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Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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INTRODUCTION

After submitting a summary of the major concerns documented by Amnesty International about Argentina in December 20131, this organisation would like to share the submission below with the Human Rights Committee (the Committee) before the fifth periodic report of Argentina is reviewed.

In this report, Amnesty International discusses its concerns regarding sexual and reproductive health and violence against women, the conditions of imprisonment, torture and other ill-treatment, the rights of indigenous peoples, freedom of expression and social protest, and the rights of refugees and migrants.

SEXUAL AND REPRODUCTIVE HEALTH AND VIOLENCE AGAINST WOMEN (ARTS. 2, 3, 7, 17, AND 26)

Women and girls in Argentina still have limited access to information and services regarding their sexual and reproductive rights. Moreover, the number of events involving violence against women and femicides in the country continues to be on the rise. Amnesty International submitted a report to the Committee for the elimination of discrimination against women in January 2016[2], to which we refer for the sake of brevity. Furthermore, a brief update on this information since January 2016 can be found below.

CRIMINALIZATION IN THE CONTEXT OF SEXUAL AND REPRODUCTIVE HEALTH

In the Province of Tierra del Fuego, a female aged 28, who is the mother of 3 girls, was charged with the alleged crime of abortion with consent. In 2010, this woman was a victim of domestic violence by her partner at that time. Before she separated and in the context of day-to-day violence, she became pregnant. She had a neck condition which prevented her from going through a fourth pregnancy without severe health consequences. Because of the abuse situation and the risk to her health, she had the right to legally end the pregnancy. She was acquitted by a criminal court on 16 May.

Recently, a case was released about a 27-year-old woman, known by the fictitious name of Belén, who has been deprived of her freedom for over two years in the Province of Tucumán, in northern Argentina, after experiencing a miscarriage at a public hospital. She was subject to violation of her right to privacy, unfair accusations and ill-treatment by both doctors and police officers.

On 21 March 2014, at dawn, Belén showed up at the Hospital de Clínicas Avellaneda

[1] Prior to the adoption of the list of issues before the 5th periodic report, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICS%2fARG%2f15989&Lang=en.
[2]Amnesty International, 27 January 2016, Index: AMR 13/3333/2016, https://www.amnesty.org/es/documents/amr13/3333/2016/es/.

Emergency Department, in San Miguel de Tucumán, with abdominal pain. She was referred to the Gynaecology Unit because she had severe bleeding. At this unit, the physicians told her that she was having a miscarriage and was expelling a foetus of approximately 22 weeks. Belén said she did not know that she was pregnant. Hospital staff found a foetus in a restroom and immediately reported her under the assumption that it was Belén's "child", but no exam or DNA test was performed to provide proof of her relationship with the foetus. Belén said that a nurse brought the foetus in a small box and that he insulted her because of what she had done, arguing that it was her "child". When she woke up in her bed after the surgery, several police officers were around her, inspecting her private parts. All of these events may be considered cruel, inhuman and degrading treatment.

Article 17 of the International Covenant on Civil and Political Rights safeguards the right to privacy and requires States to take appropriate steps to ensure that medical information remains confidential, particularly at healthcare facilities. Every girl or woman requiring an abortion at a healthcare facility, or experiencing a miscarriage, is protected by the doctor-patient duty of confidentiality.

Belén was remanded in custody for over two years upon being accused of self-inducing an abortion. The prosecutor handling the case later changed the charge for aggravated murder with two aggravating factors —the relationship and perfidy—, which is punished more severely with imprisonment for up to 25 years. On 19 April, the Tucumán Criminal Court of Appeals, Courtroom No. 3, sentenced Belén to 8 years in prison for murder. Belén's attorney appealed the decision and requested her release from prison, but the appeal was denied.

The Argentine State should ensure access to information and services regarding sexual and reproductive rights for women and girls in Argentina. Specifically, authorities should refrain from criminalizing women because they exercise their rights.

CONDITIONS OF IMPRISONMENT, TORTURE AND OTHER ILL-TREATMENT (ARTS. 7 AND 10)

In 2010, the Human Rights Committee had already expressed its concern about the prevailing conditions in many prisons of the country, recommending the State to put an end to overcrowding, observe minimum inmate treatment rules, ensure due investigation of injuries and deaths inside correctional facilities, etc.[3]

Amnesty International continues to receive information about cases of torture and other ill-treatment by law enforcement authorities, both at detention centres and at the time of apprehension, where proper investigation is rarely conducted in order to bring the responsible parties to justice.[4] Current torture rates in the Province of Buenos Aires, Santa Fe and

3 UN Human Rights Committee, Concluding Observations - Argentina, 2010, UN Doc. CCPR/C/101/D/1608/2007, para. 17.
4 See "*Amnistía Internacional envía carta a las autoridades para poner fin a violaciones de derechos humanos en Santiago del Estero*" (Index: AMR 13/001/2012). Available at: http://www.amnesty.org/pt-br/library/asset/AMR13/001/2012/es/c9668e59-3fd4-4806-aec9-9aec26a271a8/amr130012012es.html (Retrieved 3 April 2012).

Chubut[5] were disclosed in the context of a Citizen Security and Torture hearing before the Inter-American Commission of Human Rights (IACHR) which took place in March 2015. The records for the three jurisdictions show plenty of reported cases of abusive use of force, torture and other ill-treatment when individuals are detained in public areas.[6] Electric prods or stun guns, dry and/or wet submarine methods, etc.[7] , are still being used as torture tools. The use and abuse of segregation units as a punishment method continues to be usual, as well as the transfer of individuals to "*buzones*", solitary confinement cells with restricted basic services. The time of prison pavilion searches is another occasion when you can see brutal violence by correctional officers against detainees.

