

**EVALUATION OF THE COMPLIANCE
WITH THE INTERNATIONAL COVENANT ON THE ELIMINATION OF ALL
FORMS OF RACIAL DISCRIMINATION
WITHIN THE FRAMEWORK OF THE XXI-XIII CYCLE OF THE PRESENTATION OF ARGENTINA'S REPORT
BEFORE THE CERD**

RIGHTS OF INDIGENOUS PEOPLES IN ARGENTINA

NOVEMBER 2016

Esteemed committee experts:

The report was prepared with information from the Parliament of First Nations, the Observatory on Human Rights and Indigenous Peoples (ODHPI), Chaco Argentina Agroforestry Network (REDAF), Association of Lawyers in Indigenous Law (AADI), the Social Accompaniment group of the Anglican Church of Northern Argentina (ASOCIANA), the Civil Association for the Rights of Indigenous Peoples (ADEPI-Formosa), the Center for Legal and Social Studies (CELS), the United Board of Missions (JUM-Chaco), the Permanent Assembly for Human Rights (APDH), the National Pastoral Indigenous Team (ENDEPA), OCLADE (Claretian work for development), the Master's Program in Human Rights at Universidad Nacional de Salta and the Indigenous Commission of Jurists.

The objective of this presentation is to provide the Committee for the Elimination of Racial Discrimination (CERD) with a report that covers the current situation of the indigenous peoples of the Argentine Republic. This information will help to assess the fulfilment of the State's obligations in regard to the International Covenant on the Elimination of all forms of Racial Discrimination (ICERD).

This report includes a section with questions and proposed recommendations for each of the problems addressed in the report for the committee's consideration at the evaluation hearing scheduled for the 91 period of sessions and for the issuance of its Concluding Observations on Argentina.

We are aware that the information contained in the present report does not address all of the human rights issues pertaining to the country's indigenous peoples. That said, we have included the main ones--with references to some of the most illustrative cases--to complement any relevant information that will enable the Committee to assess the State's obligations in regard to the ICERD.

It is the hope of all of the organizations that participated in the drafting of this report that it will be useful in the assessment of the enforcement of the rights enshrined within the ICERD in Argentina. We are available to expand on or clarify any points as deemed necessary.

Sincerely,

**Parliament of First Nations
Observatory on Human Rights and Indigenous Peoples (ODHPI)**

Agroforestry Network Chaco Argentina (REDAF)
Association of Lawyers in Indigenous Law (AADI)
Social Accompaniment of the Anglican Church of Northern Argentina (ASOCIANA)
Civil Association for the Rights of Indigenous Peoples (ADEPI-Formosa)
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National Pastoral Indigenous Team (ENDEPA)
Claretian work for development (OCLADE)
Master's Program in Human Rights of the National University of Salta
Indigenous Commission of Jurists

I. OPENING REMARKS

As the committee experts will agree, the effectiveness of the mechanism of periodic evaluation to determine the degree of fulfilment of the obligations arising from the ICERD relies, in large part, on the information available to the committee when it is assessing the situation in the country under evaluation. In this regard, the report presented by the State within the framework of the evaluation mechanism is one of the main available sources. In this context, it is important to note that the Argentine Republic has a new government as of December 10, 2015. As such, all information submitted by the State to the committee must be analyzed and assessed against the public policies of the new government.

Notwithstanding this, there are structural issues which were highlighted in the observations made by the committee in 2010, which, unfortunately, continue and have deepened over time.

The indigenous peoples that inhabit the Argentine Republic, for the most part, suffer acts of discrimination tolerated by the State and their agents. Below, we will examine some of the key issues expressed by the distinguished Committee in the note by the rapporteur in reference to the list of themes related to the combined twenty-first to twenty-third periodic reports of Argentina (CERD/C/ARG/Q/21-23).

II.- ACCESS TO BASIC SERVICES AND POVERTY REDUCTION (CERD/C/ARG/CO/19-20, PARA. 29)¹.

The Argentine State has an enormous outstanding debt in terms of its obligation to guarantee respect and enjoyment of indigenous peoples' economic, social and cultural rights. Undoubtedly, the cruder and more painful version of that statement translates into the fragile situation of malnutrition and poverty that many Argentine indigenous peoples are living, with particular severity in the case of those living in the Argentine regions to the Northwest and Northeast (NOA and NEA, respectively).

The CERD, in its 2010 observations, expressed concern about the situation of poverty of indigenous peoples in Argentina and recommended that the mode in which State programs on health, employment, housing and education impact them be included in their reports. The Committee also requested that indigenous peoples and minorities of African descent be included in the national census.

Unfortunately, the 2010 Census conducted by the National Institute of Statistics and Censuses (INDEC)² does not mention any to the cruder aspects of poverty (malnutrition) and refers only partially to health and access to water sources. Some of them are discussed below:

II.1.- Malnutrition

The CERD's request for information in its list of themes No. 17 contrasts with the absence of statistical data regarding the serious malnutrition affecting several members of the indigenous peoples—young children and older people, in particular—and the challenge of receiving a correct diagnosis given that medical reports generally refer to the health consequences of malnutrition and not its causes (which would be malnutrition itself in many cases).

Notwithstanding this, the information that transcends public opinion on the subject exposes an aspect of reality that must be duly enlightened by the State before the CERD.

¹ The Committee expressed as a relevant theme "...Information on the measures taken to guarantee effective access to basic services (decent housing, drinking water, health-care services, employment opportunities and quality education), particularly in rural areas, and to reduce poverty among indigenous communities, other minorities, migrants, refugees and asylum seekers..." (CERD/C/ARG/Q/21-23. Para. 17)

² National Institute of Statistics and Censuses (INDEC), 2010 Census, available at: http://www.indec.gov.ar/nivel4_default.asp?id_tema_1=2&id_tema_2=21&id_tema_3=99 (Spanish)

For example, a researcher at Universidad Nacional de Salta presented an alarming data in relation to the malnutrition of indigenous children in 2013. The study carried out from June to August 2011 in 74 communities of the General San Martín Department and in the municipalities of Rivadavia, Banda Norte and Santa Victoria Este of the Rivadavia Department, showed "...there is a significant prevalence of chronic malnourishment among indigenous children, 62.4% in the age group of 1-4 years of age, and 37.5%, under one year of age. If the global acute malnutrition figures are added to these values, the numbers soar to 50% of indigenous children under one year of age suffer some kind of nutritional deficit; and 70.8% of indigenous children 1 to 4 years of age are affected..."³

Also, Dario Aranda, a journalist dedicated to the coverage of cases involving indigenous peoples, published very worrying information: the accounts of the deaths of six indigenous children in early 2015. According to his report, the following cases occurred:

- On January 6, 2015, a Qom child Néstor Femenía died in Chaco. He was 7 years old, his body showed signs of starvation, malnutrition and tuberculosis. His death made the front page of national newspapers, was on primetime television but the story was forgotten after a few days.
- On January 13, 2015, Natalia Gómez, three-month-old Qom infant died in Chaco.
- On January 20, 2015, Marcos Solís, a one-year-old Wichí child from the town of Morillo (Salta), died due to severe malnutrition.
- On February 2, 2015, Alan Villena, nine months old died at the hospital in Colonia Santa Rosa (Salta).
- On February 6, 2015, another Wichí child, Mauricio Lucas, died of malnutrition in Santa Victoria Este in Salta. He was two years old and, like his mother, he was undocumented.
- On February 9, 2015, Samuel Jaimez, a three-year-old Aboriginal child from Pozo El Bravo died⁴.

There was already a precedent to these cases: the deaths of Sabina Gisela Jurado (11 months) and Martín Delgado (eight months), in August and September 2014, whose medical reports, which were reported by the media, indicated that the children suffered from first and second degree malnutrition, respectively.

II.2.- Health

To continue to address the list of themes No.17, indigenous people, especially those in the NOA and NEA regions, suffer the consequences of health policies designed without an intercultural approach.

In public health centers, where the majority of patients are indigenous peoples, the presence of translators and/or interpreters on site is neither foreseen nor guaranteed, which makes it difficult on repeated occasions to provide a correct diagnosis and, even more serious, the definition of medical treatment.

This gains relevance in relation to the last census conducted in 2010 in as much as the indicator that refers to the indigenous population descendants of indigenous or native peoples in private homes by type of health coverage, by province, in which 452,663 members of the 955,032 indigenous people do not have health insurance/medical coverage and 23,294 are beneficiaries of government health plans. This number represents the 49.83% of indigenous people receiving care in public health centers⁵. But

3 Buliubasich, Catalina, in "La política indígena en Salta. Límites, contexto etnopolítico y luchas recientes" (The indigenous politics in Salta. Limits, ethno political context and recent struggles), Instituto de Ciencias Antropológicas, Facultad de Filosofía y Letras, Universidad de Buenos Aires, in the publication RUNA. Vol. 34, N° 1, Facultad de Filosofía y Letras of Universidad de Buenos Aires, Autonomous City of Buenos Aires, 2013.

