



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Forty-seventh session

14 November-2 December 2011

## Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

### Concluding observations of the Committee on Economic, Social and Cultural Rights

#### Argentina

1. The Committee on Economic, Social and Cultural Rights considered the third periodic report of the State party on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/ARG/3) at its 44th to 46th meetings, held on 23 and 24 November 2011 (E/C.12/2011/SR.44-46), and adopted, at its 59th meeting, held on 2 December 2011, the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the third report of the State party but regrets, however, that it was submitted with a delay of eight years. It also acknowledges the submission of the comprehensive written replies to the list of issues (E/C.12/ARG/Q/3/Add.1) on 14 November 2011, although their late submission made their translation into the working languages of the Committee impossible before the dialogue with the State party.

3. The Committee appreciates the constructive dialogue held with the State party, which was represented by a high-level delegation that included representatives from relevant ministries.

#### B. Positive aspects

4. The Committee welcomes the ratification by the State party of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on 24 October 2011.

5. The Committee notes with appreciation the legislative and other measures undertaken by the State party to implement economic, social and cultural rights, and in particular:

(a) The inclusion for the first time in 2010 of a question based on self-identification of Argentinians of African descent in the National Census;

(b) The Migration Act (No. 25871 of 2004) which, inter alia, protects the right of all migrants, including those in an irregular situation, to free access to education and health services (arts. 7 and 8);

(c) The National Mental Health Act (No. 26657 of 2010) promoting community-based health services and guaranteeing an interdisciplinary approach;

(d) The Equal Marriage Act (No. 26618 of 2010) which, inter alia, provides same-sex couples the same marital rights as heterosexuals;

(e) The Act on the protection of glaciers (No. 26639 of 2010) safeguarding the glaciers and periglacial areas of the State party;

(f) The National Education Act (No. 26075 of 2006) which, inter alia, allocates 6 per cent of the gross domestic product for education purposes.

### **C. Principal subjects of concern and recommendations**

6. The Committee notes the absence of specific information concerning the domestic case law applying the Covenant rights while also noting that the Constitution of the State party grants constitutional rank to the Covenant and ensures its prevalence over ordinary statutes in the case of their inconsistency with the Covenant.

**The Committee requests the State party to provide in its next periodic report comprehensive information about the application of the Covenant rights by the judiciary. In this context, the Committee draws the attention of the State party to general comment No. 9 (1998) on the domestic application of the Covenant.**

7. **The Committee recommends that the State party consider amending the appointment procedures of the Defensor del Pueblo to make it possible to fill the post now and to avoid deadlocks in the future.**

8. The Committee notes with concern that Act No. 26160 (extended by Act No. 26554), regarding the possession and ownership of lands traditionally occupied by indigenous peoples, has not been fully implemented. It is also concerned about delays in providing indigenous communities with ownership titles to such lands or territories (arts. 1, 11, 12 and 15).

**The Committee urges the State party to ensure the full and coordinated implementation of Act No. 26160/26554 both at the federal and provincial levels. The Committee recommends that the State party finalize the processes of demarcation in all provinces, as foreseen by the Constitution and existing laws, and that it expedite the granting of communal title of land to indigenous communities.**

9. The Committee is concerned about the persisting threats, displacements and violent evictions of indigenous peoples from their traditional lands in numerous provinces. The Committee also regrets the shortcomings in consultation processes with affected indigenous communities, which in some cases have led to the exploitation of natural resources in the territories traditionally occupied or used by them without their free, prior and informed consent and without just and fair compensation being paid to them, in violation of the Constitution (art. 75) and International Labour Organization (ILO) Convention No. 169

concerning Indigenous and Tribal Peoples in Independent Countries. The Committee is particularly concerned by the negative consequences of lithium exploitation in Salinas Grandes (Salta and Jujuy provinces) on the environment, access to water, way of life and subsistence of indigenous communities (arts. 1, 11 and 12).

