



## International Covenant on Civil and Political Rights

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### Human Rights Committee

### Concluding observations on the fifth periodic report of Argentina<sup>1</sup>

1. The Human Rights Committee considered the fifth periodic report of Argentina (CCPR/C/ARG/5) at its 3281st and 3283rd meetings (CCPR/C/SR.3281 and 3283), held on 29 and 30 June 2016. At its 3295th meeting, held on 11 July 2016, it adopted the following concluding observations.

#### A. Introduction

2. The Committee is grateful to the State party for having accepted the new optional procedure for the submission of reports and for having submitted its fifth periodic report in response to the list of issues prior to consideration of reports (CCPR/C/ARG/QPR/5) under that procedure. It is gratified to have the opportunity to renew its constructive dialogue with the State party concerning the steps taken by Argentina during the reporting period to implement the Covenant. The Committee thanks the State party for the responses provided by the delegation orally and for the additional information that it has provided in writing.

#### B. Positive aspects

3. The Committee welcomes the following legislative and other measures taken by the State party:

- (a) The adoption of the National Preventive Mechanism Act (Act No. 26.827);
- (b) The adoption of the Gender Identity Act (Act No. 26.743) in 2012;
- (c) The adoption of the Hiring Quota Act for Transvestites, Transsexuals and Transgender Persons of the Province of Buenos Aires (Act No. 14.783) in 2015;
- (d) The adoption of the National Action Plan 2014-2016 for the Provision of Prevention, Assistance, and the Elimination of Violence against Women;
- (e) The adoption of the Justice 2020 Programme on human rights aspects in 2016.

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<sup>1</sup> Approved by the Committee at its 117th session (20 June-15 July 2016).



4. The Committee welcomes the State party's ratification of or accession to the following international human rights instruments:

(a) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 24 October 2011; and

(b) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 14 April 2015.

## C. Principal subjects of concern and recommendations

### Promotion and protection of human rights

5. While noting with appreciation the delegation's assurances of the State party's commitment to the promotion and protection of human rights, the Committee notes with concern the fact that a Defensor del Pueblo has not yet been appointed and that recent downsizing measures and institutional changes have been implemented in areas related to human rights protection, particularly with regard to institutions involved in the quest for remembrance, truth and justice (art. 2).

**6. The State party should ensure that institutions for the promotion and protection of human rights are strengthened, in particular institutions involved in the quest for remembrance, truth and justice, through the participation of civil society and the allocation of sufficient human and material resources. In addition, the Defensor del Pueblo should be appointed without delay.**

### Gender equality

7. While noting the measures taken by the State party to promote equality between men and women, the Committee deplores the persistence of a significant wage gap, of 25 per cent on average, between men and women. The Committee also finds it regrettable that women are still insufficiently represented in the public and private sectors, particularly in decision-making posts (arts. 2, 3 and 26).

**8. The State party should redouble its efforts to eliminate the gender stereotypes surrounding the roles and responsibilities of men and women in the family and in society and should conduct awareness-raising campaigns to that end. The State party should also endeavour to increase participation by women in the public and private sectors and, where necessary, adopt appropriate temporary special measures to give effect to the provisions of the Covenant. In addition, the State party should adopt practical measures to reduce the wage gap that persists between men and women and should look into all the reasons why this gap is widening.**

### Gender-based and domestic violence

9. The Committee takes note with concern of reports indicating that violence against women remains a serious problem in the State party (CCPR/C/ARG/CO/4, para. 11). The Committee deplores the persistence of shortcomings in the implementation of the Comprehensive Act to Prevent, Punish and Eliminate Violence against Women within the scope of their interpersonal relations (Act No. 26.485), the inadequacy of the budget allocated for its implementation and the failure to implement the National Plan provided for in the Act. The Committee welcomes the law that provides for the establishment of a pool of qualified lawyers for victims of gender-based violence (Act No. 27.210 of 2015) but finds it regrettable that it has not yet been implemented (arts. 2, 3, 6 and 7).

**10. The State party should step up its efforts to prevent and eliminate all forms of gender-based violence by ensuring the effective application of the corresponding**

legislative framework at all levels of the State and by providing the necessary resources for that purpose. The State party should investigate acts of violence against women promptly and effectively, prosecute the perpetrators of such acts and punish them appropriately. In addition, the State party should ensure that victims are able to avail themselves of their right to redress, which should include fair and adequate compensation, and should offer training and awareness-raising to combat gender-based violence in all spheres.

