

ARGENTINA

CCPR A/45/40 (1990)

212. The Committee considered the initial report of Argentina (CCPR/C/45/Add.2) at its 952nd, 955th and 956th meetings on 19 and 21 March 1990 (CCPR/C/SR.952,SR.955 and SR.956).

213. The report was introduced by the representative of the State party, who emphasized that Argentina was committed to promoting and protecting human rights and had established machinery for that purpose. It was difficult, however, in view of the economic crisis prevailing in Argentina to further promote and protect economic, social and cultural rights. The representative noted that the Government had made the communications referred to in article 4, paragraph 3 of the Covenant in respect of states of siege declared in Argentina in May 1989. Argentina had also informed the United Nations and had provided details regarding the rights which had been temporarily suspended during the state of siege after that exceptional measure had been lifted.

214. Members of the Committee welcomed the State party's report but expressed regret that, whereas it gave a clear idea of the welcome developments since the end of the military dictatorship in Argentina, not enough information had been provided on factors and difficulties affecting the implementation of the Covenant.

215. In connection with article 2 of the Covenant, members of the Committee wished to receive additional information regarding the status of the Covenant in domestic law. In particular, they wished to know whether the Covenant took precedence over the national Constitution, the provincial Constitutions and the national laws and what the procedure was for eliminating any discrepancies between an international human rights instrument and domestic legislation. In that regard, clarification was requested of the statement in the report that rights protected under the Covenant were already protected under the Constitution, particularly in view of the fact that Argentina had just emerged from a period during which the Constitution had not been applied in respect of the rights and freedoms it contained. It was also asked whether there had been any specific cases in which alleged violations of rights by the authorities had been declared unconstitutional; whether courts other than the Supreme Court were competent to decide on such matters, what the relationship between administrative and judicial remedies was; and whether there were any rights and guarantees other than those listed in the Constitution.

216. Further information was also sought on the organizational structure and functions of the Under-Secretariat of Human Rights and on the number, nature and dispositions made of the complaints that had been received by that body. It was also asked what specific action had been taken to raise public awareness of the provisions of the Covenant, particularly in the police and security forces and among minority groups; what was the scope of the term "inhabitant" as used in Argentine law; and whether article 20 of the Constitution, setting forth the rights of aliens, was in conformity with article 2 of the Covenant.

217. Additionally, members expressed grave doubts as to whether the Law of “Punto Final”, the Law of “Due Obedience” and the presidential pardons of October 1989 were compatible with article 2, paragraph 3, and article 9, paragraph 5 of the Covenant and sought further information as to the reasons that had led the Government to adopt those measures. They also wished to know what remedies were currently available to victims of offences committed by the military for which amnesty had been granted. It was further asked whether the provisions of those laws had been scrutinized by the courts; how many investigations into alleged violations of human rights had been completed and with what results; what the present position was with regard to investigations not yet completed; and why the Attorney General had issued instructions to the prosecutors not to challenge the constitutionality of the presidential pardons.

218. In connection with article 3 of the Covenant, members wished to know whether the Under-Secretariat for Women had received any complaints about discrimination and, if so, what the main subjects of such complaints had been. It was also noted that the concept of there being individuals to whom particular respect was due, enshrined in some provisions of Argentine legislation such as article 42 or 80 of the Penal Code, seemed to be rooted in archaic principles and appeared to be clearly discriminatory.

219. With regard to article 4 of the Covenant, members of the Committee requested clarification of the provisions governing the state of siege in Argentina and requested information, in particular, on the state of siege that had been declared since the return of civilian rule. They also wished to know what the maximum duration of a state of siege was; what guarantees were available during a state of siege to a person whose rights had been infringed; whether there was any explicit legal provision to guarantee that there could be no derogation from the basic rights laid down in article 4, paragraph 2, of the Covenant; whether habeas corpus and the amparo procedure remained applicable during a state of siege; whether the mere probability of internal disturbances could justify a declaration of state of siege; and what control was exercised by the legislature over the powers accorded to the President during a state of siege.

