

Observations on the State of Indigenous Human Rights in Argentina

Prepared for:
The 28th Session of the United Nations
Human Rights Council
Universal Periodic Review
March 2017



Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. 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

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I. Executive Summary

Historically Indigenous Peoples have struggled against Argentina's state oppression, exclusion, and discrimination. Reporting on Indigenous Peoples in Argentina often fails to disaggregate data to demonstrate particular challenges faced by Indigenous Peoples. Available reports highlight the situation of Indigenous Peoples as one of serious marginalization.

II. Background

The total population of Argentina is around 43,886,748. 2.4% of the total population self-identify as Indigenous, belonging to more than 35 different Indigenous Peoples, the largest being the Mapuche (population: 205,009, 21.5% of the total), the Qom (126,967), and the Guaraní (105,907).ⁱ

The rights of Indigenous Peoples were incorporated into Argentina's Constitution in 1994, following the 1985 law on Indigenous Policy and Aboriginal Community Support,ⁱⁱ recognizing multi-ethnicity and acknowledging Indigenous customary law. Indigenous customary law is not incorporated into the Argentine system.ⁱⁱⁱ Argentina voted for the UN Declaration on the Rights of Indigenous Peoples in 2007, yet an implementation gap remains. Indigenous Peoples have been denied access to basic services such as quality health care, employment opportunities, and appropriate education. They lack titles to their lands and are mostly excluded from social and political life and face obstacles in attaining key decision-making positions, even in bodies which are dedicated to their issues.^{iv}

Previous UPR recommendations from the second cycle have not been implemented, including recommendations to combat discrimination and apply affirmative action policies for Indigenous Peoples (Bolivia), to guarantee universal birth registration (Mexico), to step up participation and consultation with Indigenous Peoples on public policies (Peru), to expedite granting of communal land title to Indigenous communities and offer appropriate compensation (South Africa/Nigeria), to improve the right to property, access to housing and intercultural education, right to participation (Spain) and to representation in civil service and public institutions (Korea).

III. Continuing Rights Violations of Indigenous Peoples

A. Land Rights and Free, Prior and Informed Consent

Although Argentina's constitution recognizes the rights of Indigenous Peoples to their ancestral lands and to manage their natural resources, these rights are not respected.^v Access to land titles remains a challenge. Indigenous Peoples are rarely consulted and there are numerous accounts of the government's disregard for Indigenous Peoples' right to Free, Prior and Informed Consent (FPIC), especially in the context of extractive industries and agribusiness. Indigenous people are barred from fully participating in the management of their lands and natural resources, and out of the 23 provinces, only 11 constitutions have recognized Indigenous rights.

In 2016, over 30 Indigenous communities from the northern Argentine provinces of Jujuy and Salta petitioned the Inter-American Commission of Human Rights to accuse local authorities of failing to respect their right to FPIC regarding salt mines which cause water scarcity and contamination on their lands.^{vi}

The Campo Maripe community, in Neuquen Argentine province, is located on top of the largest unconventional hydrocarbon 'play' outside North America, known as Vaca Muerta, and is most affected by shale gas fracking. Several Mapuche communities have been suffering from pollution caused by the oil industry for decades. The government recognized the Campo Maripe as a Mapuche community in 2014, but extraction on their land is still taking place, despite opposition.

In 2015, the Canadian Barrick Mining Company was responsible for 224,000 liters of cyanide leaking into a local river from its Veladero gold mine in the San Juan province, near Indigenous lands. The company has continued operations and allowed another cyanide spill in the same region, despite opposition from the local Diaguita community on the Argentine/Chilean border.^{vii}

Land grabbing continues to be a major problem. In September 2016, two elderly villagers of San Martin, Eladio Antonio Dominguez and his wife Maria Gertrudis Encina, were arrested after resisting corporate occupation of their ancestral territory. They have received improper treatment in custody.^{viii}

The Guaraní, who live in the Iberá wetlands of Northern Argentina, are affected by monocropped pine and eucalyptus plantations in their lands protected under the Ramsar Convention. The plantations threaten biodiversity, devastated freshwater levels and even eliminated entire sections of wetlands, dramatically affecting the livelihoods of the Guaraní. Harvard University is a major shareholder in the companies who manage the plantations, Empresas Verdes Argentinas Sociedad Anonima and Las Misiones S.A. These two timber companies control approximately 350 square miles of the Iberá wetlands system. The plantations have destroyed Guaraní ancestral lands that held spiritual, mythological, and subsistence value to their communities. The plantations harm the environment by introducing invasive pine species that affect water levels the delicate wetland ecosystem, and reduce the availability of water for farming or fishing, worsening summer droughts, creating water shortages, and restricting access of Indigenous Peoples to their sacred sites.^{ix} Contributing to the harm done to the Iberá wetlands is a lack of implementation of the Law of Environmental Impact Evaluation and the Water Code.