4 Published on May 17, 2015: <http://www.biophilia-foundation.org/ES/2015/05/17/argentina-profunda/>

5 National Institute of Statistics and Censuses (INDEC), 2010 Census, available at: http://www.indec.gov.ar/nivel4_default.asp?id_tema_1=2&id_tema_2=21&id_tema_3=99 (Spanish)

as reported by INDEC, the 39.358% who do have health insurance includes beneficiaries of PAMI, the Argentine medical coverage for retirees and pensioners. It is reasonable to assume that the members of the indigenous peoples of the Argentine Republic far exceed the 50% that go to public health centers.

Upon analyzing that data, the lack of translators or interpreters in health services has a negative impact on results because in those communities where the native language is the primary language (such as the Wichí, Toba, Chorote, Chulupí, etc.) their members suffer from their difficulties to overcome the language barrier and absence of an intercultural approach.

II.3.- Water

Also, in response to the list of themes No.17, another worrisome aspect tied to health is the absence of reliable data pertaining to indigenous peoples' access to drinking water. Complaints regarding access to water are frequent insofar as they relate to overall well-being and a decent standard of living.

In 2010, the Economic Commission for Latin America and the Caribbean (ECLAC) reported on the basis of the national census conducted in the year 2001, that "...in most of the country's departments, indigenous households report a lacking water supply. In most departments in the provinces of northern Argentina (particularly Chaco, Formosa, Misiones and Santiago del Estero), and to a lesser extent, those located in the south (provinces of Neuquén and Rio Negro and Chubut), half of indigenous households lack access to an adequate water supply..."⁶.

The national census conducted in 2010 by INDEC charted the critical situation facing indigenous peoples regarding their access to water and its origin.⁷ According to the census, 91.3% of the total population had access to the public water network, but this indicator dropped to 79.5% in the case of indigenous peoples. This could give the impression that there are no differences in the access to water from the public network. However, looking at disaggregated data, percentages in NOA and NEA—regions characterized by the existence of structural poverty—are considerably lower. Thus, in the province of Salta, the percentage is 72.1%; in the province of Santiago del Estero is 45.8%; in the province of Tucumán, 79.7%; Catamarca, 83.5%; Jujuy, 82%; Chaco, 61.7%; Formosa, 48%; and Misiones, 46%. Levels of access to the public network found in Corrientes (89%) and La Rioja (94.4%) are unique cases that can be explained by the number of indigenous people that were counted in the census (5,129 and 3,935 respectively).

Furthermore, the situation is worse for indigenous peoples. Government plans aimed at providing water infrastructure require that the beneficiaries be owners of the land, rendering it impossible for these communities to access the plans. To date, indigenous peoples are barred from the government deploying plans in place to dig water wells and implement other infrastructure works because, in their vast majority, they are not titleholders of their land, a situation we address below.

The Committee is familiar with the relationship between dignified life and access to drinking water. The situation of malnutrition and deprivation of water is central to indigenous peoples in Argentina and has not been adequately addressed by the State.

Finally, in response to the list of themes No. 19 in relation to health, it should be noted that there are no public policies related to sexual and reproductive health services with an intercultural approach, nor are

6 Ribotta Bruno, Socio-demographic assessment of the indigenous peoples of Argentina, ECLAC, accessible at http://www.cepal.org/celade/noticias/paginas/7/40377/argentina_julio2010.pdf.

7 Idem. Note 4. In the Census 2010 report, INDEC described what is meant by public network in the following terms: "... Public supply network (running water): water collection, treatment and distribution system by means of a communal network of pipes subject to inspection and control by the public authorities. The system can be overseen by a public body, cooperative entity or private company."

there any that allow women from these indigenous communities to participate in their design and creation.

III.- POLICY PARTICIPATION (CERD/C/ARG/CO/19-20, PARA. 28)

In its observations made in 2010, the Committee expressed great concern about the low level of participation in political life. Their under-representation in the Argentine Parliament. Furthermore, a specific question was included about this in its list of themes No. 21.

Unfortunately, minimal progress has been made in this regard; none whatsoever in the framework of political representation in the Chamber of Representatives and Senate of Argentina's National Congress.

As a result, indigenous peoples are not able to participate in public affairs.

IV.- TERRITORIAL RIGHTS, LAW 26.160 AND NATURAL RESOURCES (CERD/C/ARG/CO/19-20, paras. 20 and 21)⁸

In regard to the list of themes No. 20, it should be noted that the legal system of the Republic of Argentina recognizes indigenous peoples' property rights over the territories they have traditionally occupied. Article 75, subsection 17 of the National Constitution recognizes the right of ownership of the lands traditionally occupied by indigenous peoples. On the other hand, article 18 of the National Civil and Commercial Code recognizes this right in a similar manner. Despite this, there is a profound difference between the regulations and their enjoyment and effective exercise of their rights.

The Committee in its 2010 observations emphasized its concern regarding its implementation throughout the Argentine Republic and urged the State "... to take steps to halt forced evictions and safe keep indigenous peoples' community property...". Unfortunately, to date, the State has failed to implement those recommendations made in 2010.

In addition, Law 26.160, which was issued in the face of an emergency situation created by the numerous evictions of indigenous peoples from their territories, will remain in effect until November of 2017. This Law suspends the execution of eviction rulings and procedures and the implementation of a survey of their territories to carry out a "regularization" of land ownership. **Despite the importance of the law to stop the evictions, the land titling of the territories on behalf of indigenous peoples upon completion of the survey is not among the State's objectives under the law.** From this perspective, neither the Law 26.160 nor the actions of the State can be valued as a procedure aligned with international standards that then ensures the reception of territorial claims and the indigenous peoples' subsequent enjoyment of the right of ownership. In addition, it is extremely worrying that the State has not delivered the technical survey folders to the consulted indigenous communities within the framework of the Law 26.160, even though several years have gone by since its completion.⁹ It is

⁸ As a pertinent theme, the Committee highlighted "Information on the measures taken and the mechanisms and procedures put in place to promote the recognition and protection of the rights of indigenous peoples over their traditional lands and natural resources and to ensure that indigenous peoples are involved in such efforts and are consulted about them. Information on the implementation and impact of the reform of the Civil and Commercial Code on the communal ownership of lands occupied by indigenous peoples. In particular, information on the measures taken to protect indigenous communities from forced evictions and violence, including measures taken in connection with the expiration of Act No. 26554 in early 2017." (CERD/C/ARG/Q/21-23. Para. 20)

⁹ This is the case, among many others, of the Wichí communities El Traslado, Zopota and El Escrito which have still not received a folder with the technical information despite a ruling in their favor from the Federal Chamber of Appeals of Salta ordering the National State to demarcate and reveal the data. The ruling was obtained in the case of "Chief Roberto Sánchez and the Zopota community and El Escrito Chief Bautista Frías with the national government with amparo (a judicial protection against the action of authorities)" dated February 23, 2011.

extremely important that they receive this document given that in the majority of cases it is the only public document that contains their territorial claim.

The territory of the communities, even that of the few who have managed to obtain their land titles, is at risk because control over their natural resources is not effectively assured. In recent years, some achievements have been made in terms of the titling of community lands, but at the same time there has also been an explosion of authorizations for land clearing, forestry or mining exploitations, which put the community balance at risk. There is also serious concern due to the environmental pollution caused by such activities, carried out without serious environmental impact studies or participatory hearings.

Deforestation is an environmental problem that has become an issue of concern on a global scale.

In this context, dry tropical forests are among the most threatened. The World Wildlife Fund (WWF) lists Gran Chaco among the eleven fronts of massive deforestation around the world. The tropical dry forests of the Argentine and Paraguayan Chaco, in particular, have suffered the highest rates of deforestation. In the last 10 years (2006-2015) more than 3,200,000 hectares of forests in the dry Chaco of Argentina have been cleared¹⁰.

One particular case occurs in the so-called Chaco Region: 22% of Argentina's land area corresponds to the eco- region of the Gran Chaco Americano, encompassing all or part of 13 provinces in the north. The Chaco Region is the ancestral territory of many indigenous peoples, such as the Wichí people, Iyojwaja (Chorote), Nivaklé (Chulupí), Qom (Toba), Moqoit (Mocoví), in addition to the numerous peoples who inhabit the region in Paraguay and Bolivia, representing transborder peoples in some cases. According to the Complementary Survey of Indigenous Peoples (ECPI) carried out by INDEC in 2004, 136,000 persons belonging to indigenous communities are living in the Argentine Chaco.

The dry forests of this region are undergoing a devastating process of deforestation, mainly native forests, which are cleared to create new land for mono-crop plantations such as soybeans. The high profitability of agricultural crops, especially soybeans, led to an increase in the price of land in the provinces located in the core area for agribusiness—the Pampas region—activating interest in purchasing or leasing land in provinces like Chaco.