220. In connection with article 6 of the Covenant, information was requested about cases of enforced or involuntary disappearances in Argentina that had occurred before Argentina became party to the Covenant and about the results of the relevant investigations. Referring to the rules and regulations governing the use of firearms by the police and security forces, members asked how many officers had been found guilty of offences and disciplined for them; what the penalties had been; and whether the deaths of persons participating in peaceful demonstrations were automatically investigated. Information was also sought on measures taken in reaction to the attack on La Tablada barracks in January 1989 and, in that connection, it was asked whether any complaints of torture were currently under investigation by the Government. Additionally, members requested details about the implementation of legislative measures concerning abortion.

221. With regard to articles 7 and 9 of the Covenant, members wished to receive clarification of the meaning of corporal punishment for “failure to carry out duties of family assistance”, which appeared to be incompatible with article 7 of the Covenant; on legal provisions and court practice concerning compensation for unlawful arrest or detention; and on a specific recent Supreme Court decision concerning habeas corpus. Members also wished to know how soon after arrest a person could contact a lawyer; and whether there were any time limits within which a detainee had to be

brought before a judge. In the latter connection, it was noted that article 255 of the Code of Penal Procedure, providing for a defendant to be informed of the reason for the proceedings and for his imprisonment only after making a statement before the judge, seemed to be incompatible with article 9 of the Covenant.

222. With regard to article 14 of the Covenant, members of the Committee wished to receive additional information on the organization of the civil and military court systems; on the status of judges, and on the steps which had been taken to strengthen the independence of the judiciary. Clarification was also sought of the provision according to which appeals on administrative cases were to be lodged with the same body which had ruled in the first instance; of the possibilities for challenging administrative decisions before the courts; and of the scope of Argentina's reservation to article 15, paragraph 2, of the Covenant, in the light of existing imperative international law. It was also inquired whether the right to seek legal assistance could be denied to a defendant during the preliminary and investigatory stages of proceedings; how the right to a public trial was ensured in Argentina; what procedures were used by military courts and, in particular, whether their competence was determined ratione materiae or ratione personae; and whether remedies were available to any civilians who had been sentenced to death by military courts during the period of military rule.

223. Members of the Committee wished to receive further information on the implementation of article 17 of the Covenant and wished to know, in particular, under what circumstances telegraph and telephone tapping was authorized.

224. Regarding article 18 of the Covenant, members of the Committee wished to know what the procedures for legal recognition and inscription of religious denominations were; how many non-Catholic denominations had been registered; whether, once registered, the latter were equal under the law with the Roman Catholic Church and also enjoyed financial privileges; what had been the consequences of the designation of the Roman Catholic Church as a public legal person; how Law No. 21.745 could be reconciled de facto with article 18 of the Covenant; and whether any provisions had been made for conscientious objectors.

225. With regard to articles 19 and 20 of the Covenant, members of the Committee inquired how, in practice, journalists were guaranteed access to information; to what extent officials were legally bound to provide information to the press; whether there were any limitations imposed on the activities of non-registered journalists; and whether anti-semitism still persisted in some circles despite anti-discrimination legislation. It was observed that Argentine law did not seem to comply with the provisions of article 20 of the Covenant since no provisions had been made for the prohibition of war propaganda and members also sought clarification of article 22 of the Constitution relating to the crime of sedition.

226. In connection with articles 21 and 22 of the Covenant, members of the Committee wished to know what legal restrictions, if any, could be imposed on freedom of assembly; how the exercise of freedom of assembly and freedom of association was guaranteed in practice; and what the prerequisites were for forming associations and political parties.

227. With regard to article 24 of the Covenant, further information was sought on the situation of

kidnapped and abducted children and about any plans to maintain the data bank that had been established on such children, and on the reasons for the reduction of penalties for murdering or abandoning children in order to conceal the dishonour of the mother or of other members of the family.

228. Regarding article 25 of the Covenant, it was asked whether there were instances in which foreigners had actually voted and been elected in the municipalities in which they lived and whether Argentina planned to change the religious test for eligibility for the office of President or Vice-President, which it had acknowledged to be contrary to article 25 of the Covenant. Members also questioned the compatibility with the Covenant of the requirement that senatorial candidates possess a certain minimum income and requested clarification of the statement in the report that the Constitution established political rights “in implicit form”.

229. Lastly, with regard to article 27 of the Covenant, members of the Committee wished to receive additional information on the aboriginal communities referred to in paragraph 246 of the report; on the right of indigenous groups to practise their own religion and use their own languages; and on the activities of the National Institute of Indigenous Affairs since its establishment in 1985.

