

ARGENTINA

Key human rights concerns in Argentina

*Amnesty International
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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review of Argentina taking place in October-November 2012, Amnesty International comments on the implementation of recommendations that the government supported during its previous UPR in April 2008, concerning discrimination against women, prison conditions, impunity for the crime of torture and the rights of Indigenous Peoples.

Regarding the human rights situation on the ground, Amnesty International expresses concern at the impediments blocking the access of women and girls to legal abortion. The organization has continued to document attacks on Indigenous leaders over land claims and forced evictions of Indigenous communities. Prisoners in Argentina face overcrowding and poor prison conditions and allegations of torture and ill-treatment are still being reported.

FOLLOW UP TO THE PREVIOUS REVIEW

During its previous review in 2008, Argentina supported recommendations to address discrimination against women;¹ improve prison conditions;² take steps to ensure that there is no impunity for the crime of torture;³ observe the principle of speedy trials in the context of ongoing human rights trials;⁴ and ensure respect for the rights of Indigenous Peoples.⁵ Amnesty International welcomes that Argentina provided a mid-term review in September 2010 on the state of implementation of the recommendations it supported. However, serious human rights violations continue to pervade the country.

WOMEN'S HUMAN RIGHTS

Argentina has made advances in addressing discrimination against women, particularly in increasing women's political participation. However, women still face obstacles in accessing information and services relating to their sexual and reproductive rights.⁶ It is estimated that between 460,000 and 600,000 illegal abortions take place each year in Argentina. Almost 80,000 women and girls are hospitalized each year due to complications as a result of illegal abortions. For the last 20 years, the lack of access to safe abortions has been the primary cause of maternal mortality in the country. According to statistical information from the Ministry of Health for 2009, more than 100 women die every year as a result of unsafe abortions. Most victims are from poor or low income backgrounds.⁷

PRISON CONDITIONS

Progress in improving prison conditions has been slow. Prisons continue to be overcrowded and lack adequate structures, resulting in detainees being held in cruel, inhuman or degrading conditions; some prisons operate at more than twice their capacity.⁸ A number of deaths have occurred in detention centres in the northern province of Catamarca and in Buenos Aires, as a result of violence committed by prisoners or guards.⁹

TORTURE AND ILL-TREATMENT

Argentina has made little progress in addressing impunity for the crime of torture. Amnesty International continues to receive information of torture and ill-treatment in prisons and detention centres, where investigations are rarely carried out to bring those responsible to justice.¹⁰ There have been some advances in the implementation of mechanisms to prevent torture and ill-treatment, particularly at the local level.¹¹ However, at the national level Argentina has still not introduced a National Preventive Mechanism in line with its obligations under the Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman or

Degrading Treatment or Punishment.¹² A draft law to establish the National Preventative Mechanism was passed by the Chamber of Deputies in 2011, and at the time of writing it was under discussion before the Senate.

Significant progress has been made in securing the conviction of those responsible for grave human rights violations committed during the period of military rule from 1976 to 1983. By contrast, with regard to more recent human rights violations- for example in cases of alleged forced evictions, excessive use of force or torture and ill-treatment- investigations either do not take place or take too long to ensure that those responsible are brought to justice.

INDIGENOUS RIGHTS

Argentina has made some improvements in relation to the rights of Indigenous Peoples. However, Indigenous communities continue to be threatened with eviction by private landowners, despite a blanket ban on evictions until November 2013 pending the completion of a nationwide survey of Indigenous territories.¹³ Members of Indigenous communities have suffered direct attacks by private actors, resulting in the deaths of at least two individuals since 2008.¹⁴

NATIONAL HUMAN RIGHTS FRAMEWORK

CRIMINALIZATION OF ABORTION AND VIOLENCE AGAINST WOMEN

According to Article 86 of the Criminal Code, women and girls for whom pregnancy poses a mental or physical health risk, or whose pregnancy is the result of rape, are entitled to a legal abortion. Although in force since 1921, the wording of this article is unclear and its inconsistent interpretation results in discretionary application of the Criminal Code by judges and health service providers. This in turn limits the access to legal abortion for women and girls. In March 2012, the Supreme Court clarified the content of Article 86, establishing that any victim of rape should have access to safe abortion, and that a judicial order is not required for health professionals to carry out this treatment.¹⁵ However, some local authorities have expressed disagreement with the Supreme Court judgment and it is not clear whether it will be complied with.¹⁶ Several treaty bodies- including the Committee on the Elimination of All Forms of Discrimination against Women, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights- have called on Argentina to review and modify its abortion legislation to ensure that women do not need to undertake unsafe abortions, which may put their lives at risk.¹⁷