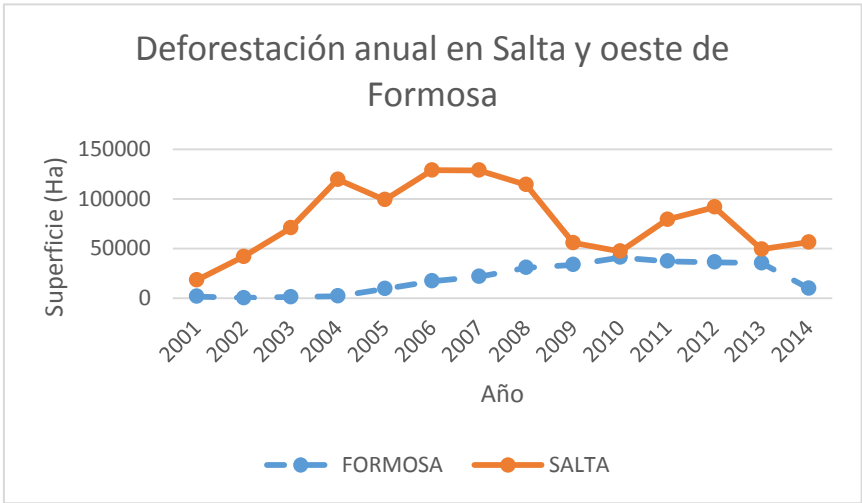
This led to a very strong pressure to appropriate territories inhabited by indigenous and peasant communities, with consequent eviction scenarios and multiple orders of clear cutting. In the face of this growing conflict related to land and territory, and in response to complaints of indigenous, peasant and human rights organizations, Law No. 26.331 of Minimum Budgets for Environmental Protection of Native Forests and Law No. 26.737 of Protection to National Domain over the Property, Possession or Ownership of Rural Lands, known as the Law against Foreign Ownership of Land, were sanctioned, in addition to the aforementioned Law No. 26.160.

Law 26.331 forced the provinces to draft a Land Management Plan for Native Forests, which stated that the areas for conservation and sustainable use must be differentiated from those wherein changes in land use could be authorized through a participatory mechanism with the indigenous communities, among others. Although this is a step forward as it is the only land-use plan conducted to date and it establishes that addressing the interests of the indigenous communities that make their livelihood from the land is a priority criterion (criterion 10 of the law), **its implementation has been particularly controversial in the provinces of the Chaco region**, product of the pressure exerted by business sectors related to agribusiness.

¹⁰ See technical information at www.monitoreodesmonte.com.ar.

The seriousness of this situation comes from the pressures faced by the indigenous communities as a result of authorization requests for land clearing and crop planting on their traditional lands without a complete survey of all of the indigenous communities and their territories within the framework of the Law No. 26.160, nor have the appropriate measures been adopted so that they have a property title, which would confer them legal certainty. The cases of Salta and Formosa are particularly worrying. In Salta, there are serious problems with monitoring and alternative participatory mechanisms to land clearing. In Formosa, the forest management plan protects only 25% of the province's native forests, leaving the rest in conditions that expose them to the advance of deforestation without any prior resolution to the land rights claims made by the indigenous peoples.

The following table illustrates the situation of deforestation in Salta and Formosa since 2001:



This represents the current and potential risk for many communities that inhabit the region, since they do not have the recognition of their territories granted by land titles, or, if they do have them, they only represent a small portion of the land area.

In Chaco, there are emblematic cases of this relationship between clearing and deforestation with the absence of government action to protect and recognize the land rights of indigenous peoples. Some of them are discussed below:

.- Miraflores, department of General Güemes, Chaco

In 1930, Qom Chiefs Soria, Leiva and Alegre accepted a proposal made by the national government to vacate the territory where they were settled in the city of J.J. Castelli, to occupy 10,000 hectares in Miraflores. In 1994, the town of Miraflores was created on 300 hectares of indigenous land. The Land Commission of Miraflores, comprised of Qom and Wichí families, filed a claim on the 10,000 ha. The court ruled in favor of the indigenous community's ownership rights over the territory. However, to date, the national government has not formalized any proposal of this guaranteed right.

.- Large Reserve or Reserve of the West, department of General Güemes, Chaco

In 1991, the Chaco provincial government recognized the existence of the indigenous territorial reserve of the West, which ended up demarcating 308,000 hectares of native forest after some reforms. Indigenous peoples Qom, Wichí and Moqoit convened by the State, and duly consulted, created an organization to administer the territories, it is called MOWITOB. The Chaco provincial government acknowledged the organization's status as a non-governmental juridical person but in December 2015 a provincial executive branch decrees divided the territory and recognized non-indigenous occupations. To date, there is no property title.

.- Wichí community El Pajarito, department of Patiño, Formosa.

The community initiated the administrative process with the Land Institute of the province of Formosa to claim recognition of their historic indigenous territory. The provincial state government granted an occupancy permit temporarily delimiting the territory, as a prelude to the measurement and titling. However, a family of neighbors interrupted the traditional indigenous possession, in addition to the involvement of interests of new real-estate developers eager to expand the agricultural frontier and sell these lands, which aggravated the territorial conflict. The El Pajarito community is constantly suffering attacks, such as damages to wire fencing along the perimeter of the community, destruction of property markers, arson attempts on their homes and other structures, and threats made at gunpoint. Of all the communities in the area, this community is the only one that has access to the Bermejo River, this being the historical territory of several communities. The community initiated the administrative process to get the property title without any concrete results to date.

.- PAMPA THE 20 community, department of Patiño, Formosa

Pampa THE 20 is a Wichí community, and the origin of several surrounding communities. It is a historical, spiritual, place of concentration of the Wichí people since time immemorial. It was inhabited on a permanent basis until the 1980s, when some families in the community moved closer to town to access basic services. In 2012, all the families of the community decided to settle down permanently in Pampa THE 20. As a result of this decision, people began to come forth claiming rights over the traditional territory. Since that time, and with the support of the police, they have tried to evict them permanently, performing acts of violence on their material possessions, committing acts of intimidation, harassment and violence on some community leaders, injuring several of them, in one case severely.

Members of the community filed 17 criminal complaints for acts of violence suffered, which were archived by the intervening authorities. At the same time, persons with a claim on the territory initiated a criminal case for usurpation and an injunction for usurpation. The judge ruled that the families be evicted. The ruling was not executed in the end, in good part because of the pressure by the families, who organized a protest. In addition, the community initiated a lawsuit denouncing violations of due process in the judicial process.

.- Communities of San José, Cuchuy and others, department of San Martín, province of Salta.

The Wichí communities San José (ChustajLhokwe), Cuchuy and neighboring communities are losing their ancestral territories in the face of the advance of deforestation. In addition, there is an ongoing process of companies and individuals buying and selling titles of the lands they inhabit. Thus they have been driving out indigenous groups, forcing them to move to urban centers; others remain, still resisting in restricted spaces with the loss of their forests and natural, cultural and historical property. This has triggered various conflicts between peasant neighbors and companies that put pressure on the communities so that they leave and cede their rights on their territories so they can be clear cut. Currently the application of agrochemicals on fields that are already in production has affected the natural water sources and the health of the members of the Wichí community, which is surrounded by large expanses of soybeans, corn and bean crops.

In 2008, a judicial process of territorial claims was initiated in the federal courts of the province of Salta--with the assistance of a public defender--which sought an injunction to halt the deforestation of their territories. In 2009, the Federal Judge of Oran recused himself after a large body of evidence was presented, and referred the case to the National Supreme Court of Justice (CSJN). Only in October 2013 did the CSJN declared itself incompetent to hear the case, at which point it passed the case to the Court of Justice in Salta. As a result, the indigenous communities were left without a public defender because their defense attorney from the Public Ministry had no provincial jurisdiction. In 2015, the Court

of Justice of Salta notified the indigenous communities that they needed to appoint a lawyer in the case under penalty of being found in contempt, at which point the trial would continue in absentia.

To date, the trial is pending, waiting for a ruling from the Court of Justice of Salta. The lack of community property titles for their territories exposes communities to a constant situation of risk and insecurity. From the date of the filing of their territorial claim to the present day, indigenous peoples have lost 17,579 hectares of native forest in their territory in this case alone.

IV.1. THE CASE OF THE LHAKA HONHAT ASSOCIATION OF INDIGENOUS COMMUNITIES (OUR LAND)

An emblematic case in terms of the re-vindication of the ancestral lands of indigenous peoples in Argentina is that of the Lhaka Honhat Association of Indigenous Communities (Lhaka Honhat Association) in the province of Salta. It is formed by 71 communities that represent around 7000 people who recognize the association as their legitimate representative.