In 2015, the Province of Buenos Aires Public Defence Office of the Court of Cassation and Amnesty International published a joint report which analyses the situation of minors who are victims of torture and other cruel, inhuman or degrading treatment in the Province of Buenos Aires. Focused on boys and girls, this report reveals that 304 cases were recorded by the Public Defence Office of the Court of Cassation Database in slightly more than one year. Less than half of the cases collected in this Register of Torture were reported to a competent authority, leading to the possibility of initiating the relevant judicial investigations. The vast majority of the case files in this second case group were directly closed, with no investigation whatsoever, not even an interview to request further information from the reporting party.

In many other cases, "no ratification" from the reporting party is the reason for file closure. Then, the joint report further provides a selection of five Judicial Departments for case file analysis. For the five selected departments, the Register of Torture includes 131 cases in the study period, representing 43% of all the reported cases across the Province of Buenos Aires during the same time period. Only 57 of these cases were formally reported to the relevant authorities.

The almost absolute impunity in the 57 surveyed cases is also seen in another survey published in 2013, which revealed that, of 3,013 torture cases recorded in the Province of Buenos Aires between 1998 and 2002, only three sentences had been passed as of December 2013, with only one of them being for a torture-related crime[8].

A vast majority of recorded torture cases (71%) arises at the time of apprehension or detention of children and another significant percentage is seen during the deprivation of freedom (20%). Of 59 cases of victims deprived of their freedom, 46 (78%) occurred at

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[5] IACHR, Hearing on Citizen Security and Torture Reports in Argentina. Petitioners: Buenos Aires Province Public Defence Office of the Court of Cassation, Santa Fe Province General Public Defence Office, Chubut Province General Public Defence Office, Amnesty International, Argentine State. The information submitted by the petitioners is available at http://www.amnistia.org.ar/sites/default/files/Informeseg.pdf (Retrieved 26 March 2015).
[6] Buenos Aires Province Public Defence Office of the Court of Cassation in Criminal Matters, Second and Third Quarterly Report for 2014; Chubut Public Defence Office, Report on Cases of Torture And Other Cruel, Inhuman and Degrading Treatment, September 2004 – February 2015, and appendices; Santa Fe Province Public Defence Office (SPPDP), Preliminary Report, Register of Torture and Police Abuse, from 1 November 2013 to 15 December 2014.
7 These torture methods consist in the application of electricity or electrical shocks upon bodily contact, especially on genitals, teeth, mucous membranes, nipples, etc. (electric prod), suffocation with plastic bags (dry submarine), and suffocation by submersion in water (wet submarine), and they were used during the last military dictatorship in Argentina.
[8] Coriolano, M. L., *Red para la lucha contra la Tortura, Implementación del Protocolo Facultativo a la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanas o Degradantes*, Chapter II, Section IV, "La Impunidad como el factor más importante en la proliferación y continuación de la tortura", Ed. Ministerio Público de Justicia y Derechos Humanos de la Nación, October 2013.

police stations.

Furthermore, Amnesty International has received reports on current safety and freedom deprivation conditions in various areas and wings at a number of correctional facilities in Mendoza —Penitenciaría Provincial de Mendoza (Boulogne Sur Mer), Complejo Penitenciario III (Almafuerte), Complejo San Felipe and El Borbollón[9].

In July 2013, video images of at least five police officers torturing two detainees at a police station in General Güemes, Province of Salta, were available online. These images, apparently recorded in 2011, showed how the prisoners were beaten and suffocated with a bag.

Amnesty International has also been informed of the high impunity rates in torture and ill-treatment cases, partly because victims and witnesses fear retaliation after reporting such events, and of the nearly zero investigation and punishment of responsible parties. It is necessary to implement protection systems for witnesses and victims of torture and ill-treatment to safeguard those who are brave enough to report these events both during and after investigation.

Amnesty International holds the advances in passing and regulating the National Mechanism for the Prevention of Torture[10] in high regard; however, Amnesty International is concerned about the delayed implementation of these rules and regulations. Additionally, efforts have been made to create torture prevention mechanisms at local level[11]. The national mechanism is a central tool to monitor and control sites where deprivation of freedom occurs and to prevent torture and ill-treatment.

Amnesty International has witnessed the curbs and restraints on agencies, such as the National Prison Ombudsman's Office, to oversee and monitor juvenile detention institutions. The death during a fire of a teenager who was secluded in an isolation cell at Instituto Cerrado Luis Agote reveals that it is necessary to have independent organisations conduct regular inspections without notice in order to check imprisonment conditions at juvenile detention facilities, as set forth under the law which created the National Mechanism for the Prevention of Torture. In order to prevent poor detention conditions, prison overcrowding and excessive population, poor safety and security conditions, torture and other ill-treatment acts, no access to health, food, drinking water and/or appropriate sanitary conditions in detention centres, any places where individuals are deprived of their freedom need to be properly and systematically monitored by independent external institutions, which can document the situation and check for compliance with relevant rules and standards.

