



International Covenant on Civil and Political Rights

Distr.: General
31 March 2010
English
Original: Spanish

Human Rights Committee

Ninety-eighth session

New York, 8–26 March 2010

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations by the Human Rights Committee

Argentina

1. The Committee considered the fourth periodic report of Argentina (CCPR/C/ARG/4) at its 2690th and 2691st meetings (CCPR/C/SR.2690 and SR.2691), held on 10 and 11 March 2010, and adopted the following concluding observations at its 2708th meeting (CCPR/C/SR.2708), held on 23 March 2010.

A. Introduction

2. The Committee welcomes the fourth periodic report of Argentina and is grateful for the oral and written replies provided by the State party's delegation, which made it possible to have an open and constructive dialogue on the various issues facing the country. The Committee appreciates the detailed information on the State party's legislation relating to implementation of the Covenant and on its new draft legislation. It notes, however, the lack of statistical information that would provide a picture of how the situation has developed, at both the federal and provincial levels, in the areas mentioned in its previous concluding observations.

B. Positive aspects

3. The Committee welcomes the numerous legislative and institutional changes that have taken place since its consideration of the third periodic report, such as the decriminalization of libel and slander in statements regarding topics of public interest and the drafting of the 2005 National Plan against Discrimination.

4. The Committee welcomes the information concerning the progress made in the prosecution of persons responsible for serious human rights violations during the military dictatorship and in the recovery of the identity of children who were taken from their families during that time, as well as the adoption of various laws amending the Code of Criminal Procedure with a view to expediting the trials of such persons. The Committee is

also pleased to note the establishment of the Special Investigation Unit within the National Commission for the Right to Identity (CONADI) and of the National Genetic Data Bank.

5. The Committee welcomes the State party's accession, since its submission of its third periodic report, to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which enjoys constitutional status. It also notes with satisfaction the ratification of the Rome Statute of the International Criminal Court.

6. The Committee welcomes the State party's ratification of a number of human rights treaties, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance.

7. The Committee welcomes the State party's practice of seeking amicable settlements with victims of human rights violations, granting non-monetary reparations and establishing ad hoc arbitral tribunals to decide on compensation in these cases.

C. Principal subjects of concern and recommendations

8. The Committee notes with concern that, owing to the country's federal system of government, many of the rights laid down in the Covenant are not uniformly protected throughout the country (article 2 of the Covenant).

The State party should take measures to guarantee the full implementation of the Covenant throughout its territory, without any limitations or exceptions, in accordance with article 50 of the Covenant with a view to ensuring that all persons are able to fully enjoy their rights in any part of the country.

9. Although the Committee is pleased to note the progress made in processing the cases of those responsible for serious human rights violations during the military dictatorship, it is concerned by the slow pace at which the various phases of these trials, including that of cassation, are proceeding, particularly in certain provinces, such as Mendoza (article 2 of the Covenant).

The State party should continue to make rigorous efforts to process these cases in order to guarantee that serious human rights violations, including those involving sexual abuse and the seizure of children, do not go unpunished.

10. The Committee notes with concern that, despite the principle set forth in article 114 of the Constitution concerning the importance of having a balanced Council of the Magistrature, representatives of political organs close to the executive branch predominate at the expense of judges and lawyers (article 2 of the Covenant).

The State party should take measures to achieve the balance envisaged in the constitutional provision regarding the composition of the Council of the Magistrature and to avoid situations in which the executive branch controls this body.

11. Even as it notes with satisfaction the adoption of the Integral Protection Act to prevent, punish and eradicate violence against women in the context of their interpersonal relations, the Committee is disturbed to note the existence of shortcomings in the effective implementation of the Act (articles 3 and 26 of the Covenant).

The State party should adopt, with all due speed, measures to establish implementing legislation for the Integral Protection Act and to provide for a budgetary allocation

that permits its effective implementation throughout the country. The State party should compile national statistics on domestic violence with a view to maintaining reliable data on the scope of the problem and on trends in that regard.

12. Although the Committee welcomes the State party's establishment of the Office of Domestic Violence to provide assistance to victims of domestic abuse, it is concerned that the Office's sphere of responsibility is limited to the City of Buenos Aires and that the services it offers include only very limited free legal assistance in the courts (articles 3 and 26 of the Covenant).

