



ARGENTINA: REGRESSIVE HUMAN RIGHTS POLICIES

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Argentina in November 2017. In it, Amnesty International evaluates the implementation of recommendations made to Argentina in its previous UPR, assesses the national human rights framework and the human rights situation on the ground, and makes a number of recommendations to the government of Argentina to address the human rights challenges mentioned in this report.

Amnesty International is concerned about the regressive policies adopted on migrants' rights, the continued criminalization of abortion, and shortcomings in the national human rights institution.

Amnesty International also raises concerns about the threats of detention of irregular migrants, obstacles in accessing legal abortion, violence against women, violations of the rights of Indigenous Peoples and increased criminalization of Indigenous leaders and human rights defenders, restrictions on the rights to freedom of expression and assembly, and impunity for past crimes.

FOLLOW UP TO THE PREVIOUS REVIEW

During its previous UPR in 2012, Argentina supported recommendations to combat discrimination and violence against women,¹ to guarantee sexual and reproductive rights,² to improve prison conditions,³ to ensure that there is no impunity for the crime of torture,⁴ to achieve truth and justice,⁵ and to ensure respect for the rights of Indigenous Peoples.⁶ Amnesty International welcomes that Argentina undertook a mid-term review in 2014 of the state of implementation of the recommendations it supported.⁷ However, serious human rights violations continue to pervade in the country.

¹ A/HRC/22/4, Recommendations: 99.25 (Moldova, Indonesia), 99.47 (France), 99.48 (Greece and Morocco), 99.49 (Netherlands), 99.55 (Spain), 99.59 (Canada).

² A/HRC/22/4, Recommendations: 99.89 (France), 99.94 (Slovenia), and 99.96 (Uruguay).

³ A/HRC/22/4, Recommendations: 99.35 (Germany); 99.36 (Hungary), 99.37 (India), 99.38 (Mexico), 99.39 (Morocco), 99.40 (Slovakia), 99.41 (Slovenia), 99.42 (Spain), 99.43 (Switzerland), 99.44 (Switzerland), 99.45 (Austria).

⁴ A/HRC/22/4, Recommendations: 99.12 (Brazil), 99.13 (Honduras), 99.15 (UK and Northern Ireland), 99.16 (United States of Americas), 99.34 (Belarus, Slovakia, Tunisia, Austria).

⁵ A/HRC/22/4, Recommendations: 99.72 (Peru), 99.73 (Armenia).

⁶ A/HRC/22/4, Recommendations: 99.31 (Bolivia); 99.108 (Greece); 99.109 (Peru).

⁷ Argentina's National Mid-term Report (2014)

In 2012, Argentina voluntarily committed to promoting initiatives in the UN Human Rights Council to increase the protection of migrants and to spearhead discussions on the development and implementation of public policies on this issue.⁸ However, despite this commitment, the current government has promoted regressive policies on migrants.

In 2012, Congress approved the creation of a National Preventive Mechanism in accordance with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as recommended by several States in the 2008 and 2012 reviews.⁹ However, more than nine years later, the government has yet to establish such a mechanism and to advance the designation of experts to serve on the National Committee for the prevention of torture.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

MIGRANTS' RIGHTS

The Law on Migration N° 25.871, promulgated in 2004 and guaranteeing key human rights, affirms the right to migrate and guarantees access to health, education, justice, and social welfare for all residents, regardless of their immigration status.

However, in January 2017, the law was reformed through the Necessity and Urgency Decree N° 70/2017, which introduced barriers to the admission of migrants and their permission to stay, accelerated expulsion procedures, removed the family unit as a requirement for avoiding expulsion, and restricted access to Argentine nationality. Amnesty is concerned that the Decree has reduced the issue of migration to a debate about national security, which associates migrants with criminals.

The government has justified the reform alleging that crime rates have increased because of migrants, especially drug-related crimes. However, the number of migrants implicated in crime in Argentina is not significant: less than 6% of the prison population are foreigners. Moreover, according to official data, of the total number of persons arrested for drug-related offences in the country, 83% are Argentine and only 17% are foreigners, which corresponds to a total of 1,426 foreigners, or 0.06% of the total migrant population in Argentina.¹⁰

⁸ A/HRC/4/22. Voluntary commitments: Argentina committed to promoting the Human Rights Council and initiatives aimed at raising the standard of protection for migrants, and leading discussions on the development and implementation of public policies on the matter (para. 42). This is in addition to accepting the recommendations of 99.114 (Belarus) and 99.115 (Mexico) on social integration of migrants, refugees and asylum seekers.