Since 1983, the Lhaka Honhat Association has made countless efforts to obtain the State's recognition of its property rights on the now former fiscal lots 55 and 14, territories where the community members live. Communities are demanding that the State delimit and demarcate their ancestral territory of 400,000 hectares and give them a collective title. Of a total of 643,000 hectares, which involve the now former fiscal lots 55 and 14 of the department of Rivadavia, the State must demarcate 400,000 that belongs to the indigenous communities and 243,000 for eligible Creole families and move these families out of the ancestral territory. It should be noted that many of the Creoles have erected solid and wire fences, upsetting the integrity of the indigenous territory and preventing the free passage of the communities, several of which are hunter-gatherer societies.

On August 4, 1998, the Lhaka Honhat Association, with the representation of CELS, filed a petition before the Inter-American Commission on Human Rights (IACHR) in light of: the lack of legal recognition of the territory of traditional occupation of the indigenous communities; the construction of various works and exploration of hydrocarbons in the traditionally indigenous territory without any respect for any Inter-American standard regarding free, prior and compulsory consultation; for the tolerance of allowing third parties to install fences, wired fences, illegal logging and cattle grazing activities in traditionally indigenous territory; failure to respect, protect and take effective measures to ensure the full enjoyment of the right to community property. On January 26, 2012 the Inter-American Commission approved the merits report 2/12 in which it stated that various rights enshrined in the American Convention on Human Rights had been violated to the detriment of the communities represented by the Lhaka Honhat Association and made several recommendations to the Argentine government to ensure their claim to their ancestral territory. The IACHR is currently overseeing the implementation of these measures because the decision to pass this case on to the Inter-American Court of Human Rights depends on its effective implementation.

On May 29, 2014, decree 1498/14 was approved. It transfers the ownership of 400,000 hectares of the now former fiscal lots 55 and 14 to the indigenous communities that form Lhaka Honhat and 243,000 hectares to eligible Creole families. This decree legally recognizes the territorial ownership of the Lhaka Honhat communities. Even though this measure is an important step toward compliance with the recommendations of the merits report 2/12, there is still a lot to do: the demarcation and delimitation of all of the indigenous land is incomplete; not all of the Creole families have agreed to relocate; not even 5% of the necessary infrastructure works for the Creole families to be relocated have been completed; no measures have been taken to combat illegal logging; no progress has been made to remove fences and wire fences in the indigenous territory; among other pending actions.

V.- PRIOR CONSULTATION AND FREE CONSENT, PRIOR AND INFORMED (CERD/C/ARG/CO/19-20, para. 26).

The illustrious Committee highlighted as a relevant theme the mechanisms of prior consultation to obtain free, prior and informed consent¹¹. Indigenous people systematically demand respect of their right to consultation, to free, prior and informed consent and participation in all matters affecting them. Unfortunately, the indigenous peoples of Argentina repeatedly report the violation of those rights and the consequences as a result. Despite the provisions of the Constitution and the international human rights instruments signed by Argentina, there are no regulated procedures for consultation with indigenous peoples.

The State has not produced the legal conditions to ensure the consultation of indigenous peoples affected by actions or development, investment or infrastructure projects. In any case, it has become a discretionary practice, in which projects are chosen unilaterally, as are the indigenous peoples to be consulted and the modality used. It is commonplace that in the few cases in which there is any consultation, none of the project documentation, environmental impact studies or records are translated into the native language of the affected indigenous people. As a result, they cannot participate freely.

Usually they are practices in which coercive decisions take precedence, where pressures are imposed, with manipulation of indigenous leaders, corruption, creation of fake organizations, and falsification of documents; jointly or separately, they violate indigenous rights, and for years, sometimes they exercise multiple dominance to strong arm them in favor of the interests of big business and its patrimonial interests, without considering the vital interests at stake and the development of communities and indigenous peoples¹².

In the Argentina, indigenous people are not adequately consulted about the public or private projects that affect them. Many allegations have exposed this situation. Some of them are discussed below.

V.1.- Absence of consultation in the law of discrimination.

In response to the list of themes No. 6 and No. 10, it should be noted that a legislative bill called "National law against discriminatory acts," under file No. 1450-D-2016 is pending before the Chamber of deputies of the nation of Argentina.

This bill is intended to regulate issues that affect the lives of indigenous peoples, in that they are recipients of persistent patterns of discrimination in the Argentina Republic, but, coincidentally, has not been put to consideration of indigenous peoples for their consultation and participation.

Without any input from indigenous peoples, the bill against discrimination is limited and conditioned and expresses, paradoxically, discrimination in the origin by omitting the consultation and participation of indigenous peoples.

To such a point that the mentioned project deliberately omits the collective character of the rights of indigenous peoples, fundamentally, the mention of the peoples and their communities within the same text of the law. It simply mentions that "persons or groups of persons" may be the object of discrimination.

V.2.- Case of the Las Salinas community

11 It said "...Information on national and/or provincial mechanisms for conducting consultations to obtain the free, prior and informed consent of communities that may be affected by natural resource development projects in the territories that they traditionally occupy or use. Disaggregated information on the consultations conducted to date and, in cases of eviction, on how due process was ensured and on any remedial action taken, including financial compensation..."(CERD/C/ARG/Q/21-23, para. 20). See also paragraph 22 of the list of themes.

12 Report from the National Indigenous Pastoral Team (ENDEPA) and the OCLADE Foundation for the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Rutere, dated May 17, 2016.

As an example of the failure to comply with the list of themes No. 22, it is important to mention that 33 indigenous communities that traditionally inhabit territories which today are part of the provinces of Salta and Jujuy are demanding respect for their rights of participation and consultation within the framework of the *amparo* initiated before the National Supreme Court of Justice in November 2010. They denounced that lithium exploration is advancing on their economic, social and cultural activities in breach of the national and international legislation, inasmuch as they have no participation, nor are they consulted about the implementation of productive projects in their territories.

Mining projects are authorized by the provinces of Salta and Jujuy based on environmental impact studies conducted by the companies involved in the projects, which, in general, do not include procedures of participation or consultation with the affected indigenous peoples. As a result, these people's traditional ways of life, their representative institutions and their customary law are not respected.

ILO Convention No. 169, article 15, to which the Argentine government is a party, states "*The rights of the people concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of such resources.*"

There are no specific mechanisms to ensure participation in the benefits derived from investment projects for the development or exploitation of natural resources. In relation to the mineral resources, Convention No. 169 states that indigenous communities "*shall participate whenever possible in the benefits of such activities, and receive fair compensation for any damages they may suffer as a result of such activities,*" but this does not occur.

We understand that both the federal State and the provinces are in breach of their international commitments assumed by ratifying Convention No. 169 - Law 24.071 and the United Nations Universal Declaration of Indigenous Rights. We are aware that the Argentine federal system delimits the areas of competence between the two levels, but in issues related to indigenous law, the attributions are concurrent and, hence, the responsibilities are shared.

Without any specific mechanisms that regulate the processes of participation and consultation, in the case of investment or development projects, private companies have the same obligations that are applied to the general population, i.e., obligation to participate in legally non-binding public hearings and to carry out environmental impact studies. Government control is minimal and limited to formal matters.

Governments do not carry out proper consultation on mining exploration and exploitations that occur in indigenous territories; companies invade the ancestral territories and force indigenous communities to file grievances and claims with the Office of Mining, the Office or Secretariats of the Environment and initiate judicial proceedings under conditions of absolute inequality.

V.3.- The Council of Indigenous Participation.

In relation to the point 9 of the list of themes, it is worth highlighting the absence of consultation on issues affecting indigenous peoples is exhibited in the State's response to a historical demand. In this sense, it created an Advisory Council of participation of the indigenous peoples of Argentina without consulting with indigenous peoples themselves.

The national government issued Decree 672/2016 for the creation of the aforementioned body but failed to consult all the involved indigenous peoples about this important aspect. This led numerous indigenous organizations, through the Parliament of Indigenous Nations,¹³ to manifest their rejection of

13 The organizations that expressed their rejection are: Indigenous Plurinational Council; Coordinator of the Parliament of the Mapuce Chewelche of Rio Negro; the Committee of the Native Peoples of the Province of Buenos Aires and CABA; Qullamarka Coordinator of Kolla Communities and Organizations of Salta; Community of India Quilmes. Tucuman;

the decree: a) it was drafted and approved without participation or consultation with the indigenous people, organizations and communities around the country; (b) it does not address the fundamental demands of recent decades: the law of community land ownership and the right to free, prior and informed consent, through the completion of the consultation that the government is required to carry out; (c) it aims to form an Advisory Council with representatives of indigenous authorities from all over Argentina that imposes a work table and political dialogue hastily put together with only some organizations; (d) it focuses on the emergency and the current situation, ignoring the greatest threats to indigenous territories, e.g., extractive industries: fracking, mega-mining, mono-crops of soy, lumber; and their most serious consequences: clear cutting, displacement of communities, eviction, prosecution, pesticides; (e) it breaks up and encourages the dispersal of peoples by creating a body dependent on the government, rather than strengthening organizations in the regions where the policies of provincial governments already lack support because they lead to repression, incidental deaths, and political and judicial persecution; (f) it creates a native bureaucracy and distorts the objectives of organizations and their authorities, which are to depend on their own institutions, and not the current government, weakening their leaders ideologically, who end up defending a personal source of employment; (g) it creates a new body which overlaps with other satellite bodies of the State created by the previous administration.