230. Replying to questions raised by members of the Committee concerning article 2 of the Covenant, the representative said that the two international human rights covenants, together with the American Convention on Human Rights, had been incorporated into Argentine law between 1984 and 1986. Pursuant to article 31 of the Constitution, the Covenant ranked below the Constitution, was on an equal footing with national laws and took precedence over provincial laws. Conflicts between national law and international law were resolved by applying the general principle that a subsequent rule took precedence over a prior rule on the same subject. The Covenant could be invoked in any jurisdiction, and any court could directly apply its provisions. Victims of human rights violations had recourse to all civil and criminal remedies provided in the national judicial system, including administrative remedies if applicable. The Argentinian system did not have a specialized court for constitutional review and that function was performed by the Supreme Court of Justice through the extraordinary appeal procedure. All executive and legislative acts, with the exception of acts which were merely discretionary or ministerial, were subject to such constitutional review, if and when there was a complaint by a litigant alleging unconstitutionality. By virtue of article 100 of the Constitution, the Supreme Court was the final authority in interpreting the Constitution.

231. Concerning the questions relating to the Law of “Due Obedience”, the Law of “Punto Final” and the presidential pardons of October 1989, the representative recalled that the Covenant only applied to events occurring on or after the date of its entry into force and that, consequently, the provisions of the Covenant did not apply to Acts 23.492 and 23.049. In its judgment of 3 July 1987, the Supreme Court had declared Act 23.521 to be constitutional. While that Act placed limitations on criminal prosecution of individuals who had committed crimes on orders of their superiors it did not imply the denial of the facts or of the criminality of the acts and the guilt of those who had committed them. Neither did the presidential pardon eliminate the crime itself; it merely prevented the execution of the sentence. The decision to exercise clemency had been based on the fact that the events of the past two decades had constantly jeopardized the maintenance of public order within Argentina and its purpose was to bring peace to all sectors of Argentinian society. Nothing in

Argentina's legislation prevented the continuing investigation of the facts and, indeed, such investigations were being pursued. Seven officers of the armed forces had been sentenced for human rights violations and, in early October 1989, 34 other persons were placed on trial, many of them for several human rights offences.

232. In reply to questions raised by members of the Committee concerning article 4 of the Covenant, the representative stated that a state of siege could be declared in the event that internal disorder or foreign attack endangered the operations of the Constitution and of the authorities created thereunder. A state of siege was declared for a limited period, but the exact duration of that period did not have to be specified. During a state of siege, the power of the President of the Republic was limited to arresting or displacing individuals and he had no power to convict them of any criminal offences. The rights provided for under article 4, paragraph 2, of the Covenant continued in force. The existence of a state of siege did not imply the suspension of the Constitution or any weakening of the division of powers among the executive, legislative and judicial branches. According to a Supreme Court decision taken in 1978, notwithstanding the fact that taking measures such as the arrest and transfer of persons was provided for under the Constitution, officials were not exempt from possible criminal liability when their actions constituted an offence under the law. The legality of the declaration of a state of siege could be reviewed, under Act 23.098 of 1984, as part of the procedure of habeas corpus. Both amparo and habeas corpus could be invoked during a state of siege. The enactment of a law regulating the exercise of the powers of the executive branch with respect to the imposition of a state of siege was currently under consideration.

233. Responding to questions raised by members concerning article 6 of the Covenant, the representative noted that, since the restoration of democracy, successive constitutional Governments had provided the Working Group on Enforced or Involuntary Disappearances with information concerning reported cases of forced disappearances. The National Commission on the Disappearances of Persons (CONADEP) and the Public Prosecutor's Office had investigated cases that had been brought before the competent Federal Appeal Chamber. Three such cases, of special significance, involved persons who had been detained by the military régime and who had subsequently claimed compensation for illegal detention. They showed that despite the Law of "Due Obedience" and the Law of "Punto Final" it was possible to continue litigation until compensation was awarded. Referring to the attack on La Tablada military barracks, the representative said that 20 persons had been brought to trial and that a decision had been handed down on 5 October 1989. Both the Office of the Public Attorney and the defence attorneys had lodged appeals against that decision, the latter alleging mistreatment or unlawful use of force by the police - allegations that were all currently under investigation.