⁹ A/HRC/WG.6/1/ARG/4, recommendations 64.6 (Netherlands), A/HRC/22/4, Recommendations: 99.12 (Brazil); 99.15 (UK); 99.16 (United States)

¹⁰ Ministry of Justice and Human Rights, System of National Statistics about the Execution of Penalties (SNEEP), 2015.
<http://www.ius.gob.ar/media/3202712/Infracci%C3%B3n%20a%20la%20ley%20de%20drogas.pdf>

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 inconsistent interpretation results in its discretionary application by judges and health service providers which, in turn, limits the access to legal abortion. 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.¹¹

Several UN treaty bodies, including the Committee on the Elimination 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 subject themselves to unsafe abortions which may put their lives at risk.¹²

Amnesty welcomes the launch in July 2016 by the National Women's Council of a new comprehensive National Plan of Action for the Prevention, Assistance and Eradication of Violence against Women for the 2017-2019 period. Amnesty International is concerned, however, that the goals of the National Plan are too wide and generic and its performance indicators too non-specific which may make monitoring difficult.

ACCESS TO INFORMATION

On 14 September 2016, Congress passed a law to provide access to public information (N° 27.275), as recommended in the previous UPR.¹³ The law will enter into force in September 2017, but has yet to be regulated by the executive, judicial and legislative branches.

NATIONAL HUMAN RIGHT BODIES

For the past eight years, the National Ombudsman has been without leadership. It is mandated to protect human rights by investigating, documenting, and denouncing human rights violations before the judicial branch; however, the absence of an official defender (ombuds person) prevents it from complying with its mandate.

¹¹ The Declaration of Amnesty International Argentina welcomes the decision of the Supreme Court of Justice to guarantee access to abortion in cases of rape, 13 March 2012.

¹² UN Committee on the Elimination of the Discrimination against Women, CEDAW/C/ARG/CO/7, para.33, 2016; CEDAW/C/ARG/CO/6, para. 38; UN Human Rights Committee, CCPR/C/ARG/CO/5, 2016, para. 31, and CCPR/C/ARG/CO/4, para. 13; UN Committee on Economic, Social and Cultural Rights, E/C.12/ARG/CO/3, para. 22.

¹³ A/HRC/22/4, 99.77 Recommendations (Belgium), 99.78 (Canada), 99.79 (Switzerland), 99.80 (Norway).

HUMAN RIGHTS SITUATION ON THE GROUND

MIGRANTS AND REFUGEES

On 30 January 2017, the government published the Necessity and Urgency Decree N° 70/2017 which serves to restrict immigration policies, including Immigration Law N° 25.871.

In August 2016, the National Directorate of Migration and the Ministry of Security announced plans for a detention centre for irregular migrants. This is in breach of current immigration laws¹⁴ and the rights to liberty and freedom of movement, as well as protection from arbitrary arrest and detention.¹⁵

During 2016, the Argentine government announced its willingness to receive 3,000 Syrians, giving priority to families with children. Argentina must now translate this proposal into specific action, including by receiving refugees and ensuring their local integration.

SEXUAL AND REPRODUCTIVE HEALTH AND VIOLENCE AGAINST WOMEN

Under the Criminal Code, access to abortion is only permitted in cases where the pregnancy poses a risk to the mental or physical health of the woman or girl or where the pregnancy is the result of rape. However, abortion is still being prosecuted by the authorities. In June 2015, the National Ministry of Health published a new “Guide to Comprehensive Care for Persons with a Right to a Legal Interruption of Pregnancy”.¹⁶ Although the Guide “is enforceable throughout the Argentine territory and must be implemented by all institutions, both public and private”, only eight of Argentina’s 25 jurisdictions have protocols for legal abortions that correspond to the protocols in the Guide.¹⁷ Another eight states have protocols

¹⁴ Argentina, Law No. 25.871 (2004)

¹⁵ International Covenant on Civil and Political Rights, Article 9(1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his [or her] liberty except on such grounds and in accordance with such procedure as are established by law; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, 1990 Article 16(1) Migrant workers and members of their families shall have the right to liberty and security of person.

