



Observatorio del
DERECHO SOCIAL



Foro Ciudadano de Participación por
la Justicia y los Derechos Humanos



ALTERNATIVE REPORT TO THE
COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
SESSION 47/ARGENTINE EVALUATION

SUGGESTED RECOMMENDATIONS

I. ACCESS TO INFORMATION

Suggested recommendations:

1. Take measures to implement the institutional reform of INDEC that incorporates the recommendations and guidelines of recognized international bodies.¹ Specifically, it is “critical to ensure a set of criteria for the production of statistics such as: independence; relevance; integrity and credibility; quality and consistency; protection and accessibility of the information; and efficiency. In addition, it is necessary to implement

¹ Comisión de Estadística de ECOSOC “Los principios fundamentales de las estadísticas oficiales”, “Los principios fundamentales de las estadísticas oficiales” y CEPAL (2004), “Manual de organización estadística, tercera edición: “El funcionamiento y organización de una oficina de estadística.”

procedures, methods, registries and technology security measures to ensure transparency in the processing of the statistics produced.”²

2. Guarantee periodic access to and dissemination of information from the Permanent Household Survey (EPH) database, and from the National Survey of Household Spending (ENGH).

3. Guarantee the dissemination of the complete database from the National Survey of Household Spending (ENGH) for the year 2004-5.

4. Guarantee access to and dissemination of public information, including the organization’s internal rules, documents, memoranda and resolutions - among others - that regulate access to and publication of statistical information, in order to safeguard freedom of information and expression, etc.

II. INDIGENOUS RIGHTS AND THE RIGHT TO SELF-DETERMINATION (ART. 1)

Suggested recommendations:

1. Adopt measures to coordinate with provincial governments and the judiciary in order to enforce Law 26.160/26.554 that prohibits evictions.
2. Take steps to complete technical land surveys in all provinces, including specially those that have opposed previous attempts.
3. Develop procedures for zoning and land titling to complete the survey.
4. Take measures to prevent acts of violence against members of indigenous communities by both public officials and individuals, especially security forces.
5. Adopt measures to protect the territory of indigenous peoples and natural resources.
6. Adopt measures to ensure compliance with the right to consultation and participation of indigenous peoples, and to prevent development projects that inflict social and cultural harm on indigenous communities.
7. Adopt measures to ensure the training and the inclusion of indigenous teachers in the educational system, especially within indigenous territories.
8. Take measures to enable indigenous students to go through their educational process according to their cultural norms.

III. UNEQUAL ENJOYMENT OF RIGHTS: VIOLENT INSTITUTIONAL RESPONSES AND VIOLATIONS OF ESCR (ART. 2)

1. Violence in the context of land seizures and other assertions of rights

Suggested recommendations:

1. Adopt measures to prevent the state’s use of disproportionate force and criminalization of social activists and advocates as the main response to ESCR problems and demands.
2. Implement mandatory protocols for security forces in cases of evictions, protests, and demonstrations, among others. These protocols should take into account special protections for women, children, indigenous people, migrants and other vulnerable groups and incorporate mechanisms for negotiation and conflict resolution in coordination with relevant agencies.
3. Ensure that these protocols are incorporated into norms with sufficiently high hierarchy to ensure their effectiveness.
4. Take steps to monitor and control the actions of justice officials vis-à-vis social conflicts and sensitize them to the needs of vulnerable groups and their claims to social rights. In particular,

² Comisión de Estadística de ECOSOC “Los principios fundamentales de las estadísticas oficiales” , “Los principios fundamentales de las estadísticas oficiales” y CEPAL (2004), “Manual de organización estadística, tercera edición: “El funcionamiento y organización de una oficina de estadística.”

- actions and behavior in the contexts of protests should not be treated as common or organized crime, and the threat of criminal offenses should not be used as a disincentive to claims for rights*
5. *Promote the adoption of similar rules and protocols by security forces and courts at provincial and local levels and take measures to prevent regressions in those jurisdictions (such as the Federal Capital and Buenos Aires Province) where positive steps have been taken.*
 6. *Promote the existence of adequate and effective mechanisms to channel the social demands of the most disadvantaged groups of society in order to prevent violence and guarantee the rights of those who claim their rights.*
 7. *Promote the generalization of a practice adopted in some jurisdictions that impedes the involvement of security forces that have intervened in evictions as aids in criminal investigations regarding the related occupation.*
 8. *Investigate in a serious and diligent manner, and promote criminal and administrative sanctions against those responsible for committing abuses in police operations; take steps to keep people with a history of abuse from returning to participate in similar operations.*
 9. *Track the health status of people injured during violent repression or evictions and provide them with appropriate medical treatment.*
 10. *Take measures to ensure that prior to an eviction alternative housing for families and individuals will be secured.*

