

*Convention on the Elimination of
All Forms of Discrimination
Against Women*

Shadow Report Submission
**Indigenous Women's Rights in
Argentina**

Submitted for 65th session October 2016



Submitted by:
Cultural Survival
2067 Massachusetts Avenue
Cambridge, MA 02140
Tel: 1 (617) 441 5400
agnes@culturalsurvival.org

CEDAW Report Submission: Indigenous Women's Rights in Argentina

I. Reporting Organization

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*, and on its website: www.cs.org. Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civil participation.

II. Background Information

The total population of Argentina is calculated to be around 43,886,748. Out of these forty three million, about 955,032 persons, nearly 1 million, have been reported to self-identify as descending from, or belonging to, an Indigenous Peoples. 2.4% of the total population define themselves as Indigenous and out of these 955,032 Indigenous People, 473,958, just under fifty percent, are recorded as being Indigenous women, while the remaining 481,074 as Indigenous men.

A comprehensive report on the status of Indigenous women in Argentina has yet to be published by the state. Reporting on women in Argentina, including the state's National Council for Women, fails to disaggregate data to cast light on the particular challenges faced by Indigenous women. The 2015 State report to CEDAW by Argentina fails to adequately mention Indigenous women and does not report on their situation.

A major difficulty in assessing and addressing persistent forms of discrimination in Argentina is the lack of adequate and accurate information gathered about the population, particularly the Indigenous community. Argentina is reported to be home to at least 35 different Indigenous groups, the largest of these groups being the Mapuche with a population of 205,009, (21.5% of the total), the Qom with 126,967, and the Guaraní with 105,907. These three peoples jointly account for 45.9% of the entire Indigenous population of Argentina. In addition, 62,642 households reported having one of their members who self-identified as Afro-descendent: 92% of this population was born in Argentina, and 8% abroad.¹

In 1985, Argentina ratified the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW). Despite this, women, and particularly Indigenous women, are still subjected to an aggressive machismo attitude, violence, and even death. There is a long history of Indigenous Peoples' struggle against Argentina's state oppression, exclusion, and discrimination; and these violations have a direct effect on the women and their children.

III. Situation analysis- Continuing Rights Violations of Indigenous women

¹ "2016 yearbook article (pdf 98 KB) - iwgia." 2016. 16 Sep. 2016
<http://www.iwgia.org/images/stories/sections/regions/latin-america/documents/IW2016/Argentina_IW2016_web_redu.pdf>

A. Violations of Indigenous Women's Constitutional Rights (CEDAW Article 1, 2, 7, 8, 14).

The rights of Indigenous Peoples were incorporated into Argentina's National Constitution in 1994, as well as in provincial constitutions and other laws that followed the 1985 law on Indigenous Policy and Aboriginal Community Support. Despite these advances, Indigenous Peoples, both male and female, face the lack of implementation of such laws and continue to have a strained relationship with the government.² For example, poverty rates are higher than average in areas with large Indigenous populations, Indigenous people have greater than average rates of illiteracy, chronic disease, and unemployment. Indigenous women face further discrimination based on gender as well as reduced economic status. The lack of trained teachers in Indigenous communities hamper government efforts to offer bilingual education opportunities to Indigenous people. Children are being taught almost exclusively in Spanish which leads to the eradication of their own ancestral languages. Indigenous Peoples' rights as well as women's rights are protected under the Constitution; yet they are still being violated.³

The constitution recognizes the ethnic and cultural identities of Indigenous People, and states that congress shall protect their right to bilingual education, recognize their communities and the communal ownership of their ancestral lands, and allow for their participation in the management of their natural resources. Indigenous people are not allowed to fully participate in the management of their lands or natural resources however, in part because responsibility for implementing the law is delegated to the 23 provinces, only 11 of which have constitutions recognizing Indigenous rights. As a result, provinces fail to achieve the Free, Prior, Informed Consent of Indigenous Peoples, especially rural Indigenous women, on issues that may affect them, as is stipulated in CEDAW General Recommendation 34.⁴

There are over 30 Indigenous languages still spoken in Argentina today. The Linguistic Society of America (LSA) estimates that 80% of the world's languages may vanish within the next century. The Qom face this danger but there are steps being taken to keep the Indigenous languages alive. Currently, the Toba represent nearly 11.5% of the Indigenous population of Argentina, and statistics from the National Institute of Indigenous Affairs show that around 60% of them can still speak or understand the Qom language.⁵ However, with each generation, fewer youths learn to speak the language as their communities are increasingly integrated into the Spanish-speaking world. It is often the woman's role to preserve and continue teaching the culture and languages, which is why Qom women have begun to initiate the Qom Culture Route of Northern Argentina. This is a route built along the newly paved Provincial Route Three, connecting Presidencia Roca with Villa Rio Bermejito. There are seven cultural sectors along the route dedicated to the preservation of different aspects of Ancient Qom Culture. In a community where culture is of the utmost importance, and government action is lacking, it is crucial that these women are able keep ancient ties with the language and other artistic and

² "Indigenous rights in Argentina - Canadian Foundation for the Americas." 2011. 21 Sep. 2016
<<http://www.focal.ca/publications/focalpoint/413-march-2011-maria-delia-bueno-en>>