#### **Voluntary termination of pregnancy**

11. The Committee notes with satisfaction the ruling of the Supreme Court in the *F., A.L. s/medida autosatisfactiva* case of 2012, which reaffirmed women's right to terminate their pregnancy in all circumstances permitted by law, including when the pregnancy is the result of rape, irrespective of the woman's intellectual or psychosocial capacity. The Committee is concerned, however, by the fact that the ruling is not being uniformly applied in the State party and that legal abortion is often inaccessible due to a failure to establish medical protocols and the exercise of individual conscientious objection by health workers and other de facto barriers. The Committee expresses its concern about the Belén case, in which the accused, who is still being deprived of her liberty, was charged with aggravated homicide for allegedly having an illegal abortion. The Committee is also concerned about the high rates of clandestine abortion and the associated maternal mortality rate and about teenage pregnancies (arts. 3, 6, 7 and 17).

12. **The State party should revise its legislation on abortion, including its criminal legislation, by, inter alia, introducing additional exceptions to the prohibition on abortion, such as in cases where the pregnancy is the result of rape, irrespective of the woman's intellectual or psychosocial capacity. The State party should also ensure that all women and girls have access to reproductive health services in all parts of the country and that women are not obliged, as a consequence of legal obstacles, the exercise of conscientious objection of health workers or the lack of medical protocols, to resort to clandestine abortions that put their lives and health at risk. In light of the situation in the Belén case, the State party should consider decriminalizing abortion, and should review the Belén case in light of relevant international standards, with a view to her prompt release. Furthermore, the State party should increase education and awareness-raising programmes and ensure their implementation in both formal spheres, such as public and private schools, and informal arenas, such as the mass media and other forums, on the importance of using contraceptives and the right to sexual and reproductive health.**

#### **Torture and ill-treatment**

13. The Committee takes note with concern of the institutional violence present in prisons, which is reflected in the high number of cases of torture and ill-treatment of persons deprived of their liberty. This includes violence that is attributable to the existence of a system of prison self-governance and to the limited number of convictions of those responsible for acts of violence and the light penalties which they receive. While noting the establishment of a national registry of cases of torture and/or ill-treatment in 2014, the Committee finds it regrettable that a unified registration system for acts and victims of torture has not yet been established at the federal level. The Committee is concerned by reports of humiliating searches, high rates of inter-prisoner violence, particularly in the province of Buenos Aires, forced transfers and the recurrent use of solitary confinement as a method of punishment. It is also concerned by the fact that only a small number of victims of torture have been granted reparation following judicial proceedings. The Committee finds it regrettable that, despite the adoption of the National Preventive

Mechanism Act (Act No. 26.827) in 2012, that mechanism has not yet been implemented (art. 7).

**14. The State party should:**

(a) **Ensure that all complaints of torture and ill-treatment are investigated promptly, thoroughly and independently and that the perpetrators of such acts are brought to justice;**

(b) **Ensure that victims receive appropriate reparation, including health and rehabilitation services;**

(c) **Ensure that forensic examinations performed in presumed cases of torture and ill-treatment committed by State officials are impartial, comprehensive and conducted in accordance with the Istanbul Protocol;**

(d) **Implement a unified registration system for acts and victims of torture with a view to establishing specific policies for the prevention of torture and cruel, inhuman or degrading treatment, including by conducting systematic human rights training programmes for law enforcement and security officers; and**

(e) **Expedite the adoption of the necessary legal measures to ensure that the national preventive mechanism is established in all regions of the country, as provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and ensure that this mechanism is provided with sufficient human and financial resources to enable it to function efficiently.**

**Corporal punishment**

15. The Committee is concerned by the fact that corporal punishment is not explicitly prohibited as a disciplinary measure in the home, in schools, in detention centres or in childcare institutions (arts. 7 and 24).

**16. The State party should take steps to put an end to corporal punishment in all domains. It should also promote non-violent forms of discipline as alternatives to corporal punishment and conduct public information campaigns in order to raise awareness among the general public of the prohibition and harmful effects of corporal punishment.**

**Identity checks**

17. The Committee reiterates its concern about the police practice, and the regulation under which it is permitted, of taking people into custody without a warrant in order to verify their identity and then detaining them for lengthy periods of time without bringing such persons before a judge or other officer authorized by law to exercise judicial supervision of their detention (arts. 9).

