indigenous Peoples in Argentina live in extreme poverty, in socio-cultural isolation and without access to basic services such as adequate health, decent housing or even drinkable water. The current modes of state participation have largely failed to provide Indigenous Peoples with the voice or the education necessary to remedy their long history of exclusion and marginalization which only perpetuated the strained relationship with the government.<sup>4</sup> Poverty rates are reported to be higher than average in areas with large Indigenous populations, and Indigenous people statistically have greater than average rates of illiteracy, chronic disease, and unemployment.<sup>5</sup>

Indigenous Peoples have been denied access to basic services such as quality health care, employment opportunities, appropriate and quality education, lack titles to their lands, and are mostly excluded from mainstream social and political life. Indigenous Peoples are generally kept from politics in Argentina leaving them absent in key decision making positions, even in bodies which are specifically dedicated to their issues. The methods of consultation are not sensitive to their cultures and understanding of life, and access to land titles remains a challenge through 2016.<sup>6</sup>

***B. Land Rights (CERD Articles 2.2, 5i, 5v, 5vi, Gen. Rec. #23):***

The Convention of the Elimination of Racial Discrimination does not include language on land disputed through a racial context,<sup>7</sup> however, article 5 guarantees against discrimination in the right to own property, the right to inherit, and the right to residence within the border of the State. Article 2 states that parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them. Taken together, the historical displacement of Indigenous Peoples in Argentina and the ongoing failure of the Argentine state to implement its constitutional recognition of Indigenous Peoples to their ancestral lands and to the participation in the management of natural resources amounts to racially-based discrimination under CERD.

General Recommendation 23 on Indigenous People specifically addresses the issue of land. It calls upon states parties to recognize and protect the rights of Indigenous People to own, control, and develop their land and resources, as well as to take steps to return land to Indigenous People when it has been used or inhabited without their free and informed consent. General Recommendation 23 also includes a demand for States to include Indigenous People into their periodic reports with full information on the situation of Indigenous People in the

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<sup>3</sup> "Indigenous rights in Argentina - Canadian Foundation for the Americas." 2011. 21 Sep. 2016  
<<http://www.focal.ca/publications/focalpoint/413-march-2011-maria-delia-bueno-en>>

<sup>4</sup> "United Nations News Centre - Argentina: UN rights expert urges ..." 25 Oct. 2016  
<<http://www.un.org/apps/news/story.asp?NewsID=54031>>

<sup>5</sup> "argentina 2013 human rights report - US Department of State." 23 Sep. 2016  
<[http://www.iri.edu.ar/publicaciones\\_iri/anuario/cd\\_anuario\\_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf](http://www.iri.edu.ar/publicaciones_iri/anuario/cd_anuario_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf)>

<sup>6</sup> "Full text of the press statement delivered by the United Nations ... - ohchr." 2016. 25 Oct. 2016  
<<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20005&LangID=E>>

<sup>7</sup> "Ley 26.160 - Infoleg." 2016. 20 Sep. 2016  
<<http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/122499/norma.htm>>

reporting country. Argentina is lacking this data in their periodic report, putting them in violation of this convention.

Argentina is also party to other bodies of law which recognize Indigenous Peoples rights to their ancestral lands, specifically for their right to Free, Prior and Informed Consent (FPIC) on issues that may affect them particularly regarding extractive industries and agribusiness on Indigenous People's land, however, these too are often lacking in implementation.<sup>8</sup>

The land ownership system that was established by the state after the Spanish conquest did not account for Indigenous systems. Without legal titles to their lands, Indigenous communities are at a dramatic disadvantage. The unjust treatment and destruction of their territory leaves Indigenous Peoples to be pushed out to remote and isolated areas or into cities, with poor living conditions. The constitution recognizes the ethnic and cultural identities of Indigenous Peoples, and states that congress shall recognize their communities, respect the ownership of their ancestral lands, and allow for their participation in the management of their natural resources. But Indigenous people are not allowed to fully participate in the management of their lands or natural resources partially because out of the 23 provinces responsible for the implementation of the rights of Indigenous Peoples in regards to their land, only 11 have constitutions have recognized Indigenous rights. As a result, provinces fail to achieve the Free, Prior and Informed Consent of Indigenous Peoples on issues that may affect them, which also directly violates ILO Convention No 169.<sup>9</sup>

Today, lands that are used for cultural practices, hunting, fishing, fruit gathering, agriculture and raising small animals, or areas destined for cemeteries and sacred places, are sought after for major development and extraction projects. These include, but are not limited to, the logging and extractive industries; the exploitation of mineral, hydrocarbon and natural resources; the construction of pipelines, roads and dams; large-scale agricultural expansion; and tourism. Damage to lands and water causes environmental imbalance and destruction. The result leads to evictions, displacements, expropriations, harassment, health and environmental destruction, and permanent discontent.<sup>10</sup>

Law was enacted in 2006 in order to halt evictions related to territorial rights in regard to property and the possession of lands traditionally occupied by Indigenous communities. It was influenced by Convention No. 169 of the International Labour Organization regarding Indigenous and Tribal Peoples in Independent Countries, which was ratified by Argentina and recognized in the National Constitution. But instead of providing solutions, the process has prolonged existing conflicts.<sup>11</sup>

In 2016, over 30 Indigenous communities from the northern Argentine provinces of Jujuy and Salta went to the Inter-American Commission of Human Rights after having exhausted all national legal resources accusing local authorities of failing to respect their right to prior

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<sup>8</sup><https://www.culturalsurvival.org/publications/cultural-survival-quarterly/rural-womens-right-free-prior-and-informed-consent>

<sup>9</sup> "argentina 2013 human rights report - US Department of State." 23 Sep. 2016  
<[http://www.iri.edu.ar/publicaciones\\_iri/anuario/cd\\_anuario\\_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf](http://www.iri.edu.ar/publicaciones_iri/anuario/cd_anuario_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf)>

<sup>10</sup> "Indigenous rights in Argentina - FOCAL." 2011. 17 Oct. 2016  
<<http://www.focal.ca/publications/focalpoint/413-march-2011-maria-delia-bueno-en>>

<sup>11</sup> "Indigenous rights in Argentina - Canadian Foundation for the Americas." 2011. 23 Sep. 2016  
<<http://www.focal.ca/publications/focalpoint/413-march-2011-maria-delia-bueno-en>>

consultation regarding the exploitation of salt mines which potentially cause water scarcity and contamination on their land. The Indigenous groups took their complaint to the country's Supreme Court in 2010, but the court denied their request two years later.<sup>12</sup>