234. With reference to questions raised by members of the Committee concerning article 9 of the Covenant, the representative said that, under the law, detainees had to be provided with counsel immediately and that a judge had to be informed of the alleged violation and had to be provided with all relevant documentation within 24 hours of an arrest. A detainee had the right to make a telephone call indicating his whereabouts, which enabled a lawyer to begin representing him. The remedy of amparo was admissible in connection with any act by the authorities which infringed, restricted or arbitrarily jeopardized any right recognized by the Constitution. The right of habeas corpus was invoked when freedom of movement had been restricted by the public authorities without a warrant or when an arrest had been made illegally.

235. Turning to questions raised by members of the Committee concerning article 14 of the Covenant, the representative of the State party said that Argentina still followed the practice of written proceedings, which provided for a limited period of secrecy. A proposed amendment to the existing law, which aimed at institutionalizing verbal and public proceedings, had not been adopted. However, the Code of Military Justice and the Law for the Defence of Democracy now provided for public hearings before a court of charges, evidence and expert testimony. Journalists had direct access to courtrooms, the persons under trial, and to judges and attorneys. Referring to the competence of military courts, the representative explained that, in 1984, the Congress had introduced amendments to the Code of Military Justice providing for a transitional régime in judging offences committed during the repression. The jurisdiction of the military courts had been reduced to strictly military matters which further limited the possibility of a civilian being judged by a military court for civil offences. Additionally, there was a recourse of mandatory appeal to the competent Federal Appeal Chambers against decisions handed down by military courts concerning military offences in time of peace.

236. Responding to questions raised under article 18 of the Covenant, the representative said that there was freedom of worship in Argentina but not equality of worship. The Government provided financial aid for helping to train members of the Catholic clergy and for the support of bishops and attributed special value to the Roman Catholic Church, which represented the majority of the population. While the Catholic Church enjoyed pre-eminence and enjoyed the legal status of a public body corporate whereas other religious denominations were allowed to function only as associations, it was not a state church. Discussions were currently under way with a view to granting a special legal status to non-Catholic religions. Under Act No. 21.745, all non-Catholic religious institutions and organizations were required to register. Registration itself was a simple procedure and once a group was registered it was allowed to carry out its activities anywhere in the country and could request a tax exemption. So far, approximately 2,730 religious groups had registered. A bill providing for regulations concerning conscientious objectors had been submitted to the Congress and on 18 April 1989 the Supreme Court had recognized the principle that the obligation of military service could be met without taking up arms. Exemptions from military service were granted on a case-by-case basis to seminary students belonging to Jehovah's Witnesses who presented the necessary certificates from the relevant institutions.

237. With reference to questions raised by members of the Committee concerning article 20 of the Covenant, the representative said that discrimination of any kind was essentially incompatible with the provisions of the Constitution. Under the Criminal Code, racial or religious hatred was considered as an aggravating circumstance in respect of various crimes. The law regulating the activities of political parties prohibited the use of party names containing words that expressed racial, class or religious hostility, or that might provoke such hostility.

238. With regard to article 24 of the Covenant, the representative stated that the Genetic Data Bank carefully collected and stored genetic data on family members of disappeared persons. Through the Bank, it had been possible to return many children to their natural families.

239. In reply to questions raised under article 25 of the Covenant, the representative said that, apart from article 76 of the Constitution, which provided that a person must belong to the Roman Catholic Church in order to be elected President or Vice-President of the nation, there were no other religious

requirements for holding high office. Although proposals to amend the Constitution could be envisaged in respect of article 76, it could not be said categorically that the requirement contained therein was contrary to the Covenant.

240. Responding to questions relating to article 27 of the Covenant, the representative stated that according to the latest census, taken in 1966, there were 302,000 indigenous inhabitants in Argentina. Their rights were being protected and their traditions were being preserved.

General observations

241. Members of the Committee thanked the representative of the State party for the co-operative and open spirit in which she had answered many of their questions. They observed that while it was evident that the Government of Argentina was seriously committed to the protection of human rights which had been violated during the military dictatorship, there was nevertheless some cause for concern regarding the effective implementation of the Covenant in Argentina. Members voiced concern especially in respect of the compatibility of the Law of “Due Obedience” and the Law of “Punto Final” with the Covenant and of the negative precedents that those measures could set and expressed the hope that those laws would not jeopardize the rights of victims to reparation. They also hoped that the Government would make further efforts and take appropriate action in respect of the disappearances that had occurred before Argentina had become party to the Covenant. References were also made by members to the use of excessive force by the police; the privileges enjoyed by the Roman Catholic Church; and to the guarantees relating to the prevention of abuse of power by the authorities, particularly in respect of the practice of torture and during a state of siege.