**18. The State party should take all necessary steps, including the adoption of legislative measures, to put an end to the practice of detaining persons when such detention is not related to the commission of an offence, in accordance with article 9 of the Covenant.**

**Pretrial detention**

19. The Committee reiterates the concern which it expressed in its preceding concluding observations (CCPR/C/ARG/CO/4, para. 16) regarding the long duration of pretrial detention and the large percentage of prisoners — over half of the prison population in facilities administered by the Federal Prison Service — who are held in pretrial detention.

The Committee welcomes the information provided by the State party's delegation regarding the initiative undertaken as part of the Justice 2020 Programme to review the system of pretrial detention in accordance with the Covenant (art. 9).

20. **The State party should take concrete action to review the regulations governing pretrial detention and to expedite the application of non-custodial alternatives. The State party should also provide additional training to persons involved in the administration of justice with a view to ensuring that pretrial detention is not the norm and that its duration is strictly limited, in accordance with article 9 (3) of the Covenant. The State party should also ensure that all persons who are detained have effective access to a lawyer.**

#### **Persons with disabilities**

21. While noting that legislative inroads have been made in this connection, the Committee is concerned by reports of violations of the human rights of persons with disabilities in psychiatric institutions. In particular, the Committee is concerned by reports which indicate that persons are placed in such institutions for long periods of time without effective supervision of their placement and by reports that 133 persons died in Melchor Romero Hospital between 2012 and 2014. The Committee deplores the shortcomings in the use of monitoring and supervisory mechanisms in those institutions and the failure to implement intermediate community support services. Despite the legal obligation that establishes a 4 per cent minimum employment quota for persons with disabilities, the Committee is concerned by reports according to which that quota as currently implemented amounts to no more than 0.86 per cent (arts. 2, 7 and 10).

22. **The State party should ensure the full enforcement of international standards and the Mental Health Act (No. 26.657). It should also ensure that any decision to resort to restraints or involuntary committal is taken on an exceptional basis and is preceded by a thorough and professional medical evaluation which determines what restraints are strictly necessary for a given patient and the amount of time for which their application is strictly required. Furthermore, the State party should establish an independent monitoring and reporting system and should ensure that any abuses are investigated and prosecuted and that redress is provided to the victims and their families. The State party should also institute practical community and family support measures, and should take all necessary steps to implement the 4 per cent quota, in accordance with the provisions of Act No. 25.689 on the full protection of persons with disabilities. It should also establish a monitoring mechanism and penalties in cases of infringement.**

#### **Conditions of detention**

23. While taking note of the declaration of a state of emergency in the prison system and the State party's intention to reform the prison system, the Committee expresses its concern about the high levels of overcrowding, which are manifested in the use of police stations as permanent places of detention; the poor conditions existing in places of detention; and insufficient access to appropriate health services, at federal and provincial level (art. 10).

24. **The State party should adopt effective measures to improve material conditions in its prisons, reduce overcrowding and duly meet the basic needs of all persons deprived of their liberty, particularly with respect to their access to health services, in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The State party should also consider making wider use of non-custodial measures, such as electronic surveillance devices, parole and community service.**

**Witness protection**

25. The Committee is concerned about measures recently taken by the State party which have weakened systems for the protection of witnesses to crimes involving serious human rights violations committed during the dictatorship. In particular, the explanation provided by the State party's delegation notwithstanding, the Committee wishes to express its concern about the appointment of a former member of the military as the Director of the National Programme for the Protection of Witnesses and Defendants. The Committee is also concerned about the lack of information on the investigation of the case of the disappearance of Jorge Julio López (arts. 6 and 14).

**26. The State party should adopt specific measures to heighten the effectiveness of the institutions and programmes designed to provide full protection to witnesses of crimes committed during the dictatorship. The State party should ensure that the authorities thoroughly investigate cases of disappearances, killings and the suspected intimidation of witnesses. In particular, the State party should carry forward the investigations into the disappearance of Jorge Julio López and punish those responsible for that disappearance.**

**Investigation of past human rights violations**

27. The Committee reiterates its concern (CCPR/C/ARG/CO/4, para. 9) about the slow pace of the investigations of human rights violations and of the corresponding trials and issuance of verdicts, which is due in part to a failure to set up special courts and the infrequency with which hearings are held. The Committee welcomes the preparation of a report on the responsibility borne by business owners for offences committed against workers during the dictatorship and the establishment of a bicameral committee that is to be tasked with identifying instances of economic collusion during the military dictatorship. It finds it regrettable, however, that obstacles are hampering the progress of the investigations into those offences and that the bicameral committee has not yet been set up. The Committee takes note of the information provided by the State party's delegation regarding the commitment to accelerate the pace of the quest for remembrance, truth and justice and to prosecute those responsible for human rights violations committed during the military dictatorship (arts. 2, 6, 7 and 14).