V.4.-Gas pipeline in Northwest Argentina (NEA)

As an example of the lack of compliance with the list of themes No. 22, it is worth noting that several organizations and indigenous communities protested against the execution of the gas pipeline in Northwest Argentina (NEA) because no consultation process was carried out among the affected indigenous peoples. The pipeline along much of its length runs through the territory of various indigenous people: Wichí, Toba, Tapiete, and Chorote, among others, in the provinces of Salta and Formosa.

Works were initiated without addressing allegations regarding the environmental, social and cultural impacts that a work of such magnitude represents. There was no prior consultation so that community members could express free, prior and informed consent.

The *Lhaka Honhat* Association, which represents 71 indigenous communities, had to present a request before the Inter-American Commission on Human Rights, within the framework of the international case No. 12.094, in order to achieve the suspension of the works that were crossing through their traditional territory without the necessary social, cultural and environmental impact studies. The information generated by the contractor —Vertua— omitted the serious consequences on the strategic paleo-riverbeds over which the water consumed by indigenous communities runs. The Lhaka Honhat had to use studies from specialized experts because the administrative proceedings and submitted environmental impact studies were only available in Spanish, which represented a blatant obstacle, hindering indigenous peoples' access to the information and rendering it impossible for them to identify the serious effects it could have on their physical and cultural survival. That is why, at a meeting held on September 17, 2015 in the city of Buenos Aires between the State, the province of Salta, the company ENARSA and Lhaka Honhat, within the framework of the aforementioned international case, they agreed to suspend works in the part of the territory that pertained to the Lhaka Honhat communities and

Indigenous Union of the North of Salta. UNIS; Ojo de Agua de Yavi Indigenous Community. Jujuy; South American region coordinador of the Continental Link of Indigenous Women; General Pueyrredon Indigenous Social Organization. OSPI; Newen Lelfun Mapu. La Pampa; Community DiaguitoCacanoAtamisqui. Santiago del Estero; Jujuy Pluricultural MCP community movement; Amaicha del Valle indigenous community. Tucuman; Secretariat of indigenous peoples of the CTA; Indigenous Peoples Team SERPAJ; Kintu Kimvn Community. Los Toldos. Province of Buenos Aires; Tehuelche Mapuche Peñi Mapu. Olavarria. Provincia of Buenos Aires; National Council of Indigenous Women CONAMI; Assembly of the Qom People of Rio Bermejito. Chaco.

promised to gather additional information about returning the paleo-river beds to their original elevation to avoid the diversion of waterways; dispose of waste without polluting the environment and ban burying garbage and waste on traditional territory; grant petitioners access and control over the works on their territory; and provide weekly informational updates about the work to be performed; among other actions.

But the rest of the indigenous communities affected by the execution of the works, which include the communities of Tartagaly Rivadavia Banda Sur of the province of Salta and those of Formosa did not have the same luck and the construction of the gas pipeline was imposed upon them without consultation or participation.

V.5.- Discrimination in authorizations granted for clear cutting and changes in land use.

Indigenous peoples are discriminated against in the administrative procedures required for authorization of deforestation and land use changes¹⁴. They are generally private and corporate initiatives aimed at obtaining authorization of agro-livestock business activities.

The initiatives mentioned, in general, are not translated into indigenous languages and procedures do not ensure the participation of affected indigenous peoples and communities.

A recent study reveals that between 2004 and 2015, the province of Salta –through the Environment Secretariat (SA) under the Ministry of Environment and Sustainable Production (MAyPS)– held more than 306 public hearings for processing requests for "projects involving land use change" in Salta's Chaco region, which will affect an estimated gross floor area of 1,250,000 hectares. Almost every project (99%) involved the conversion of land covered with native forest to land for agricultural use and/or livestock.

In cases where "land use changes" directly or indirectly affect indigenous peoples, they are generally unaware of the changes until the public hearing; however, more often than not, they learn about them once the companies begin their activities directly on the traditional lands.

In addition, neither the State nor the provinces provide any information regarding the cumulative impact that each individual project involving a change in land use will generate on the interests of local populations—in particular land use and natural resources—and indigenous peoples themselves.

V.6.- Situation of the Nivaklé people in the province of Formosa.

The Nivaklé people traditionally inhabited the area of influence of the Pilcomayo River, in the current territory of the province of Formosa and the neighboring Republic of the Paraguay, as such they are a transborder people. This identity and history is not recognized by the government of Formosa, hindering the delivery of identity documents to its members, transgressing international regulations for transborder indigenous peoples.¹⁵ At the same time, this lack of recognition prevents the processing of the legal status of their communities, stretching between the towns of Laguna Yema and Las Lomitas to the north of national route 81, which delays community land title procedures, essentially making it impossible for them to exercise the right to consultation as long as their legal indigenous status is denied.

VI.- INSTITUTIONAL VIOLENCE AGAINST INDIGENOUS PEOPLES. (CERD/C/ARG/CO/19-20, paras. 20 AND 21)

In relation to the lists of themes No. 20 and No. 25, the acts denounced by indigenous communities are extremely worrying, in particular that they are subject to violence directly by government agents or with

¹⁴ This point is an example in relation to paragraph 22 of the list of themes.

¹⁵ This is an example of the points 20 and 22 on the list of themes.

their acquiescence. In most cases, they are actions produced within the framework of judicial proceedings in which the aim is to evict them from their territory.

Despite the fact that the Law 26.160, which suspends evictions of indigenous communities, is in effect, there have been cases in a context of extreme violence. Evictions and violence have been possible because not all the territories of the indigenous peoples of Argentina have been surveyed. This generates legal insecurity for indigenous peoples, a situation that third parties and/or governments take advantage of to strengthen their claims to the detriment of the territorial rights of the communities. In addition, the inequality of arms contributes to the use of violence, which systematically, with limited exceptions, is denounced in judicial proceedings involving indigenous peoples and their communities.

Next, we will review some of the reported cases.

In the province of **Salta**, on May 12, 2016, members of the community Diaguita Calchaqui Cóndor Huasu of the Quebrada de San Lucas, department of San Carlos, were violently evicted. A complaint was made publicly after a group of police officers and the Justice of the Peace of the town of Cafayate, acting in compliance with a court-order eviction ruling issued by María Virginia Toranzos de Lovaglio, went to the homes of Martina Herrera and Santos Arjona, and when they did not find the individuals they were looking for, they took their belongings and destroyed their homes. Representatives of the Union of the Peoples of the Diaguita Salta Nation denounced that the court order was obtained to satisfy the interests of the company San Carlos S.R.L., who wants the land that forms part of the community's territory¹⁶.

In the province of **Tucuman**, serious events occurred to the detriment of members of indigenous peoples. **These crimes include the murder of Javier Chocobar and serious injuries suffered by** three other community members: Delfín Cata, Emilio Mamaní and Andrés Mamaní (the community's current chief). Also in the province of Tucuman, the Chief of the India Quilmes community was arrested in June 2015, as a result of conflicts over the management of their sacred site known as "Ruin of Quilmes"—currently usurped for economic exploitation—in an attempt made by the chief to recover the site.¹⁷ In July of 2015, as reported by the Organization ANDHES, the Diaguita people suffered another violent eviction attempt against its community, wounding three indigenous women, two with bullet wounds and one with a fractured arm.^{18,19} All these events will be object of a specific report that ANDHES will present to the illustrious Committee, which we adhere to.

Furthermore, in the province of **Formosa**, there have been several incidents that demonstrate a situation of structural discrimination and severe repression against indigenous communities.

Félix Díaz—one of those mentioned in paragraph 25 of the list of themes—belongs to the *Potae Napocna Navogoh community* "La Primavera," which lies 174 kilometers from the city of Formosa, within a short distance of the Pilcomayo River on the border with the Republic of Paraguay. Before the creation of the province of Formosa, the national government recognized the property of different portions of land in favor of the community. However, over time, tension around the ancestral territory has risen. The conflict worsened in 2007 when the Institute of Colonization and Fiscal Lands of Formosa gave the provincial national university a tract of traditional territory claimed by the community for the construction of a university campus. The community filed a series of complaints to prevent works

16 See the publication Nuevo Diario de Salta, May 12, 2016, with statements made by David Pastrana and Héctor Fabián, representatives of the Union of the Peoples of the Diaguita Salta Nation.