242. The representative of the State party expressed appreciation to the Committee for its comments and recommendations and assured it that they would be conveyed to her Government.

243. In concluding the consideration of the initial report of Argentina, the Chairman also thanked the representative of the State party for her co-operation and expressed the hope that the issues raised by the Committee, particularly in respect of such important matters as torture, which had been a great evil in Argentina, and religious freedom and religious equality, would be acted upon immediately and would be addressed in Argentina’s second periodic report.

CCPR A/50/40 (1995)

144. The Committee considered the second periodic report of Argentina (CCPR/C/75/Add.1) at its 1389th to 1391st meetings, on 21 and 22 March 1995, and adopted 13/ the following final comments:

1. Introduction

145. The Committee welcomes the second periodic report submitted by the State party and views with satisfaction the frank and constructive manner in which the dialogue with the Committee has been conducted. It welcomes in particular the comprehensive answers provided by the high-level delegation representing the State party. None the less, the Committee expresses its regret that the report does not adequately deal with the factors and difficulties encountered with regard to the actual implementation of the Covenant. The Committee notes that this shortcoming was compensated in part by the oral update of the report, as well as the oral replies provided to the list of issues and other questions raised by the Committee during the consideration of the State party's report.

2. Factors and difficulties affecting the implementation of the Covenant

146. The Committee notes that the compromises made by the State party with respect to its authoritarian past, especially the Law of Due Obedience and Law of Punto Final and the presidential pardon of top military personnel, are inconsistent with the requirements of the Covenant.

3. Positive aspects

147. The Committee notes with satisfaction Argentina's continuous progress in its efforts to democratize and to match its level of human rights protection with international standards. Although much work remains to be done in this area, legislative developments since 1983 indicate that Argentina is committed to the protection of human rights at the highest levels. In this connection, the Committee welcomes the constitutional reforms of August 1994, which elevate several international human rights instruments, including the Covenant and the First Optional Protocol, above national laws and grants them constitutional status (arts. 31 and 75 (22) of the Constitution). The Committee further welcomes the creation of the post of "Defender of the People", which was established in December 1993 under Act 24,284. This post is responsible for the protection of the rights of the Argentine people against possible infringement by the national authorities.

13/ At its 1411th meeting (fifty-third session), held on 5 April 1995.

148. The Committee welcomes the programmes established for the advancement of women's equality and particularly welcomes the recognition on the part of the State party of violence against women as a matter of concern.

149. The Committee welcomes the enactment of Act 24,043 granting compensation to those who were detained by order of the Executive. It also welcomes Act 24,411, which grants some benefits to relatives of disappeared persons.

150. The Committee welcomes the revisions made to the Code of Criminal Procedure, those which are under way to the Code of Civil Procedure, the reform of the prison system and the establishment of the Office of the Government Procurator for the Prison System. It also welcomes the efforts by the State party to rehabilitate convicted prisoners and construct more facilities to alleviate prison crowding.

151. The Committee notes with satisfaction the elimination in the constitutional reforms of 1994 of the qualification that the President of the Republic must be Catholic.

152. The Committee also notes with satisfaction that the Ministries of the Interior and of Foreign Affairs are conducting human rights training programmes for law enforcement officials, personnel engaged in the administration of justice, and the general public.

4. Principal subjects of concern

153. The Committee reiterates its concern that Act 23,521 (Law of Due Obedience) and Act 23,492 (Law of Punto Final) deny effective remedy to victims of human rights violations, in violation of article 2, paragraphs 2 and 3, and article 9, paragraph 5, of the Covenant. The Committee is concerned that amnesties and pardons have impeded investigations into allegations of crimes committed by the armed forces and agents of national security services and have been applied even in cases where there exists significant evidence of such gross human rights violations as unlawful disappearances and detention of persons, including children. The Committee expresses concern that pardons and general amnesties may promote an atmosphere of impunity for perpetrators of human rights violations belonging to the security forces. Respect for human rights may be weakened by impunity for perpetrators of human rights violations.