Campo Maripe, in the Argentine province of Neuquen has been subjected to a similar negligence. The community is located on top of the largest unconventional hydrocarbon 'play' outside North America, known as Vaca Muerta (Dead Cow). This area is most affected by fracking. It is home to many Mapuche communities that have been suffering from the pollution of the conventional oil industry for decades. There is large protest by the Indigenous women of these areas, fighting for the rights of their sacred land. In one incident, there were three Mapuche women who chained themselves to a U.S.-owned machine on Indigenous territory that was seized by the Argentine state despite signed treaties such as the ILO 169, and a national law for the survey of aboriginal lands which governments past and present insist on ignoring the results of, and finally, a significant achievement in 2014 □the government of the province legally recognizing Campo Maripe as a Mapuche community. Yet the extraction activity on their land is still taking place. Mapuche woman have the role of the bearers of Mapuche knowledge; specifically, the role of teaching. After the invasion and imposition of another culture, they fear they are losing their roots. Being expelled from fertile lands throughout decades of dispossession, the communities cannot carry out their life as usual; they cannot exist if they are not on their territory, and if they don't have the autonomy needed to exercise their rights they will be forced out. In this regard, respect for the rights of Indigenous women is not possible either if their collective rights as a community are not respected. Rural Indigenous women face multi-faceted discrimination; being not only women, but also Indigenous and dependant on their land. The pollution, destruction and loss of their land, leaves them with even less ties to their roots, less opportunity for jobs, and less space to call home.<sup>13</sup>

In 2015 the Canadian Barrick Mining Company was responsible for 224,000 liters of cyanide being leaked into a local river from its Veladero gold mine located in the western province of San Juan on Indigenous territory. Only one year later, now in 2016, the company has continued operations without pause and has allowed yet another cyanide spill in almost the same exact region. Cyanide is used in the processing of gold which they mined in massive quantities, despite opposition from the Indigenous groups who reside there such as the Indigenous Diaguita community on the Argentine/Chilean border. Cyanide has leached into the water supplies of these Indigenous communities and could have potentially lethal consequences for the people that reside there. The open-pit cyanide leaching mine, one of the largest gold mines in the world, is the target of a petition urging President Mauricio Macri to clamp down on Barrick

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<sup>12</sup> "Argentine Indigenous Accuse Gov't of Violating Their Rights | News ..." 2016. 21 Sep. 2016 <<http://www.telesurtv.net/english/news/Argentine-Indigenous-Accuse-Govt-of-Violating-Their-Rights-20160223-0034.html>>

<sup>13</sup> "Argentina: 6 Indigenous women at Heart of Fracking Resistance ..." 2016. 21 Sep. 2016 <<http://www.telesurtv.net/english/opinion/Argentina-6-Indigenous-Women-at-Heart-of-Fracking-Resistance-20160318-0015.html>>

and close Veladero once and for all, but action has been halted. <sup>14</sup>

There are reported accounts of land grabbing as recently as September 2016. Two elderly villagers of San Martín were arrested after a police operation conducted on the 24th of September. Eladio Antonio Domínguez, 63, and his wife María Gertrudis Encina, 53, were arrested after resisting corporate occupation of their ancestral territory. Since being arrested, they have received improper treatment due to discrimination as Indigenous Guaraní. There is a call to free them and grant the Indigenous groups who live here their lawful rights to the lands. Mirian Sotelo, of the Guaraní Community Jhaveri and representative of the Indigenous communities of the Province, requested the urgent intervention of the National Institute of Indigenous Affairs. The national Government declared emergency in the territory of the Indigenous communities through law number 26160, this emergency suspends evictions of local communities.<sup>15</sup>

The Guaraní, who live in the Iberá wetlands of Northern Argentina, have been struggling to thrive due to the buildup of plantations on their ancestral homeland. The owner of these invasive plantations is an investment management company owned by Harvard University of Cambridge, MA, USA. The plantations greatly harm the surrounding environment, reducing the availability of water for farming or fishing, worsening summer droughts, and creating water shortages in local communities. In a report by Cultural Survival in 2016, it was reported that Harvard has been investing millions into the projects here, causing damage to spiritual land, as well as taking crucial resources for survival from these people. There is a call to stop Harvard from investing into these invasive plantations, but Harvard falsely insists that the program that seeks to ensure that certified timber companies is "environmentally appropriate, socially beneficial and economically viable." Harvard is in direct violation of the Guaraní's traditional rights to their lands and waters. The institution has not achieved the Free, Prior and Informed Consent of the Guaraní and Article 26 of the UN Declaration on the Rights of Indigenous Peoples declares that the Guaraní, as Indigenous Peoples, have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, and waters. As one of the leading US educational institutions, it is important that Harvard sets an example in following international law and recognizes Indigenous people and their rights. <sup>16</sup>

In 2011, Indigenous Peoples in the provinces of Neuquén and Formosa were refused adequate participation in decisions affecting their ancestral lands. In many of the cases these decisions endangered the health and welfare of their homes and communities. In April the IACHR ordered the national government to guarantee life and personal integrity to both the Paichil Antrio people of Neuquén and the Toba people of Formosa, who had denounced being harassed and dispossessed from their lands by their provincial governments for several years. By June, there were multiple reports on the Indigenous Rights situation in Formosa, stating that the Indigenous communities there lacked basic rights such as access to clean water and health services. In July the NGO, Observatory of the Human Rights of Indigenous Peoples, reported that at least

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<sup>14</sup> "Canadian Gold Mining Giant Spews Cyanide in Argentina — Again ..." 2016. 22 Sep. 2016  
<<http://www.telesur.tv/english/news/Canadian-Gold-Mining-Giant-Spews-Cyanide-in-Arentina--Again-20160915-0027.html>>

<sup>15</sup> "Exigen la liberación de un matrimonio de ancianos ... - Corrientes Hoy." 2016. 3 Oct. 2016  
<<http://www.corrienteshoy.com/noticias/view/158234>>

<sup>16</sup> "Argentina: Urge Harvard to Be a Responsible Investor | Cultural Survival." 2014. 30 Sep. 2016  
<<https://www.culturalsurvival.org/advocacy/argentina>>



250 Indigenous people from Neuquen were being prosecuted by the courts for defending their ancestral lands.

Following a violent conflict in Formosa, the Indigenous Toba group called on the national government to calm disputes between the group and provincial authorities. In December, national authorities signed an agreement with the Toba in which they pledged to oversee the return of ancestral land, provide official identification documents to the members of the community, and ensure minimum sanitary and security conditions. In the months following the agreement, the Toba group alleged that the provincial government failed to comply with the terms set forth. Community members, meanwhile, carried out a hunger strike in downtown Buenos Aires as a form of peaceful protest. In May, the Minister of Interior met with the group's leaders and promised to carry out land surveys, ending the hunger strike and reportedly quelling some of the concerns of human rights groups and community leaders. Although discussions continued, there was no known progress on the land surveys.<sup>17</sup>

Over the years, the projects carried out by the agricultural and extractive industries in Argentina have undermined a whole series of Indigenous Peoples' rights, including their rights to their lands and natural resources, as well as their rights to, inter alia, food, health and development. Similarly, the lack of Indigenous weight in the Argentine government, and a steady history of discrimination against Indigenous People within the private sector has kept the Indigenous people unable to protect their lands.