17 Fourteen members of the Indian community Quilmes have been waiting a year for a trial date, as a result of a series of complaints of usurpation filed by a group of landowners starting in 2008. The courts ignored the insistent requests from the defense attorneys, who tried to frame the case within the parameters of the indigenous law.

18 <http://www.lagaceta.com.ar/nota/645756/policiales/tension-tafi-valle-se-enfrentaron-tiros-disputa-terreno.html>

19 <http://apaprensa.com.ar/ciertos-empresarios-contratan-gente-como-bruno-petech-como-brazo-armado-para-sacar-a-las-comunidades-de-sus-territorios-y-venderlos/>

from moving forward on their territory. These complaints led to reprisals against members of the community. In July 2010, as works to clear and prepare the grounds for construction of the aforementioned campus began, the conflict took a turn for the worse. As a form of complaint and protest, the community decided to carry out a blockade along the national route No. 86, which runs through the territory claimed by the community.

On the afternoon of November 23, 2010, during the protest underway by community members, security forces came down severely on protesters causing the death of a member of the community, Roberto López and police officer Eber Falcón. Fierce police repression resulted in dozens of wounded, some of whom were gravely injured. Security forces also burned down the homes of several community members. Furthermore, close to 30 people—including elderly people, pregnant women, mothers with their babies, even children between 4 and 17 years of age—were detained for more than 24 hours. Many of the children detained were alone at the time and not allowed to communicate with their parents. Members of the community suffered cruel treatment while they were detained; many of the wounded were handcuffed and when they fell asleep in their cells, the guards would throw hot water on them.

As a result of this situation, on November 30, 2010, CELS, along with the National Office of Public Defense, asked the IACHR to adopt precautionary measures to protect the life and integrity of community members and Félix Díaz, their leader. On April 21, 2011, the IACHR granted this request, which is still in effect to this day.

After the violent repression, the Justice of Formosa opened three criminal cases against Félix Díaz and other members of the community in order to criminalize their work as defenders of the rights of indigenous peoples and to delegitimize their struggle. At the same time, no action was taken to investigate the responsibility of the police of the province of Formosa in the repression. While Felix is still being criminalized and is possibly facing jail time, the provincial justice acquitted the police officers. Meanwhile, after five years, a resolution is still pending from the National Supreme Court of Justice in the legal underlying cause in dispute, which is the possibility of the community's full enjoyment of the ancestral territory.

The case of the *Potae Napocna Navogoh* "La Primavera" community is in no way isolated. It is another example of the serious institutional violence that indigenous communities in Formosa are subject to. In this context, it is worth mentioning that on August 16 and 17, 2002, the provincial government undertook an illegitimate and extremely violent police operation without judicial authorization, characterized by a special cruelty against the Nam Qom indigenous community of Qom people (Toba). More than 100 police officers violently entered the community carrying out massive and indiscriminate arrests, mistreating and torturing its members: women, men, children and the elderly. During this oppressive operation, several homes were destroyed and raided without a warrant, all in the presence of the prosecutor and a judge, who then was the judge who presided over the investigation into the occurrences.

The criminal process that ensued at the internal level involved serious irregularities: complainants did not have an impartial tribunal; they did not have the chance to request measures or appeal against the decision of the acquittal of the police officers; a Qom interpreter (Qómlac'taqa) was not present during many of the interrogations; and the representatives of the victims were not allowed in the interrogations. In short, the judicial investigation was not serious, diligent or effective and was rife with acts of discrimination. The criminal case was definitively closed on August 25, 2004. CELS presented the case to the Inter-American Commission on Human Rights in March 2005. In 2013, IACHR issued its admissibility report No. 5/13, which, to date, has not been answered by the State. Argentina's lack of

response is extremely worrying because it continues to impede the community from finally getting justice and reparation for the serious acts they were subject to.

This situation worsened recently when the community was once again victim of severe repression. On September 30, 2015, several community members were wounded by the province's security forces²⁰, a theme that forms part of the Committee's list of highlights. A group of about 10 women with their children, all members of the Nam Qom indigenous community in the province of Formosa, blockaded national route No. 11 to claim their right to decent housing²¹. Around 7:30pm the provincial security forces came to the site of the road block and began to repress the protesters with lead and rubber bullets. In response to the violent police operation, other community members approached the site where the road block was taking place. During the crackdown, the police commissioner in charge of the operation grabbed one of the demonstrators by the hair and said "If you want another Primavera, I'll give you another Primavera." The commissioner's words refer to the violent repression on November 23 and 24, 2010 in Formosa against the indigenous community Qom Potae Napocná Navogoh "La Primavera" by the police during a protest and road blockade that culminated in the death of a community member and a police officer. As we have already mentioned, these events and the ongoing insecurity faced by the community, on April 21, 2011, the IACHR issued precautionary measures 404-10.

The repression ceased when the police realized that were being filmed by several onlookers using their cell phones. Several community members, including children were injured by rubber bullets. The wounded had to go to the community health center for medical attention, i.e., no ambulances were on the scene nor did any doctors come to the site of the repression to care for them.

Other incidents of noted violence and discrimination against indigenous communities in Formosa took place on March 24, 2015, when Wichí²² community members were violently repressed. Around 150 members of the Formosa Wichí communities barricaded route 81 at the access to Ingeniero Juárez, demanding housing, land titles, jobs, among other demands. Police arrived on the scene and indiscriminately fired rubber bullets on the demonstrators, which included children. Agustín Santillán, a community leader, was struck by five rubber bullets and another member was shot in the eye.

Another incident occurred on July 28, 2014 at 8:00am, when a police operation with more than 100 agents in a dozen trucks raided the homes of four families of the Wichí community, members of the Satuktes Civil Association, of Chief El Colorado, located in the department of Ramón Lista, in western Formosa. The police acted based on a report of an alleged theft of a motorcycle that belonged to a Creole with whom the Wichí community had had territorial problems. Their belongings were destroyed and several people were injured. In the framework of the operation, police officers fired rubber bullets, injuring Ricardo Tejada, who received two bullet wounds. Ricardo was taken to the hospital for emergency surgery. Before and after his operation, he was handcuffed to the bed. In addition, during

20 <http://www.noticiasformosa.com.ar/2015/10/01/barrio-namqom-aborigenes-se-enfrentaron-con-la-policia-en-el-corte-de-la-r11/>

21 See article "Barrio Namqom: aborígenes se enfrentaron con la Policía en el corte de la R11" (Namqom Neighborhood: indigenous communities are confronted by the Police on the road block of Route 11) October 01, 2015 in Noticias Formosa, <http://www.noticiasformosa.com.ar/2015/10/01/barrio-namqom-aborigenes-se-enfrentaron-con-la-policia-en-el-corte-de-la-r11/>. See also the article "NamQom: sigue el corte en la 11" (NamQom: road block continues on Route 11) on October 1, 2015 in *Diario El Comercial* http://www.elcomercial.com.ar/index.php?option=com_content&view=article&id=182022:disparos-y-enfrentamientos-en-el-barrio-namqom-por-corte-de-ruta&catid=9:edicion-digital&Itemid=65

22 See article "Formosa: reprimen a integrantes de la Comunidad Wichí, hay heridos" (Formosa: members of the Wichí community are repressed, there are wounded) from March 25, 2015 on Agencia de Noticias de Redacción <http://www.anred.org/spip.php?article9535>

the police operation, four of his brothers, Esteban, Avelino, Manuel and Rogelio were arrested and subjected to a judicial process with serious irregularities.

VI.1.- Discrimination in the judicial system (CERD/C/ARG/Q/21-23, para. 7).

Indigenous peoples are submitted to the judicial system without the adoption of the necessary measures to ensure the equality of arms and, fundamentally, the possibility that they can enjoy the guarantees of due process to defend and attain the respect of their rights. (CERD, Art. 5, subsection a).

The Argentine Republic, which is a federal country, has a federal judicial system and each province that comprises it has its own judicial system.

In response to the list of themes No. 6, it is worth highlighting the majority of the country's procedural systems, with some partial exception in the cases of Neuquén and Chubut provinces, there are no provisions to ensure the participation of the members of indigenous peoples under conditions of equality. Thus, structural problems can be identified, including: (a) judicial operators lack of knowledge of indigenous institutions; (b) lack of interpreters and translators in native languages from the stage of consultation to the full development of the proceedings; (c) lack of legal assistance specialized in indigenous rights; (e) difficulties for production of proof in judicial processes—especially civil proceedings—because expenses and fees charged beforehand by the experts and/or to cover travels fees for expert witnesses²³ cannot be paid if the money is not available; (f) absence of specialized experts.

VI.2.- Violation of due process in the trial of extradition of Facundo Jones Huala.