**28. The Committee reiterates its recommendation that the State party step up its efforts to investigate all the human rights violations committed in the past, including crimes committed by the owners and/or staff of companies that are suspected of having been involved in the commission of crimes against humanity. The State party should provide the human and economic resources required to ensure that, as a result of these investigations, the responsible parties are identified, prosecuted and punished in a manner that is commensurate with the gravity of their crimes and that victims are provided with redress.**

**Investigation into the attack on the building of the Argentine Jewish Mutual Association in Buenos Aires (arts. 2, 6, 7 and 14)**

29. The Committee notes with concern the slow progress made and limited information available regarding the investigation into the attack in 1994 of the Argentine Jewish Mutual Association (AMIA) in Buenos Aires (arts. 2, 6, 7 and 14).

**30. The State party should step up its efforts to investigate what happened in the attack on the AMIA building in 1994, in order to bring those responsible to justice. The State party should also take the necessary steps to ensure that the investigation is brought to a prompt, effective, independent, impartial and transparent conclusion.**

### **The right to a second hearing**

31. The Committee welcomes the fact that the right enshrined in article 14 (5) of the Covenant is also set forth in the Code of Criminal Procedure of Argentina and has been recognized in Supreme Court decisions. It finds it regrettable, however, that this safeguard is not uniformly applied in all courts at the provincial level (art. 14).

**32. The State party should ensure that the safeguard provided for in article 14 (5) of the Covenant is applied throughout its territory.**

### **Office of the Public Defender**

33. The Committee reiterates the concern which it expressed in its preceding concluding observations (CCPR/C/ARG/CO/4, para. 20) regarding the Office of the Public Defender's lack of operational and budgetary independence, which adversely affects the quality of the services that it provides. The Committee is concerned that neither the Federal Office of the Public Defender, nor the offices of the public defender at the provincial level, may have sufficient resources to fully carry out their mandates (art. 14).

**34. The State party should step up its efforts to ensure that the Federal Office of the Public Defender and the offices of the public defender at the provincial level have the necessary resources, as well as operational and budgetary independence from other State bodies, to perform their duties effectively in all regions of the country.**

### **Freedom of expression**

35. The Committee takes note with concern of recent changes in the Audio-visual Communications Services that could result in the concentration of media ownership and adversely affect the enjoyment of the right to freedom of expression (art. 19).

**36. The State party should take all necessary steps to ensure that its laws are fully compatible with article 19 of the Covenant with a view to guaranteeing the full and effective exercise of the right to freedom of expression and freedom of the press. In particular, it should review the recent changes made in the Audio-visual Communications Services and prevent a concentration of media ownership in order to avert any harmful impact on the diversity of sources and views, in accordance with the Committee's general comment No. 34 (2011) on article 19: freedoms of opinion and expression.**

### **The rights of indigenous peoples**

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.**

**Dissemination of information on the Covenant**

39. The State party should widely disseminate information on the Covenant and its two Optional Protocols, the text of its fifth periodic report and the present concluding observations in order to raise awareness of the rights enshrined in the Covenant among judicial, legislative and administrative authorities, civil society, non-governmental organizations active in the country and the general public.

40. In accordance with rule 71 (5) of the Committee's rules of procedure, it hereby requests the State party to provide, within one year of the approval of these concluding observations, information on the action that it has taken pursuant to the recommendations made by the Committee in paragraphs 12 (Voluntary termination of pregnancy), 14 (Torture and ill-treatment) and 24 (Conditions of detention) herein.

41. The Committee requests the State party to submit its next periodic report by 15 July 2022 at the latest and to include specific, up-to-date information on the action taken pursuant to the recommendations made in the present concluding observations and on its implementation of the Covenant as a whole. It further requests the State party, when preparing its next periodic report, to hold broad-based consultations with civil society and with non-governmental organizations active in the country.

42. Since the State party has accepted the simplified procedure for the presentation of reports, the Committee will in due course provide it with a list of issues prior to consideration of reports. The State party's replies to that list of issues will constitute its sixth periodic report. In accordance with General Assembly resolution 68/268, the report is subject to a word limit of 21,200 words.

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