As revealed by several UN human rights mechanisms about Argentina[12], despite the efforts

[9] Amnesty International, "Situación de las cárceles de Mendoza". Available at: http://www.amnistia.org.ar/sites/default/files/CarcelesMendoza.pdf.
[10] Law No. 26.827, Creation of the National Mechanism for the Prevention of Torture, *de facto* enactment on 7 January 2013; See Official Gazette No. 32.560, 11 January 2013. Regulated by Decree 465/2014. Official Gazette, 9 April 2014.
[11] In a few provinces, such as Chaco, Río Negro and Mendoza, specific legislation was approved to create a local prevention mechanism.
[12] HRC, Considerations of reports submitted by State parties under Article 44 of the Convention, CRC/C/ARG/CO/3-4, 21 June 2010. Human Rights Committee, CCPR/C/ARG/CO/4, Concluding Observations on Argentina - 2010, para. 18,

and initiatives of a few official public defenders and local agencies, there is no register of events and reports of cases of torture and other ill-treatment at national level under the National Mechanism for the Prevention of Torture, where the information collected at different jurisdictions —by judges, prosecutors and defenders— is compiled, in order to obtain reliable data about the actual extent of the problem across the country.

The Argentine State must fulfil its obligation to investigate any cases of torture and ill-treatment, and implement protection systems for witnesses and victims of torture and other types of ill-treatment. Finally, it should undertake to ensure full operation of the Mechanism for the Prevention of Torture.

INDIGENOUS PEOPLES RIGHTS (ARTS. 2, 26 AND 27)

Amnesty surveyed more than 183 cases where indigenous peoples reported that their human rights had been violated, explaining the violence and exclusion they experienced[13]. This is just a representative number of the cases in Argentina where indigenous communities demand that their rights be respected (right to land and territory, right to prior consultation and free, prior and informed consent, right to equality and non-discrimination, access to justice, etc.) by governments (at local, provincial and national level), companies (including farming, mining, oil, tourism businesses), and judicial branch judges and prosecutors who pay no heed to current rules and regulations. In effect, there is marked inconsistency between the regulatory framework concerning indigenous peoples and the effective implementation of such regulations and the exercise of rights. For instance, communities which are evicted from their ancestral lands, communities which are subject to violent repression and abuse by authorities for engaging in peaceful demonstrations to claim their human rights, criminalization situations as a way to silence indigenous peoples' claims. A few of these cases will be discussed below.

LAND AND TERRITORY

Argentina has recognised, both under its National Constitution and other internal laws and by ratifying several fundamental international instruments, such as International Labour Organisation (ILO) Convention No. 169, and by adopting the UN Declaration on the Rights of Indigenous Peoples[14], the human rights of indigenous peoples —the right to territory and

where registers of torture cases and other cruel, inhuman or degrading treatment or punishment, or strengthen the ones that exist, if any, for the purpose of obtaining reliable information about the actual extent of the problem across the national territory, watch how it develops and take appropriate steps to address the problem.

[13] Territorio Indígena, www.territorioindigena.com.ar.

[14] Even though the Declaration does not create any new right under international law, it is the most comprehensive instrument about indigenous peoples. Although it is not a treaty ratified by States, the Declaration was adopted by an

natural resources, the right to self-determination, the right to decide on their own development priorities and that their own customs and traditions be respected.

In spite of this, in practice, indigenous peoples still face obstacles when claiming their rights to control their lands and natural resources. As the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, said after his visit to Argentina, even though there is a significant number of national and provincial laws and programmes on indigenous matters, "there remains a significant gap, however, between the established regulatory framework on indigenous issues and its actual implementation"[15].

Most indigenous communities in the country have not received "legal recognition of their lands in line with their traditional ways of using and occupying those lands", as a result of the fact that "historically they have been dispossessed of large tracts of their land by ranchers and by the operations of farming, oil and mining companies"[16], or of the overlapping of national parks and protected areas with places inhabited or used by indigenous peoples[17].

Even though progress has been made with the enactment of Law No. 26,160, which suspends evictions of indigenous communities and charges the National Institute for Indigenous Affairs (Instituto Nacional de Asuntos Indígenas [INAI]) with the duty of conducting a technical and legal cadastral survey of ownership of the lands occupied by indigenous communities, the repeated time extensions, delays and arbitrary nature of this law have led to a high level of infringement. Amnesty International is concerned about the little survey progress made in more than 10 years after the original emergency situation was declared[18] and that violent evictions continue. Failure by the government to fulfil its obligation to engage indigenous peoples and obtain their free, prior and informed consent in some of the surveys conducted[19].

Besides, this law neither recognises nor promotes land titling; therefore, upon survey completion, communities need to institute legal proceedings to claim their lands and

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overwhelming majority of 143 nations across the world, and as a universal human rights instrument, it binds all UN member states to fully apply its provisions. Apart from that, the Declaration clarifies and confirms rights which are already formally and legally binding upon and apply to indigenous peoples.

[15] UN General Assembly. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, 2012, p. 18, para. 80

[16] UN General Assembly. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, 2012, p. 7.

[17] UN General Assembly. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, 2012, p. 12.

[18] Official reports, such as the report by the National General Audit Office and INAI, reveal programme under-execution by the agency responsible for implementing the law. National General Audit Office, Audit Report, INAI, *Programa 16 - Atención y Desarrollo de Pueblos Indígenas* (Programme 16 – Care and Development of Indigenous Peoples). The report reveals that land surveys were completed in only 4.22% of the communities in the country by mid 2011, even if we consider the figures provided by INAI. The report is available at: http://www.agn.gov.ar/files/informes/2012_083info.pdf. The information provided by INAI in 2012 shows that the advances in the indigenous land survey programme, including unfinished jobs, are equal to 23.95% (approximately 380 surveyed communities). See in this regard: Note 327/12 to the Observatory of Indigenous Peoples' Human Rights (Observatorio de Derechos Humanos de Pueblos Indígenas [ODHPI]); Unnumbered Note to the president of the Indigenous Law Attorneys' Association (Asociación de Abogados/as de Derecho Indígena [AADI]); Note of procedure 92786/12 to the Centre for Legal and Social Studies (Centro de Estudios Legales y Sociales [CELS]). It should be noted that the data provided by INAI have been challenged by several organisations that work in this field. For instance, see ENDEPA's Report "*Nueva advertencia sobre la inejecución de la ley 26.160. La brecha entre las declaraciones y la realidad en materia de derechos territoriales indígenas,* Year 2013. Available at: http://www.slideshare.net/AndreaLandella/segunda-advertencia-de-endepa-sobre-la-ley-26160.