154. In the latter connection, the Committee regrets that evidence presented to the Senate against members of the armed forces, proving that they have engaged in extrajudicial executions, forced disappearances, torture, or other violations of human rights, may in some cases prevent the promotion of those accused but does not in itself cause their dismissal.

155. The Committee is concerned about threats to members of the judiciary, which through intimidation seek to compromise the independence of the judiciary as set forth in article 14 of the Covenant. The Committee is further concerned about attacks against journalists and unionists, and the lack of protection afforded to them, which restricts the enjoyment of the rights of expression and association provided for in articles 19 and 22 of the Covenant.

156. While the Committee welcomes Act 24,043 and Act 24,411, it regrets that they do not provide

for compensation for victims of torture. The Committee expresses concern about cases of excessive use of force, torture and arbitrary or unlawful detentions committed by members of the police and the armed forces which have been brought to its attention. It is concerned that there is no clear mechanism for investigating complaints of police violence that ensures there will be no reprisals against complainants, that where provincial administrations are lax in dealing with allegations of police violence the federal authorities do not ensure compliance with the Covenant, and that the perpetrators of acts of police violence generally are not punished and the victims are not compensated. It expresses concern about the delay in resolving the situation of children of disappeared persons and is especially disturbed at the failure of the report to provide any information at all on the real situation as it relates to article 7 of the Covenant.

157. The Committee is concerned that the Penal Code appears to be deficient in certain key areas that apparently conflict with the principle of presumption of innocence (art. 14, para. 2, of the Covenant). It is concerned about the system of pre-trial detention, which it considers to be one of the remaining vestiges of authoritarian rule. The Committee also expresses concern that persons may be detained for a period longer than the maximum penalty allowed by law and regrets, in this connection, that article 317 of the Constitution does not order their release. The Committee further notes that bail is established according to the economic consequences of the crime committed and not by reference to the probability that the defendant will not appear in court or otherwise impede due process of law. Nor is it compatible with the presumption of innocence that the length of pre-trial detention is not a product of the complexity of the case but is set by reference to the possible length of sentence. The Committee is also concerned that accused persons are held in detention in the same facilities as convicted persons, and that the grounds for judicial authorization of telephone tapping may be too broadly drawn.

5. Suggestions and recommendations

158. The Committee recommends that the State party, in accordance with article 2, paragraph 2, of the Covenant, develop mechanisms for compensating all remaining victims of past violations of human rights by amending Act 24,043 or enacting appropriate legislation for the victims of such crimes. The Committee especially recommends that appropriate care be taken in the use of pardons and general amnesties so as not to foster an atmosphere of impunity (see the Committee's general comment No. 7 (16)). The Committee recommends that members of the armed forces or security forces against whom sufficient evidence of involvement in gross human rights violations exists be removed from their posts.

159. The Committee urges the State party to continue to investigate the whereabouts of disappeared persons, to complete urgently investigations into the allegations of illegal adoption of children of disappeared persons and to take appropriate action. It also urges the State party fully to investigate recent allegations of murders committed by the military during the period of military rule and to take action on the findings.

160. The Committee notes that the Office of the Under-Secretary-General of Human and Social Rights falls under the jurisdiction of the Ministry of the Interior, which also regulates the police forces. The Committee recommends that measures to guarantee the independence of the Under-Secretary-General be taken, particularly with respect to investigations of human rights

violations.

161. The Committee urges that all necessary steps be taken to prevent cases of excessive use of force, torture, arbitrary detention or extrajudicial execution by members of the armed forces or the police. These steps should include preventive, disciplinary and punitive measures, as well as appropriate training. All violations should be investigated and the victims compensated.

162. The Committee recommends that special protection be provided to journalists and members of trade unions under threat or intimidation so as effectively to protect the rights provided for in articles 19 and 22 of the Covenant.

163. With respect to the Code of Criminal Procedure, the Committee recommends that the system of pre-trial detention be carefully reviewed. Legal safeguards should be established to ensure that, in instances where pre-trial detention exceeds the maximum applicable penalty for a crime, the defendant will be released without qualification. The Committee urges the State party to define clearly the purpose of pre-trial detention and to set the length of detention accordingly, applying the principle of presumption of innocence. It recommends the same consideration in the setting of bail.