### ***C. Economic Equality (CERD Articles: 5e)***

There are few facts on the economic and social reality experienced by the Indigenous Peoples in Argentina. In many of the reports on the Economic State of Argentina, there is either no mention of Indigenous Peoples at all, or there is given space for data on Indigenous Peoples which has been marked as unknown or left completely blank altogether. Given that until 2001 the national census made no mention of Indigenous issues, disaggregated data on the economic and social situation of the Indigenous Peoples of the country are lacking. It is therefore difficult to assess changes in the situation of Indigenous Peoples over the years or to examine the condition of Indigenous Peoples as compared with other sectors of the population. This has also slowed the development of public policies to meet the basic needs of Indigenous Peoples.<sup>18</sup>

In Northern Argentina in the Chaco Province, poverty is an undisputedly major issue. Guaraní women, although valued at home, have trouble finding work, and their labor is often not appropriately valued. There is a daily struggle to get food on the tables, so Indigenous women often make traditional baskets and jewelry to sell as a means to provide for their families, but are often not paid fair wages for their time and labor, leaving them at an overwhelming disadvantage when it comes to their economic security. Lack of economic security often leaves Indigenous people in poverty and dependent upon an economic system based on inequality.<sup>19</sup>

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<sup>17</sup> "ARGENTINA EXECUTIVE SUMMARY - US Department of State." 2012. 26 Oct. 2016  
<<http://www.state.gov/documents/organization/186697.pdf>>

<sup>18</sup> "General Assembly - ohchr." 2012. 25 Oct. 2016  
<[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47-Add2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47-Add2_en.pdf)>

<sup>19</sup> "Fighting for the Chaco - United Methodist Women." 2015. 3 Oct. 2016  
<<http://www.unitedmethodistwomen.org/news/fighting-for-the-chaco>>

Some Mapuche communities, after forced eviction of their ancestral lands, have been reported to be left vulnerable in harsh and intolerable lands that they are placed in by the Argentine state. Without their homeland, there is often no new way for them to create a profit. For the Mapuche communities who are facing economic challenges in addition to the recent Puyehue-Cordón Caulle volcanic eruption, this is especially prevalent. Due to the strong winds characteristic of the southern regions that limit visibility and inhibit breathing, working in their fields has become a difficult and dangerous endeavor. There are records of at least 15 Mapuche communities in the affected areas that have been requesting economic assistance. One form of help they are asking for has been food for their livestock, but the communities have received little to no aid. The Government-supplied animal feed that they *have* received in these communities was considered inedible and included trash and waste products. On top of the economic issues, these communities have additionally been facing environmental issues in the form of an extensive drought that has been ongoing for five years. As 80% of the affected population are Mapuche small business owners, the communities consistently feel that their voices are not heard. Extreme weather conditions, challenges of volcanic ash, lack of food and water sources, contamination from resource extraction, and other land disputes have resulted in more than 250 claims for restitution according to the Observatorio Derechos Humanos de los Pueblos Indígenas (ODHPI). Because of the loss of ancestral lands and their resources continue, the Mapuche are left in situations where their traditional means of coping with challenges are removed, leaving them reliant on outside economic aid. Another challenge faced by Mapuche communities is lack of access to infrastructure. Roads in regions populated by the Mapuche are often in poor condition, or do not extend beyond main trunk routes and are not serviced by sufficient fueling stations. These circumstances highlight the active impoverishment and discrimination of the Mapuche people.<sup>20</sup>

The lack of reliable data and statistics remains problematic, and it is necessary that protocols for the systematic collection of reliable, comprehensive disaggregated data on a wide range of indicators be put in place. Data is key in measuring levels of discrimination. However, the reports that *are* available, found that, on the economic status of Indigenous Peoples in Argentina, the situation of Indigenous Peoples is one of serious marginalization. Their situation contrasts with that of the Argentine population as a whole, given that Argentina is considered one of the most developed countries in Latin America.

#### ***D. Health (CERD Articles: 5iv)***

Indigenous families are often in poor health because of inadequate living conditions, lack of access to vaccinations, and poor diets that are consequences of economic marginalization, loss of resources, unemployment, lack of access to information. Infant mortality in regions populated by some Mapuche is also known to be easily preventable, yet unexplainably high. Lack of access to adequate healthcare services and facilities and the generally limited number of trained doctors that understand Indigenous culture has been mentioned as a contributing factor to the acute condition of maternal and infant health in rural areas.<sup>21</sup>

Some of the most simple obstacles in health care for Argentinian Indigenous people include long delays in providing services, unwanted referrals to wrong clinics, demands for permission from the spouse which is contrary to law, financial barriers, and in the case of some, outright

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<sup>20</sup> "CESCR Alt Report ARG - UNPO." 2016. 26 Oct. 2016 <<http://unpo.org/downloads/1739.pdf>>

<sup>21</sup> "Official PDF , 137 pages - Documents & Reports - World Bank." 3 Oct. 2016 <<http://documentos.bancomundial.org/curated/es/846861468210572315/pdf/813610CPS0REVI0C0disclod090100140.pdf>>



denial of care. As a direct result of these barriers, Indigenous people often cannot make informed, independent decisions about their own health, or the health of their families.<sup>22</sup> A lack of access to information about these matters as well as a lack of oversight and accountability for implementing existing laws and policies by government officials has been identified as one of the main problems in the persistent denial of proper care. In other places, some health care and service providers have failed to extend services to areas largely populated by Indigenous communities. There are reports of ambulances or private service providers refusing to operate in certain communities contributing to the segregation of certain population groups.<sup>23</sup> Reports have been made by Qom women that going to the doctors is not always recommended because doctors do not treat them well and they do not even always receive them as patients.<sup>24</sup> Indigenous communities have limited access to health services and studies show that 47.4% of Indigenous people in the country have no access to health insurance because of discrimination or poverty.<sup>25</sup>

In September of 2015 there was a news report with horrid images of Oscar Sanchez, a 14 year old Qom boy who died in El Hospital Güemes. When Oscar died, he weighed only 11 kilos and was reported to have received little to no professional care while in the hospital's care.<sup>26</sup> A similar report on the death of a seven year old Qom boy, Femenía Nestor's, brought on the debate about the persistence of extreme poverty, malnutrition and improper health care in the Indigenous communities of Argentina. Both of these cases are considered to be severe but not isolated incidents, and both of the cases held the Hospital at fault for a lack of care on the basis of racial discrimination.<sup>27</sup>

Indigenous communities also experience major health issues as a direct result of pollution from resource extraction projects on or near their lands. The Mapuche community in the Loma de la Lata region is settled over high quality gas and mineral deposits that were sought by the Spanish corporation Repsol-YPF. Despite a rare lawsuit in favor of the Mapuche communities, they continue to lack access to clean drinking water. They also continue to be subjected to health risks that have created a development of learning disabilities in children, progressive eyesight loss, painful joints and kidney complaints. The Neuquén provincial government's discovered that the Mapuche who live there, and especially young children and the elderly have dangerously high levels of heavy metals in their blood and urine. The Repsol extraction plants have contaminated the drinking water and damaged the surrounding ecosystem which help the Mapuche to survive. The Argentine government had ordered the Neuquén government to