³ "argentina 2013 human rights report - US Department of State." 23 Sep. 2016
<http://www.iri.edu.ar/publicaciones_iri/anuario/cd_anuario_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf>

⁴ "argentina 2013 human rights report - US Department of State." 23 Sep. 2016
<http://www.iri.edu.ar/publicaciones_iri/anuario/cd_anuario_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf>

⁵ "Qom As You Are: Saving Indigenous Languages in Argentina < The ..." 2012. 3 Oct. 2016
<<http://www.argentinaindependent.com/socialissues/development/qom-as-you-are-saving-Indigenous-languages-in-argentina/>>

personal cultural activities.⁶ Women who are part of the Qom Culture Route have been reported to have an increased level of participation in political activities in their communities, for example in the establishment of intercultural and bilingual education policies and policies related to health services in their communities.⁷

B. Labor, Law and Economic Equality (CEDAW Articles 7, 8, 10, 13, 14):

In 1992, the law on quotas for elective office was approved.⁸ As of December 2007, 38.5 percent of the executive positions within the national government were held by women. However, According to a Human Rights Report, women still hold significantly fewer executive positions in the private sector than men and sometimes have less of a voice than their male counterparts where they are elected.⁹ Although it is written that women have equal rights under the law, including property rights, they continued to face economic discrimination and hold a disproportionately high number of lower-paying jobs. Although equal payment for equal work is constitutionally mandated, the 2013 Global Gender Gap Report estimated that women earned approximately 58 percent as much as men for similar or equal work. This difference in income shows the gender inequality, and in some cases, leaves women to remain dependent on men.¹⁰ Likewise, there was almost no data on the economic status of Indigenous Women except that there are no known Indigenous women in the cabinet or on the Supreme Court.

The first Latin American intercultural jury trial took place in 2016 when a Mapuche woman was convicted of throwing a stone at a judicial assistant after resisting eviction which was requested by US oil. The conflict was aggravated by a series of oil spills, and in 2012 the community blocked the way to the company. In April of that year a gang linked to the oil attacked several Mapuche families, even harming a pregnant women at the time, and threats and harassment against the Mapuche maintained repeatedly until one conflict arose and a stone was thrown by Relmu Ñamku, a Mapuche woman.¹¹ There was a lawsuit filed for attempted murder and aggravated damage, with a request to a sentence of fifteen years in prison. In this situation, the defense requested that, as established in the Criminal Procedure Code of Neuquen, half of the jurors belong to the same social and cultural environment as the accused. This resulted in a historical process unprecedented in Argentina: the creation of an intercultural jury, in which half the members were Mapuches with a full translation into Mapuzungun the language of the Mapuche. It was found that territorial rights of the Mapuche were being violated in this case, along with the communities' right of consultation, and specified that the national and provincial authorities were responsible because they had consistently failed to implement the law. During the trial, it emerged that they had been legitimately defending the Mapuche territory from a

⁶ "Indigenous Women in Argentina benefit from road ... - YouTube." 2014. 3 Oct. 2016

<<https://www.youtube.com/watch?v=spGHLzAspBo>>

⁷ "Un camino une el presente y el pasado de las ... - World Bank Blogs." 2014. 3 Oct. 2016

<<http://blogs.worldbank.org/latinamerica/es/mujeres-qom-argentina>>

⁸ "Women's human rights in Argentina: advances, setbacks and the tasks ..." 2010. 21 Sep. 2016

<<http://www.thefreelibrary.com/Women's+human+rights+in+Argentina%3A+advances,+setbacks+and+the+tasks...-a0105915332>>

⁹ "CEDAW/C/ARG/7 - Treaty bodies Download." 16 Sep. 2016

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FARG%2F7&Lang=en>

¹⁰ "argentina 2013 human rights report - US Department of State." 23 Sep. 2016

<http://www.iri.edu.ar/publicaciones_iri/anuario/cd_anuario_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf>

¹¹ "Argentina Relmu Ñamku mujer indígena acusada por resistir un ..." 2015. 5 Oct. 2016

<<http://www.resumenlatinoamericano.org/2015/10/24/argentina-relmu-namku-mujer-indigena-acusada-por-resistir-un-desalojo-un-juicio-con-jurado-mapuches/>>

systematic action taken against them by the company and state. After deliberation, the jury found the defendant "not guilty" of crimes of serious injury and aggravated damage. For the Mapuche, this is a great victory and a perfect precedent for future trials, however, it is a highly unusual case, and the first of its kind. Pressure is now being put on the judicial system as well as the Indigenous communities to push for more trials such as this one.¹² It isn't unusual, at this time, for Indigenous people to be ignored and outright refused when requesting a trial as well as many other of their constitutional rights.