2. The rights of individuals with mental disabilities. Advances and work to be done to achieve full access to and enjoyment of rights

Suggested recommendations:

1. *Adopt all necessary measures to adapt judicial statements of restriction of legal capacity (past and future) to the current legal framework (the least restrictive and most supportive system so that the person is best able to exercise his/her autonomy).*
2. *Take positive steps to facilitate the redistribution of economic resources, from financing institutions and asylums to providing health care services for people with mental disabilities within the community.*
3. *Take steps to monitor the coordination of all state agencies to achieve the full enjoyment, access and equal and equitable exercise of ESCR of people with mental disabilities.*
4. *Adopt measures to ensure that people with mental disabilities and their representative organizations are able to participate in all stages of development, implementation and monitoring of legislation, regulations, policies, and care rehabilitation services. In addition, ensure policies and programs which foster the full inclusion and integration of people with mental disabilities in society, considering that the right to health is closely linked to the exercise of other human rights and dependent upon those rights.³*

IV. INEQUALITY BETWEEN MEN AND WOMEN (ART. 3)

1. Inequality in employment

Suggested recommendations:

1. *Adopt measures to reduce the rate of informal work for women, and prevent occupational discrimination.*

³ Specifically, the right to food, housing, work, education, human dignity, life, non-discrimination, equality, the right to no be tortured or deprived of liberty, and the right to access to information and freedom of association.

2. *Guarantee the availability of care for children and other dependents for everyone, regardless of an individual's link to the formal wage sector.*
3. *Ensure the production and dissemination of information regarding the type of care services and infrastructure needed to facilitate the full incorporation of women into the workforce.*
4. *Adopt concrete measures to reduce informal employment in the domestic service sector.*
5. *Overtum regulations that support the unequal treatment of domestic workers. In this regard, we recommend the swift adoption of legislative measures to ensure domestic workers the same rights as all employees.*

2. Violence against women as part of the discrimination they suffer. Violence as an impediment to the exercise of a woman's fundamental rights as enshrined in the ICESCR.

Suggested recommendations:

1. *Adopt measures to ensure the legitimacy, institutional authority, financial and human resources necessary to strengthen the CNM (National Women Commission) responsible for the implementation of the Comprehensive Law against Violence. These resources must be sufficient enough to enable the CNM to centralize and coordinate the various existing initiatives on violence against women, both nationally and at the provincial level.*
2. *Take concrete measures to ensure the effective operation of the right of access to justice for female victims of violence.*
3. *Produce gender-based information on violence against women in its various manifestations (domestic violence, sexual violence, murder), and ensure that this data is transmitted to administrative and judicial bodies across the country so as to better identify situations of serious violence in the context of personal relationships.*

V. LABOR LAWS (ART. 6, 7 AND 8)

1. Obstacles to labor rights

Suggested recommendations:

1. *Ensure that all workers have access to a minimum wage. Adopt changes to laws that exclude certain workers - domestic workers, agricultural workers and workers in provincial and municipal public sector - from receiving the minimum wage.*
2. *Strengthen efforts to reduce the rate of non registered and informal sector workers.*
3. *Reform laws that justify the unequal treatment of domestic workers, mostly women, and rural workers. We recommend that the State take swift and appropriate legislative measures to ensure that these groups enjoy the same rights as all workers, taking into special account gender considerations.*
4. *Adopt measures to reform unemployment insurance regulations to include workers who currently are excluded from unemployment benefits. In addition, incorporate mechanisms for the periodic increase of insurance stipends.*

2. Labor exploitation and inhuman working conditions

Suggested recommendations:

1. *Take effective measures to control, prevent and prosecute labour exploitation and subjugation of workers in inhumane conditions.*

2. *Implement measures and procedures for effective and timely detection and documentation of conditions of inhumane employment conditions.*

3. Violations of union rights

Suggested recommendations

1. *Promote the reform of provisions of the trade union law that hamper union activity for those trade unions that are simply registered and do not enjoy official legal standing for calling to strikes.⁴ These practices have previously been identified as contrary to Convention No. 87 of the ILO for the Committee of Experts on the Application of Conventions and Recommendations of the ILO, and the Supreme Court of Argentina.*
2. *Take the necessary measures to enforce the Supreme Court ruling in the "ATE", "Rossi" and "Alvarez" cases and to extend them to all workers and trade unions in similar situations. Additionally, adopt legislative measures to overturn discriminatory layoffs and provide workers the opportunity to re-enter the workplace.*
3. *Taking into consideration the limits being placed on the right to strike for those trade unions that are not granted with official legal standing and for newly formed unions, the State should take measures - including legislation - to ensure the broadest exercise of the right to strike by all unions and workers.*
4. *Take measures to resolve delays in the processing of trade union registration requests and the granting of legal recognition as quickly as possible, so as not to affect trade union rights. Adopt a protocol that clearly outlines the role of public authorities in the granting of trade union registration and legal recognition.*

