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Chairperson of the Committee on Economic,  
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**AMNESTY  
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Dear Mr Marchan Romero

**Argentina: Briefing to the Committee on Economic, Social and Cultural Rights**

Amnesty International would like to bring the following information to the attention of the Committee on Economic, Social and Cultural Rights (the Committee) in light of the pre-session Working Group to draft the list of issues for the forthcoming examination of Argentina's third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant). Please could this letter be circulated to all members of the Committee. This information is based on Amnesty International's research on Argentina and documents concerns regarding the rights of Indigenous Peoples' (articles 2 and 11), sexual and reproductive rights (article 3 and 12), and the right to health in the context of agro-business (article 12). The briefing is not an exhaustive review of the implementation of the Covenant in Argentina. It instead highlights specific concerns regarding cases and thematic issues.

**Sexual and reproductive rights, (Article 3 and 12)**

Abortion remains partially criminalised in Argentina. Amnesty International is concerned that misinterpretation of the criminal code by judges and health service providers has resulted in pregnant rape survivors facing serious obstacles in obtaining legal abortions. In 2010 the Committee on the Elimination of Discrimination Against Women (CEDAW) and the Human Rights Committee (HRC) called upon Argentina to review and modify abortion legislation, and although

discussions have started within the legislative in this respect, there has been no tangible outcome to date<sup>1</sup>.

The long-awaited Guide for the Integral Attention of Non-Punishable Abortion cases [Guía Técnica para la Atención Integral de los Abortos no punibles] was published in 2009. This Guide has the specific aim of improving conditions for the enjoyment of sexual and reproductive rights, paying particular attention to addressing existing barriers to accessing legal abortions. After publication of the Guide there was uncertainty as to whether the Guide had been approved by the Minister of Health. Amnesty International believes that the provision of clear protocols to health service providers, to be implemented uniformly across different institutions, is essential so that equal and effective access to legal abortions can be safeguarded across the country.

In 2010, two 15-year old girls, both allegedly raped by their respective step-fathers, were denied abortions by hospital authorities in the southern province of Chubut.<sup>2</sup> In both cases, judicial intervention was sought by health service providers in order to determine the legality of their abortion requests. In both cases, first instance judges rejected their requests.

In the second of these cases, the girl in question had suffered many years of sexual abuse from her stepfather, which was reported to the authorities once she found that she was pregnant. In February, the mother of the girl made a formal request to the Regional Hospital of Chubut for her daughter to be given an abortion. The hospital presented a written refusal, arguing that the case did not fall under the permitted exceptions to the prohibition of abortion in the Argentinean Criminal Code. These exceptions allow abortion in cases in which the life or health of the woman is at risk. Several weeks later, on 10 March, a judge at the Comodoro Rivadavia Second Family Court heard the case. A group of doctors (Junta Médica) at the Comodoro Rivadavia Regional Hospital advised that the abortion was still medically possible. However, on 12 March, the judge rejected the abortion request on the grounds that the rights of the foetus prevailed over the rights of the pregnant girl to life and health. Lawyers in Argentina argued that being subjected to sexual abuse and rape had had a serious impact on the victim's health, referring to the World Health Organization's definition of health as a state of complete physical, mental and social well-being.

Although in both cases, judges eventually overturned the decisions and the girls received the abortions they had requested, Amnesty International believes that the involvement of the judicial system was unwarranted, and caused unacceptable decisions that prolonged the mental anguish and suffering of both girls. Any denial of safe, legal abortion in rape cases constitutes a violation of human rights and puts the victims' physical and mental well-being at risk. It is a way of doubly victimising women who have already suffered at the hands of their sexual aggressors .

Amnesty International has recommended the government of Argentina

- reform the Penal Code to ensure that women and girls are not subject to criminal sanctions for seeking or obtaining an abortion under any circumstances and that medical health practitioners are not criminalized solely for providing abortion services that are safe;
- ensure that girls and women can access abortion services as provided by the Guide for the Integral Attention of Non-Punishable Abortion cases.

### **Indigenous Peoples' Rights (Article 2 and 11)**

<sup>1</sup> UN Committee on the Elimination of Discrimination Against Women , CEDAW/C/ARG/CO/6, para 38 and UN Human Rights Committee, CCPR/C/ARG/CO/4 para 13.

<sup>2</sup> Amnesty International, "Teenage Rape Survivor Gets Legal Abortion", Further information on Urgent Action 65/10 Index: AMR 13/004/2010 Argentina, Date: 23 March 2010; Amnesty International, "Teenage Rape Survivor Denied Legal Abortion", Urgent Action UA: 65/10 Index: AMR 13/002/2010 Argentina, Date: 15 March 2010; Amnesty International and Human Rights Watch, "Safe abortion for young victims of rape", Press Release PRE01/076/2010

Amnesty International's research into the situation faced by the indigenous Pilaga community in El Descanso, Formosa Province, has drawn attention to the fact that the free, prior and informed consent of this community was not sought before major infrastructure works were carried out in 1997. A lawsuit lodged by members of the community in 2001 remains pending. Members of this community complain that between a third and a half of their lands are more susceptible to flooding since irrigation canals were dug, and that fish and other natural resources they relied upon for their subsistence and development have now diminished.

Pending a nationwide land survey that reviews and registers land ownership, a national emergency law (Emergency Act No. 26.160) was passed in 2006 to suspend the execution of eviction orders or the removal of Indigenous communities from traditional lands. After an extension of its initial period of application, this law will remain in force until November 2013.