In Northern Argentina in the Chaco Province, poverty is a major issue. Guarani women, although valued at home, have trouble finding work, and their labor is often not appropriately valued. There is a daily struggle to get food on the tables, so Indigenous women often make traditional baskets and jewelry to sell as a means to provide for their families, but are often not paid fair wages for their time and labor, leaving them at an overwhelming disadvantage when it comes to their economic security. Lack of economic security often leaves Indigenous women in poverty and dependent upon their male counterparts, despite the fact that many communities in Argentina are a matrilineal lineage. This doesn't translate into power however, because the men are generally the Spanish-speaker in the family, and therefore make the majority of the economic decisions.¹³

C. Women's Health (CEDAW Articles 12, 14, 16):

While discrimination against women is evident in almost all areas of life, it is the regulation of women's sexuality and reproduction that most clearly reveals gender stereotypes and bias. It also brings back archaic ideas about the role women 'should' play in society, and how they are imposed on all women through legislation and highly discriminatory practices. Indigenous women are at the heart of this issue; being discriminated against not only for being women, but also for being an Indigenous minority. Reports have been made by Qom women that going to the doctors is not always recommended because doctors do not treat them well and they do not always receive them as patients.¹⁴ Indigenous communities have limited access to health services. Studies show that 47.4% of Indigenous people in the country have no access to health insurance because of discrimination or poverty.¹⁵

According to Amnesty International, the Ministry of Health published a new protocol for the implementation of legal abortions in line with a 2012 ruling by the Supreme Court, but the protocol still had not received ministerial endorsement by the end of 2015.¹⁶ More than half of jurisdictions lacked understandable hospital protocols that would guarantee access to legal

¹² "un jurado intercultural absolvió a la dirigente mapuche Relmu Ñamku." 2015. 5 Oct. 2016
<<http://www.lanacion.com.ar/1842662-neuquen-un-jurado-intercultural-absolvio-a-la-mujer-mapuche-relmu-namku>>

¹³ "Fighting for the Chaco - United Methodist Women." 2015. 3 Oct. 2016
<<http://www.unitedmethodistwomen.org/news/fighting-for-the-chaco>>

¹⁴ "Argentina: Mujer Originaria. Amanda Asijak relata cómo es resistir y ..." 2015. 3 Oct. 2016
<<http://kaosenlared.net/argentina-mujer-originaria-amanda-asijak-relata-como-es-resistir-y-luchar-por-su-tierra-tan-lejos-de-ella/>>

¹⁵ "Official PDF , 137 pages - Documents & Reports - World Bank." 3 Oct. 2016
<<http://documentos.bancomundial.org/curated/es/846861468210572315/pdf/813610CPS0REVI0C0disclosed090100140.pdf>>

¹⁶ "Amnesty International Report 2015/16: The state of the world's human ..." 2016. 21 Sep. 2016
<<https://www.amnesty.org/en/documents/pol10/2552/2016/my/>>

abortion when a pregnancy was the result of rape or poses a risk to the health or life of the woman or girl as legislation called for by legislation.¹⁷

Some of the most simple obstacles in health care for Argentinian women include long delays in providing services, unwanted referrals to wrong clinics, demands for permission from the spouse which is contrary to law, financial barriers, and in the case of some Indigenous women, outright denial of care. As a direct result of these barriers, women and girls in Argentina often cannot make informed, independent decisions about their own health, or the health of their children and many face unwanted or unhealthy pregnancies as a result. Forty percent of pregnancies in Argentina end in abortions, which are often unsafe, and have been the leading cause of maternal mortality in the country for decades.¹⁸ A lack of education about these matters as well as a lack of oversight and accountability for implementing existing laws and policies by government officials has been identified as one of the main problems in the persistent denial of proper care.

The experience of one woman, Belén, is an illustrative example of what women in Argentina might have to go through just to receive basic care. Belén was accused of having a self-induced abortion after seeing a doctor for severe abdominal pain and heavy bleeding. She was sent into surgery after discovering that she was unknowingly pregnant. She awoke from the surgery surrounded by police officers and has spent the last 2 years in pre-trial detention on charges of abortion that were later changed by the prosecution to charges of aggravated murder. The evidence against her is controversial at the least, and the way Belén has been treated by the medical staff could amount to cruel, inhuman or degrading. Additionally, according to international law and standards, non-consensual disclosures of personal medical information, including to law enforcement officials, is a violation of the right to privacy. Medical professionals have an obligation to protect the confidentiality of the information to which they have access as part of their profession. As of April 2016, the Third Chamber of the Criminal Chamber of Tucumán sentenced Belén to eight years in prison for murder but by August, after receiving over 120,000 petitions from around the world, Belén was up for release.¹⁹

D. Gender and Homophobia (CEDAW Articles 2, 3, 5):

Discrimination against individuals with non-heterosexual orientations also reveals a violent situation of rights violations. Lesbians are overlooked even in the most progressive public policies. Homophobia, both internal and external, keeps women from being vocal, for fear of harsh discrimination, and often keeps their sexuality hidden from society completely.