In addition to the list of themes No. 6, it should be mentioned that on August 31 and September 1, 2016, the first trial was held for the extradition of the Mapuche *lonko* Facundo Jones Huala, requested by Chile. Facundo was arrested in Chile in 2013 and 2014 accused of arson, carrying a handcrafted weapon with 12 ammunitions, and illegally entering the country. After Chilean authorities received the news that the Mapuche leader would be in the area of Esquel, Argentina, they asked Interpol that it issue a red alert and, subsequently, petitioned Argentina for his extradition. Judicial extradition proceedings began in Argentina in February 2015 and Facundo wasn't arrested until late May 2016. This process culminated in the ruling, as corollary of a trial, in which it was decided to declare void all actions taken in the procedure due to the serious irregularities committed to detain the indigenous leader.

The two days of the trial had a very strong social impact as they revealed: (a) the illegal acts committed by the provincial police of Chubut, who worked in a joint mode with an intelligence officer of the former-SIDE (Secretariat of State Intelligence) and with the probable consent of fiscal prosecutor and judges; (b) the work of an intelligence agent that carried out illegal espionage, not only against Facundo Jones Huala, but mainly against him; (c) the provincial prosecutor received information obtained illegally and worked with this agent; (d) policemen got information about Facundo by beating a young man arrested

²³ The case of the Carapari indigenous community presented before the Federal Justice of the province of Salta is paradigmatic as it represents a judicial process against the Argentine State and the oil company Refinor for damages generated by a pipeline running through its traditional territory in which the only testing measures that have not yet been produced are the forensic anthropological, psychological and the quantification of environmental damage. Experts have requested money for expenditures within the judicial process but the community does not have the resources to pay them. The community requested support from the National Institute of Indigenous Affairs, who replied that it didn't have the budget to cover evidence in judicial proceedings. Given that response, the community asked the provincial judge to submit the request to the National Supreme Court of Justice but was told that prior to that measure that they indicate what the rule was whereby that state authority should cover the costs of expert testimony. Since then, it has been three years and they cannot produce the evidence due to a lack of money. The case is being processed by the Federal Court No. 1 of the province of Salta, under "Carapari Community and others vs the national government, Refinor and others without damages," case file No. 035/05.

for theft and they took statements from other police officers with reserved identities; (e) intelligence operation run on all of Facundo's relatives and any vehicle that enters the territory of the Lof in resistance of the department of Cushamen, where it is presumed the Mapuche leader may be found; (f) the participation of the Department of Investigations against Terrorism of the Federal Police of Argentina who first carried out a survey of Mapuche communities in the area of Esquel, then, in a clandestine operation, made contact with members of these communities.

The trial ended with a declaration of nullity of the proceedings for the case file due to the serious irregularities in the investigation process. The judge also ordered criminal proceedings against police officers and others involved in the process, as well as other measures of protection for witnesses affected by the actions of police officers and intelligence agencies. However, that sentence is not definitive, since it was appealed by the public prosecutor before the Supreme Court of Justice of the Nation. This illustrates the institutional violence he was subjected to within the framework of a judicial process that involved federal and provincial State agents.

VI.3.- Criminalization and judicial harassment of indigenous peoples in the province of Rio Negro²⁴.

As an example of the list of themes No. 20, it should be noted that the province of Rio Negro possesses a series of state strategies for not recognizing indigenous territory. The method has been to revive criminal cases already closed against members of Mapuche communities to generate wear and publicly expose the members as the "usurpers." There are two cases that give credit to that statement.

The first is against members of the José Manuel Pichún Mapuche community in the area of Cuesta del Ternerero, fostered by the state-owned Rio Negro forestry company ENFOR S.A. sponsored by lawyers of the State Prosecutor of the province of Rio Negro in the courts of San Carlos de Bariloche. This case is being processed before the Court of Instruction No. 2, Secretariat 3, presided over by Judge Bernardo Campana, case number "Fuentes, Juan Carlos, Valle Nicolás and other usurpers" S.3-15-398. The suit was initially filed by Prosecutor Francisco Arrien and the allegation was made by Prosecutor Sergio Damián Pichetto against the Mapuche community because, according to his statement: "...they cut the wire perimeter fence to enter the aforementioned property, they installed themselves there and prevented the company's workers from entering... stripping the affected party of the possession that it exerts over the property."

Upon receiving notice of the complaint, members of the Community explained that a similar cause against them involving the same land had been dismissed in 2012, in the case "MURGIC, Albino S/Dcia-Case File S.11-09-0218" of the Court of Instruction No. 6, Secretariat 11 of this Constituency²⁵. Then, summoned to give testimony--which meant they had to travel for days to appear—they explained to the investigating judge the situation of double jeopardy regarding the criminal prosecution for the same incident; but citing a possible prior exception of inaction, he suspended the process and requested the records and, requested a new look from the prosecutor and the lawyers of the province who had become third parties in the case in defense of the "interests of the State." The case has yet to be resolved.

²⁴ This section was drafted based on an article by Kosovsky Fernando, *Criminalización del reclamo territorial indígena en Rio Negro* (Criminalization of the indigenous territorial claim in Rio Negro), lawyer of CEPPAS-GAJAT. Unpublished.

²⁵ They also noted that involving the same place ENFOR S.A. had insisted on the eviction of those members and that the community, on their behalf, had won a civil trial that was filed in the proceedings entitled "PROVINCIA DE RIO NEGRO C/ VALLE, NICOLAS Y OTROS S/ DESALOJO –SUMMARY JUDGMENT," Case No. 08392-09 of the Civil Court in commercial, mining and successions No. 5 – San Carlos de Bariloche with a ruling made on November 13, 2013, which recognized and considered proven the Mapuche's traditional occupation and the right of community ownership. The province withdrew the appeal in December 2013 and the sentence is firm and final.

The same prohibition against double jeopardy also affects Crescencio Prafil, Casiano, Evaristo, Andrés Prafil and Cesar Yañez, members of the Lof Prafil-Calfupán and the Mapuche Newen Twain Com community with traditional territory in Parajes Cuesta del Ternero and Fitamiche. Again the complainant is the landowner Ricardo Natalio Mohana who in 2015 lost, with a firm and final ruling, in all of the criminal trials in which he was the complainant against members of the community on lots 93, 94, 107, 108 of section IX, department of Ñorquinco, province of Rio Negro, which form part of the community's ancestral lands²⁶. The new case 3-16-332 S. entitled "Prafil, Crescencio, Evaristo, Andres and Yañez, Cesar, regarding Usurpation" and together with the additional case S.3-16-346 entitled "Prafil Andres, Yañez Cesar regarding Usurpation" were filed in the same Court of Instruction No. 2 by Dr. Campana, who ordered a raid to seize weapons and record damages and an injunction against members of the Community. In order to execute the injunction, in addition to Rio Negro police, troops from the National Gendarmerie intervened acting beyond the scope of the court order by placing padlocks on the entrances to the Mapuches' homes (*rucas*) and prohibiting them from re-entering them. There are infants living in those homes. State agents withdrew taking with them three knives, which are the working tools that belong to community members, who are *crianceros* (Nomadic shepherds) in the middle of their herds' parturition; they could not even leave their herds to attend the inquest in Bariloche because it would have meant abandoning their herds, nor did they have enough money to pay for transportation (there is not public transport from Ñorquinco to the courtroom in Bariloche).

Mohana's allegations culminate with a summons for questioning and searches of the community's *rucas* carried out in a manner that clearly represented an abuse of authority; while the complaint and request for protection of the Community is "shelved" at the police station, without even a formal procedure filed in the courts.

The discrimination against members of the Mapuche people is evident.

VII.- GANG RAPE OF A WICHÍ GIRL. DISCRIMINATION AND NON-PUNISHABLE ABORTION. (CERD/C/ARG/Q/21-23. Para. 23)

As an example of the lack of compliance with the list of themes No. 10 and No. 19, it is imperative to mention the incident involving the gang rape of a 12-year-old Wichí girl with a severe developmental delay, by nine Creoles in November 2015. They chased her down a soccer field, took her up to a hill and raped her on the ancestral lands claimed by the Indigenous Communities Lhaka Honhat in the Province of Salta. The mother filed a report but the State did not listen, nor was a pregnancy test or a legal abortion performed. Furthermore, she did not receive a prophylaxis treatment to prevent transmission of sexually transmitted diseases or HIV. After 31 weeks of pregnancy, she underwent a Caesarean because the pregnancy was not viable, and the fetus was diagnosed with anencephaly.