¹⁶ The new Guide contains some useful aspects, including the use of simple language; the change of the expression “non-punishable abortion” to “legal interruption of pregnancy”; the acknowledgement of changing mainstream thinking towards gender, including trans men as subjects of law who may require protection in line with the national law on gender identity, Law 26.743; a specific definition of legal abortion in cases of sexual violence, or health risks; and the incorporation of the latest scientific and legal developments as recommended by the World Health Organization and other guidelines established by the Supreme Court in the ruling “f., AI”, among others. This Protocol reviewed and updated medical, bioethics and legal information contained in the technical guide of 2010. Available at <http://www.msal.gov.ar/images/stories/bes/graficos/0000000690cnt-Protocolo%20ILE%20Web.pdf>.

¹⁷ These provinces are: Chaco, Chubut, Jujuy, La Rioja, Misiones, Santa Cruz, Santa Fe, and Tierra del Fuego.

that further hinder women's access to safe abortion services,¹⁸ and the last nine jurisdictions do not have a protocol.¹⁹

The obstacles that women and girls face in accessing legal abortion include:

- The practice of conscientious objection to abortion by health providers,
- Violation of patient confidentiality standards,²⁰
- Harassment and persecution of women and girls seeking an abortion,
- Misuse of the justice system to obstruct the provision of abortion.

It is estimated that between 460,000 and 600,000 clandestine abortions are performed every year in Argentina.²¹ In 2014, 290 women lost their lives due to pregnancy-related causes, including clandestine abortion.²² In 2013, there were 243 such deaths.²³

In 2014, 25-year-old Belén²⁴ was deprived of her liberty for more than two years for having suffered a miscarriage at a public hospital. Despite this being stated in her medical records, she was detained, prosecuted for homicide and sentenced to eight years in prison. In June of 2016, the UN Human Rights Committee called on Argentina to review “the case of Belén” and to release her immediately.²⁵ The Committee further stated that women should never be subjected to criminal proceedings or forced to put their lives or health at risk if they need to interrupt their pregnancy.²⁶ The Special Rapporteur on the right of the highest attainable physical and mental health has said that States should refrain from using legal restrictions or penal laws that are not based on evidence to regulate public health, since they may violate the right to health of the people affected as well as being contrary to the purposes that justify

¹⁸ City of Buenos Aires, Córdoba, Entre Ríos, La Pampa, Neuquén, province of Buenos Aires, Río Negro and Salta.

¹⁹ Catamarca, Corrientes, Formosa, Mendoza, San Juan, San Luis, Santiago del Estero and Tucumán.

²⁰ In its General Observations 24 and 33, the CEDAW Committee expressed concern about the relationship between complying with the right to privacy in healthcare, abortion and women's health: “Lack of respect for the confidentiality of information affects both men and women, but it can talk women out of getting advice and treatment, negatively affecting their health and wellness. Therefore, women will be less prepared to get medical attention for her genital diseases, use contraceptive methods or even pay attention to incomplete abortions when she is a victim of sexual or physical violence.” UN Committee on the Elimination of Discrimination against Women, A/54/38/Rev.1 and CEDAW/C/GC/33.

²¹ The Ministry of Health of the Nation estimated the magnitude of clandestine induced abortions in Argentina, Edith Pantelides (Conicet and Cenep-Centre of studies of population) and Silvia Mario (Institute Gino Germani), pp. 111 and 112. Like some other countries of Latin America, Argentina has only an estimated number of clandestine induced abortions every year. This estimate was made at the request of the Ministry of Health of the Nation using two methodologies validated internationally: first, a method based on the statistics of hospital discharges due to complications of abortion and, the second, the residual method. According to the first method, the number of clandestine induced abortions in 2000 was between 372,000 and 447,000, with induced abortions ratio per live births between 0.53 and 0.64: This means more than 1 abortion per 2 births. With the second method, the estimate for 2004 indicates that they were between 486,000 and 522,000 abortions.

²² DEIS, 2015. www.deis.gov.ar

²³ DEIS, 2014. www.deis.gov.ar

²⁴ Not her real name but a pseudonym, used at her own request. See more information at <http://www.amnistia.org.ar/rau/argentina3>; <http://www.pagina12.com.ar/Diario/suplementos/las12/13-10537-2016-04-29.html>; <http://www.pagina12.com.ar/diario/sociedad/3-298129-2016-04-29.html>.