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<sup>22</sup> "Argentina: Guarantee Women's Access to Health Care | Human Rights ..." 2015. 21 Sep. 2016  
<<https://www.hrw.org/news/2010/08/10/argentina-guarantee-womens-access-health-care>>

<sup>23</sup> "Argentina: "Immediate action must be taken to address the ... - ohchr." 2016. 25 Oct. 2016  
<<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20008&LangID=E>>

<sup>24</sup> "Argentina: Mujer Originaria. Amanda Asijak relata cómo es resistir y ..." 2015. 3 Oct. 2016  
<<http://kaosenlared.net/argentina-mujer-originaria-amanda-asijak-relata-como-es-resistir-y-luchar-por-su-tierra-tan-lejos-de-ella/>>

<sup>25</sup> "Official PDF , 137 pages - Documents & Reports - World Bank." 3 Oct. 2016  
<<http://documentos.bancomundial.org/curated/es/846861468210572315/pdf/813610CPS0REVI0C0disclosed090100140.pdf>>

<sup>26</sup> "Otro chico qom murió en el Chaco por desnutrición y ... - Clarín." 2015. 25 Oct. 2016  
<[http://www.clarin.com/sociedad/chico-qom-murio-chaco-desnutricion-tuberculosis\\_0\\_1427857397.html](http://www.clarin.com/sociedad/chico-qom-murio-chaco-desnutricion-tuberculosis_0_1427857397.html)>

<sup>27</sup> "La muerte de un chico qom en Chaco reabrió el debate por la ... - Clarín." 2015. 25 Oct. 2016  
<[http://www.clarin.com/sociedad/desnutricion-chaco-qom\\_0\\_1281471980.html](http://www.clarin.com/sociedad/desnutricion-chaco-qom_0_1281471980.html)>

provide the affected Mapuche communities with a daily supply of 250 liters of potable water per person, but community members maintain that they never received their full entitlement.<sup>28</sup>

### ***E. Violence Against Indigenous People (CERD Article: 5c)***

Discrimination against minorities and Indigenous people in Argentina has led to alarming incidents of violence over the past few years. The Mapuche have suffered discrimination and violence not only from the Argentinian government, including its armed forces, but also from private citizens. The use of threats and police violence to circumvent official judicial proceedings against the Mapuche has developed into a common practice in Argentina. It is unclear what specific steps Argentina has taken or with what degree of success Mapuche are able to seek justice for crimes committed against them.

Reports of an incident in 2009 where 70 police officers arrived at the Mapuche community Paisil Antreao in Villa la Angostura, brought to attention the discriminatory police brutality that takes place in some sectors of Argentina. In the case of Neuquén, home to a community of Indigenous Mapuche, the officers violently removed families from their homes, tore down buildings, and occupied strategic locations in the community. The community members reported that they were not notified beforehand that an eviction was to take place, or even why the eviction was called for. In the days following the evictions, it was reported that the Mapuche nation flag was burned by police officers and that they also engaged in sexual harassment of Mapuche women. Further, there were accounts of violence with an aim to harm the physical wellbeing and sustainability of the Mapuche community. For example, children were threatened with weapons and the communal water reserves were destroyed. Instances of discrimination and violence at the hands of fellow citizens are not isolated according to the Mapuche, who recently protested against the robbery and desecration of a tomb belonging to a Lonko, Mapuche chief, in late February 2012.<sup>29</sup>

In 2013, Mapuche men, women, and children attended a spiritual ceremony but were confronted by a roadblock installed by businessman Pedro Alejandro Chaparro in the only vehicle access point to Veranada. Indigenous People who tried to pass were received with threats of all kinds and death threats by employees of Pedro. Later that month, ten hooded people carried blunt instruments and knives and threatened to kill men, women and children who at that time were in the community of Lof Felipin. The ten people went on to destroy the tires of vehicles that were parked a few meters from Ruka.<sup>30</sup>

In November 2015, the Inter-American Commission on Human Rights received visual evidence proving at least 75 Mapuche children victims of police brutality in the past years. In addition to the psychological harm of witnessing the violence suffered by their families, Mapuche children are often victims themselves: there are evidences of injuries from rubber bullets and exposure to tear gas grenades, and even alarming cases of torture, rape and disappearances.<sup>31</sup>

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<sup>28</sup> "CESCR Alt Report ARG - UNPO." 2016. 26 Oct. 2016 <<http://unpo.org/downloads/1739.pdf>>

<sup>29</sup> "UPR Stakeholder Report UNPO Argentina.pdf - Unrepresented ..." 2012. 26 Oct. 2016 <<http://www.unpo.org/downloads/451.pdf>>

<sup>30</sup> "Neuquén: Agresiones y amenazas de muerte contra comuneros ..." 2013. 2 Nov. 2016 <<http://www.opsur.org.ar/blog/2013/04/17/neuquen-agresiones-y-amenazas-de-muerte-contra-comuneros-mapuche/>>

<sup>31</sup> "UNPO: Mapuche: Police Brutality against Mapuche Children." 2015. 26 Oct. 2016 <<http://unpo.org/article/18766>>

The repeated incidents of violence and unlawful seizures demonstrate a failure on the part of Argentine officials to properly uphold Indigenous Peoples' rights and quell violent discriminatory practices. The multiple cases of forced and violent evictions of Indigenous families in light of legislation and state mechanisms to protect rights suggests that the situation is not being handled well. This failure suggests deep bias against Indigenous Peoples within state institutions.<sup>32</sup>

***F. Freedom of Expression: Legal Rights to Cultural Practices (CERD Articles 2, 4c, 5a, 5viii, 5ix, 6)***

The Argentine constitution acknowledges the ethnic and cultural pre-existence of Indigenous Peoples of Argentina. It guarantees bilingual and intercultural education as well as the legal standing of their communities, their religious and spiritual rights, and possession of traditionally owned lands. The continued lack of political representation of the Indigenous groups such as the Mapuche has led to discrimination against Argentina's Indigenous Peoples in political discussions. Mapuche participation in decisions that affect their communities rarely take place despite constitutional assurances that Indigenous Peoples have a right to participate in the administration of their natural resources and in all issues affecting them. The Argentinian state not only fails in its obligations to implement Indigenous land rights, but Indigenous communities claim that in many cases efforts to uphold their rights are met with violent responses from the State, including the criminalization of protests, as well as repression, violence, and killings by individuals or members of security forces.