**The Committee recommends that the State party undertake the necessary measures to stop violations of the rights of indigenous peoples and that it hold accountable those responsible for such unlawful acts. It urges the State party to always enter into effective consultations with indigenous communities before granting concessions for the economic exploitation of the lands and territories traditionally occupied or used by them to State-owned companies or third parties, fulfilling the obligation to obtain the free, prior and informed consent of those who are affected by the aforementioned economic activities. The Committee also recommends that the State party guarantee that in no case will such exploitation violate the rights recognized in the Covenant and that just and fair compensation is granted to indigenous communities. The Committee also calls upon the State party to ensure the protection of indigenous communities during the implementation of mining exploration and exploitation projects. With regard to Salinas Grandes, the Committee urges the State party to comply with the decision of the Supreme Court, once it is available.<sup>1</sup> The Committee recalls in this context its statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/C.12/2011/1).**

10. The Committee is concerned about cases in which the increased use of chemical pesticides and transgenic soya seeds in regions traditionally inhabited or used by indigenous communities have negatively affected these communities. It worries the Committee that these communities find it increasingly difficult to apply their traditional farming methods, and that as a consequence, this may become an important obstacle to the access to safe, adequate and affordable food. The Committee also notes with concern the scale of deforestation, which has forced indigenous peoples to leave territories traditionally occupied or used by them, and in spite of Act No. 2633 on forest protection. The Committee is further concerned about the fact that the aforementioned activities are often carried out without an effective prior consultation with the affected groups of the population (arts. 1, 11, 12 and 15).

**The Committee urges the State party to ensure that the means of subsistence of indigenous communities and their enjoyment of economic, social and cultural rights are effectively protected, and to develop institutional and procedural guarantees to ensure the effective participation of indigenous communities in decision-making on issues that affect them. The Committee also recommends that the State party ensure the full implementation of Act No. 2633 and other legislation regarding the protection of the non-renewable resources of the State party with a view to combating deforestation.**

11. The Committee is concerned that, since 2007, the introduction of different statistical methods within the national statistical system (INDEC), which are not always publicly available, pose difficulties for the correct interpretation of data and the comparison of progress in and challenges to the enjoyment of the Covenant rights by all. It also notes with concern the data and calculation discrepancies between certain provincial and national official statistics as well as doubts raised by national and international civic, research and financial institutions with regard to the credibility of data produced by INDEC (art. 2).

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<sup>1</sup> File No. 1196/2010: *Indigenous Community of Three Wells Sanctuary and others vs. Jujuy, Province of and others*, on appeal to the Supreme Court since it has original jurisdiction in the matter, Supreme Court of Justice of the Nation.

The Committee underlines the importance of the availability of reliable and comprehensive data for the development of public policies and their implementation. It recommends that the State party take the necessary steps to make its official statistics comparable with data produced by relevant international institutions. It also recommends that the State party ensure that methodologies used and data gathered by INDEC in the course of its surveys are accessible to external users and adequately disseminated.

12. The Committee is concerned that the data provided for the Covenant rights was not presented on a comparative basis, disaggregated on an annual basis, as requested in the previous concluding observations of the Committee.

**The State party is requested to supply, in its next periodic report, disaggregated data for each of the Covenant rights, on an annual basis, taking into account the prohibited grounds of discrimination.**

13. The Committee is concerned about instances in which security forces and agents, both public and private, resorted to reprisals and disproportionate use of force against persons participating in activities in defence of economic, social and cultural rights, in particular in the context of land disputes.

**The Committee urges the State party to protect social activists and human rights defenders against any form of intimidation, threat and, especially, disproportionate use of force perpetrated by security forces and agents, both public and private. It also calls on the State party to ensure that all allegations of reprisals and abuse are promptly and thoroughly investigated, and that the perpetrators are brought to justice.**

14. The Committee reiterates its concern about continuing inequalities in the enjoyment of economic, social and cultural rights between men and women, in particular in the area of employment (E/C.12/1/Add.38, para. 17) (arts. 3 and 10).

**The Committee urges the State party to strengthen legislative and other measures to effectively strive for the equal rights of men and women in practice, and to combat all forms of discrimination against women. In this regard, the Committee recalls its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights. The Committee reiterates its previous recommendation that the State party strengthen its efforts to promote gender equality in all spheres of life. With regard to employment, the Committee encourages the State party to consider legal options, capacity-building and services that would enable men and women to reconcile professional and family responsibilities. It also calls upon the State party to promote the employment of women in the formal sector of economy.**

15. The Committee notes with concern the large number of workers in the informal economy in the State party and regrets that a significant percentage of them, including migrant workers, lack access to the social security system, in particular pension schemes. The Committee also expresses concern about discrimination with regard to conditions of work and minimum wages experienced in particular by outsourced (*tercerizados*) or temporary workers, and women in domestic work, the textile industry and the agricultural sector (arts. 6 and 7).