Legislation to prevent and punish violence against women was enacted in April 2009. It provides for free legal assistance for women who experience violence, and sets out protocols for the collection and systematic recording of official data on gender-based violence. However, the law has not been fully implemented, and there is not sufficient reliable data on which to base an evaluation of the legislation.

LACK OF ACCESS TO RELIABLE DATA TO ASSESS HUMAN RIGHTS COMPLIANCE

Argentina has failed to provide reliable data to monitor and evaluate the government's compliance with its human rights obligations. One of the main sources of such information is the National Institute for Statistics and Censuses (Instituto Nacional de Estadísticas y Censos, INDEC). However, information about the methodology used by the INDEC to calculate statistics is not always available, and consequently the analysis of the data can be very difficult. The weaknesses of the INDEC were also highlighted by the Committee on Economic, Social and Cultural Rights in its recommendations to the Argentine state in 2011.¹⁸

HUMAN RIGHTS SITUATION ON THE GROUND

INDIGENOUS RIGHTS

Indigenous Peoples in Argentina continue to face obstacles in gaining legal recognition of their rights to traditional lands. In 2006, a national emergency law was passed to suspend the execution of eviction orders and the removal of Indigenous communities from their lands, pending a nationwide land survey to review and register land ownership.¹⁹ The suspension will remain in force until November 2013. However, despite this, Indigenous communities have been threatened with eviction, and in some cases have been evicted.

Amnesty International has also documented attacks on Indigenous leaders over land claims. On 12 October 2008, Javier Chocobar of the Diaguita Indigenous community in Tucumán province was shot dead while trying to stop the forced eviction of his community by a local landowner.²⁰ In 2009 and 2010, in the same province, members of the Quilmes Indigenous community were evicted from their homes. The police attempted to evict them again in April 2011, after they had returned to the land. It was not until August 2011 that a court ordered the suspension of attempts to evict the Quilmes Indigenous community pending the conclusion of proceedings to determine the ownership of the land where they were living.

In November 2010, around 400 armed police officers violently dispersed members of the Toba Qom Indigenous community in Formosa Province, who had mounted a roadblock in protest at plans to build a university on traditional lands. The police also burned down the temporary homes members of the community had built alongside the highway. At least one police officer and one member of the Indigenous community were killed and around 30 community members were detained, including children. Felix Diaz, the leader of the community, was personally threatened by the police and labelled an “agitator”. Members of his family subsequently received death threats from members of a non-Indigenous (*criollo*) family who claimed rights to the same piece of land. In April 2011, the Inter-American Commission on Human Rights urged the Argentine authorities to implement measures to guarantee the safety of Felix Diaz and his family.²¹ In May 2011, the government reached an agreement with the Toba Qom Indigenous community to ensure their safety. However, despite these measures, Amnesty International has documented further threats and acts of harassment against the Toba Qom community.²²

As noted by the Special Rapporteur on the rights of Indigenous Peoples in 2011, developments and extractive projects affecting Indigenous Peoples’ rights have been carried out in Argentina without respecting the right of Indigenous Peoples to be consulted and without securing their free, prior and informed consent.²³ Amnesty International’s research shows that the free, prior and informed consent of the Indigenous Pilagá community in El Descanso, Formosa province was not sought before major infrastructure work was carried out in 1997. Members of the Indigenous Pilagá community claim that between a third and a half of their lands are more susceptible to flooding since irrigation canals were dug, and that fish and other natural resources they relied upon for their subsistence and development have diminished.²⁴

SEXUAL AND REPRODUCTIVE RIGHTS

Abortion remains partially criminalized in Argentina, as mentioned above. The lack of clear legislation on abortion is exacerbated by the absence of effective nationwide guidelines for health service providers on access to legal abortion. The long-awaited Guide for the Integral Attention of Non-Punishable Abortion Cases (*Guía Técnica para la Atención Integral de los Abortos no punibles*) was published in 2009. It aims to improve the enjoyment of sexual and reproductive rights, in particular by addressing the barriers to accessing legal abortions. However, the guide has not been effectively implemented.