From 1778-1885 there was a campaign of genocide where the British funded the killing and enslaving of the Mapuche people. Up until the 1920s money was awarded to anyone who could show the ear of a slain Mapuche. This was a process which enabled many Westerners to buy up land once Mapuche were removed from the area. The practice, although not quite as gruesome, continues in some ways today. In August of 2016, there was a large contingent of police and military personnel who took to the streets of Esquel where Mapuche peoples were gathering outside of the courthouse in a movement of solidarity with Traditional Leader Facundo Huala Jones. Huala had been in preventative detention since May 2016 under the accusation of usurping land belonging to the multi-national Benetton in Chubut Argentina. Huala claimed to be a political prisoner persecuted for a lack of fair judicial process. For health reasons, Huala requested that he be placed under house arrest, yet he was not granted this by the court. His land was taken, his rights were infringed, and he was discriminated against because he is an Indigenous leader.<sup>33</sup>

The Observatory of Human Rights of Indigenous Peoples (ODHPI) noted at least 40 ongoing land dispute cases where approximately 200 Mapuche community members have been arrested after protesting the improper seizure of traditional lands that were rightfully theirs. Notably, no provincial official or institution has been implicated for these human rights violations, an example of the culture of discrimination against Indigenous Peoples where victims are criminalized for acting within their rights<sup>34</sup>

Mapuche culture and religion is deeply linked to their ancestral land. Their socio-cultural and political relations have always been shaped by their spirituality, their religious beliefs, and the

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<sup>32</sup> "CESCR Alt Report ARG - UNPO." 2016. 26 Oct. 2016 <<http://unpo.org/downloads/1739.pdf>>

<sup>33</sup> "Mapuche Beyond Borders - Intercontinental Cry." 2016. 17 Oct. 2016 <<https://intercontinentalcry.org/mapuche-beyond-borders/>>

<sup>34</sup> "CESCR Alt Report ARG - UNPO." 2016. 26 Oct. 2016 <<http://unpo.org/downloads/1739.pdf>>

strong relationship with land and nature. The Mapuche believe that the land does not belong to them but rather that they belong to the land. The lack of access to holy sites, shrines and graves due to the privatization of land breaches despite Argentina's ratification is a personal, cultural, and spiritual deprivation for the Mapuche communities. Argentina's failure to protect this right is also in violation of Article 6(a) of the 1981 declaration of the UN General Assembly which provides the right to "freedom of thought, conscience, religion or belief" and includes the freedom, to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes. These are being denied to the Indigenous People in Argentina.

Various cases of police repression of social protest throughout Argentina have occurred despite government effort of police training programs. Approximately 150 Mapuche individuals faced criminal charges in connection to protests over land rights and against judicial orders in Neuquén Province. Mapuche representation is also hindered by the lack of accurate data gathering regarding population statistics. The Committee on Economic, Social and Cultural Rights raised concerns that methodology is not always publicly available, and discrepancies between certain provincial and national figures pose challenges for ensuring that all Argentines, including the Indigenous Mapuche, are enjoying the full protection of their economic, social and cultural rights.<sup>35</sup>

Access to justice for Indigenous Peoples remains another significant challenge. Difficulties in accessing justice are linked to language barriers, limited awareness of the law, difficulties in finding adequate judicial counsel, and most alarmingly at times the impossibility to register claims with judicial clerks because, it has been recorded that in some areas of the country, judges may be complicit in discriminatory practices. It is also of concern that the linkage between discrimination and denial of basic services is not usually made by the judicial system. The absence of Indigenous People at the highest positions in the judicial system is a contributing factor to the challenge of racial discrimination felt by Indigenous People when granted a trial.

The first ever Latin American intercultural jury trial was in 2016 when a Mapuche Native was convicted of throwing a stone at a judicial assistant after resisting an eviction which was requested by a US oil company. The conflict began from a series of oil spills. In 2012 the community blocked the industry road to the company sites and in April of that year a gang linked to the oil company attacked several Mapuche families, harming a pregnant women at the time, and threatening and harassing the Mapuche repeatedly. During one of the conflicts, a stone was thrown by Relmu Ñamku, a Mapuche woman.<sup>36</sup> There was a lawsuit filed for attempted murder and aggravated damage, with a request to a sentence of fifteen years in prison. In this situation, the defense requested that, as established in the Criminal Procedure Code of Neuquen, half of the jurors belong to the same social and cultural environment as the accused. This resulted in a historical process unprecedented in Argentina: the creation of an intercultural jury, in which half the members were Mapuches with a full translation into Mapuzungun, the language of the Mapuche.

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<sup>35</sup> "UPR Stakeholder Report UNPO Argentina.pdf - Unrepresented ..." 2012. 26 Oct. 2016  
<<http://www.unpo.org/downloads/451.pdf>>

<sup>36</sup> "Argentina Relmu Ñamqu mujer indígena acusada por resistir un ..." 2015. 5 Oct. 2016  
<<http://www.resumenlatinoamericano.org/2015/10/24/argentina-relmu-namqu-mujer-indigena-acusada-por-resistir-un-desalojo-un-juicio-con-jurado-mapuches/>>

A case like this was unheard of in Argentina, and the jury found that territorial rights of the Mapuche were being violated, along with the communities' right of consultation, and specified that the national and provincial authorities were responsible because they had consistently failed to implement the law. During the trial, it emerged that they had been legitimately defending the Mapuche territory from a systematic action taken against them by the company and state. After deliberation, the jury found the defendant "not guilty" of crimes of serious injury and aggravated damage. For the Mapuche, this is a great victory and a perfect precedent for future trials, however, it is a highly unusual case, and the first of its kind. Pressure needs to be heavily put on the judicial system as well as the Indigenous communities to push for more trials such as this one.<sup>37</sup> It isn't unusual, at this time, for Indigenous people to be ignored and outright refused when requesting a trial as well as many other of their constitutional rights.<sup>38</sup>

The trend of repression in several parts of the country against the mobilization by Indigenous groups to claim their rights, is ongoing. Reprisals against Indigenous civil rights defenders and leaders as well as members of their families are also often documented. Police profiling and violence against migrants from neighboring countries is another commonly reported issue, and these acts often remain unpunished and investigations of such crimes are seldom conducted. In 1992, the law on quotas for elective office was approved.<sup>39</sup> However, according to a Human Rights Report, Indigenous People still hold significantly fewer executive positions in the public sector and sometimes have less of a voice than their non-Indigenous counterparts where they are elected.<sup>40</sup> Although it is written that Indigenous people have equal rights under the law, including property rights, their rights are often withheld from them on the basis of discriminatory practice. They continue to face economic discrimination and hold a disproportionately high number of lower-paying jobs.<sup>41</sup> Likewise, there was almost no data on the economic status of Indigenous Women at all as stated earlier, except that there are no known Indigenous women in the cabinet or on the Supreme Court, and the problem of poverty among Indigenous Families is rampant.<sup>42</sup>

### **G. Education (CERD Articles 5v, 7)**

There are over 30 Indigenous languages still spoken in Argentina today. The Linguistic Society of America (LSA) estimates that 80% of the world's languages may vanish within the next century. The Qom face this danger but there are steps being taken to keep the Indigenous