Female sexuality continues to be controlled by both the State, through its legal discourse, and social agents, which insist that heterosexuality is a women's only choice.²⁰ If these unspoken norms are not accurately followed, violence is often the response. According to Amnesty International, in September, a well-known Argentinian LGBTQI activist, Daiana Sacayán, was found dead in her apartment. She was the third transgender woman – after Marcela Chocobar

¹⁷ "View The Full Report - Document | Amnesty International." 2016. 18 Sep. 2016

<<https://www.amnesty.org/en/documents/pol10/2552/2016/en/>>

¹⁸ "Argentina: Guarantee Women's Access to Health Care | Human Rights ..." 2015. 21 Sep. 2016

<<https://www.hrw.org/news/2010/08/10/argentina-guarantee-womens-access-health-care>>

¹⁹ "Sentenced to Eight Years in Jail for a Miscarriage - Human Rights Now." 2016. 23 Sep. 2016

<<http://blog.amnestyusa.org/americas/sentenced-to-eight-years-in-jail-for-a-miscarriage/>>

²⁰ "Women's human rights in Argentina: advances, setbacks and the tasks ..." 2010. 19 Sep. 2016

<<http://www.thefreelibrary.com/Women's+human+rights+in+Argentina%3A+advances,+setbacks+and+the+tasks...-a0105915332>>

and Coty Olmos – to have died in violent circumstances in one month and by the end of 2015, no one was yet to be held accountable or charged for their deaths.²¹

Indigenous LGBTQ people are even further discriminated against and invisible in reporting and services.

E. Violence Against Women (CEDAW Article: 11, 12)

During the 1990s, laws began slowly to emerge to deal with domestic violence, empowering police agencies and provincial judicial authorities to establish preventive measures; but domestic violence against women in Argentina remains a serious problem. Rape, including spousal rape, is a crime, but the need for proof, either in the form of clear physical injury or the testimony of a witness, often presented difficulties in prosecuting such crime²²

After the adoption of the Comprehensive Law on the Prevention, Punishment and Elimination of Violence against Women in their Interpersonal Relations, in 2009, there has been no implementing legislation or sufficient allocation of financial resources to implement that law leaving the problem of female violence in Argentina a prevalent issue. ²³ One case in Argentina, that sent crowds into a riot in 2014 consisted of a woman who had half her body badly burned after her husband doused her with alcohol and set her on fire. She had already reported beatings and other abuses during their 13 years of marriage, but she said authorities failed to intervene. Her husband was only jailed after her case was reported in the press and still legal action has been limited.

In 2012, the Office of Domestic Violence and the Security Ministry trained members of the Federal Police, Navy, and Gendarmerie in the city of Buenos Aires on domestic violence intervention. Statistics on the number trained were not available at the end of the year, which gives significant proof that the problem is not only an aggressive machismo attitude, but a lack of authority and organized resistance to the issue.²⁴ Women who are monetarily dependent upon an abusive spouse, find themselves cornered, some women reach out only to find that the authorities won't take any action; these issues require immediate and sustainable action by the Government of Argentina.

F. Femicide (CEDAW Articles 12):

In November 2012 Congress passed the Femicide Law, imposing stricter penalties on those who kill their spouses, partners, or children as a consequence of gender violence. According to a Human Rights Report by the US Department of State, lack of police and judicial vigilance often led to a lack of protection for victims.²⁵ According to the Marisel Zambrano Femicide

²¹ "View The Full Report - Document | Amnesty International." 2016. 21 Sep. 2016

<<https://www.amnesty.org/en/documents/pol10/2552/2016/en/>>

²² "Women's human rights in Argentina: advances, setbacks and the tasks ..." 2010. 19 Sep. 2016

<<http://www.thefreelibrary.com/Women's+human+rights+in+Argentina%3A+advances,+setbacks+and+the+tasks...-a0105915332>>

²³ "CEDAW/C/ARG/7 - Treaty bodies Download." 16 Sep. 2016

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FARG%2F7&Lang=en>

²⁴ "argentina 2013 human rights report - US Department of State." 23 Sep. 2016

<http://www.iri.edu.ar/publicaciones_iri/anuario/cd_anuario_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf>

²⁵ "argentina 2013 human rights report - US Department of State." 23 Sep. 2016

<http://www.iri.edu.ar/publicaciones_iri/anuario/cd_anuario_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf>

Observatory from La Casa del Encuentro, 275 cases of femicide have taken place since the first march in June 2015.²⁶ These statistics are not official, but it is precisely this lack of official government data that perpetuates the problem. It was recorded that, of the 275 victims, 39 had previously reported violence to the police; and 171 of the femicides occurred inside the home, confirming that the private, domestic sphere remains one of the most dangerous places for women. The murders of these women left 216 children without a mother.²⁷

In a report by Amnesty International, on June 3, 2016, Argentines began protesting on the streets in a fight against their government demanding an end to femicide and increasing levels of violence against women in the country. Violence against women is compounded by discrimination on the grounds of race, ethnicity, sexual identity, social status, class, and age. Such multiple forms of discrimination further restrict women's choices, increase their vulnerability to violence, and make it even harder for women to obtain justice.²⁸

States have the obligation to prevent, protect against, and punish violence against women whether perpetrated by private or public actors. States have a responsibility to uphold standards of due diligence and take steps to fulfill their responsibility to protect individuals from human rights abuses. Yet, such violence is often ignored and rarely punished. Too often no one is held accountable for these crimes.