164. The Committee recommends that the State party include information in its next report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the First Optional Protocol, also bearing in mind its obligations under article 2 of the Covenant.

165. The Committee recommends that Argentina include, in its next periodic report, information on the measures adopted to follow up on the present comments and give effect to its suggestions and recommendations. It further recommends that its comments be widely disseminated and incorporated into the curriculum of the human rights training programmes organized for law enforcement officials and administrators of justice.

CCPR A/56/40 (2001)

74. Argentina

(1) The Committee examined the third periodic report of Argentina (CCPR/C/ARG/98/3) at its 1883rd and 1884th meetings, held on 25 and 26 October 2000. At its 1893rd meeting on 1 November 2000, the Committee adopted the following concluding observations.

Introduction

(2) The Committee welcomes the frank and constructive elaboration by the delegation of measures undertaken by the State party, since the presentation of its second periodic report, to ensure respect for rights guaranteed by the Covenant. It also appreciates the additional information provided orally by the delegation during the examination of the report and in response to members' questions.

(3) The Committee observes that the federal system of government in the State party entails provincial involvement in the implementation of many of the rights provided for in the Covenant, and that it therefore requires additional information on the laws and measures undertaken at the provincial level, in order to assess progress in ensuring Covenant rights, in accordance with article 50 of the Covenant.

Positive aspects

(4) The Committee welcomes the consolidation of democratic processes and measures taken to promote national reconciliation following the years of military rule when many basic human rights were flagrantly violated. In this regard, the Committee notes with satisfaction the operation of a number of institutions and programmes designed to serve as a channel of redress for victims of past abuses, *inter alia* the Historical Reparation Programme, the National Commission on the Disappearance of Persons, and the National Commission for the Right to an Identity. The Committee also appreciates the efforts being made to provide financial and other compensation to victims of arbitrary detention and the families of persons who died or disappeared under the military regime.

(5) The Committee welcomes recent developments in which some of those responsible for the most serious violations of human rights, including forced disappearances, torture, and removal of children from their parents for purposes of illegal adoption or trafficking, are being brought to trial. It particularly welcomes the establishment of a mechanism, without time restriction on its activities, to restore the identities of children who were forcibly removed from their families.

(6) The Committee is pleased to note the recent reforms enacted to promote the independence of the judiciary, particularly the creation of a competitive selection process for judges.

(7) The Committee also notes with satisfaction the advances made in the protection of the rights of the indigenous peoples, the devolution of national and provincial land to indigenous communities through the National Registry of Indigenous Communities, and the promotion of multicultural and multilingual education.

Principal subjects of concern and recommendations

(8) The Committee is concerned at the continuing uncertainty over the status of Covenant rights in national law. Despite assurances that the Covenant has constitutional status and is therefore directly invocable in courts, the Committee notes that it has been further described by the State party as being applied in a manner which is “complementary” to the Constitution, without further precision concerning that term. It also notes that the federal system of government confers upon the provinces responsibilities in critical areas, such as the administration of justice, which has resulted in uneven application of the Covenant in different areas of the State party’s territory.

The Committee, recalling the responsibility of the State party itself with regard to implementation of obligations under the Covenant, recommends that clarification of the status of Covenant rights be included in the fourth periodic report, including any specific examples of cases where Covenant rights have been invoked in the courts. The next report should also contain information on the legal and other measures taken to implement the Covenant at the provincial level to ensure that all persons are able to enjoy their rights throughout the territory of the State party.

(9) Despite positive measures taken recently to overcome past injustices, including the repeal in 1998 of the Law of Due Obedience and the Punto Final Law, the Committee is concerned that many persons whose actions were covered by these laws continue to serve in the military or in public office, with some having enjoyed promotions in the ensuing years. It therefore reiterates its concern at the atmosphere of impunity for those responsible for gross human rights violations under military rule.

Gross violations of civil and political rights during military rule should be prosecutable for as long as necessary, with applicability as far back in time as necessary, to bring to justice their perpetrators. The Committee recommends that rigorous efforts continue to be made in this area, and that measures be taken to ensure that persons involved in gross human rights violations are removed from military or public service.