[19] Cf. International Labour Organisation (ILO) Convention No. 169; UN Declaration on the Rights of Indigenous Peoples, Art. 10.

territories from private individuals or entities, or even the government. This is the reason why, along with the survey, Argentina needs to advance on the legal recognition of communal ownership, by means of a special law to be discussed and consulted with indigenous peoples. It is essential that any such law gets rid of judicial concepts or categories which are not in line with how indigenous peoples view and understand their lands and territories and which impose an occidental conception inherent in the private right to property.

The Quilmes Indigenous Community

The Quilmes Indigenous Community, or Comunidad India Quilmes (CIQ), lives in the area called Valles Calchaquíes, Tucumán, and holds communal and ancestral possession over its territory. This community has a Royal Letters Patent, issued by the Spanish Crown in April 1716 and accepted by the Public Ministry of Buenos Aires in 1853, which recognises the possession and right to land of the communities that are currently living in the north-western area of the province. CIQ's Ciudad Sagrada has been subject to seizure again beginning on 6 November 2013.

The relationship of indigenous peoples with their traditional lands and territories is central to their identity and spirituality, and it is deeply rooted in their culture and history. For the Quilmes Indigenous People, this City was the centre of social and cultural organisation: the individuals, the objects and the wisdom which governed those who they call their "ancestors" or the "elderly" converge there. The most important ceremony centres were in this place, where the Amautas —wise men and teachers— conducted their ceremonies and shared their knowledge concerning the respect for our Pacha Mama (Mother Earth) and everything around the town. Since time immemorial, the elderly have been creating and developing this community's culture, including art, medicine, food habits, astrology, architecture, and above all, their own view of the world or spirituality. These men and women lived and died at Ciudad Sagrada. Moreover, Ciudad Sagrada is a symbol of the Diaguita people resistance against foreign invasion during the Colony period. At this place lies the bloodshed by the elderly whilst resisting land usurpation and cultural invasion. "Their spirits are still present here and only those of us who are predisposed to feel their presence are able to know it, and we, their direct descendents, are the ones who can experience their presence only in these places where they lived and where their remains rest or rested in peace before they were plundered" (Comunidad India Quilmes).

This community filed an action for protection of their constitutional rights (amparo) and Ciudad Sagrada was returned to them. Two days later, on 7 March 2014, a group of outsiders came unexpectedly and again took possession of this sacred city forcibly. They came into this site with guns and iron and wooden sticks, and the community members who were on the premises were assaulted. The outsiders were particularly cruel to Sergio Condorí, a member of the Community Council of Delegates, and they beat and injured eight community members. The attackers took possession of the revenue and seized the place again (in spite of the court decisions that ratified CIQ's possession over Ciudad Sagrada). The Community reported that it continues to be divested of its sacred site at present, asserting that the legal proceeding is "patently delayed". The Community filed a complaint (with Prosecutor's Office No. 1 at Monteros) entitled "usurpation, attempted murder and injuries", where the community was the plaintiff. CIQ stated that the State failed to take appropriate security steps to protect the community and questioned the failure by the Judiciary to issue a court

order (or detention or search warrant or new eviction order) aimed to return this land to the community.

REPRESSION AND CRIMINALIZATION

Current eviction rates do nothing but reflect the serious legal uncertainty around the issue of indigenous land in this country. Amnesty International has documented cases of forced eviction which led to peaceful protests (e.g. by blocking public roads) to claim for the rights of indigenous peoples. The response by law enforcement officers or private-sector third parties has resulted in violent situations, causing the loss of life of indigenous community members and/or pre-trial investigation in criminal cases against indigenous leaders, as a means of harassment and intimidation against indigenous leaders and other human rights defenders.

In this respect, the UN independent expert on racism, Mutuma Ruteere, recently said that "most alarming are the reported trends of repression, in several parts of the country, against the mobilization by indigenous groups to claim their rights, and the reprisals against minority rights defenders and leaders, as well as members of their families"[20].

The Félix Díaz Case

An example of this is the eviction and violent repression sustained by the Qom PotaeNapocnaNavogoh (Spring) community in November 2010, and the legal proceedings still pending against their leader, Félix Díaz. On 23 November 2010, while the community was blocking Route 86 peacefully to claim their rights, Formosa Police Department officers entered the area to subdue the protest with violent repression. As a result of this event one indigenous individual and one police officer died, dozens of people were injured and several houses were burned down. So far, the PotaeNapocnaNavogoh community continues fighting so that these events are not left unpunished. Félix Díaz, the community leader, is still being prosecuted in three criminal proceedings against him (for the crimes of usurpation, armed attack against authority, serious and minor injuries and instigation to commit a crime, and stealing of firearms) for acts related to 23 November.