G. Trafficking and exploitation of prostitution (CEDAW Articles 6):

Argentina was placed as a 'Tier 2' Country for human Trafficking in the 2015 Trafficking in Persons Report. The country's tier ranking is based on the government's efforts against trafficking as measured by the Trafficking Victims Protection Act's (TVPA) in the context of its efforts in the preceding years. Being placed in Tier 2 would mean that Argentina's government is not reaching the minimum standards for Trafficking and Exploitation prevention, but they are working on taking steps to do so. Argentina is a source and destination country for men, women, and children subjected to sex trafficking and forced labor. Women and girls who live in extreme poverty, a violent family environment, or suffer from addiction are among those most vulnerable to trafficking.²⁹ Sex workers operating from private accommodation are often subject to violent inspections and raids by the police, as well as extortion and bribes. Sex workers also reported challenges accessing health services due to intense discrimination.³⁰ The 2012 anti-trafficking law required the government to establish a fund for trafficking victims, but this fund was still not yet created by the end of 2014.³¹

²⁶ "5 Things I Learned at Argentina's #NiUnaMenos March against Femicide." 2016. 23 Sep. 2016 <<http://blog.amnestyusa.org/americas/5-things-i-learned-at-argentinas-niunamenos-march-against-femicide/>>

²⁷ "argentina 2013 human rights report - US Department of State." 23 Sep. 2016 <http://www.iri.edu.ar/publicaciones_iri/anuario/cd_anuario_2014/Amnor/2013%20-%20Huma%20rights%20Report%20Argentina.pdf>

²⁸ "5 Things I Learned at Argentina's #NiUnaMenos March against Femicide." 2016. 23 Sep. 2016 <<http://blog.amnestyusa.org/americas/5-things-i-learned-at-argentinas-niunamenos-march-against-femicide/>>

²⁹ "2016 Trafficking in Persons Report Country Narrative: Argentina." 2016. 16 Sep. 2016 <<http://www.state.gov/j/tip/rls/tiprpt/countries/2016/258713.htm>>

³⁰ "What I'm Doing Is Not a Crime: The Human Cost of Criminalizing Sex ..." 16 Sep. 2016 <<http://www.amnestyusa.org/research/reports/what-i-m-doing-is-not-a-crime-the-human-cost-of-criminalizing-sex-work-in-the-city-of-buenos-aires-a>>

³¹ "2015 Trafficking in Persons Report - US Department of State." 2016. 22 Sep. 2016 <<https://www.state.gov/documents/organization/245365.pdf>>

Trafficking-related corruption, mainly amongst government officials at the provincial level, remained a serious concern. Judges have been reported to receive bribes from traffickers or will not adequately investigate signs of official complicity. Some officials, mainly at the provincial level, including police officers and mayors, protect brothels where trafficking occurred. The government has reported police were complicit in 40 percent of sex trafficking cases either as purchasers of commercial sex or as personal contacts of brothel owners; this serves as a blaring disincentive for victims to report exploitation and proves a lack of action even when they do.³²

H. Land Rights (CEDAW Articles 14):

There is a long history of violations to land rights throughout Argentina. Although the Constitution recognizes the rights of Indigenous Peoples to their ancestral lands and to participate in the management of natural resources, these rights have been rarely respected and Indigenous Peoples across Argentina continue to struggle over land rights.³³ Indigenous Peoples are rarely consulted on what happens on their land and there is a number of reports on the Argentinian Government disregarding Indigenous Peoples' specific right to Free, Prior, and Informed Consent (FPIC) on issues that may affect them and particularly regarding extractive industries and agribusiness on Indigenous People's land. Rural Indigenous women in Argentina remain especially disenfranchised, in violation of the newly issued CEDAW General Recommendation 34 on the Rights of Rural Women.³⁴

In 2016, over 30 Indigenous communities from the northern Argentine provinces of Jujuy and Salta went to the Inter-American Commission of Human Rights after having exhausted all national legal resources accusing local authorities of failing to respect their right to prior consultation regarding the exploitation of salt mines which potentially cause water scarcity and contamination on their land. The Indigenous groups took their complaint to the country's Supreme Court in 2010, but the court denied their request two years later.³⁵

Campo Maripe, in the Argentine province of Neuquen has been subjected to a similar negligence. The community is located on top of the largest unconventional hydrocarbon 'play' outside North America, known as Vaca Muerta (Dead Cow). This area is most affected by fracking. It is home to many Mapuche communities that have been suffering from the pollution of the conventional oil industry for decades. There is large protest by the Indigenous women of these areas, fighting for the rights of their sacred land. In one incident, there were three Mapuche women who chained themselves to a U.S.-owned machine on Indigenous territory that was seized by the Argentine state despite signed treaties such as the International Labor Organization Convention 169, ratified by Argentina in 2000, and a national law for the survey of aboriginal lands which governments past and present insist on ignoring the results of, and finally, a significant achievement in 2014 –the government of the province legally recognizing Campo Maripe as a Mapuche community. Yet the extraction activity on their land is still taking place. Mapuche woman have the role of the bearers of Mapuche knowledge; specifically, the role of

³² "2015 Trafficking in Persons Report - US Department of State." 2016. 22 Sep. 2016
<<https://www.state.gov/documents/organization/245365.pdf>>

³³ "Ley 26.160 - Infoleg." 2016. 20 Sep. 2016
<<http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/122499/norma.htm>>

³⁴ <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/rural-womens-right-free-prior-and-informed-consent>