²⁵ UN, Human Rights Committee, Concluding observations on the fifth periodic report of Argentina, paragraph 11 (UN Doc. CCPR/C/ARG/CO/5). In light of this case, the Committee called for consideration of the decriminalization of abortion.

²⁶ UN, CEDAW Committee, Argentina 2010 final recommendations, CEDAW/C/ARG/CO/6.

them.²⁷ In March 2017, the Supreme Court of Tucumán unanimously decided to acquit Belen.

In 2006, the Law for Sexuality Education (N° 26.150) created the national program of Integrated Sexuality Education.²⁸ However, as of 2015, only eight provinces had passed laws providing for sexuality education and a further two provinces had passed resolutions to implement the national program.²⁹ Even in these jurisdictions, there is resistance to integrating sexual education in the curriculum and to distributing materials and information. In many cases, the materials were changed to include inaccurate content.³⁰

VIOLENCE AGAINST WOMEN

According to a local NGO, between 2015 and October 2016, a woman was murdered every 30 hours in Argentina.³¹

On 3 June 2015, the first mass demonstration against violence against women, *#NiUnaMenos*, took place in Argentina.

In November 2016, the Special Rapporteur on violence against women visited Argentina and drew attention to “significant shortcomings” in its systems to prevent violence against women which continued to be tolerated in a “machismo culture”.³² The Special Rapporteur recommended that the government increase the human, technical and financial resources of the National Council of Women, which is mandated to develop public policies for the prevention, punishment and eradication of violence against women.³³

²⁷ UN, Special Rapporteur on the right of the highest attainable physical and mental health, provisional report, A/66/254 from August 3, 2011.

²⁸ The Autonomous City of Buenos Aires (Law N° 2.110/06), Chaco (Law N° 5.811/06), Entre Ríos (Provincial Law N° 9.501/03, includes that sexuality education must adhere to the PNSSYPR), the Rioja (Law N° 8.431/08 of Accession to the National Act), Buenos Aires (Law N° 14.744/15 in compliance of the national law), Río Negro (Law N° 4.339/09 of accession to national law), Santa Cruz (Law N° 3043/09 accession to national law), Misiones (Law VI - N° 129/09 establishing compulsory with national law). See, the difficulties of implementation at the local level in the provinces of San Juan, Rojas, Fabian “Integral Sexuality Education? Time running the veil”, Journal of the National University of San Juan, year IX, N° 56, March 2012. Available at <http://www.revista.unsj.edu.ar/revista56/index.php>

²⁹ Formosa (resolution N° 2.181/12 required adhesion to the ESI program). Resolution N° 5.249/14 made it compulsory in all educational institutions of the provinces). La Pampa (resolution N° 814/10 created a provincial program of sexuality education, in line with the provisions of the national law).

³⁰ Sexuality education in the province of Salta was first developed by the provincial government in conjunction with conservative organizations and included inaccurate content.

³¹ La casa del Encuentro. Annual Report 2016. Available at: <http://sosella.org/wp-content/uploads/2016/11/Informe-de-investigacion-de-femicidios-en-Argentina-2016.pdf>

³² UN, Special Rapporteur on Violence against Women, “UN Special rapporteur challenges Argentina to step up protection of women in “machismo culture”. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20903>

³³ This recommendation was also supported by the CEDAW Committee, which also recommended to strengthen the coordination between the National Council of Women, the Provincial Women’s Offices and the Municipal Women’s Offices, in order to establish clear lines of coordination in the field of gender equality work. The Committee also urged the state to ensure sufficient resources for the collection of statistical data for public policy to prevent and combat gender-based violence. UN CEDAW Committee, Argentina 2016 final recommendations, CEDAW/C/ARG/CO/7.