The Relmu Ñamku Case

On 28 December 2012, during a Mapuche funeral (or "Eluwvn" in Mapuche language), an eviction order was issued by court against the Mapuche WinkulNewen community, located in Portezuelo Chico, Province of Neuquén, Argentina. It was approximately 3:00 p.m. when the community noticed that there was a large deployment of Apache bulldozers and trucks, which were a few metres away from the fence that the community had laid out to prevent entry into their land. The community resisted the eviction, defending itself with stones when the court officer ordered that the bulldozer should go into the area.

20 Press release by UN Rapporteur on racism after his visit to Argentina on 16-23 May 2016; 24 May 2016. Available at: http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=20008&LangID=S#sthash.lYxhzHDu.dpuf.

This event intensified political and judicial persecution against the traditional authorities of this community and a lawsuit was brought against Relmu Ñanku for alleged aggravated, attempted murder and aggravated damage. Furthermore, two additional members of this indigenous community —Martín Maliqueo and Mauricio Raín— were sued for the crime of aggravated damage. These events are set within the context of social protest criminalization and political persecution against the WinkulNewen community for defending their territory and human rights.

The trial began on 26 October 2015. Under the case title, Relmu could have been deprived of her liberty and sentenced to up to 15 years in prison. Finally, on 4 November 2015, Relmu was found not guilty to the charges of attempted murder and damages. The legal proceeding against her filled indigenous leaders and human rights defenders with fear.

Javier Chocobar

In 2009, Javier Chocobar, a member of the Diaguita people, was shot to death while he and other community members were peacefully defending their territory against a landowner who was allegedly claiming to own the area. So far, no progress has been made in this case and his murder remains unpunished.

Landowner Amín had attempted to enter the bluestone quarry which is on Diaguita land on the first days of October 2009. The community was on guard, keeping an eye out to stop the intruder. On 12 October, Amín came at 6:30 p.m. with two men, who the community identified as former police officers.

They went directly to the quarry and asked to see the community leader (the "chief"), stating that they were the landowners, threatening the persons present (20 of the 300 members of the Chuschagasta community) and requiring them to abandon those lands. When the community members approached the three men to ask them to leave, they started to shoot, killing Javier Chocobar, aged 68, and injuring three additional men. After that, they hopped on a vehicle and drove away, shooting through the windows and killing another man. Community members threw stones at them. "This was not a clash, as a few media said. They came here to kill," asserted Néstor Chocobar (Javier's brother).

The community identified businessman Darío Amín (who intends to exploit a quarry) as the individual who pulled the trigger (several witnesses point at him as the perpetrator of the shootings). Shortly after that, the landowner and the other two men were arrested. Regardless of the evidence, the Court of Appeal in Criminal Matters released the accused. A lawsuit was only filed almost two years later, in August 2011, but the trial has not begun yet and the defendants are free.

RIGHT TO CONSULTATION AND FREE, PRIOR AND INFORMED CONSENT

Argentina needs to implement a new policy —at federal and provincial level— to guarantee a consultation procedure with indigenous peoples[21].

The UN Special Rapporteur on indigenous affairs recommended Argentina to develop a consultation procedure, in accordance with international standards, to increase the involvement of indigenous peoples in the decisions that affect them[22].

As reported by Amnesty, the Qom *PotaeNapocnaNavogoh* (Spring) community did not only bring legal actions through its legal representative —the National Public Defender's Office— to stop the construction of a university centre on their land, because prior consultation and consent mechanisms failed to be followed, but also filed an appeal with the National Supreme Court of Justice more recently, in 2014, questioning how INAI and Instituto de Comunidades Aborígenes conducted the land surveys without consultation[23].

LEGAL STATUS

According to the nature of pre-existence of indigenous peoples —also recognised in Argentina's National Constitution— as compared with provincial and national states, the registration of indigenous communities as legal entities should be based on a declaration, rather than on an organisation procedure[24]. And they should be recognised as the legitimate holders of possession of their land under the same grounds. Thus, the State cannot recognise only the communities enrolled in national or provincial registries.

Furthermore, Amnesty International has received reports on fraudulent manoeuvring in procedures to grant legal status to "fictitious" indigenous communities, to the benefit of production-related projects on their land. The UN Special Rapporteur on the rights of indigenous peoples also warned of this situation[25].

The Argentine State should be respectful of the indigenous peoples' right to their land and natural resources and guarantee their involvement in decision-making regarding any public policies that affect them. To this end, the State should promote a comprehensive policy of consultation and free, prior and informed consent, which is in agreement with indigenous peoples and in line with international rules and standards on indigenous peoples' human rights. Also, it has to refrain from fostering persecution and criminalization of indigenous leaders who claim for their fundamental rights.

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[21] UN General Assembly. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, 2012, p. 11.
[22] UN General Assembly. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, 2012, p. 18.
[23] http://www.amnistia.org.ar/noticias-y-documentos/archivo-de-noticias/argentina-98
[24] Higher Court of Justice, Jujuy, Case entitled "Comunidad Aborigen Laguna de Tesorero – Pueblo Ocloya c/ Cosentini César Eduardo", decision dated 27 December 2005, vote of Mr. González, attorney-at-law, para. 14, 15 and 17). Citing Bidart Campos, Germán "Tratado Elemental ...", Ed. Ediar, Book 1B, p. 301).
[25] Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, visit to Argentina, July 2012.

FREEDOM OF EXPRESSION AND SOCIAL PROTEST (ARTS. 19 AND 21)

Amnesty International has documented cases of unnecessary and excessive use of force by different law enforcement agencies during public demonstrations, failing to comply with their duty to protect those who are exercising their right to peaceful demonstrations.