Despite this law being in force, Amnesty International has documented cases in which evictions have been threatened and sometimes carried out.

Landowners in Tucumán Province threatened to forcibly remove members of the Diaguita Indigenous community of Los Chuschagasta from their ancestral lands in October 2009. On 12 October, a local landowner arrived in the community with two other men whom the community recognised as former police officers. The men asked for the leader of the community (el cacique). They said they were the owners of the land, and told the people of Los Chuschagasta (around 20 of the community's 300 people were present) to get out. Other members of the community approached and asked the men to leave; the three men opened fire, killing 68-year-old Javier Chocobar and wounding three other men. The gunmen then got into a car and drove off, shooting from the windows: they wounded one other man. Community members threw stones at them. The landowner and the two gunmen were arrested shortly afterwards.

Ten days earlier, the landowner had gone onto the community's land and built a prefabricated house there. As a result, members of the community blocked the road leading to the land. Despite the existence of the 2006 law, members of the Diaguita community received threats of forcible removal. After international and local pressure in this instance, the imminent eviction of the community was halted.

In November 2010, around 400 heavily-armed police officers violently dispersed members of the Toba Qom Indigenous community who had mounted a roadblock in protest at plans to build a university on traditional lands. The police also burned down the temporary homes members of the community had built alongside the highway. At least one police officer and one member of the Indigenous community were killed and around 30 community members were detained, including children. Felix Diaz, the leader of the community, was personally threatened by officers and called an "agitator".

Earlier on the same day, five members of a non-indigenous (criollo) family who claim property on the same piece of land claimed by the community, arrived on horses, carrying arms. They were accompanied by around 18 police officers. When Felix Diaz approached them, they shot at him twice, missing both times. Coming to his aid, other members of the community threw stones at the horses to make them bolt. The non-indigenous family left, firing shots in the air. Terrified community members sought help from the police who did nothing to protect them. According to members of the community, police officers told them "you deserve it; you have been looking for trouble" ("se lo tenian merecodp, ustedes se lo buscaron").

Amnesty International has recommended that the government of Argentina

- ensure that the Emergency Act No. 26.160 is fully implemented and respected in order to prevent eviction orders and the removal of indigenous peoples' from their traditional lands;
- conduct the nationwide land survey that reviews and registers land ownership with full participation of affected Indigenous Peoples;

- establish clear mechanisms that require the free, prior and informed consent of Indigenous Peoples in plans and decisions that affect them, in line with international human rights standards.

### **Right to health – land and environment. (Article 12)**

Amnesty International is aware of growing evidence that suggests that chemicals used on soya and rice plantations in several Argentinean provinces are having a negative impact on the health of people living in the vicinity. No systematic epidemiological study or investigation has been undertaken by the government or its agencies to evaluate the extent and gravity of the problem.

In this context, Amnesty International is concerned that attempts to generate debate around the possible health implications of these chemicals used, in the very areas affected, may be thwarted by those with interests in agro-industry. The right to health includes the right to seek, receive and impart information and ideas concerning health issues. In August 2010, Professor Andres Carrasco, a scientist and doctor from the Buenos Aires Medical School, renowned for his research into the health impact of chemicals sprayed on rice and soya crops travelled to the remote northern Argentinian town of La Leonesa to give a talk about his findings. Carrasco had conducted a major study, concluded in 2009, which highlighted the negative effects of glyphosate, a commonly-used agro-chemical, on embryos.<sup>3</sup>

Community activists and a delegation of two provincial deputies, a former public official and members of the neighbouring community of Resistencia also came to La Leonesa to hear the talk. On arrival in La Leonesa at around 4pm, the delegation headed for the school where the talk was due to take place. However, the talk was suspended because the delegation was attacked by a group of around 100 people who threatened them and beat them. One person has since suffered from lower body paralysis after being hit on his spine, and another is undergoing neurological examinations after receiving blows to the head. The former provincial Sub-Secretary of Human Rights, Marcelo Salgado, was struck in the face and left unconscious. Dr Carrasco and his colleague shut themselves in a car, and were surrounded by people making violent threats and beating the car for two hours. Members of the community were injured and a journalist's camera equipment was damaged.

Members of the community who witnessed the incident have implicated local officials in the attack, as well as a local rice-producer and his workers and security guards. They strongly believe that the violence was promoted by them, and motivated by the powerful economic interests behind local agro-industry who are concerned that limits may be placed on the use of chemicals if any negative health impact is proven. Despite calls to local authorities asking for help, the police were slow to respond and failed to send sufficient reinforcements to stop the violence.

Amnesty International has recommended the Argentinean authorities:

- carry out monitoring and investigations where credible evidence regarding the negative health impact of spraying of agro-chemicals exists, in line with their responsibility to respect the right to health.
- ensure that individuals' rights to seek, receive and disseminate information, including in public forums, around the possible health effects of widespread spraying of crops are not hindered.

<sup>3</sup> Carrasco, A. et al. "Glyphosate-Based Herbicides Produce Teratogenic Effects on Vertebrates by Impairing Retinoic Acid Signaling", in *Chem. Res. Toxicol.* 2010, 23 (10), pp 1586–1595.

Amnesty International hopes this information is of interest to you. Please do not hesitate to contact us with any questions which may arise from this letter.

Yours sincerely,

A handwritten signature in black ink that reads "Tania Baldwin-Pask". The signature is written in a cursive style with a small dot at the end.

Tania Baldwin-Pask

Advocate

International Advocacy Program