³⁵ "Argentine Indigenous Accuse Gov't of Violating Their Rights | News ..." 2016. 21 Sep. 2016
<<http://www.telesurtv.net/english/news/Argentine-Indigenous-Accuse-Govt-of-Violating-Their-Rights-20160223-0034.html>>

teaching. After the invasion and imposition of another culture, they fear they are losing their roots. Being expelled from fertile lands throughout decades of dispossession, the communities cannot carry out their life as usual; they cannot exist if they are not on their territory, and if they don't have the autonomy needed to exercise their rights they will be forced out. In this regard, respect for the rights of Indigenous women is not possible either if their collective rights as a community are not respected. Rural Indigenous women face multi-faceted discrimination; being not only women, but also Indigenous and dependant on their land. The pollution, destruction and loss of their land, leaves them with even less ties to their roots, less opportunity for jobs, and less space to call home.³⁶

In 2015 the Canadian Barrick Mining Company was responsible for 224,000 liters of cyanide being leaked into a local river from its Veladero gold mine located in the western province of San Juan. Only one year later, now in 2016, the company has continued operations without pause and has allowed yet another cyanide spill in almost the same exact region. Cyanide is used in the processing of gold which they mined in massive quantities, despite opposition from the Indigenous groups who reside there such as the Indigenous Diaguita community on the Argentine/Chilean border. Cyanide has leached into the water supplies of these Indigenous communities and could have potentially lethal consequences for the people that reside there. The open-pit cyanide leaching mine, one of the largest gold mines in the world, is the target of a petition urging President Mauricio Macri to clamp down on Barrick and close Veladero once and for all, but action has been halted. ³⁷

There are reported accounts of land grabbing as recently as September 2016. Two elderly villagers of San Martin were arrested after a police operation conducted on the 24th of September. Eladio Antonio Dominguez, 63, and his wife Maria Gertrudis Encina, 53, were arrested after resisting corporate occupation of their ancestral territory. Since being arrested, they have received improper treatment due to discrimination as Indigenous Guarani. There is a call to free them and grant the Indigenous groups who live here their lawful rights to the lands. The national Government declared emergency in the territory of the Indigenous communities through law number 26160, this emergency suspends evictions communities. Mirian Sotelo, of the Guaraní Community Jhaveri and representative of the Indigenous communities of the Province, requested the urgent intervention of the National Institute of Indigenous Affairs. ³⁸

The Guaraní, who live in the Iberá wetlands of Northern Argentina, have been struggling to thrive due to the build up of plantations on their ancestral homeland. The owner of these invasive plantations is an investment management company owned by Harvard University of Cambridge, MA, USA. The plantations greatly harm the surrounding environment, reducing the availability of water for farming or fishing, worsening summer droughts, and creating water shortages in local communities. In a report by Cultural Survival in 2016, it was reported that Harvard has been investing millions into the projects here, causing damage to spiritual land, as well as taking crucial resources for survival from these people. There is a call to stop Harvard from investing into these invasive plantations, but Harvard falsely insists that the program that seeks to ensure that certified timber companies is "environmentally appropriate, socially

³⁶ "Argentina: 6 Indigenous women at Heart of Fracking Resistance ..." 2016. 21 Sep. 2016
<<http://www.telesur.tv/english/opinion/Argentina-6-Indigenous-Women-at-Heart-of-Fracking-Resistance-20160318-0015.html>>

³⁷ "Canadian Gold Mining Giant Spews Cyanide in Argentina — Again ..." 2016. 22 Sep. 2016
<<http://www.telesur.tv/english/news/Canadian-Gold-Mining-Giant-Spews-Cyanide-in-Arentina--Again-20160915-0027.html>>

³⁸ "Exigen la liberación de un matrimonio de ancianos ... - Corrientes Hoy." 2016. 3 Oct. 2016
<<http://www.corrienteshoy.com/noticias/view/158234>>

beneficial and economically viable.” Harvard is in direct violation of the Guarani’s traditional rights to their lands and waters. The institution has not achieved the Free, Prior and Informed Consent of the Guarani and Article 26 of the UN Declaration on the Rights of Indigenous Peoples declares that the Guarani, as Indigenous Peoples, have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, and waters. As one of the leading US educational institutions, it is important that Harvard sets an example in following international law and recognizes Indigenous people and their rights. ³⁹

Broken policies in regards to land demarcation and titling should be dealt with immediately. A law was enacted in 2006 in order to halt evictions related to territorial rights in regard to property and the possession of lands traditionally occupied by Indigenous communities. It was influenced by Convention No. 169 of the International Labour Organization regarding Indigenous and Tribal Peoples in Independent Countries, which was ratified by Argentina with the 1992 law and recognized in the National Constitution. But instead of providing solutions, the process has prolonged existing conflicts.⁴⁰

III. CEDAW Concluding Observations

In 2010 the Committee noted in Concluding Observations:

14. *The Committee urges the State party to adopt legislative and other measures, including sanctions where appropriate, prohibiting all forms of discrimination against women and promoting equality, as well as to implement measures to create awareness of and adequately disseminate the Convention, its Optional Protocol and the Committee’s general recommendations among all stakeholders, including Government ministries, parliamentarians, the judiciary and law enforcement officers, so as to create awareness of women’s human rights. The Committee further urges the State party to undertake awareness-raising campaigns targeted at women to enhance women’s awareness of their human rights and to ensure that women can avail themselves of procedures and remedies for violations of their rights under the Convention.*