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<sup>37</sup> "un jurado intercultural absolvió a la dirigente mapuche Relmu Ñamku." 2015. 5 Oct. 2016  
<<http://www.lanacion.com.ar/1842662-neuquen-un-jurado-intercultural-absolvio-a-la-mujer-mapuche-relmu-namku>>

<sup>38</sup> "Full text of the press statement delivered by the United Nations ... - ohchr." 2016. 25 Oct. 2016  
<<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20005&LangID=E>>

<sup>39</sup> "Women's human rights in Argentina: advances, setbacks and the tasks ..." 2010. 21 Sep. 2016  
<<http://www.thefreelibrary.com/Women's+human+rights+in+Argentina%3A+advances,+setbacks+and+the+tasks...-a0105915332>>

<sup>40</sup> "CEDAW/C/ARG/7 - Treaty bodies Download." 16 Sep. 2016  
<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FARG%2F7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FARG%2F7&Lang=en)>

<sup>41</sup> "argentina 2013 human rights report - US Department of State." 23 Sep. 2016  
<[http://www.iri.edu.ar/publicaciones\\_iri/anuario/cd\\_anuario\\_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf](http://www.iri.edu.ar/publicaciones_iri/anuario/cd_anuario_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf)>

<sup>42</sup> "Racial Discrimination in Argentina - University of Dayton." 2005. 26 Oct. 2016  
<<http://academic.udayton.edu/race/06hrights/georegions/southamerica/argentina01.htm>>



languages alive. Currently, the Toba represent nearly 11.5% of the Indigenous population of Argentina, and statistics from the National Institute of Indigenous Affairs show that around 60% of them can still speak or understand the Qom language.<sup>43</sup> However, with each generation, fewer youths learn to speak the language as their communities are increasingly integrated into the Spanish-speaking world. It is often the woman's role to maintain and continue teaching the culture and languages, which is why Qom women have begun to initiate the Qom Culture Route of Northern Argentina. This is a route built along the newly paved Provincial Route Three, connecting Presidencia Roca with Villa Rio Bermejito. There are seven cultural sectors along the route dedicated to the maintenance of different aspects of Qom culture. Because culture is of the utmost importance, and government action is lacking, it is these people who are working against the system to keep ancient ties with the language and other artistic and personal cultural activities.<sup>44</sup> The women who are part of the Qom Culture Route have been reported to have an increased level of participation in political activities in their communities. They are often included in the establishment of intercultural and bilingual education policies and policies related to health services in their communities.<sup>45</sup> Although a unique project, it is important to note for possible further replication in other Indigenous Communities. Education is a fundamental means of eradicating prejudice, discrimination, stigmatization and for fostering mutual understanding and coexistence. It is a possible tool for the eradication of discriminatory practices in a country like Argentina.<sup>46</sup>

Complications on this issue include Indigenous languages usually being trumped by Spanish and Portuguese in the public education system. A lack of bilingual, or Indigenous teachers is a key issue. According to the World Bank, urban Indigenous people have the fastest rate of language loss, and cultural continuity is clearly more at risk there than in their communities. Intercultural Bilingual Education (IBE) is the educational protocol by which children of Indigenous descent are meant to receive instruction in Spanish or Portuguese, as well as in their ancestral language. The implementation of and access to IBE in Argentina however, are in fact highly irregular and unsystematic<sup>47</sup> UNESCO reported in 2011 that in Argentina, where IBE was put into law in 2006, over 90 percent of the children who attended school received no instruction whatsoever in their Indigenous languages.<sup>48</sup>

Indigenous People also face particular educational barriers because of high levels of poverty, which often forces them to choose between education and work. The increasing numbers of grants awarded by INAI to Indigenous students represent an important step towards remedying this problem. However, this number is still not enough to meet the needs of Indigenous communities, and in addition there are significant delays in the payment of the grants. According

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<sup>43</sup> "Qom As You Are: Saving Indigenous Languages in Argentina < The ..." 2012. 3 Oct. 2016  
<<http://www.argentinaindependent.com/socialissues/development/qom-as-you-are-saving-Indigenous-languages-in-argentina/>>

<sup>44</sup> "Indigenous Women in Argentina benefit from road ... - YouTube." 2014. 3 Oct. 2016  
<<https://www.youtube.com/watch?v=spGHLzAspBo>>

<sup>45</sup> "Un camino une el presente y el pasado de las ... - World Bank Blogs." 2014. 3 Oct. 2016  
<<http://blogs.worldbank.org/latinamerica/es/mujeres-qom-argentina>>

<sup>46</sup> "Full text of the press statement delivered by the United Nations ... - ohchr." 2016. 26 Oct. 2016  
<<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20005&LangID=E>>

<sup>47</sup> "Indigenous Latin America in the Twenty-First ... - Documents & Reports." 2016. 26 Oct. 2016  
<<http://documents.worldbank.org/curated/en/145891467991974540/pdf/98544-REVISED-WP-P148348-Box394854B-PUBLIC-Indigenous-Latin-America.pdf>>

<sup>48</sup> "There's A Huge Lack Of Statistical Information On Argentina's ..." 2016. 26 Oct. 2016  
<<http://www.thebubble.com/information-lack-Indigenous-peoples-argentina/>>



to data reported by the United Nations Children's Fund (UNICEF), which in turn is based on official data, the vast majority of children between 5 and 14 years of age attend school. However, school attendance for this age group is much lower among certain Indigenous groups, especially the Mbyá Guaraní, Pilagá, Toba, Mocoví and Wichí peoples, and Indigenous People overall tend not to complete their mandatory schooling of High School completion, let alone attend University. According to UNICEF, more than half of Argentina's Indigenous Wichí population between ages 15 and 19 haven't finished primary school.<sup>49</sup> Likewise, in the Ramón Lista and Matacos's departments, out of children fifteen years and older, only the between 4-6% finished their secondary studies and approximately 43 to 67 % are functionally illiterate. Malnutrition may affect the intellectual capacity and impede the possibility for the Indigenous children to have successful educational experiences as well.<sup>50</sup>

### **III. CERD Concluding Observations**

#### **In 2010 the Committee noted in Concluding Observations:**

*20. The Committee takes note of Act No. 26160 of November 2006, under which a four year state of emergency was declared in order to halt the eviction of Indigenous Peoples and to permit implementation of a territorial reorganization process and the regularization of their communal property, and of the work of the National Registry of Indigenous Communities (RENACI) in promoting the registration of Indigenous communities and assisting them to complete the necessary formalities. While the Committee also notes that the law's application has been extended for another four years, it is seriously concerned by CERD/C/ARG/CO/19-20 4 GE.10-41561 the fact that six of the State party's provinces have not agreed to apply this national law (Salta, Formosa, Jujuy, Tucumán, Chaco and Neuquén).*

*The Committee recommends that the State party increase its efforts to have this law implemented in all provinces which have a large Indigenous population and where the struggle for control over natural resources has led to violence and forced evictions. The Committee urges the State party to take whatever steps are necessary to halt evictions and as appropriate to safeguard the communal property of Indigenous Peoples. It also recommends that the State party increase its efforts to align RENACI with the provincial registries.*