Also affecting the Guaraní of Iberá is the illegal construction of an embankment. On March 9th, 2017, the Guaraní community in Yahaveré, within the Iberá wetlands, denounced the continued presence of an embankment illegally constructed by Hacienda San Eugenio on Ramsar convention wetlands collectively owned by the community. This embankment seriously affects the population of Yahaveré and the Iberá wetland ecosystem. The construction did not receive the FPIC of the communities nor has it undergone an environmental impact study as required by law in Corrientes. Despite a number of court orders ordering its demolition, the 24km

embankment still has not been removed by the company, and the company is now reinforcing and reconstructing the land from deterioration. In 2007, the Superior Tribunal de Justicia ratified the demolition order and in 2009 that was upheld by Argentina's Supreme Court; but these have still not been implemented due to complacency at the provincial level of Corrientes. In 2013 the Corrientes Institute of Water and the Environment (ICAA by its Spanish acronym) announced the destruction of the terraplén, but community members declare that this did not actually occur.^x

B. Social and Economic Rights:

Poverty rates are reported to be higher than average in areas with large Indigenous populations, and the average as of 2016 is 32.5%.^{xi} Indigenous people have greater than average rates of illiteracy (approximately twice the average)^{xii}, chronic disease, and unemployment.

Health

47.4% of Indigenous people in the country have no access to health insurance.^{xiii} Long delays in providing services, unwanted referrals to wrong clinics, financial barriers, and in some cases, outright denial of care and lack of access to information all contribute to the healthcare disparities in Indigenous communities. There are reports of ambulances and private service providers refusing to operate in certain communities.^{xiv} Reports have been made by Qom women that doctors often do not treat them well and sometimes refuse to see them as patients.^{xv} Lack of access to adequate healthcare services and facilities and the limited number of trained doctors that understand Indigenous cultures also contribute to the acute condition of maternal and infant health in rural areas.^{xvi}

According to the Ministry of Health, provinces in Argentina with high Indigenous populations have the lowest improvement and the highest maternal deaths in 2015.^{xvii} Salto, the province with the second highest Indigenous population, has the highest maternal death rate at 8.1 (per 10,000 live births). The provinces of Chubut and Neuquen had an increase in maternal deaths, with Chubut increasing from 2.3 in 1990 to 4.1 in 2015; and Neuquen increasing from 1.8 to 3.4 in the same time frame.^{xviii}

In September 2015, news reports showed images of Oscar Sanchez, a 14 year old Qom boy who died in El Hospital Güemes after receiving little to no professional care.^{xix} The death of a seven year old Qom boy, Femenía Nestor, reinvigorated the debate about the persistence of extreme poverty, malnutrition, and improper health care in the Indigenous communities. Both of these cases are considered to be severe but not isolated incidents, and both of the cases held the hospital at fault for a lack of care on the basis of racial discrimination.^{xx}

Indigenous communities also experience major health issues as a direct result of pollution from extractive industries. The Mapuche community in the Loma de la Lata region is near gas and mineral deposits sought by the Spanish corporation Repsol-YPF. Despite a rare lawsuit in favor of the Mapuche communities, local people continue to lack access to clean drinking water. They are also subjected to health risks that have created learning disabilities in children, progressive eyesight loss, painful joints and kidney complaints. The Neuquén provincial government discovered that the Mapuche who live there, and especially young children and the elderly, have

dangerously high levels of heavy metals in their blood and urine. The Repsol extraction plants have contaminated the water and damaged the surrounding ecosystem. The Argentine government had ordered the Neuquén government to provide the affected Mapuche communities with a daily supply of potable water, but community members maintain that they never received their full entitlement.^{.xxi}

Education

The Argentine constitution guarantees bilingual and intercultural education. There are over 30 Indigenous languages still spoken in Argentina today but many of these are threatened. 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.^{.xxii} However, fewer children learn to speak the language as their communities are increasingly integrated into the Spanish-speaking world. A lack of bilingual or Indigenous teachers is a key issue. Urban Indigenous people have the fastest rate of language loss. Intercultural Bilingual Education (IBE) is the educational protocol by which children of Indigenous descent are meant to receive instruction in Spanish, as well as in their ancestral language. The implementation of and access to IBE in Argentina is highly irregular and unsystematic.^{.xxiii} UNESCO reported in 2011 that in Argentina, where IBE was put into law in 2006, over 90% of the children who attended school received no instruction in their Indigenous languages.^{.xxiv}

F. Violence against Indigenous People and the Repression of Freedom of Expression

The lack of Indigenous political representation has led to discrimination in political discussions. In 1992, the law on quotas for elective office was approved,^{.xxv} however, Indigenous people still hold significantly fewer executive positions in the public sector and sometimes have less of a voice than their non-Indigenous counterparts.^{.xxvi} As of 2013, there are still no representatives from Indigenous communities or ethnic or racial minorities in the cabinet or in the Supreme Court.