VI. RIGHT TO SOCIAL SECURITY (ART. 9)

1. - Universal Child Allowance

Suggested recommendations

1. *Promote a law to ensure that the "universal child allowance for social protection" is a permanent state policy and not just of one government.*
2. *Ensure a single system of child allowance regardless of a parent or guardian's employment status.*
3. *Ensure a single system of allowances that includes those groups that currently fall outside of the allowances provided for school assistance, maternity, birth, adoption and marriage.*

2. Immigrant rights to social security

Suggested recommendations

1. *Adopt the swift modification of the requirement of a minimum number of years of legal residency for accessing state social protection services. This is particularly important for individuals living in situations of extreme social vulnerability, such as those who need access to elderly or disability pensions, or in cases of mothers with 7 or more children.*

⁴ As explained in the Executive Summary, the Union Law (Law No. 23,551) distinguishes between labor unions with legal recognition to practice all union rights (that we referred here as unions with official legal standing in Spanish "personería gremial") and unions that despite having legal recognition are not authorized to practice basic collective rights, such as calling for strikes and represent worker in collective negotiations. We call this last category of unions "simply registered unions".

2. *Eliminate the years of residency requirement for access to family allowances and the universal child allowance.*

VII. ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND THE INSTITUTIONALIZATION OF CHILDREN AND ADOLESCENTS (ART. 10)

Suggested recommendations

1. *Increase efforts to effectively implement policies and programs (training, dissemination, prevention, comprehensive treatment of victims, etc.) to prevent and address different forms of exploitation and abuse of children throughout the country.*
2. *Create an agency to address the specialized care and protection that victims require, and implement a National Plan of Action against commercial sexual exploitation and the trafficking of children and adolescents.*
3. *Develop coordinated government actions to eradicate sexual exploitation and child trafficking; secure the regulation of the National Program on Human Trafficking and Assistance to Victims (National Law 26364), which was passed over a year ago*
4. *Establish an independent and accessible mechanism for receiving and processing complaints that addresses the needs of victims.*
5. *Ensure access to justice and the immediate attention of the child victims of commercial sexual exploitation, domestic violence or sexual abuse aimed at ensuring their physical and psychological recovery.*
6. *Strengthen education and training programs for members of the judiciary, police, as well as specialized agents involved in investigating commercial sexual exploitation and trafficking.*
7. *Develop protocols to receive and deal with reports of labor and sexual exploitation, and trafficking of children and adolescents.*
8. *Maintain and strengthen campaigns, especially in schools, on sexual exploitation, trafficking in children and adolescents, and gender-based violence.*
9. *Design and implement measures to provide information to children and adolescents to ensure they know they have a right to not be abused, and to ensure access to adequate measures for their protection.*
10. *Strengthen controls on employers who hire teenage workers and improve detection systems of slave labor; coordinate information-sharing among government entities, trade unions, NGOs and business groups.*
11. *Provide counseling to victims of labor exploitation, ensure comprehensive assistance to victims, in order to swiftly address the situation; provide all affected individuals with sufficient accommodations during the period they remain vulnerable.*

VIII. THE RIGHT TO ADEQUATE HOUSING (ART. 11)

Suggested recommendations:

1. *Promote and pass a law that recognizes the public function of land-use planning, in accordance with the general principles regarding private property rights as regulated in the Civil Code.*
2. *Encourage and recommend to subnational levels, especially the provinces, the updating of rules governing the management of land-use planning; including urban land planning for low and middle sectors, as well as the adoption of measures to regulate land prices.⁵*

⁵ To cite one example, the proposed law put forward by the Planning Minister of the Province of Buenos Aires to promote the creation of social housing would establish a new legal foundation for provincial governments and municipalities to expand the supply of developed land for affordable housing for middle and lower income sectors.