The State party should take measures to ensure that services such as those offered by the Office of Domestic Violence are accessible in all parts of the country and that free legal assistance is guaranteed in cases of domestic violence brought before the courts.

13. The Committee expresses its concern at the restrictive legislation on abortion contained in article 86 of the Criminal Code and at the inconsistency in the courts' interpretations of the grounds for exemption from punishment set out in this article (articles 3 and 6 of the Covenant).

The State party should amend its legislation so that it effectively helps women to prevent unwanted pregnancies and protects them from having to resort to clandestine abortions that could endanger their lives. The State should also adopt measures for educating judges and health workers about the scope of article 86 of the Criminal Code.

14. The Committee is concerned by the information it has received concerning deaths, including deaths of minors in some cases, caused by police violence.

The State party should take measures to ensure that incidents such as those described above do not occur and to ensure that those responsible for them are duly prosecuted and punished.

15. The Committee reiterates its concern at the subsistence of legislation giving the police the power to detain persons (including minors) whom they have not apprehended in the act of committing an offence, and to do so without a warrant or subsequent judicial review, for the sole stated purpose of verifying their identity, in violation of, *inter alia*, the principle of the presumption of innocence (articles 9 and 14 of the Covenant).

The State party should take measures to withdraw the power of the police to detain persons when their detention is not related to the commission of an offence and is in violation of the principles set out in article 9 of the Covenant.

16. While recognizing the importance of the Supreme Court decision in the *Verbitsky, Horacio writ of habeas corpus* case, which sets standards for the protection of the rights of persons deprived of their liberty, the Committee regrets the lack of measures for the effective implementation of these standards and the failure of criminal procedural law and practice relating to pretrial detention and post-trial imprisonment at the provincial level to comply with international standards. The Committee wishes to express its concern, in particular, at the fact that a large percentage of prisoners remain in pretrial detention and at the long duration of such detention (articles 9 and 10 of the Covenant).

The State party should take measures, without delay, to reduce the number of persons held in pretrial detention and the length of pretrial detention by taking such steps as having greater recourse to precautionary measures or making greater use of bail or of electronic bracelets. The Committee reiterates that pretrial detention should not be the norm; instead it should be resorted to only as an exceptional measure and to the extent that it is necessary and consistent with due process of law and with article 9, paragraph 3, of the Covenant. There should be no offences for which it is mandatory.

17. Despite the information provided by the State party with regard to measures taken to improve living conditions in the country's prisons, the conditions in many of them remain a source of concern for the Committee. These conditions include a high rate of overcrowding, violence inside prisons, the poor quality of services and insufficient satisfaction of basic needs, in particular with regard to hygiene, food and medical care. The Committee is also concerned that, owing to the lack of space in these institutions, some detainees who have been charged remain in police stations for long periods. The fact that some prisons continue to operate despite court orders that they be shut down is a further cause of concern. The Committee also regrets that the Procurator of Prisons is authorized to deal with matters relating to inmates in federal penitentiaries only (article 10 of the Covenant).

The State party should adopt effective measures for putting an end to prison overcrowding and ensuring compliance with the requirements set out in article 10. In particular, the State party should take measures to comply with the Standard Minimum Rules for the Treatment of Prisoners. The practice of keeping accused persons at police stations should be halted. The functions of the Procurator of Prisons should cover the entire country. The State party should also take measures to guarantee that all occurrences of injury and death in prisons and detention centres are duly investigated and to ensure compliance with court orders mandating the closure of some of these centres.

18. The Committee notes with concern the abundance of information it has received on the frequent use of torture and cruel, inhuman or degrading treatment at police stations and in prisons, particularly in the provinces of Buenos Aires and Mendoza. It also notes that very few of the cases reported lead to investigations or trials and even fewer result in the conviction of those responsible, making for a high rate of impunity. The Committee is also concerned by the judicial practice with regard to the characterization of the facts, whereby torture is frequently classified as a less serious offence, such as unlawful coercion, for which penalties are less severe (article 7 of the Covenant).

The State party should take immediate and effective measures against such practices. It should monitor, investigate and, where appropriate, prosecute and punish law enforcement officers responsible for acts of torture and should compensate the victims. The legal characterization of the facts must take into account their seriousness and relevant international standards.