Indigenous communities report that efforts to uphold their rights are met with violent responses from the State, including the criminalization of protests, as well as repression, violence, and killings by individuals or members of security forces. Reprisals against Indigenous civil rights defenders and leaders as well as members of their families are also often documented. Felix Diaz is the Qom chief and he champions legislation to establish Qom ownership of Qom land. As a result of his advocacy, his family suffered many attacks in 2013, the most violent of which was when his son, Abelardo Diaz, was attacked by 30 people. In 2015 Diaz led a protest for the recognition of Indigenous leaders by the government. This protests was broken up by a raid at 3am, led by riot police with armored vehicles.^{.xxvii}

Police profiling is another commonly reported issue, and these acts often remain unpunished and investigations of such crimes are seldom conducted. The repeated incidents of violence and unlawful seizures demonstrate a failure on the part of Argentine officials to properly uphold Indigenous Peoples' rights and quell violent discriminatory practices and suggests bias against

Indigenous Peoples within state institutions.^{xxviii}

On November 23rd, 2013, a group of protestors from the La Primavera community blocked a highway for four months to express their opposition to plans to build a university on ancestral land. Police used violence to quell the protests and 1 protester and 1 policeman were killed.^{xxix}

In 2013, Mapuche men, women, and children attending a spiritual ceremony were confronted by a roadblock. Indigenous People who tried to pass were received with death threats by employees of businessman Pedro Alejandro Chaparro. Later that month, ten hooded people carried blunt instruments and knives and threatened to kill men, women and children who at that time were in the community of Lof Felipin.^{xxx}

In May of 2013, a member of the Toba community was killed by police during eviction procedures in Chaco Province.

In November 2015, the Inter-American Commission on Human Rights received visual evidence proving at least 75 Mapuche children were victims of police brutality in past years. Many Mapuche children have suffered injuries from rubber bullets and exposure to tear gas grenades, and in some case they are victims of torture, rape, and disappearances.^{xxxi}

In August of 2016, a large contingent of police and military personnel took to the streets of Esquel where Mapuche gathered outside of the courthouse in a movement of solidarity with Traditional Leader Facundo Huala Jones. Huala has been in preventative detention since May 2016 under the accusation of usurping land belonging to the multi-national Benetton in Chubut Argentina. Huala claimed to be a political prisoner persecuted for a lack of fair judicial process. For health reasons, Huala requested that he be placed under house arrest, yet he was not granted this by the court.^{xxxii}

Access to justice for Indigenous Peoples remains another significant challenge due to language barriers, limited access to information, difficulties in finding adequate judicial counsel, and most alarmingly inability to register claims with judicial clerks because in some parts of the country, judges are complicit in discriminatory practices. The absence of Indigenous representatives at the highest positions in the judicial system is just one of the challenges of racial discrimination felt by Indigenous people.

The first Latin American intercultural jury trial took place in 2015. The conflict began from a series of oil spills. In 2012 the community blocked the industry road to the company sites and in April of that year a gang linked to the oil company attacked several Mapuche families, harming a pregnant woman, and threatening and harassing the Mapuche. During one of the clashes, a stone was thrown by Relmu Ñamku, a Mapuche woman,^{xxxiii} who was brought to trial for attempted murder and aggravated damage and faced 15 years in prison. 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. In an unprecedented process in Argentina, an intercultural jury was established, where half the members were Mapuche with a full translation into Mapuzungun. The jury found that territorial rights of the Mapuche were being violated, along with the communities' right to consultation, and specified that the national and provincial authorities were responsible because they had consistently failed to implement the law. It was established that the Mapuche were legitimately defending

their territory from a systematic attack by the company and state. The jury found the defendant "not guilty" of crimes of serious injury and aggravated damage. For the Mapuche, this is a great victory and set a precedent for future trials.^{.xxxiv} Unfortunately, Indigenous people's requests continue to be ignored when claiming their constitutional rights.^{.xxxv}

VIII. Questions

1. What steps will Argentina take to collect information on the situation of Indigenous Peoples?
2. What concrete steps is Argentina taking to respect, protect, and fulfill the rights of Indigenous Peoples?

IX. Recommendations

Cultural Survival urges the government of Argentina to:

1. Collect disaggregated data on Indigenous population.
2. Respect, protect and fulfill Indigenous people's rights to participate fully, in the political, economic, social and cultural life of the State.
3. Ensure proper implementation and compliance with the *Ley de Evaluación de Impacto Ambiental*, and the *Código de Aguas*.
4. Follow up on a Supreme Court ruling to demolish an illegally constructed embankment in the Iberá wetlands of Corrientes Province.
5. Develop a National Action Plan in implementing the rights of Indigenous Peoples as called for in the Outcome Document of the World Conference on Indigenous Peoples.
6. Implement the UN Special Rapporteur on the Rights of Indigenous Peoples recommendations from 2012.
7. Respect, implement, and monitor Indigenous Peoples' right to Free, Prior and Informed Consent.
8. Enforce CEDAW General Recommendation No 23.
9. Return the land to dispossessed communities, and ensure compensation and health care to those affected.
10. Regulate extractive industries to stop and clean up pollution on Indigenous lands.
11. Halt the criminalization of activists and ensure protection for Indigenous human rights and environmental defenders.
12. 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.
13. Provide basic health care services to Indigenous communities and prohibit discriminatory practices such as denial of care based on ethnicity.
14. Provide translation services for Indigenous people in the justice and health service spheres.
15. In partnership with Indigenous Peoples, develop and implement culturally relevant education in Indigenous languages.

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