3. *Adopt policies and legal measures to limit the excessive increase of rents, to facilitate access to rental, and to safeguard the security of tenant leases.*
4. *Take effective measures to reduce informal settlements, ensure security of land titles, and promote their urbanization with the participation of resident groups.*
5. *Adjust procedural codes at national and provincial levels with regard to evictions, incorporating international standards as well as mediation mechanisms to groups threatened with eviction in order to reach a solution that avoids homelessness.*
6. *In compliance with the regulations established by Law 26,061: intensify efforts to generate policies to strengthen families and communities to minimize the number of children and adolescents on the streets; and prevent the institutionalization of children and adolescents by the state.*

IX. THE RIGHT TO HEALTH (ART. 12)

1. The health impact of non-communicable diseases

Suggested recommendations :

1) Tobacco control:

- a. *Take the necessary steps to implement and ensure compliance with the tobacco control law (Law No. 26,687).*
- b. *Enact a law guaranteeing a complete ban on advertising, promotion and sponsorship of tobacco products throughout the country.*
- c. *Promote measures to increase taxes on cigarettes and ratify the Convention for Tobacco Control.*

2) Food:

- a. *Update the Argentine Food Code and ensure effective implementation of its modifications.*
- b. *Implement the necessary measures to ensure proper labelling of products and prohibit misleading advertising of unhealthy foods.*
- c. *Regulate and implement Law 23,396 on eating disorders and ensure compliance with standards in the field.*
- d. *Implement controls to ensure compliance with the prohibition of the use of trans fats in processed foods.*

2. Women and Health

a) *Teenage pregnancy: the situation is most acute in the nation's most neglected regions*

Suggested recommendations :

1. *Implement education campaigns, access to contraception and quality health services throughout the country.*
2. *Promote and ensure the existence of educational and employment opportunities that improve the socioeconomic situation of individuals living in the most neglected regions of the country.*
3. *Guarantee the provision of contraceptives and information about contraception in all hospitals.*

b) *Maternal Mortality and c) Lack of public health policies to ensure access to legal abortion*

Suggested recommendations:

1. *Ensure the implementation in all hospitals of the Technical Guide for the Comprehensive Attention of Non-Punitive, Abortions.*

2. *Adopt measures and allocate resources to ensure access to legal abortions throughout all jurisdictions.*
3. *Take effective measures to ensure adequate standards of medical attention and health care throughout the country.*

d) *Unequal access to misoprostol in primary health care (O.G.14 ESCR Committee, para. 21, 30, 43 and 44)*

Suggested Recommendations

1. *Take measures for ensuring universal availability and access to the pills of 200 mcg of misoprostol in the public and private pharmacies, for use in pre and post-abortion care in primary care and community health, in accordance with General Comment 14 of the Committee, para. 43, 44, 52.*
2. *Adopt mechanisms and measures to end and prevent measures designed to intimidate, investigate or persecute pharmacies, social organizations, public primary care and community health teams providing services for prevention of unsafe abortion and health care for women who have illegal abortions.*
3. *Revise legislation criminalizing abortion by extending the time frame and coverage for legal abortions, removing punitive provisions imposed on women who undergo an abortion, in accordance with general recommendation 24 of the CEDAW Committee on women and health, and the Beijing Declaration and Platform for Action.*
3. *Reform the laws that criminalize abortion by extending coverage and removing punitive provisions imposed on women who have abortions, in accordance with the Committee's recommendation on women and health (number 24), and the Beijing Declaration and Action Plan.*

3. The Right to Safe Drinking Water

Suggested recommendations

1. *Take swift action to provide sufficient and safe drinking water to populations that lack adequate water supply networks; ensure that the poorest sectors are not disproportionately burdened with water expenses as compared to wealthier households.⁶*
2. *Require public service suppliers to provide alternative forms of drinking water (bottled water, tank trucks, etc.) to all individuals in their service zones who live in situations of high vulnerability and/or health risks, and who have no access to potable water services due to delays in implementing the network expansions or planning.*
3. *Review current plans for the expansion of services and prioritize extension of services to groups who are in more vulnerable social health situations.*
4. *Create accurate diagnoses of social vulnerabilities and health care; plan the expansion of water networks and sewage systems in terms of prioritizing those sectors that are most vulnerable.*
5. *Track and control the quality and price of bottled water suppliers that service those sectors that do not have access to public water systems.*

X. RIGHT TO EDUCATION (ART. 13 AND 14)

1. Education Policies: Universal Education; Lack of vacancies in the province of Buenos Aires and the City of Buenos Aires

Suggested recommendations:

1. *Understand the realities of educational exclusions in order to take the necessary measures to achieve greater inclusion.*

⁶ ESCR Committee, General Observation, No. 15, par. 27.