INDIGENOUS PEOPLES

Although there is a number of national and provincial laws to protect the rights of Indigenous Peoples, the Special Rapporteur on the rights of Indigenous Peoples identified “a significant gap between the established regulatory framework on Indigenous issues and its actual implementation”.³⁴ Most Indigenous Peoples in Argentina do not have “legal recognition of their land for their use or traditional occupation”. This, the Special Rapporteur noted, was due to the fact that “historically they have been dispossessed of large tracts of their land by ranchers and the operations of farming, and oil and mining companies”.³⁵

In 2006, Law 26.160 was enacted, which ordered the suspension of evictions of Indigenous Peoples and instructed the National Institute of Indigenous Affairs to carry out a survey of land occupied by Indigenous Peoples. However, 11 years later, only limited progress has been made with regard to the survey,³⁶ and violent evictions continue to take place.³⁷ In addition, the law does not recognize or advance land titling. As a result, communities are forced to resort to legal mechanisms to reclaim their land.

In 2009, Javier Chocobar, a member of the Diaguita Indigenous Community, was gunned down while peacefully defending his territory against a landowner who claimed to own the land. To this day the murderer continues to go unpunished.

In January 2017, over 200 gendarmes carried out a lockdown operation, closing off all access points to the Indigenous land inhabited by the Mapuche community (Lof) Cushamen in the province of Chubut. The local police also intervened to support the gendarmes. The community reported the attacks to the police, including beatings, use of batons, women having their hair pulled, and intimidation of children in the community.³⁸ At least 10 members of the

³⁴UN, Assembly General, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/21/47/Add.2, 2012, p. 18.

³⁵UN, Assembly General, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/21/47/Add.2, 2012, p. 12. See also Argentina. Territorio Indígena: mapping of more than 250 cases where indigenous people faces violation of their human rights. www.territorioindigena.com.ar

³⁶ Official report of the General Audit of the Nation and of the National Institute of Indigenous Affairs (INAI), and the National Institute of Indigenous Affairs reveals that until the middle of 2012, they had only concluded the survey of 4.22% of the lands of Indigenous communities. This is true even if we take into account the figures provided by INAI, available at http://www.agn.gov.ar/files/informes/2012_083info.pdf. Information sent by INAI in 2012 indicates that the advancement of the Indigenous territorial survey program, including unfinished tasks, is equivalent to 23.95% (approximately 380 identified communities). See on this subject: 327/12 Note to the Indigenous Peoples Human Rights Observatory (ODHPI). Data provided by INAI has been viewed as controversial by various organizations working in the field. For example, see the report by ENDEPA: “New Warning on the Nonperformance of Law 26.160. The Gap between the Statements and the Reality on Matters of Indigenous Territorial Rights”. 2013. Available at: <http://www.slideshare.net/AndreaLandella/segunda-advertencia-de-endepe-sobre-la-ley-26160>

³⁷ The UN Special Rapporteur on racism, Mutuma Ruteere, said “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 indigenous civil rights defenders and leaders as well as members of their families. These reprisals have also targeted non-indigenous defenders of minority rights including migrants”. Press release of the UN Rapporteur on racism following his visit to Argentina between 16 and May 23, 2016. May 24, 2016. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20005&LangID=E>

³⁸ The women and children reported that they tried to protect themselves within the main “ruca house” (a traditional Mapuche communal house), but the gendarmes kept them locked in there before forcing their way in. Some of the statements reported that the children were terrified by the presence of the armed men, women were dragged across the ground, houses were destroyed and animals stolen or killed.

community and their supporters were arrested.³⁹

The authorities also use legal proceedings to harass and intimidate Indigenous Peoples, including unfounded accusations of sedition, resisting authority, committing thefts, and attempted killings and injuries. The anti-terrorist law (N° 26.734), in force since 2011, also poses a threat of criminalization of Indigenous Peoples.

In the past 20 years, there has been a notable increase in forestry and extractive projects, such as mega-mining, agribusiness, and oil. Some of these have infringed the rights of Indigenous Peoples, including their right to consultation and free, prior and informed consent,⁴⁰ despite the accept of a recommendation in this regard during Argentina's last UPR.⁴¹ In 2000, there were 40 mining projects in the country; in 2015, this had increased to 800 such projects.⁴² Unfortunately, lack of information impedes the assessment of the impact of those projects on Indigenous territories.