16. *The Committee requests that the State party take all appropriate measures to remove impediments women may face in gaining access to justice and to put in place measures to ensure women’s access to justice. It specifically recommends that the State party enhance women’s awareness of their rights, inter alia in rural areas and among the most disadvantaged groups, including Indigenous communities, through legal literacy programmes and legal assistance so that they can gain knowledge of available legal remedies for discrimination and abuse and claim all their rights under the Convention. It further urges the State party to ensure that the judiciary, including judges, lawyers, prosecutors and public defenders, is familiar with the rights of women and the obligations of the State party under the Convention. The Committee also encourages the State party to provide training on gender awareness to all members of the justice system, including law enforcement agencies, and to monitor the results of such efforts.*

24. *The Committee urges the State party to speed up the adoption and the implementation, in a consistent manner and in all provinces, of implementing legislation and the provision of financial*

³⁹ "Argentina: Urge Harvard to Be a Responsible Investor | Cultural Survival." 2014. 30 Sep. 2016 <<https://www.culturalsurvival.org/advocacy/argentina>>

⁴⁰ "Indigenous rights in Argentina - Canadian Foundation for the Americas." 2011. 23 Sep. 2016 <<http://www.focal.ca/publications/focalpoint/413-march-2011-maria-delia-bueno-en>>

resources to give full effect to the Comprehensive Law on the Prevention, Punishment and Elimination of Violence against Women in their Interpersonal Relations. This must include the effective implementation of the existing legislation, at the national, provincial and municipal levels, to combat all forms of violence against women, including domestic violence. The Committee encourages the State party to strengthen its system of data collection in regard to all forms of violence against women and to include such information under the Committee's follow-up procedure referred to in paragraph 51 of the present concluding observations. With specific regard to marital rape, the Committee urges the State party to put in place a system to encourage women to report, as well as a set of indicators to assess trends in both the reporting and incidence of this crime.

30. The Committee urges the State party to further strengthen its efforts in anti-trafficking activities with a view to addressing fully and comprehensively the complexities of a crime that is international in nature. The Committee also urges the State party to complement Law No. 26,364 of April 2008 by ensuring adequate protection of all women, independent of their age, as well as individuals who have been trafficked and who fear being subjected to persecution upon return to their country of origin, in accordance with international standards.

34. The Committee urges the State party to ensure widespread dissemination of information relating to women's educational opportunities, including in respect of vocational education, with a view to further expanding women's professional choices, including access to higher-paying jobs. The Committee further recommends that gender training be mandatory for teachers at all levels of the educational system throughout the country, in all provinces and municipalities, with a view to eradicating gender stereotypes from both official and unofficial curricula. Specific strategies should be put in place to counter the prevalent patriarchal culture.

38. The Committee urges the State party to ensure women's and teenage girls' access to health services, including sexual and reproductive health services, and to see to it that education on sexual and reproductive health is undertaken in all schools at all levels, as relevant. It also urges the State party to adopt all the necessary measures to further reduce the high maternal mortality rate. The Committee further urges the State party to review existing legislation that criminalizes abortion, with serious consequences for the health and lives of women. The State party should ensure that the "Technical guide for the integral attention of non-punishable abortion cases" is applicable in the whole country in a uniform manner so that there is equal and effective access to health services to interrupt pregnancies.

42. The Committee urges the State party to continue to pay special attention to the needs of rural women, including older women and Indigenous women, ensuring that they participate in decision-making processes and have full access to education, health services and credit facilities.

As can be seen from this report many of the concluding observations were not implemented. Indigenous women's situation has not changed much since the last review.

IV. Argentina State Report

The Argentine State Report appears to be thorough, but upon closer examination, it is lacking in implementation and action on the ground. Indigenous women's issues are not sufficiently covered. The Report highlights major achievements of the Argentinian government, when many of the laws have been proven to have no actual repercussions. For example, laws on the legality of abortion have been passed, but there is still evidence that the laws are not being strictly enforced.

There is concern that, while women's access to justice is provided for by legislation, their ability in practice to exercise those rights and to bring cases of discrimination before the courts is limited by such factors as lack of information about their rights and language barriers, particularly for Indigenous women, as well as other structural difficulties in accessing the courts.

V. Legal Framework

Convention on the Elimination of Discrimination Against Women (CEDAW) Articles 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 16 and General Recommendation No. 19 and No. 34 of the CEDAW Committee

UN Declaration on the Rights of Indigenous Peoples

VI. General Comments

Health

37. *While appreciating the establishment of the National Programme for Sexual Health and Responsible Parenthood and, within its framework, the publication of the "Technical guide for the integral attention of non-punishable abortion cases" aimed at clarifying aspects of article 86 of the Criminal Code, the Committee notes that access to sexual and reproductive health-care services remains a significant problem for Argentinean women. The Committee further expresses its concern about the high pregnancy rate among adolescent girls and about high maternal mortality, one third of which is caused by illegal abortion.*

38. *The Committee urges the State party to ensure women's and teenage girls' access to health services, including sexual and reproductive health services, and to see to it that education on sexual and reproductive health is undertaken in all schools at all levels, as relevant. It also urges the State party to adopt all the necessary measures to further reduce the high maternal mortality rate. The Committee further urges the State party to review existing legislation that criminalizes abortion, with serious consequences for the health and lives of women. The State party should ensure that the "Technical guide for the integral attention of non-punishable abortion cases" is applicable in the whole country in a uniform manner so that there is equal and effective access to health services to interrupt pregnancies.*