2. *Develop statistics to highlight the socio-economic status of students in each school.*
3. *Elaborate and distribute a multi-year plan that establishes specific annual goals to expand vacancies for initial education (pre kindergarten, kindergarten and pre-school) and to establish, in a reasonably short time, the state's full compliance with the achievement of universal education at this level.*
4. *Elaborate a diagnosis and an official evaluation of the measures adopted to provide education in this level.*
5. *Provide economic resources to compensate the lack of educational opportunities.*
6. *Tally disaggregated information on children not enrolled in school due to overcrowding or lack of vacancies, or other reasons.*
7. *Take all necessary measures to guarantee universal education and to ensure the progressive enrollment of four and five-year olds.*
8. *Require schools to provide parents with written reports explaining why their children were not enrolled in a designated public school.*

2. The state's obligation to require a minimum number of school days: failure to comply with the 180-day school year

Suggested recommendations

1. *Take specific steps to achieve full compliance with Law No. 25864.*
2. *Promote research and analysis to determine the causes of the failure to comply.*
3. *Generate, regulate and disseminate an analysis of viable strategies to make up school days, independent of the reasons of why they are missed.*
4. *Adopt measures to minimize the negative impacts that missed school days have on the most disadvantaged sectors, especially in terms of loss of education, nutrition, employment opportunities and income.*

3. Sexual Education

Suggested recommendations :

1. *Ensure that curriculum guidelines developed by the Federal Council of Education are distributed throughout all jurisdictions in accordance with the law; take measures to avoid unequal access to the right to comprehensive sexual education; provide teacher training for comprehensive sexual education at all levels and jurisdictions.*
2. *Establish mechanisms to promote inter-sector coordination among state programs and institutions dealing with issues related to health education and those dealing with sexual and reproductive health.*
3. *Revise the curriculum for training teachers at pre-school and primary school levels in order to incorporate sexual education within all realms of teacher training.*
4. *Revise the curriculum for training teachers at the secondary level in order to incorporate sexual education as an obligatory part of teacher orientation.*
5. *Assign and implement the necessary budgetary resources to establish public policies for comprehensive sexual education.*

4. Inclusive education for people with disabilities

Suggested recommendations

1. *Develop an information system that generates indicators to analyze the educational situation of people with special educational needs (ie. collect information that follows the trajectory of a child's school career).*
2. *Develop programs seeking to include people with disabilities that set specific objectives and commitments, as well as deadlines and evaluation benchmarks.*
3. *Include issues of working with people with disabilities in teacher training programs.*
4. *Allocate funds to finance specific programs and projects to promote inclusion of people with disabilities.*
5. *Report on compliance with the Convention on the Rights of Persons with Disabilities.*
6. *Ensure that all educational institutions are accessible to people with disabilities (not only for students, but also for their families and all teaching and non-teaching staff).*

XI. HUMAN RIGHTS VIOLATIONS CAUSED BY INDISCRIMINATE EXPLOITATION OF NATURAL RESOURCES (ART. 11, 12, 15)

1. Clearing and Degradation of Native Forests, Expansion of the Agricultural Frontier

Suggested recommendations

1. *Grant the Ministry of Environment and Sustainable Development adequate resources (both human and budgetary) to properly monitor the implementation of the Forest Act at the national and provincial level, including full allocation of resources to the Forest Conservation Fund.*
2. *Create a free and accessible information system, including a map of forests, to monitor the situation of each province as a basis for periodic updates to comply with the law.*
3. *Institutionalize a culturally sensitive system that enables indigenous and peasant communities to access specific information about activities that may affect them, so that they may grant free and informed consent, and thus avoid forced displacements.*
4. *Provide adequate measures to ensure the end of the indiscriminate slash and removal of natural resources.*

2. Extractive Industries

Suggested recommendations:

1. *Institutionalize a culturally sensitive system to obtain prior free and informed consent of the inhabitants of towns or areas located near places of extractive activity, , especially indigenous communities.*
2. *Ensure the appropriate participation of rural communities and provide public environmental information regarding all extractive industry activities.*
3. *Establish, through the Ministry of Environment and Sustainable Development (SAyDS), a public information system in this area.*
4. *Allocate the necessary resources to complete the glacier inventory, and as part of it, register the areas where there are activities referred to in Article 6 of the Minimum Required Standards for the Preservation of Glaciers and Periglacial Environments Act.*
5. *Complete environmental audits as stipulated in Article 15 of Law No. 26,639, related to activities described in Article 6 of the same law, in order to enable an extensive system of consultation or public hearings and thus comply with mechanisms for citizen participation.*
6. *Identify priority zones while the glacier inventory is completed so that, during this transition, glacier and periglacial zones are not irreversibly affected.*