Furthermore, in situations where health professionals decline to carry out abortions due to their

beliefs, there is no effective system in place to ensure that rape survivors or women and girls whose pregnancies put their lives or health at risk are able to access treatment, including an abortion.

In April 2011, the UN Human Rights Committee stated that Argentina had failed to comply with its obligations under international law by impeding access to legal abortion for a 19-year-old woman with a mental disability, who was raped by her uncle in 2006.²⁵ The Committee found that the state's failure to guarantee her right to terminate the pregnancy caused her physical and psychological pain, and recommended that Argentina pay damages and take measures to prevent similar violations in the future.

In 2010, two 15-year-old girls- both allegedly raped by their respective stepfathers- were denied abortion by hospital authorities in the southern province of Chubut. In both cases, judicial intervention was sought by the health service providers in order to determine the legality of their abortion requests, and in both cases first instance judges rejected the girls' requests. Although both decisions were eventually overturned and the girls had the abortions they had requested, Amnesty International believes that the involvement of the judicial system was unwarranted, and that it prolonged the mental anguish and suffering of both girls.²⁶ After the decision by the Supreme Court in March 2012 clarifying the interpretation of Article 86 of the Criminal Code, hopefully such cases will not take place again in Argentina.

PRISON CONDITIONS AND TORTURE AND ILL-TREATMENT IN DETENTION

Poor conditions, violence, overcrowding, lack of adequate health services, torture and ill-treatment in prisons and detention centres in various Argentine provinces have been reported for many years. Several UN Committees, including the Human Rights Committee, have expressed concern about the excessively prolonged period of preventive detention.²⁷

In 2009, Amnesty International wrote to the authorities of the Argentine Republic and of Santiago del Estero province about the reported torture and ill-treatment of two men, Marcelo Santiago Tello and Ivan Andres Bressan, who had been detained since 2008 accused of killing a man. In November 2011, the UN Working Group on Arbitrary Detention reviewed the case and called on the authorities to investigate the reports of torture and ill-treatment. The Working Group also stated that the men had spent over three and a half years in preventive detention in violation of their right to be tried within a reasonable time and without undue delay, and called on the authorities to consider the release of the two men subject to guarantees that they would appear for trial.²⁸

In February 2011, mobile phone images emerged of the torture of two prisoners by prison guards in San Felipe prison, Mendoza province in 2010. The two prisoners, Matías Tello and Andrés Yacante, suspected by prison officers of having circulated the images, received threats and were transferred to Almafuerde prison, where they allege that they were tortured. To Amnesty International's knowledge, no one has been brought to justice in relation to these cases of alleged torture and ill-treatment.

CONTINUED IMPUNITY FOR CRIMES OF THE PAST

In recent years significant progress has been made in securing the conviction of those responsible for grave human rights violations under the military rule of 1976-1983. However, some cases continue to experience delays.

The whereabouts of Jorge Julio López, the main witness and complainant in the case against the former Director of Investigations of the Buenos Aires Provincial Police, remain unknown. Investigations into his disappearance in September 2006 have made no significant progress.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Argentina:

Follow up to the previous review:

- To ensure that all allegations of torture and other ill-treatment are thoroughly and impartially investigated, and that alleged perpetrators are brought to justice;
- To ensure that the draft law that establishes the National Preventive Mechanism, as required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is discussed in the Senate and consulted with civil society without any further delay in order to be approved by the end of 2012 at the latest.

Violence against women:

- To ensure that legislation to prevent and punish violence against women is effectively implemented, and to collect and disaggregate data on violence against women to allow better evaluation of the implementation of the legislation.

Collection of data:

- To ensure that reliable data is widely collected to allow monitoring of the state's compliance with its human rights obligations and that both the methodology used by the National Institute for Statistics and Censuses and the data it collects are available and accessible to the public.