**The Committee urges the State party to continue its efforts to reduce the informal sector of the economy with a view to promoting employment in the formal sector and, in this way, ensure the full enjoyment of economic and social rights by all workers. It recommends that the State party extend the applicability of the minimum wage legislation to those sectors where it still does not apply. The Committee recommends that measures be taken to ensure the full legal protection of workers irrespective of**

**their sector of employment. It also encourages the State party to consider modifying the residency requirements established for migrant workers in line with the National Constitution and the Migration Act to ensure their access to non-contributory social benefit schemes.**

16. The Committee is concerned that neither the penal legislation nor the labour legislation of the State party specifically prohibit sexual harassment in the workplace and that it is not specifically recognized as a crime (art. 7 b).

**The Committee strongly calls upon the State party to approve and apply legislative measures that specifically prohibit sexual harassment in the workplace, as well as to make it punishable under penal and labour laws. It recommends that the State party undertake to raise public awareness against sexual harassment and provide comprehensive protection to victims.**

17. The Committee is concerned about human trafficking in the State party and regrets the inadequacy of Act No. 26364 on the matter. It is also concerned by the insufficiency of measures for the rehabilitation of victims of trafficking and exploitation (art. 10, para. 3).

**The Committee recommends that the State party accelerate the process of revising its legislation on combatting human trafficking to international standards. It also recommends that the State party increase the resource allocations for the prevention of human trafficking, the prosecution and conviction of perpetrators, and the provision of support to victims, as well as for enhancing coordination among all levels in this respect.**

18. The Committee reiterates its concern about incidents of violence against women in the State party, in particular domestic violence (E/C.12/1/Add.38, para. 25). The Committee is also concerned by the insufficient coordination among the different levels of governance, which constitutes an important obstacle to effectively addressing violence against women (arts. 3 and 10).

**The Committee recommends that the State party continue to increase public awareness of the criminal nature of domestic violence and bring perpetrators to justice. It also recommends that the State party strengthen legal counselling programmes, and increase the availability of shelters and psychosocial support services for victims. The Committee further calls on the State party to ensure adequate funding of the National Council of Women (Consejo Nacional de las Mujeres) in order to enable it to achieve its objectives.**

19. The Committee regrets that irregularities in the implementation of the Union Act (No. 23551) pose impediments to the exercise of labour and trade union rights, in conflict with the National Constitution and ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise. These include difficulties and delays in the registration process of trade unions by the Ministry of Labour, the dismissal of workers who engage in protests, and acts of violence against trade union leaders and members (art. 8).

**The Committee recommends that the State party consider adopting the necessary reforms of the Union Act with a view to recognizing the basic collective rights of all categories of workers and labour unions and ensuring the full conformity of the national legislation with the international obligations of Argentina. In this regard, it also recommends that the State party make the relevant Supreme Court rulings *mutatis mutandis* applicable to all workers and unions. It urges the State party to ensure that trade union registration is performed in accordance with article 8 of the Covenant and in a timely manner. The Committee also reminds the State party that reprisals such as the loss of employment for the participation in protests and strikes**

**carried out in conformity with law must be prohibited and that redress must be granted to the victims of abuse.**

20. The Committee is concerned that requirements to receive the universal allowance for children (Asignación Universal por Hijo), which is granted by law, in practice exclude certain groups such as migrants and their children from receiving this benefit.

**The Committee calls upon the State party to consider adopting all the necessary measures to ensure the unrestricted coverage of the universal allowance for children, in particular those from marginalized and disadvantaged groups, such as children of migrant workers in an irregular situation and children of persons deprived of their liberty.**

21. The Committee reiterates its concern about the continuing housing deficit in the State party (E/C.12/1/Add.38 para. 20), resulting from the gap between the needs of large parts of the society and the offer of adequate and affordable accommodation. The absence of reliable official analytical data in this respect constitutes an important obstacle to addressing this problem in an effective way. The Committee is concerned that speculation with land, real estate, and construction has created difficulties in the access to housing for middle- and low-income populations. It also reiterates its concern over forced evictions of disadvantaged and marginalized individuals and groups in contravention of the State party's obligations under the Covenant, which affect in particular migrants and indigenous peoples (art. 11, para. 1).