One emblematic case reported to Amnesty International is the exploitation of the Vaca Muerta oilfield,⁴³ seated partly on the land of the Indigenous community Lof Campo Maripe, when an oil plant was created without prior consultation or obtaining the free and informed consent of the community. This situation triggered a conflict involving more than 27 Indigenous communities living in the area. On 10 January 2016, a new operating plan attracting investments in the oil on Vaca Muerta land was agreed between the government of the province of Neuquén, oil unions and companies in the sector, but without Indigenous participation.⁴⁴

FREEDOM OF EXPRESSION AND SOCIAL PROTEST

On 17 February 2016, the Ministry of Security issued the "Action Protocol for State Security in Public Manifestations"⁴⁵ which imposes excessive and disproportionate restrictions on the rights to freedom of expression and peaceful assembly as set out in international human rights

³⁹ Amnesty International Urgent Action, AMR 13/5477/2017. Available at <http://www.amnestyusa.org/sites/default/files/uaa00817.pdf>. Mapuche testimonies described that children were terrified of the presence of armed men, and women were dragged across the floor. In addition, they reported that their homes were destroyed, items were stolen and their animals killed.

⁴⁰ Press statement to the media by the UN Special Rapporteur on the rights of indigenous peoples at the conclusion of his visit to Argentina, 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>

⁴¹ A/HRC/22/4, recommendation 99.109: continue with efforts to enhance the participation and consultation of indigenous peoples on policies that affect them (Peru).

⁴² Official data of the Ministry Secretariat of agroindustry and mining (as of 2015). See also, Dario Aranda, "Land Razed Land Scorched." "Oil, soybean, pasturas and megaminería." South American, by 2015.

⁴³ In 2011, YPF-Repsol announced the discovery of the Vaca Muerta oilfield. Its oil production plans used the much-debated fracking technique (hydraulic fracking uses pressurized water and chemicals to break up rock), which raises serious questions about its environmental impact. Vaca Muerta covers an area of 30 thousand square kilometers (3 million hectares). Besides Chevron, negotiations are at an advanced stage with Total, Exxon, Shell, Wintershall and Petronas. In September of 2014, YPF announced a production of 20,000 barrels per day of shale oil in the oilfield.

⁴⁴ Available at: <http://www.lanacion.com.ar/1974553-macri-anuncio-el-plan-de-explotacion-de-vaca-muerta-esto-va-a-ser-una-revolucion-del-trabajo>.

⁴⁵ The particularity of this document is that it was agreed upon at a meeting of Security Ministers but lacks identification, due to a number of the resolution.

laws.⁴⁶ The Protocol is used to criminalize people for peacefully exercising their right to demonstrate.⁴⁷ In the past few years, Amnesty International has received reports of several acts of violent repression against social movements.⁴⁸

On 16 January 2016, community leader Milagro Sala was arrested during a protest in the Plaza Belgrano in San Salvador de Jujuy, in the Northwest of the country. Earlier, on 15 December 2015, Milagro Sala had been detained by the government of the province of Jujuy for participating in a protest organized by Red de Organizaciones Sociales de Jujuy (ROS) (a grassroots organizations network).⁴⁹ On 27 October 2016, the UN Working Group on Arbitrary Detention determined that Milagro Sala's arrest was arbitrary and requested that "the government release her immediately".⁵⁰ However, Milagro Sala remains in detention, in violation of Argentina's international commitments.⁵¹

IMPUNITY FOR PAST CRIMES

The last few years have seen important progress in condemning those responsible for crimes under international law and human rights violations during the 1976-1983 military dictatorship. However, some serious delays continue, including due to lack of organization and inefficiency in

⁴⁶ OAS, Inter-American Convention on Human Rights, Art. 13; International Covenant on Civil and Political Rights, Art. 19; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10.

⁴⁷ Ministry of security of the nation, protocol of action for the forces of state security in public manifestations, article 1 "...the chief of operational security will give the order through loudspeakers or megaphones that protesters must withdraw from blocked transit routes, and must be in a certain area to exercise their constitutional rights, but still allowing for freedom of movement. It will warn that in breach of this instruction, they will violate article 194 of the criminal code, and where appropriate, in contraventions referred to in each jurisdiction... ". The legal status of this protocol is unknown since it does not correspond with any resolution and has not been published in the Official Bulletin. However, it was released by the Ministry of Public Security. Amnesty International is concerned with Security Minister Patricia Bullrich's talk in the media, where she hints at the repression of social protests: "If they don't go in 5 or 10 minutes, they are going to get it." (<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>).