Indigenous rights:

- To ensure that Emergency Act No 26.160 is fully implemented and respected in order to prevent the eviction or removal of Indigenous Peoples from their traditional lands;
- To conduct the nationwide land survey to review and register land ownership with the full participation of affected Indigenous communities;
- To respect the right of Indigenous Peoples to consultation and free, prior and informed consent before proceeding with legal and administrative measures that may affect their rights;
- To carry out prompt, independent and impartial investigations into threats against and killings of Indigenous leaders, and to ensure that those responsible are brought to justice.

Sexual and reproductive rights:

- To ensure that women and girls are not subject to criminal sanctions for seeking or obtaining an abortion under any circumstances;
- To adopt the necessary measures and protocols, including the allocation of resources, to ensure access to non-punishable abortion uniformly throughout the country;
- To ensure that health authorities have in place an effective and accessible referral system in cases in which health professionals, due to their beliefs, wish to avoid providing abortion services for rape survivors and women and girls whose pregnancies put their lives or health at risk.

Prison conditions and torture or ill-treatment in detention:

- To ensure that all allegations of torture or other ill-treatment are effectively and promptly investigated by an independent and impartial body, and that those responsible for torture or other ill-treatment are brought to justice in fair trials;
- To ensure that confessions extracted under torture are not used as evidence in courts;

- To ensure reparation, including fair and adequate compensation, for victims of torture and other ill-treatment inflicted by state agents;
- To improve conditions in all prisons and detention facilities in compliance with international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners;
- To ensure that sufficient and adequate resources are allocated to prisons and detention facilities and to promptly and effectively address the issue of prison overcrowding;
- To take measures to reduce the length of pre-trial detention by ensuring that detainees are brought to justice without undue delay, in line with the International Covenant of Civil and Political Rights.

Impunity for crimes of the past:

- To continue efforts to bring to justice those responsible for human rights violations committed during the military regimes without unnecessary delays;
- To protect the safety and security of witnesses and defendants in such trials by ensuring that effective protection policies are fully implemented by the authorities.

ENDNOTES

¹ Report of the Working Group on the Universal Periodic Review of Argentina, 13 May 2008 (A/HRC/8/34) recommendation 64.2 (United Kingdom, Mexico).

² A/HRC/8/34, recommendation 64.8 (Slovenia, Germany, Canada).

³ A/HRC/8/34, recommendations 64.6 (Netherlands) and 64.7 (Sweden).

⁴ A/HRC/8/34, recommendation 64.5 (Switzerland).

⁵ A/HRC/8/34, recommendations 64.15 (Republic of Korea) and 64.16 (Nigeria).

⁶ See Human Rights Committee CCPR/C/101/D/1608/2007, 28 April 2011.

⁷ Ministry of Health - Estimate of abortion in Argentina Pantelides, Edith (Conicet and Cenep-Centro de Estudios de Población) y Mario, Silvia (Instituto Gino Germani).

⁸ Sistema Nacional de Estadísticas sobre Ejecución de la Pena, 2008, available at: <http://www.jus.gov.ar/media/108979/Informe%20SNEEP%20ARGENTINA%202008.pdf> (accessed 10 April 2012).

⁹ See United Nations <http://acnudh.org/2012/02/la-oficina-regional-para-america-del-sur-de-naciones-unidas-derechos-humanos-expresa-preocupacion-por-la-reciente-ola-de-muertes-y-violencia-en-las-carceles/> (accessed 10 April 2012).

¹⁰ See Amnesty International, 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> (accessed 3 April 2012).

¹¹ In recent years provinces including Chaco, Rio Negro and Mendoza have passed specific legislation to create a local preventive mechanism.

¹² Argentina has been a party to the Optional Protocol since 2004.

¹³ See Amnesty International, Argentina: Urgent Action – Indigenous families at risk of forced eviction, UA: 163/11 (Index: AMR 13/001/2011) 02 June 2011.

¹⁴ See Amnesty International, Argentina: Urgent Action - Two children attacked by armed men, UA: 245/10 (Index: AMR 13/005/2011), 11 November 2011 and Argentina: Urgent Action – Indigenous leader killed in Argentina, UA: 341/11 (Index: AMR 13/006/2011) 22 November 2011.

¹⁵ See Amnesty International statement, Amnistía Internacional Argentina celebra la decisión de la Corte Suprema de Justicia de la Nación que garantiza el acceso al aborto en casos de violación, 13 March 2012.