In the initial report filed and in subsequent proceedings, neither the girl nor her family received any legal assistance from the State to establish themselves as the complainant, see through the proceedings or file any claim for the serious harm that she had been caused, nor were any Wichí language translators made available. The State's indifference was overwhelming: it did not even call for witnesses or collect

²⁶ The members of the community were notified of the new complaint by the same police officers who notified the Community about the firm and final dismissal of the case S11-09-0089 entitled "Prafil Crescencio, Evaristo Casiano, Raúl and Irma regarding Usurpation" originally filed in the Court of Instruction No.6 and concluded in the Court of Instruction No. 4, a case that the State's Attorney ruled on September 18, 2015 before the Second Criminal Chamber (Case 15-185-A) "... whoever denounced and filed the complaint failed to establish sufficient proof and cannot do so; furthermore, the defendants have a connection with the property in question (see administrative proceedings in the General Directorate of Land, the CO.DE.C.I and C.A.I., as well as before the Civil Justice or administrative litigation) which like the traditional indigenous occupation invoked dates from the time before the encumbrance reported by Mohana ...".

necessary evidence to accredit the serious crime reported. The State's indifference was so great that the rapists were set free in March 2016 when the magistrate ruled that there was no merit to keep them detained.

All of this took place under maximum institutional stealth until the end of May 2016, when it became public that the girl who had been gang raped would undergo surgery to terminate the unviable pregnancy, the product of the rape.

The case exposed the responsibility of the Public Prosecutor's Office and the Magistrate who failed to provide any legal assistance to the rape victim and enable the protocols provided for non-punishable abortion.

As a result, the Prosecutor in charge of the case, Armando Cazón was dismissed and the new Prosecutor moved forward with a criminal filing, a new order of detention for all the accused and the mandate of an oral trial against the nine Creoles who participated in the rape. The mandate was filed by the criminal prosecutors Pablo Cabot and Federico Obeid, warning that in the analysis of the evidence, "it was found that defendants carnally accessed the girl using to their advantage the number of aggressors, the use of force and the victim's psychic and physical condition," for the crimes of "sexual abuse with carnal access committed by several aggressors, exacerbated by the intervention of a minor," a crime that the Criminal Code provides for a sentence of eight to 20 years in prison. In addition, proceedings were filed against three minors, facing charges for "sexual abuse with carnal access committed by several aggressors." The criminal investigation, activated once it became public, determined that the evidence gathered reveals that the girl not only was violently dragged by force to the place where the rape took place but the abuse was violent and the victim suffered an injury to her organs.

On the other hand, the Commission on Human Rights of the Chamber of Representatives of the province of Salta lambasted in the Executive Branch, the judiciary and the health services system. Along the same line, one of the judges of the Court of Justice of Salta filed a request for a jury trial for the permanent dismissal of the Prosecutor Armando Cazón and removal from the bench of the Magistrate Héctor Astigueta. But the trial jurors ruled that there was no merit to open a procedure for their removal as a result of the events suffered by the Wichí girl.

After an analysis of the investigation was carried out, the testimonies received and the information collected, the aforementioned Commission on Human Rights issued the following conclusions:

"...None of the judicial and administrative authorities obliged to do so complied with the provisions of emergency care protocols for non-punishable abortion cases and for the comprehensive care of sexual assault victims.

_Government mechanisms of the executive and the judiciary branch to contain and accompany the victim and her family failed, taking into account their legal obligations, in particular the provisions of the laws 26.061 (for the comprehensive protection of the rights of girls, boys and adolescents) and 26.485 (for the comprehensive protection to prevent, punish and eradicate violence against women).

_Judicial measures taken by the authorities involved in criminal proceedings to which this Committee had access, were not appropriate, nor were they conducive to the clarification of the facts. Also, the correct preservation of irreproducible evidence was not ensured.

_It was found that judicial officials who took part in the process once the Chamber of Deputies intervened over stepped their bounds..."

VIII.- DISCRIMINATION AND STIGMATIZATION IN THE SPEECH OF THE MINISTER OF EDUCATION AND SPORTS OF THE NATION. (CERD/C/ARG/CO/19-20, para. 24 and 27)

In response to the failure to comply with the list of themes No. 6, we must mention that the Minister of Education and Sports of the Nation recently gave a speech that released violence on indigenous peoples and deserves its express repudiation. Furthermore, a draft statement of rejection of the expressed opinions is pending in the Argentine Parliament.

In a public act held in the town of Choele Choel in Rio Negro on September 14, 2016, at the opening ceremony of the new Teaching Hospital of Veterinary Medicine, the Minister of Education and Sports of the Nation Esteban Bullrich in his speech compared the opening with the "conquest of the desert," making a reference to the military campaign ordered by Julio Argentino Roca in the south of the country at the end of the 1870s. The Minister tried to remedy the outburst by saying that the new conquest of the desert would not be won "...with a sword but with education...".

The Minister's reference was to the desert campaign named after military raids carried out by the General Julio Argentino Roca, around the year 1880, to expand territories, which resulted in the slaughter of tens of thousands of indigenous people who belonged to the Mapuche and Tehuelche communities who inhabited Argentine soil. In addition, many were forced into slavery and they were denied their culture for more than a century.

The mention of the "desert campaign through education" was received as a symbolic act of violence and the recognition of a historic event that resulted in death, genocide, and the humiliation of the indigenous peoples who lived in the south of Argentina.

This contravenes the Committee's recommendations that the State take the necessary measures to include and not discriminate indigenous peoples in any regard.

IX. Questions and recommendations for the State

Questions for the State:

- What measures will the State take to eradicate poverty and malnutrition among members of indigenous peoples contained in the report?
- What measures are being taken to prevent the eviction of indigenous peoples and ensure the effective enforcement of the emergency laws of indigenous community property and possession of ancestral lands?
- What are the reasons for the delay in the territorial survey ordered by Law 26.160? Why haven't the technical survey folders been delivered to all of the surveyed indigenous communities?
- What measures are being taken to prevent, investigate and punish acts of violence against members of indigenous communities committed by public officials and private individuals?
- What measures have been adopted and will be adopted so that indigenous communities and their members can effectively access justice in defense of their rights and have equality of arms?
- What measures are being taken to ensure indigenous peoples' enjoyment of the rights to participation and consultation in all projects and actions that affect them in the Argentine Republic?

- Since the enactment of the Law 26.160 (2006) thousands of hectares of forests in indigenous territories have been cleared, causing irreparable losses and de-facto evictions. Is there any mechanism foreseen for indigenous people to seek reparation for the violation of their rights? Has a system of reparation been envisaged for damage caused to indigenous peoples as a result of the loss of their territories and natural and cultural assets?
- What has the government done to ensure indigenous participation in legislative projects? What actions did the State take to enable the participation of indigenous peoples in the Bill for the "National Law against Discriminatory Acts"?
- What role did the State assign to the Indigenous Participation Council of the National Institute of Indigenous Affairs in light of the creation of the Advisory Council by an executive branch decree?
- What measures will the State adopt to ensure the participation of indigenous peoples in political participation and parliamentary representation?
- What measures has the State implemented and what will be done in relation to the implementation of public policies for sexual and reproductive health with an intercultural approach? If there are any planned policies in this regard, how will they be put to consideration of the indigenous peoples so that they can exercise their right to consultation and the free, prior and informed consent?
- What measures will the state adopt to prevent judicial officials from behaving in the manner presented in this report in the case of the gang rape of the Wichí girl?

Recommendations to the State:

- Adopt effective mechanisms to eradicate discrimination toward indigenous peoples and, in particular, poverty and malnutrition suffered by some of them, and references of government agents in historical incidents that represent genocide and the killing of indigenous people.
- Adopt concrete and uniform federal mechanisms to ensure that indigenous peoples can enjoy the practice of their rights as stated in the Constitution and the provincial constitutions, ILO Convention No. 169 and the United Nations Declaration of Rights of Indigenous Peoples.
- Adopt measures to avoid the eviction of indigenous peoples and ensure the effective enforcement of the emergency laws of indigenous community property and possession of ancestral lands. Deploy all measures to expedite the process of territorial survey prescribed by Law 26.160, in order to create a map of the location of the indigenous territories and to act accordingly.
- Implement the available means to guarantee the security of indigenous peoples who today suffer threats, harassment, violence and evictions. Adopt measures to prevent acts of violence

against members of indigenous peoples by public officials and private individuals alike, and to punish public officials who fail to comply with current legislation in the field of indigenous law.

- Take steps to legally establish procedures of demarcation and titling of indigenous lands in accordance with current international standards; and so that indigenous communities and their members can effectively access the justice system in defense of their rights and have clarity in regard to the legal channels to be used.
- Adopt effective measures to ensure that the indigenous peoples are consulted about any and all projects or initiatives that affect their interests.

Recommendations on the situation of the Lhaka Honhat communities:

- Complete as soon as possible the demarcation and delimitation of the territory of the indigenous communities of the Lhaka Honhat Association of Indigenous Communities.
- Deliver the collective title in favor of the 71 communities that form part of the Lhaka Honhat Association of Indigenous Communities.
- Implement the necessary infrastructure works in order to undergo the relocation of the Creole families outside the ancestral lands of indigenous communities that form part of the Lhaka Honhat Association of Indigenous Communities.