⁴⁸ On December 22, 2015, the national police cracked down violently on those peacefully demonstrating for claim to their jobs against the company Cresta Roja. According to public reports, security forces made excessive use of force, using tanks, fire hydrants and rubber bullets that hurt the physical integrity of protesters. On December 29, there was another repression in Villa 1-11-14 from Bajo Flores. The statements of the witnesses detailed that the National Gendarmerie advanced on neighbors and fired indiscriminately in an area where there were children and adolescents. The Office of Institutional Violence (Procuvin), dependent on the Ministry of the Public Prosecutor, stepped in to investigate the incidents where at least 11 people, including children, were injured by rubber bullets.

⁴⁹ Index: AMR 13/5612/2017, Argentina, February 2017. Notwithstanding the vagueness of the indictment and the absence of a clear and precise description of the facts charged, the accused is accused of two penal crimes: organizing a protest (interpreted as the crime of dulling circulation, where she would be committed - article 209 of the Criminal Code) and of rejecting a measure of provincial government-related work (interpreted as sedition, art. 230 of the CP). Despite having been ordered to release her, she has since been accused of other criminal actions in order to be kept detained.

⁵⁰ UN GTDA, A/HRC/WGAD/2016, October 21, 2016. Opinion No. 31/2016 on miracle Amália Angela Hall (Argentina, Republic). Available at <http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session76/31-2016.pdf>. The Group argued that there was a network of "consecutive charges" to hold her deprivation of liberty indefinitely in time; and it was concluded that the State prevented her right to defense by violating her judicial independence. To analyze the causes by which she was detained, there are no legal elements to justify her continued detention.

⁵¹ Argentina has ratified the International Covenant on Civil and Political Rights and as a state party, it must cooperate effectively with the Committee and give full consideration to its determinations.

managing the cases. New challenges have emerged as well, including the investigation into the participation of private actors, such as the owners and staff of companies suspected of having been involved in the abuses during the dictatorship, and the prosecution of offences of sexual violence committed during the dictatorship.⁵²

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF ARGENTINA TO:

FOLLOW UP TO THE PREVIOUS REVIEW

- Implement without delay the law establishing the National Preventive Mechanism, as required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

MIGRANTS AND REFUGEES

- Ensure access to fundamental human rights for all people, including foreign nationals residing in Argentina, regardless of their immigration status;
- Ensure entry into Argentina of migrants on the basis of non-discrimination as to their origin or nationality;
- Ensure due process and effective access to justice and remedies for migrants and refugees;
- Ensure that the use of detention or alternatives to detention that restrict the liberty of migrants is based in law and necessary and proportionate in all situations;
- Abolish the Necessity and Urgency Decree N° 70/2017 and revert to the Law on Migration N° 25.871, as promulgated in 2004, and ensure that any future changes to the migratory legal framework are made through a transparent debate in the Congress;
- Develop a program of local integration of refugees.

SEXUAL AND REPRODUCTIVE HEALTH

- Adopt all necessary policies and protocols and allocate adequate resources to ensure that access to legal abortion is available on equal terms throughout the country;
- Ensure that all methods of abortion are available through the public health system;
- Adopt a policy on documentation and counselling for abortion services throughout the country and compile disaggregated data on its implementation;

⁵² UN, CDH, Concluding observations on Argentina, CCPR/C/ARG/CO/5/24580/S. 28. “The Committee reiterates its recommendation that the State party step up its efforts to investigate all the human rights violations committed in the past, including crimes committed by the owners and/or staff of companies that are suspected of having been involved in the commission of crimes against humanity. The State party should provide the human and economic resources required to ensure that, as a result of these investigations, the responsible parties are identified, prosecuted and punished in a manner that is commensurate with the gravity of their crimes and that victims are provided with redress.”

- Ensure that women and girls are not subject to criminal sanctions for seeking or obtaining an abortion under any circumstances;
- Initiate a serious and informed debate in Congress on the decriminalization of abortion, in line with international law and standards;
- Ensure the implementation of the Law of Integral Sexual Education throughout the country, and monitor its implementation in all provinces;
- Ensure youth-friendly and comprehensive health services are available throughout the country, including sexual and reproductive health services and information, legal abortion, and STI/HIV counselling, testing and treatment, which respect patient privacy and confidentiality, and informed consent in accordance with “evolving capacities” of young people.