¹⁶ See http://www.lacapital.com.ar/contenidos/2012/03/25/noticia_0032.html (accessed 3 April 2012) and <http://www.taringa.net/posts/noticias/14357003/El-gobernador-de-Mendoza-tambien-minimizo-el-alcance-del-f.html> (accessed 3 April 2012).

¹⁷ UN Committee on the Elimination of Discrimination against Women, UN Doc: CEDAW/C/ARG/CO/6, para 38; UN Human Rights Committee CCPR/C/ARG/CO/4 paragraph 13; UN Committee on Social, Economic and Cultural Rights, E/C.12/ARG/CO/3, paragraph 22.

¹⁸ UN Committee on Social, Economic, and Cultural Rights, E/C.12/ARG/CO/3, December 2011, paragraph 11. The Committee said that the state should adopt measures to make its official statistics comparable to data gathered by international institutions and that it should ensure that the methodology used and the data gathered by the INDEC is accessible to the public and adequately disseminated.

¹⁹ Emergency Act No. 26.160.

²⁰ See Amnesty International, Argentina: Urgent Action-Indigenous community faces illegal eviction, UA:

282/09 (Index: AMR 13/001/2009) 16 October 2009.

²¹ Inter-American Commission on Human Rights, Precautionary Measures, MC 404/10 – Comunidad Indígena Qom Navogoh “La Primavera”, Argentina.

²² See Amnesty International, Argentina: Urgent Action - Two children attacked by armed men, UA 245/10 (Index: AMR 13/005/2011) 11 November 2011.

²³ Special Rapporteur visit to Argentina, Press release “A United Nations expert urged Argentina to strengthen its measures to protect the human rights of indigenous peoples”, December 2011, see <http://unsr.jamesanaya.org/statements/declaracion-a-los-medios-del-relator-especial-de-las-naciones-unidas-sobre-los-derechos-de-los-pueblos-indigenas-al-concluir-su-visita-a-argentina> (accessed 3 April 2012).

²⁴ See Amnesty International, Argentina: Exigimos respeto: Los derechos de los pilagá del bañando La Estrella (Index AMR 13/001/2010), 20 April 2010.

²⁵ See Human Rights Committee CCPR/C/101/D/1608/2007, 28 April 2011.

²⁶ Amnesty International, “Teenage Rape Survivor Gets Legal Abortion”. For further information see: Urgent Action 65/10 (Index: AMR 13/004/2010) 23 March 2010; Amnesty International, Argentina: Urgent Action - Teenage Rape Survivor Denied Abortion, UA: 65/10 (Index: AMR 13/002/2010) 15 March 2010; Amnesty International and Human Rights Watch, “Safe abortion for young victims of rape”, Press Release (Index: PRE 01/076/2010).

²⁷ UN Human Rights Committee, CCPR/C/ARG/CO/4 para 16. Also UN Working Group on Arbitrary Detention Opinion 52/2011 (Argentina), 2 May 2011.

²⁸ The trial in relation to the killing of the man started on 19 March 2012. However, Amnesty International is not aware of any steps taken by the authorities to investigate the allegations of torture and ill-treatment.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Argentina: The time has come to respect the rights of La Primavera Indigenous community (Index: AMR 13/002/2012).

Argentina: Indigenous leader killed in Argentina (Index: AMR 13/006/2011).

Argentina: Further information: Court rules in favour of Indigenous families, (Index: AMR 13/003/2011).

Americas: Sacrificing rights in the name of development: Indigenous peoples under threat in the Americas (Index: AMR 01/001/2011).

Argentina: Further information: Violent police operation captured on video (Index: AMR 13/002/2011).

Argentina: Threats deny community access to research (Index: AMR 13/005/2010).

Argentina: Further information: Teenage rape survivor gets legal abortion (Index: AMR 13/004/2010).

Americas: Solutions to the historic violation of Indigenous rights will only be found through respectful dialogue, in good faith, with Indigenous peoples (Index: AMR 01/004/2009).

Argentina: Historical ruling is another step towards justice (Index: PRE 01/328/2012).

¹ All of these documents are available on Amnesty International's website:

<http://www.amnesty.org/en/region/argentina>.