*21. The Committee observes that the State party's national plan against discrimination is intended to ensure that Indigenous Peoples have access to justice, and that in this respect INADI is backing Indigenous groups' efforts to lodge complaints in the courts and helping to publicize their territorial disputes (regarding their ancestral lands and their opposition to logging operations and the pollution of rivers). It is concerned, however, about the failure to prosecute and punish those responsible for the perpetration of violent acts during the forced evictions, particularly in view of the fact that a person died in Tucumán Province on 12 October 2006 and that two violent evictions recently occurred in Neuquén Province.*

*The Committee recommends that the State party increase its efforts to ensure that Indigenous communities make effective use of free legal advice services (guardia jurídica gratuita) and take steps to ensure that such services are accessible to the*

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<sup>49</sup> "In Argentina, Indigenous children explore their world through ... - Unicef." 2013. 26 Oct. 2016 <[http://www.unicef.org/infobycountry/argentina\\_70256.html](http://www.unicef.org/infobycountry/argentina_70256.html)>

<sup>50</sup> "Discussion Day on the Rights of the Indigenous Children ... - CRIN." 2016. 26 Oct. 2016 <[http://www.crin.org/en/docs/resources/treaties/crc.34/Argentina\\_en.pdf](http://www.crin.org/en/docs/resources/treaties/crc.34/Argentina_en.pdf)>

population as a whole. It also urges the State party to investigate and punish those responsible for deaths and injuries occurring in connection with forced evictions in the provinces.

26. The Committee is deeply concerned at information that, although the law explicitly prohibits eviction, Indigenous communities have recently been expelled from their ancestral lands. The situation is made even more serious when violence is used during evictions. The Committee is greatly concerned at the incidents that occurred recently in the course of the evictions of the Chuschagasta Indigenous community in Tucumán Province and of the Currumil community in Aluminé, in Neuquén Province. It is also gravely concerned that, notwithstanding the State party's ratification of the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), the State party has not set up effective consultation mechanisms in order to obtain the free, prior and informed consent of communities that might be affected by development projects or the exploitation of natural resources.

The Committee recommends that the State party take the necessary effective steps to ensure that the law prohibiting forced eviction is applied equally throughout the national territory. The Committee recommends that the State party establish appropriate mechanisms, in accordance with ILO Convention No. 169, to consult with communities that might be affected by development projects or the exploitation of natural resources in order to obtain their free, prior and informed consent. It also recommends that, where it is determined that eviction is necessary, the State party ensure that those evicted from their lands receive adequate compensation, and that it provide relocation sites equipped with basic services, such as drinking water, electricity, washing facilities and sanitation, and adequate social services, including schools, health centres and transport. The Committee also recommends that the State CERD/C/ARG/CO/19-20 6 GE.10-41561 party investigate recent occurrences of evictions of Indigenous Peoples, punish those responsible and offer compensation to those affected.

28. The Committee notes with concern the low level of participation by the Indigenous Peoples in political life and their poor representation in Parliament. In light of its general recommendation No. 23 (1997), paragraph 4 (d), on the rights of Indigenous Peoples, the Committee recommends that the State party redouble its efforts to ensure full participation by Indigenous Peoples, in public life, and that it take effective steps to ensure that all Indigenous Peoples participate in the administration at all levels.

29. The Committee notes the efforts made by the State party to combat poverty. However, it is concerned that Indigenous Peoples, in particular those living in Chaco Province, remain among the poorest and most marginalized groups. The Committee recommends that the State party take the necessary steps to ensure effective protection against discrimination in various areas, particularly in employment, housing, health and education. It also calls on the State party to include in its next report information on the impact of programmes designed to guarantee the economic, social and cultural rights of the Indigenous population, as well as statistics on progress made in this regard, with particular reference to efforts undertaken to improve living standards in Chaco Province.

As can be seen from this report many of the concluding observations were not implemented. Indigenous People's situation has not drastically changed since the last review.

#### **IV. Argentina State Report**

The Argentine State Report appears to be thorough, but upon closer examination, it is lacking in implementation and action on the ground. Indigenous people's issues are not sufficiently covered specifically in regards to land rights and rights to cultural practices in general. The Report highlights major achievements of the Argentinian government, when many of the laws have been proven to have no actual repercussions. There is also low representation and participation of Indigenous Peoples in constitution writing, and in wider participation of Indigenous stakeholders in the areas of education, health etc. is extremely low.

There is concern that, while Indigenous Peoples' access to justice is provided for by legislation, their ability in practice to exercise those rights and to bring cases of discrimination before the courts is limited by such factors as lack of information about their rights and language barriers, as well as other structural difficulties in accessing the courts.

## **V. Legal Framework**

*Convention on the Elimination of all forms of Discrimination (CERD) Articles 1, 2, 3, 4, 5(a), 5(c), 5(e), 5(i), 5(iv), 5(v), 5(viii), 6, 7 and General Recommendation No. 23*

*ILO Convention No 169*

*UN Declaration on the Rights of Indigenous Peoples*

*International Covenant on Civil and Political Rights (ICCPR)*

## **VI. General Comments**

### ***General Assembly Recommendation No 23: Indigenous Peoples: CERD***

*5. The Committee especially calls upon States parties to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.*

*6. The Committee further calls upon States parties with Indigenous Peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention.*

## **VII. Other UN Body Recommendations**

### ***International Covenant on Civil and Political Rights (ICCPR)***

*"37. Despite the national and provincial initiatives which have been undertaken to regularize the status of Indigenous lands, including Act No. 26.160 of 2006, under which a state of emergency was declared in respect of the possession and ownership of lands occupied by Indigenous communities, the Committee finds it regrettable that Indigenous lands have not yet been legally recognized and protected. The Committee reiterates its concern, as expressed in its preceding concluding observations (CCPR/C/ARG/CO/4,*

para. 25), about the fact that Indigenous groups continue to be the target of violence and forced evictions in a number of provinces (arts. 2, 6, 7 and 27).

38. The State party should, in consultation with the Indigenous Peoples concerned, step up its efforts to legally recognize and demarcate the territories over which Indigenous Peoples have rights. The State party should also provide effective protection for Indigenous Peoples from any and all acts of violence and see to it that the parties responsible for those acts are brought to justice and duly punished and that the victims are provided with appropriate redress.”

### **Economic and Social Council**

“9. The Committee is concerned about the persisting threats, displacements and violent evictions of Indigenous Peoples from their traditional lands in numerous provinces. The Committee also regrets the shortcomings in consultation processes with affected Indigenous communities, which in some cases have led to the exploitation of natural resources in the territories traditionally occupied or used by them without their free, prior and informed consent and without just and fair compensation being paid to them, in violation of the Constitution (art. 75) and International Labour Organization (ILO) Convention No. 169 E/C.12/ARG/CO/3 3 concerning Indigenous and Tribal Peoples in Independent Countries. The Committee is particularly concerned by the negative consequences of lithium exploitation in Salinas Grandes (Salta and Jujuy provinces) on the environment, access to water, way of life and subsistence of Indigenous communities (arts. 1, 11 and 12).