Rural women

41. *While acknowledging efforts aimed at decentralizing and providing training opportunities, relatively extensive health care and substantial credit loans, including to rural families, the Committee remains concerned about the situation of rural women, particularly older women and Indigenous women, in view of their extreme poverty, marginalization and frequent lack of access to health care, education, credit facilities and community services.*

42. *The Committee urges the State party to continue to pay special attention to the needs of rural women, including older women and Indigenous women, ensuring that they participate in decision-making processes and have full access to education, health services and credit facilities.*

VII. Other UN Body Recommendations

International Covenant on Civil and Political Rights (ICCPR)

“37. Despite the national and provincial initiatives which have been undertaken to regularize the status of indigenous lands, including Act No. 26.160 of 2006, under which a state of emergency was declared in respect of the possession and ownership of lands occupied by indigenous communities, the Committee finds it regrettable that indigenous lands have not yet been legally recognized and protected. The Committee reiterates its concern, as expressed in its preceding concluding observations (CCPR/C/ARG/CO/4, para. 25), about the fact that indigenous groups continue to be the target of violence and forced evictions in a number of provinces (arts. 2, 6, 7 and 27).

38. The State party should, in consultation with the indigenous peoples concerned, step up its efforts to legally recognize and demarcate the territories over which indigenous peoples have rights. The State party should also provide effective protection for indigenous peoples from any and all acts of violence and see to it that the parties responsible for those acts are brought to justice and duly punished and that the victims are provided with appropriate redress.”

Economic and Social Council

“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 E/C.12/ARG/CO/3 3 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. 1 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).”

“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.”

United Nations General Assembly

Human Rights Council Working Group on the Universal Periodic Review Fourteenth session

“40. CERD was concerned about the failure to prosecute and punish those responsible for the perpetration of violent acts during forced evictions. It recommended that the Government investigate and punish those responsible for deaths and injuries occurring in connection with forced evictions in the provinces.”

“59. CESCR reiterated its concern over forced evictions which affected, in particular, migrants and indigenous peoples.”

“66. CERD was concerned that indigenous peoples, in particular those living in Chaco Province, remained among the poorest and most marginalized groups.¹⁰⁹ 67. In 2011, the Special Rapporteur on the rights of indigenous peoples stated that one central concern expressed by indigenous representatives during his visit had been the lack of legal security in respect of their rights to their traditional lands, and in particular the various problems and delays they faced in the land surveying process. He added that issues of special concern to the indigenous peoples included the series of evictions of members of indigenous communities from land claimed by them on the basis of their traditional occupancy and the existence of mining projects in or close to indigenous territories without effective prior consultations or participation by the indigenous peoples concerned in decision-making on those projects.¹¹⁰ The Special Rapporteur on adequate housing,¹¹¹ CERD,¹¹² CESCR,¹¹³ the HR Committee¹¹⁴ and the ILO Committee of Experts¹¹⁵ expressed similar concerns.”

“68. CESCR recommended that Argentina finalize the processes of land demarcation in all provinces, as foreseen by the law, and that it expedite the granting of communal land title to indigenous communities.¹¹⁶ CERD recommended that Argentina take the necessary effective steps to ensure that the law prohibiting forced eviction is applied equally throughout the national territory and that, where it is determined that eviction is necessary, Argentina ensure that those evicted from their lands receive adequate compensation.”

“79. CESCR was concerned about the negative impact caused by the increased use of chemical pesticides and transgenic soya seeds in regions traditionally inhabited or used by indigenous communities. It also noted the scale of deforestation, which had forced indigenous peoples to leave territories traditionally occupied or used by them.”

VIII. Questions

1. What steps will the Government of Argentina take to collect information specifically on the situation and rights of Indigenous women?
2. What concrete steps is the government of Argentina taking to respect, protect, and fulfill the rights of Indigenous women at all levels of government — national, provincial and municipal?

IX. Recommendations

Cultural Survival urges the government of Argentina to:

1. Implement CEDAW General Recommendation No. 34 on the Rights of Rural Women
2. Renewed efforts to promote the rights of Indigenous women should be urgently put in place, including measures to eliminate all forms of discrimination and violence against them, incorporating active involvement of Indigenous women and their organizations. Such measures should be specifically targeted to the most at risk populations addressing root causes such as eviction from ancestral lands, violence, discrimination, and poverty.
3. Disaggregate data on the Indigenous population, specifically Indigenous women and girls.
4. Respond to requests for a trial by jury, and ensure half of the jurors belong to the same social and cultural environment as the accused.
5. Provide translation services for Indigenous women in the justice and health service spheres.
6. Promote Indigenous women's leadership in public spheres.
7. Protect and prevent Indigenous women from being murdered, trafficked and exploited.
8. Respect Indigenous Peoples' right to Free, Prior and Informed Consent.
9. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples' Outcome Document, with a special focus on Indigenous women and girls.
10. Invite Special Rapporteur on the Rights of Indigenous Peoples to visit the country.
11. In partnership with Indigenous Peoples, allow teachers and administrators within the education system to teach on culturally related curriculum.