On 7 December 2010, during a sit-in at Parque Indoamericano involving 1500 families, two individuals were killed and five were injured by law enforcement officers in the context of a human rights conflict arising from structural household deficit.

On 26 April 2013, Metropolitan Police officers, who report to the Government of the City of Buenos Aires, repressed Borda Hospital workers and patients, as well as media reporters and other people present at the site, who were protesting against the demolition of Taller Protegido No. 19 (a protected occupation training facility). More than 50 people were injured as a result of police officers' intervention. These events occurred after the implementation of eviction and demolition measures, in spite of the fact that a judicial proceeding was underway and a precautionary measure had been ordered by the judge hearing the case.

On 23 August 2014, during a joint raid by Metropolitan Police and Federal Military Police Officers, a violent and indiscriminate search and eviction of occupants took place in the premises known as "Papa Francisco" at Villa Lugano. According to public reports, six persons were arrested and several other people received wounds by rubber bullets, among other things, as a result of law enforcement officers' actions. Huts and houses that were being built since February, when the land was occupied, were removed and destroyed.

Limited discussions about the regulation of social protest rights resumed at the National Congress in the same year, and several projects were discussed by the relevant commissions[26], as a government response to various road-blocking protests and social claims.

[26] Draft Bill, "Ley de Convivencia en Manifestaciones Públicas" ("Law on Peaceful Coexistence during Public Demonstrations"), File 2544-D-2014, Parliamentary Proceeding 027 (15/04/2014); Draft Bill, "Ley Contra La Criminalización De La Protesta Social" ("Law against the Criminalization of Social Protest"), File 2963-D-2014, Parliamentary Proceeding 035 (29/04/2014); Draft Bill, "Mediación Obligatoria" ("Mandatory Mediation"), File 2907-D-2014, Parliamentary Proceeding 033 (25/04/2014); Draft Order, "Solicitar al Poder Ejecutivo Nacional que, a través de la Secretaria Legal y Técnica de la Nación, elaboren una normativa que regule los procedimientos que operativamente se deberán tener como marco legal a seguir ante toda protesta social concatenada con una sana convivencia ciudadana" ("Request the National Executive Branch to devise, through the National Legal and Technical Secretariat, rules to regulate the operational procedures that shall constitute the legal framework to be followed for healthy citizen coexistence in the event of any social protest") , File 2375-D-2014, Parliamentary Proceeding 025 (11/04/2014); Draft Bill, "Sustitución Del Artículo 5 Del Código Penal - Incorporación De La Mediación Penal Art. 73 Bis, - Reformas Al Código Penal (Ley 11.179) Arts. 59, 71 Y 274- Reforma al Código Procesal Penal De La Nación (Ley 23.984) ART. 5" ("Substitution of Section 5 of the Penal Code – Inclusion of Mediation in Criminal Cases as per Section 73 Bis, Reforms to the Penal Code [Law No. 11,179], Sections 59, 71 and 274, Reform of the National

On 24 August 2015, law enforcement officers in the Province of Tucumán suppressed violently a peaceful demonstration of people who were claiming against provincial election irregularities. Reportedly, law enforcement officers used force excessively, employing tear gas indiscriminately and rubber bullets, and putting the physical integrity of protesters at risk.

On 22 December 2015, the Federal Military Police repressed violently a group of demonstrators who were peacefully claiming for their jobs. According to public reports, law enforcement officers engaged in excessive use of force with water cannons and rubber bullets, putting the physical integrity of demonstrators at risk.

A few days later, on 29 December, another action of repression took place at Villa 1-11-14, a shantytown in the neighbourhood of Bajo Flores. Witnesses stated that the Federal Military Police advanced on shantytown residents and shot their guns indiscriminately in an area where children and teenagers were present. The Prosecutor's Unit Against Institutional Violence (Procuraduría de Violencia Institucional [Procuvin]), which reports to the National Office of the Public Prosecutor, started to investigate the events where at least 11 people, including children, received rubber bullet gunshot wounds.

The "Protocol for Government Law Enforcement Authorities Action in Public Demonstrations"[27] was announced on 17 February 2016 by the Security Ministry (even though the resolution number is unknown). This Protocol includes undue and disproportionate restrictions in excess and in violation of the allowable restrictions under human rights international law. Criminalization of those who exercise their right to express peacefully is allowed under this Protocol[28]. As the Protocol is worded (Section 1), the Raid Head shall direct demonstrators to refrain from "blocking road circulation", and to leave and go to any such area as he/she may decide, warning them that failure to follow his/her orders will result in the offence set forth under Section 194 of the Penal Code[29] being committed **in flagrance**; therefore, a competent judge will be summoned in order to file a criminal proceeding against protesters. As the Protocol states, the protest will be dispersed immediately after.

This Protocol fails to adhere to international principles under which any restriction to protest "must be strictly justified" and be clearly based on a law (both formally and materially)

Criminal Procedure Code [Law No. 23,984], Section 5"), File 1928-D-2014, Parliamentary Proceeding 020 (03/04/2014).

[27] It is referred to as the Protocol indistinctively hereinafter.