**The Committee urges the State party to adopt housing policies with a view to ensuring access to adequate and affordable housing with legal security of tenure for everyone. It calls upon the State party to effectively counter speculation in the land, real estate, and construction markets, in the light of the Committee's general comment No. 4 (1991) on the right to adequate housing. The Committee also urges the State party to take specific measures, legislation or otherwise, to ensure that persons who are forcibly evicted are provided with alternative accommodation or just and fair compensation in line with the Committee's general comment No. 7 (1997) on forced evictions.**

22. The Committee reiterates its concern about the inadequate reproductive health-care services for girls and women in the State party, the shortcomings of which result in the high maternal mortality rate and the overall high rates of teenage pregnancies (E/C.12/1/Add.8, para. 24). It notes in particular significant provincial disparities. It also notes with concern that unsafe abortions remain a main cause of maternal mortality (arts. 10 and 12).

**The Committee urges the State party to ensure the implementation of the law on sexual and reproductive health in all provinces and guarantee affordable access for everyone, especially adolescents, to comprehensive sexual and reproductive health education and services, with a view to, inter alia, addressing the high maternal mortality rate. The Committee recommends that the State party carry out programmes to raise public awareness on sexual and reproductive health. It also recommends that the State party take the necessary measures to guarantee access to legal abortions to decrease avoidable maternal deaths and that it guarantee access to health facilities, supplies and services to diminish pre- and post-abortion risks.**

23. The Committee is concerned about the high level of tobacco consumption in the State party, especially among women and youth (art. 12, para. 1).

**The Committee recommends that the State party ratify and implement the WHO Framework Convention on Tobacco Control and develop effective public awareness and tax and pricing policies to reduce tobacco consumption, in particular targeting women and youth.**

24. The Committee is concerned that despite the efforts by the State party to ensure universal access to education there are still incidences of children remaining outside of the education system, illiteracy, course repetition and school dropout, especially among disadvantaged and marginalized indigenous communities. It also notes with regret that indigenous communities do not always enjoy the right to intercultural bilingual education (art. 13).

**The Committee recommends that the State party effectively implement existing legislation to guarantee the right to education and to address, in particular, the problems of children remaining outside the education system, illiteracy, course repetition and school dropout. The Committee urges the State party to continue its efforts to remove disparities between different societal groups and promote the educational advancement of those disadvantaged and marginalized groups and provinces. It also recommends that the State party undertake effective steps to guarantee the access to intercultural education of indigenous peoples and to ensure that it is adapted to their specific needs.**

25. The Committee regrets the insufficient information from the State party regarding the protection of the collective rights of indigenous peoples related to their traditional knowledge and cultural heritage in the State party, including ancestral lands, as an integral part of their cultural identity (art. 15).

**The Committee recommends that the State party provide, in its next periodic report, comprehensive information about specific and effective measures, including legislation, to acknowledge and protect the traditional knowledge and cultural heritage of indigenous peoples, including their ancestral lands, in line with the Committee's general comments No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author and No. 21 (2009) on the right of everyone to take part in cultural life.**

26. The Committee encourages the State party to provide additional and more detailed information in its next periodic report with respect to the measures in place to ensure the right of everyone to benefit from scientific progress and its practical application, in line with article 15, paragraph 1 (b), of the Covenant.

27. The Committee requests the State party to disseminate the present concluding observations widely among all sectors of society, in particular among State officials, the judiciary and civil society organizations, to translate and publicize them as far as possible, and to inform the Committee on the steps taken to implement them in its next periodic report or earlier, as appropriate. It also encourages the State party to continue to engage national human rights institutions, non-governmental organizations and other members of civil society in the process of designing plans for the implementation of the present concluding observations and in discussions at the national level prior to the submission of its next periodic report.

28. The Committee requests the State party to submit its fourth periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 2 December 2016.