(10) In the light of articles 9 and 14 of the Covenant, the Committee reiterates its deep concern at the failure of the State party fully to ensure the principle of presumption of innocence in criminal proceedings. In this respect, the Committee considers it a matter of concern that the duration of such detention is determined by reference to the possible length of sentence following conviction rather than the need to bring the detainee before the courts. It stresses in this regard that the imposition of pre-trial detention should not be the norm but should be resorted to only as an exceptional measure to the extent necessary and consistent with due process of law and article 9 (3) of the Covenant. In this regard, there should not be any offences for which pre-trial detention is obligatory.

All aspects of the system of pre-trial detention, including the determination of the length of detention, should be reformed in accordance with the requirements of article 9 and the principle of presumption of innocence under article 14.

(11) The Committee is deeply concerned that prison conditions fail to meet the requirements of articles 7 and 10 of the Covenant. It considers the severe overcrowding and the poor quality of basic

necessities and services, including food, clothing and medical care, to be incompatible with the right to be treated with humanity and with respect for the inherent dignity of the human person to which all persons are entitled. It has been established, in addition, that there are abuses of authority by prison officials, such as torture and ill-treatment, and corruption.

While noting the plans under way to construct new prison facilities, the Committee recommends that immediate attention be paid to the need to provide adequately for the basic necessities of all persons deprived of their liberty. With respect to complaints of ill-treatment or torture, it recommends that the State party include in its next report detailed information on the number of complaints received, including the recourse procedures that are available to complainants, the outcome of complaints to date, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels.

(12) Further in relation to article 7 of the Covenant, the Committee regrets that questions of torture and excessive use of force by police officials were not adequately dealt with in the present report. The Committee is concerned at allegations it has received indicating that this is a widespread problem and that Government mechanisms established to address it are inadequate.

The Committee recommends that the State party include in its next report detailed information on the number of complaints received of torture and ill-treatment by the police, including the recourse procedures and remedies that are available to complainants, the outcomes of such complaints, the type of disciplinary or punitive measures imposed on those found guilty of these practices, and the specific responsibilities of all relevant government bodies at federal and provincial levels.

(13) The Committee expresses concern over continuing attacks on human rights defenders, judges, complainants and representatives of human rights organizations, and members of the media. In addition, persons who participate in peaceful demonstrations are reportedly subject to detention and penal action.

Attacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required. The State party should provide details in its next report on the results of such investigations and the procedures involved in disciplining or punishing offenders.

(14) On the issue of reproductive health rights, the Committee is concerned that the criminalization of abortion deters medical professionals from providing this procedure without judicial order, even when they are permitted to do so by law, inter alia when there are clear health risks for the mother or when pregnancy results from rape of mentally disabled women. The Committee also expresses concern over discriminatory aspects of the laws and policies in force, which result in disproportionate resort to illegal, unsafe abortions by poor and rural women.

The Committee recommends that the State party take measures to give effect to the Reproductive Health and Responsible Procreation Act of July 2000, by which family planning counselling and contraceptives are to be provided, in order to grant women real alternatives. It further recommends that the laws and policies with regard to family planning be reviewed on a regular basis. Women should be given access to family planning methods and sterilization procedures; and in cases where

abortion procedures may lawfully be performed, all obstacles to obtaining them should be removed. Argentine law should be amended to permit abortions in all cases of pregnancy caused by rape.

(15) With regard to article 3 of the Covenant, the Committee is concerned that, despite significant advances, traditional attitudes toward women continue to exercise a negative influence on their enjoyment of Covenant rights. The Committee is particularly concerned at the high incidence of violence against women, including rape and domestic violence. Sexual harassment and other manifestations of discrimination in both the public and private sectors are also a matter of concern. The Committee notes as well that information on these matters is not systematically maintained, that women have a low awareness of their rights and the remedies available to them, and that complaints are not being adequately dealt with.

The Committee recommends that a large-scale information campaign be undertaken to promote awareness among women of their rights and the remedies available to them. It urges that reliable data be systematically collected and maintained on the incidence of violence and discrimination against women in all their forms, and provided in the next periodic report.

(16) The Committee reiterates its concern that the preferential treatment, including financial subsidies, accorded to the Catholic Church as against other religious denominations constitutes religious discrimination under article 26 of the Covenant.

(17) The Committee requests that the fourth periodic report be submitted by 31 October 2005. It also requests that appropriate disaggregated statistics on major areas of concern be provided in the report. The Committee further requests that the present concluding observations and the next periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in the State party.