[28] National Security Ministry, Protocolo de Actuación de las Fuerzas de Seguridad Del Estado en Manifestaciones Públicas (Protocol for Government Law Enforcement Authorities Action in Public Demonstrations), Section 1 "...The Security Raid Head shall direct demonstrators to refrain from blocking road circulation, by means of loudspeakers, amplified microphones o shouting out loud, and they should leave and go to the assigned area in order to exercise their constitutional rights, ensuring always free circulation. Demonstrators will be warned that, if they fail to follow the above orders, they will be subject to the provisions of Section 194 of the Penal Code, and the applicable offences, if any, in every jurisdiction...". It goes without saying that the Protocol legal status is unknown, since it has not been assigned a Resolution number and it has not been published in the Official Gazette. Nevertheless, it has been released by the Security Ministry in the media. Amnesty International is concerned about the announcements by Security Minister Patricia Bullrich in the media explaining a procedure which leads to social protest repression: "If they refuse to leave in 5 or 10 minutes, we are going to make them go out" (http://www.lanacion.com.ar/1872122-patricia-bullrich-defendio-el-el-protocolo-antipiquetes-si-no-se-van-en-5-o-10-minutos-los-vamos-a-sacar).

[29] Argentine Penal Code, "Section 194 – Anyone who, without creating a common dangerous situation, impedes, obstructs or holds up the usual operation of land, water and/or air transport , or public utilities, including communication, water supply, electricity or other energy services, shall be punished with three months to two years in prison".

which, because it relates to the exercise of human rights, it should be written using terms that are sufficiently accurate in order to prevent authorities from using undue power when limiting the freedom of expression and assembly[30]. The authorities are responsible for demonstrating the legal basis of any imposed restriction[31]. Furthermore, human rights restrictions must comply with strict need and proportionality assessments for the specific purpose for which they were ordered, and it is necessary to assure that there is no other milder means to limit the right in question and ensure that the right itself is not at risk[32].

Moreover, on 31 March 2016, the City of Buenos Aires Public Defender's Office issued resolution FG N 25/2016, which also poses a serious risk of undue restriction on the right to social protest. For example, Resolution FG N 25/2016 actually subjects the legitimacy of a demonstration to authorization by the executive branch, whereas, under international law, the freedom of peaceful assembly is a right, not a privilege, and as such the required prior communication should not function as a *de facto* request for authorization. This has been asserted recently in the joint report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions[33]. The legitimacy of a demonstration cannot be subject to authorization by the authorities.

In addition, road blocking under the Protocol is considered a violation of Sections 194 of the Penal Code and 78 of the City of Buenos Aires Offences Code. The use of penal strategies to repress those who are expressing is banned under international law. Under IHRL, the dispersion of peaceful assemblies is allowed only under limited circumstances. In this respect, States are requested to tolerate mere nuisances to third parties[34] or the temporary disruption of vehicle and/or pedestrian circulation, as part of the exercise of the right to express.

Paradoxically, Section 78 of the City of Buenos Aires Offences Code actually recognises "that the regular exercise of constitutional rights is not an offence", and the right to express is included in that group of rights.

The Milagro Sala Case

On 6 January 2016, social leader Milagro Sala was deprived of liberty because she was leading a peaceful protest at Plaza Belgrano, San Salvador de Jujuy, in the north-western region of the country. On 15 December 2015, Milagro Sala was criminally prosecuted by the government of the Province of Jujuy for engaging in a protest that was initiated a day before

30 For example, see Inter-American Court of Human Rights, Advisory Opinion OC-6/86, 9 May 1986; Human Rights Committee, General Comment No. 34, para. 27.
31 *Idem*, Inter-American Court of Human Rights, Advisory Opinion OC-6/86, para. 27.
32 For example, see Inter-American Court of Human Rights, "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism" (Arts. 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85 dated 13 November 1985, para. 69; General Comment No. 34, Freedoms of opinion and expression, CCPR/C/GC/34, para. 21-36, and specifically, para. 21 and 22. (The Committee has also made it clear that this general comment also provides guidelines on elements of the right to freedom of peaceful assembly; see Communication No. 1790/2008, Govsha, Syritsa and Mezyak vs Belarus, ruling approved 27 July 2012, para. 9.4).
33 UN Joint Report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016.
34 See Inter-American Commission on Human Rights, Report on Citizen Security, para. 198.

by Red de Organizaciones Sociales de Jujuy (ROS), a social organisations network which Tupac Amaru is a member of. Regardless of the vague grounds for prosecution and the absence of a clear and accurate description of the facts she is accused of, she was criminally charged with two offences: organising a protest (interpreted as blocking circulation, a crime which she would have been the instigator of under Section 209 of the Penal Code) and refusing a provincial government measure related to her role in the cooperatives she is a member of (interpreted as sedition under Section 230 of the Penal Code). Both the Inter-American Commission on Human Rights and the Working Group on Arbitrary Detention are studying this case upon petition by Amnesty International, ANDHES and CELS.

ABUSIVE USE OF FORCE AND USE OF FIREARMS

Amnesty International recognises the importance of developing non-lethal or "less-than-lethal" alternatives to the use of force in order to reduce the risk of death or inherent injuries when firearms or other impact weapons are used, as provided under the Basic Principles on the use of force and firearms by law enforcement officers. However, the use of electric weapons, including Taser guns, continues to be a source of concern for security and arouses a number of concerns in terms of human rights protection. Thus, new "less-than-lethal" technologies can intrinsically derive in abuse and even be lethal in some cases.

The Argentine State should limit the abusive use of force, especially in demonstrations, and if new specific legislation is found to be necessary, any such laws should abide by international standards and be mainly aimed at ensuring the exercise of rights to freedom of expression and protest.

RIGHTS OF REFUGEES

Argentina is a State party to the Convention Relating the Status of Refugees of 1951 and its Protocol of 1967. Law No. 26,165 on refugees and asylum seekers was passed in 2006, and it established the National Refugee Commission (Comisión Nacional de Refugiados [CONARE]), which is in charge of deciding on asylum petitions and durable solutions. There are approximately 2,523 refugees and 897 asylum seekers from more than 65 countries living in Argentina at present.