The Committee recommends that the State party undertake the necessary measures to stop violations of the rights of Indigenous Peoples and that it hold accountable those responsible for such unlawful acts. It urges the State party to always enter into effective consultations with Indigenous communities before granting concessions for the economic exploitation of the lands and territories traditionally occupied or used by them to State-owned companies or third parties, fulfilling the obligation to obtain the free, prior and informed consent of those who are affected by the aforementioned economic activities. The Committee also recommends that the State party guarantee that in no case will such exploitation violate the rights recognized in the Covenant and that just and fair compensation is granted to Indigenous communities. The Committee also calls upon the State party to ensure the protection of Indigenous communities during the implementation of mining exploration and exploitation projects. With regard to Salinas Grandes, the Committee urges the State party to comply with the decision of the Supreme Court, once it is available. The Committee recalls in this context its statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/C.12/2011/1).”

“12. The Committee is concerned that the data provided for the Covenant rights was not presented on a comparative basis, disaggregated on an annual basis, as requested in the previous concluding observations of the Committee.

The State party is requested to supply, in its next periodic report, disaggregated data for each of the Covenant rights, on an annual basis, taking into account the prohibited grounds of discrimination.”

## **United Nations General Assembly**

*Human Rights Council Working Group on the Universal Periodic Review Fourteenth session*

*“59. CESCR reiterated its concern over forced evictions which affected, in particular, migrants and Indigenous Peoples.”*

*“68. CESCR recommended that Argentina finalize the processes of land demarcation in all provinces, as foreseen by the law, and that it expedite the granting of communal land title to Indigenous communities. CERD recommended that Argentina take the necessary effective steps to ensure that the law prohibiting forced eviction is applied equally throughout the national territory and that, where it is determined that eviction is necessary, Argentina ensure that those evicted from their lands receive adequate compensation.”*

*“79. CESCR was concerned about the negative impact caused by the increased use of chemical pesticides and transgenic soya seeds in regions traditionally inhabited or used by Indigenous communities. It also noted the scale of deforestation, which had forced Indigenous Peoples to leave territories traditionally occupied or used by them.”*

## **United Nations General Assembly**

*Human Rights Council Report of the Special Rapporteur on the rights of Indigenous Peoples*

*“45. The right of Indigenous Peoples to be consulted, with the aim of obtaining their consent, is guaranteed by ILO Convention No. 169, which is part of the Argentine legal order, and by the United Nations Declaration on the Rights of Indigenous Peoples, which the Argentine Government supported. However, there is no law or policy at either the federal or the provincial level to regulate a consultation procedure with Indigenous Peoples. The country’s sector-specific laws, such as the Hydrocarbons Act and the Mining Code,<sup>4</sup> also make no reference to consultation with Indigenous Peoples, although the latter requires the permission of the land “owners” to explore for minerals.<sup>5</sup> Similarly, the General Environment Act refers only in general terms to the right of “all persons” to be consulted, while at the same time stating that “the participants’ opinion or objection shall not be binding.”*

*“46. Due in part to these legal and administrative gaps regarding extraction projects, there is an absence of consultation processes with Indigenous Peoples that meet international standards. Many cases of reported lack of consultation have been brought to the attention of the Special Rapporteur. At the same time, it is claimed that the consultation processes that have been conducted have been plagued by irregularities.”*

*“47. Generally speaking, Indigenous Peoples do not directly share in the economic benefits of these projects. In some cases, however, the affected communities have managed to negotiate with the companies involved to obtain benefits such as jobs, a drinking water supply, and the building of schools or roads. In any case, the Special Rapporteur points out that it is the responsibility of the State to provide these types of benefits.”*

*“54. It is worrying that most of these evictions have occurred since Act No. 26160 of 2006 entered into force. It has been reported that the courts do not give proper consideration to, or are even completely unaware of, the rights of Indigenous Peoples*

*under A/HRC/21/47/Add.2 GE.12-14947 13 the current legislation. In addition, the courts of the different provinces do not apply the same criteria when authorizing evictions. For example, they sometimes do not recognize the Indigenous communities registered by INAI in its national registry and do not take into account the results of cadastral surveys.”*

## **CEDAW**

*41. While acknowledging efforts aimed at decentralizing and providing training opportunities, relatively extensive health care and substantial credit loans, including to rural families, the Committee remains concerned about the situation of rural women, particularly older women and Indigenous women, in view of their extreme poverty, marginalization and frequent lack of access to health care, education, credit facilities and community services.*

*42. The Committee urges the State party to continue to pay special attention to the needs of rural women, including older women and Indigenous women, ensuring that they participate in decision-making processes and have full access to education, health services and credit facilities.*

## **VIII. Questions**

1. What steps will the Government of Argentina take to collect information specifically on the situation and rights of Indigenous People?
2. What concrete steps is the government of Argentina taking to respect, protect, and fulfill the rights of Indigenous People at all levels of government — national, provincial and municipal?

## **IX. Recommendations**

Cultural Survival urges the government of Argentina to:

1. Disaggregate data on the country's Indigenous population
2. Renew efforts to promote the rights of Indigenous people as enshrined in the UN Declaration on the Rights of Indigenous Peoples, including measures to eliminate all forms of discrimination and violence against them
3. Respect, protect and fulfill Indigenous people's rights to participate fully, in the political, economic, social and cultural life of the State.
4. Develop a National Action Plan in implementing the rights of Indigenous Peoples as called for in the Outcome Document of the World Conference on Indigenous Peoples
5. Implement the UN Special Rapporteur on the Rights of Indigenous Peoples recommendations from 2012.
6. Respect, implement, and monitor Indigenous Peoples' right to Free, Prior and Informed Consent.
7. Enforce General Recommendation No 23, and fully implement the constitutional recognition of Indigenous Peoples rights to their ancestral lands and in the management of natural resources.
8. In Indigenous communities where land has been taken, make efforts to return the land, and ensure compensation, proper economic aid and health care to those affected.
9. Regulate extractive industries to stop and clean up pollution of Indigenous lands, and respond to pollution related health concerns.



10. Respect Indigenous Peoples' rights to defend their lands, halt the criminalization of activists and ensure protection for Indigenous human rights and environmental defenders.
11. Respond to requests for a trial by jury, and ensure half of the jurors belong to the same social and cultural environment as the accused.
12. Provide basic health care services to Indigenous communities and prohibit discriminatory practices such as denial of care based on ethnicity.
13. Provide translation services for Indigenous people in the justice and health service spheres.
14. Promote Indigenous leadership in public spheres.
15. In partnership with Indigenous Peoples, develop and implement culturally sensitive and culturally relevant education curricula in Indigenous languages. Provide specific data on implementation.
16. Provide a thorough analysis on the situation of Indigenous People in Argentina's next CERD periodic report.