VIOLENCE AGAINST WOMEN

- Ensure the effective implementation of the National Plan of Action for Prevention, Assistance and Eradication of Violence against Women 2017-2019, established by Law N° 26.485;
- Implement a register of cases of violence against women with disaggregated data to enable better and more effectively designed public policies;
- Prioritize the role of the National Council of Women, with political priority, links to different agencies of the State, and employing an integrated approach to violence against woman, and ensure it has sufficient human, financial and institutional resources.

INDIGENOUS PEOPLES

- Ensure that Emergency Act N° 26.160 is fully implemented in order to prevent the eviction or removal of Indigenous Peoples from their traditional lands;
- Advance the recognition of Indigenous Peoples’ legal property, through a special law created and agreed upon with Indigenous Peoples, and develop a comprehensive policy of consultation and free, prior and informed consent;
- 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;
- Investigate reports of persecution and criminalization of Indigenous Peoples, ensure due process and fair trial in criminal cases, and that anti-terrorism laws are not used to criminalize legitimate protest by Indigenous Peoples.

FREEDOM OF EXPRESSION AND SOCIAL PROTEST

- Ensure the rights to freedom of expression, association and peaceful assembly, preventing regressive regulations that disproportionately limit or restrict those rights;
- Combat stereotypes that stigmatize community leaders;
- Develop and make public the rules about the use of force by officers while policing demonstrations, in line with the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;
- Release community leader Milagro Sala, as called for in Opinion 31/2016 of the UN Working Group on Arbitrary Detention.

IMPUNITY FOR PAST CRIMES

- Intensify efforts to bring to justice, without further delay, all those suspected of criminal responsibility for crimes under international law and human rights violations during the military dictatorship, including private actors, such as the owners and staff of relevant companies;
- Protect the safety and physical integrity of witnesses and defendants in the proceedings, ensuring full and effective implementation of protection measures.

ACCESS TO INFORMATION

- Ensure the full implementation of the Access to Public Information Law in all the three branches of the state.

NATIONAL HUMAN RIGHTS BODIES

- Designate a new Ombudsperson to allow the body to carry out its mandate fully and effectively.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE⁵³

- Argentina: 2017 Human Rights Agenda For Argentina (available at <https://amnistia.org.ar/wp-content/uploads/delightful-downloads/2017/02/PRENSA-ingles4.pdf>).
- Argentina. Territorio Indígena: mapping of more than 250 cases where indigenous people faces violation of their human rights Available at www.territorioindigena.com.ar).
- Argentina. Justicia por un Lider Indigena de Tucuman (available in Spanish at <https://amnistia.org.ar/ciberaccion-detalle/?id=120>).
- Argentina. Urgent Action: Trial Ongoing Against Indigenous Defenders, UA: 58/17 Index: AMR13/5978/2017.
- Argentina: Urgent Action. Violent Repression Of Mapuche Peoples (UA: 8/17 Index: AMR 13/5477/2017 Argentina).
- Americas: The State as a Catalyst for Violence against Women. Violence Against Women And Torture Or Other III-Treatment In The Context Of Sexual And Reproductive Health In Latin America And The Caribbean (Index: AMR 01/3388/2016).
- Americas: Argentina: They never saw me as a person. They saw me as an incubator (Index: AMR 01/4140/2016).
- Argentina: Submission to the United Nations Committee on the Elimination of All Forms of Discrimination against Women (Index: AMR 13/4898/2016).
- Argentina: Informe para el Comité contra la Tortura de las Naciones Unidas (index: AMR 13/5919/2017 – available in Spanish only).
- Argentina: Algunas consideraciones sobre la modificación de la Ley de Migraciones (Decreto de Necesidad y Urgencia 70/2017. Available at <https://amnistia.org.ar/wp-content/uploads/delightful-downloads/2017/02/Migraciones-QyA-1.pdf> (only in Spanish).
- Argentina: El Derecho a la Protesta Social: Posicion de Amnistia Internacional (available in Spanish only at <https://amnistia.org.ar/wp-content/uploads/delightful-downloads/2017/06/AIAR-Documento-El-derecho-a-la-protesta-social-2016-FINAL-.pdf>).
- Argentina. Urgent Action. Milagro Sala: Social Leader Remains In Arbitrary Detention (UA: 13/16, Index: AMR 13/5152/2016)

⁵³ All these documents are available on Amnesty International's website: <https://www.amnesty.org/en/countries/americas/argentina/>

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