In 2014, Argentina instituted a special humanitarian visa programme for foreigners affected by the conflict at the Syrian Arab Republic , called "*Programa Especial de Visado Humanitario para Extranjeros afectados por el conflicto de la República Árabe de Siria*" (hereinafter, "Syria Programme"). In October 2015, the National Immigration Service (Dirección Nacional de Migraciones [DNM]) extended the "Syria Programme" for one year and expanded its implementation. The programme involves a private sponsorship method whereby a humanitarian visa is granted, and it is intended to provide easier ways for admission into Argentina to Syrian people and their family, and to Palestinian persons, provided they are regular residents of or have resided in Syria and have received assistance

from UNRWA. The humanitarian visa procedure starts when an entry permit application is filed with Argentina's DNM by any citizen or resident of Argentina, who will act as an "interlocutor" before the DNM, undertaking to provide assistance (accommodation and support) to the beneficiaries. After the entry permit is issued, the interested parties are able to request and obtain a visa for entry into Argentina from any country, including bordering nations or countries affected by the abovementioned conflict. Once they are in Argentina, humanitarian visa beneficiaries have access to a two-year residence permit and the relevant personal documents.

More than 250 humanitarian visas were issued after the "Syria Programme" became effective in October 2014.

Amnesty International understands that the "Syria Programme" is a concrete expression of solidarity with one of the most serious humanitarian crisis in the world.

Nevertheless, we understand that this private initiative should be supplemented with active public policy by the Argentine State in order to share humanitarian responsibility in the worst refugee crisis since the Second World War.

EXTRADITION AND NON-REFOULEMENT REQUESTS

On 4 February and 26 April 2016, Argentina's Supreme Court of Justice approved the extradition of two Peruvian citizens whose asylum requests are still awaiting resolution in the first phase of the refugee status determination procedure[35]. Both cases involve asylum seekers who are accused of alleged terrorist activities in the context of a criminal proceeding filed in Peru while Fujimori was in office. These cases have been awaiting resolution by the National Refugee Commission (Comisión Nacional para los Refugiados [CONARE]) for 2 to 7 years. The ruling by Argentina's Supreme Court of Justice puts an end to the discussion about legal extradition requirements when the protection needs of applicants have not been evaluated yet, and about the assurance of the non-refoulement principle, which forbids the surrender of a person to a country where he/she is at risk of human rights infringement.

In its Guidance Note on Extradition and International Refugee Protection, the United Nations High Commissioner for Refugees (UNHCR) has stated that in the event of an asylum seeker who has an extradition request from its country of origin, his/her refugee status should be determined first, so that the State is able to decide on his/her extradition[36]. This arises from the principle of non-refoulement.

35 See the ECHARRI PAREJA, Rolando Case (PER), https://www.diariojudicial.com/public/documentos/000/066/860/000066860.pdf and the case of QUISPE, Oswaldo (PER), http://old.csjn.gov.ar/docus/documentos/verdoc.jsp.
36 See UNHCR, Guidance Note on Extradition and International Refugee Protection, April 2008. Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2009/7039.pdf?view=1.

INTEGRATION TO THE COMMUNITY AND EQUALITY BEFORE THE LAW

Local integration of refugees and asylum seekers is still a significant challenge in Argentina. Therefore, comprehensive local integration public policies should be developed. In the absence of a government assistance programme for local integration, refugees and asylum seekers, particularly those with specific protection needs, face serious challenges. Scarce and temporary documentation often results in limited access to social, economic and cultural rights for asylum seekers.

Furthermore, limited local integration occurs when refugees and asylum seekers face administrative obstacles to access the same social protection benefits which are available to Argentine citizens.

According to Articles 2 and 7 of the International Covenant on Civil and Political Rights and General Comment No. 20 of this Committee, the Argentine State needs to adopt all the necessary measures to ensure that extradition requests involving asylum seekers abide by the non-refoulement principle. And it should also undertake to promote community integration of refugees, ensuring equality.

RIGHTS OF MIGRANTS (ARTS. 2 AND 26)

The enactment of Migration Law No. 25.871 in 2004 changed significantly the legal status of foreigners residing in Argentina. Devised under human rights considerations, this law affirms the right to migrate and ensures access to a number of fundamental rights (health, education, justice, social welfare) for each and every resident of the country, regardless of their migration status (arts. 6 and 8).

Law No. 25.871 also requires the State to inform migrants about their rights and to promote social integration. This obligation is essential, because it indirectly implies the involvement of a great number of public agencies in all jurisdictions (at national, provincial and local level), which should necessarily participate to make it easier for immigrants to have access to certain rights, such as health, education or social assistance.

In spite of the positive changes in the legal framework and institutional work, the experience in various governmental institutions and civil society organisations has shown persistent situations where migrants' rights are infringed. At present, most restrictions on the access to rights are no longer so much a result of exclusive rules and regulations but of inertia in a number of institutional and administrative practices which are not consistent with the letter and spirit of the law.

As noted by migrant organisations, actual access to rights challenges include obstacles in the access to government-sponsored social security systems, particularly non-contributory

pensions and welfare benefits, because there are some benefits at different jurisdictional levels (e.g. specific residence types or terms are required for the access to benefits by foreigners), and healthcare barriers because hospital staff and managers ignore, or in some cases fail to comply with, migration laws, and require documents or inappropriate certificates to schedule appointments, perform medical exams and/or supply medication.

The Argentine State should implement current domestic laws, ensuring the migrant population access to all human rights.

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