The State party should establish registers of cases of torture and other cruel, inhuman or degrading treatment or punishment, or, where appropriate, strengthen existing registers with a view to maintaining reliable information on the real scale of the problem throughout the country, monitoring developments in this connection and taking adequate measures to address it.

The State party should redouble its efforts to provide human rights training for law enforcement officers in order to dissuade them from engaging in such conduct.

The State party should expedite the adoption of the necessary legal measures for the establishment of an independent national preventive mechanism, as provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This process should take into account the need for effective coordination between federal and provincial levels.

19. The Committee notes with concern the absence of procedural law and practice that would guarantee the effective implementation of the right set out in article 14, paragraph 5, of the Covenant throughout the country (article 14 of the Covenant).

The State party should take the necessary and effective measures to guarantee the right of every person who is convicted of a crime to have the conviction and sentence

reviewed by a higher tribunal. In this connection, the Committee recalls its general comment No. 32 on the right to equality before courts and tribunals and to a fair trial, which emphasizes, in paragraph 48, the need to review substantively the conviction and sentence.

20. The Committee notes with concern that, despite the fact that a large percentage of persons who have been arrested and charged do not have legal counsel of their choosing and must use the services of the Office of the Public Defender, the Office does not have the necessary means to provide adequate legal assistance in every case. It further notes that, despite the provisions of article 120 of the Constitution, the operational and budgetary independence of the Office of the Public Defender from the Office of the Procurator of Prisons is not assured throughout the country. This could have a negative impact on the quality of the services provided by the Office of the Public Defender (article 14 of the Covenant).

The State party should take measures designed to ensure that the Office of the Public Defender can provide all persons suspected of having committed a crime with appropriate and effective services as from the time of their apprehension by the police in order to protect the rights set out in the Covenant. The State party should also take steps to guarantee the budgetary and operational independence of the Office of the Defender from other State organs.

21. The Committee wishes to express its concern about the intimidation of persons participating as witnesses for the prosecution in trials for crimes involving serious human rights violations during the dictatorship, including the abduction and disappearance of Jorge Julio López (article 19 of the Covenant).

The State party should pursue its efforts to clarify the whereabouts of Jorge Julio López and to identify and bring to trial those responsible for his disappearance. The State party should also strengthen measures for the effective implementation of the National Programme for the Protection of Witnesses and Defendants.

22. The refusal to recognize the Central de Trabajadores Argentinos as a trade union is disturbing to the Committee, given that the State is a party to the International Labour Organization (ILO) Convention concerning Freedom of Association and Protection of the Right to Organise (Convention No. 87) and in the light of the Supreme Court decision against trade union monopoly (article 22 of the Covenant).

The State party should take measures designed to guarantee national implementation of international standards on freedom of association, including article 22 of the Covenant, and should avoid any discrimination in this regard.

23. The Committee wishes to express its concern over serious shortcomings in the operation of custodial institutions for children, including instances of collective punishment and strict confinement, and over the current juvenile criminal justice system, which, inter alia, makes excessive use of internment and does not guarantee adequate legal assistance to minors in conflict with the law (article 24 of the Covenant).

The State party should take measures to establish a juvenile criminal justice system that is respectful of the rights protected by the Covenant and other relevant international instruments. The Committee believes that measures are needed to guarantee respect for such principles as the right of such minors to receive treatment that promotes their reintegration into society, the use of detention and imprisonment only as a last resort, the right of minors to be heard in criminal proceedings relating to them and the right to receive appropriate legal assistance.

24. The Committee is concerned by the information it has received with regard to inadequate care for users of mental health services, in particular as concerns the right to be

heard and the right to have access to legal assistance in connection with decisions relating to their internment (article 26 of the Covenant).

The State party should take measures with a view to protecting the rights of these persons under the Covenant and to aligning its legislation and practice with international standards on the rights of persons with disabilities.

25. The Committee is concerned by information that it has received which indicates that indigenous groups have been the target of violence and have been forcibly evicted from their ancestral lands in a number of provinces for reasons having to do with control over natural resources (articles 26 and 27 of the Covenant).

The State party should adopt such measures as are necessary to put an end to evictions and safeguard the communal property of indigenous peoples as appropriate. In this connection, the State party should redouble its efforts to implement the programme providing for a legal cadastral survey of indigenous community property. The State party should also investigate and punish those responsible for the above-mentioned acts of violence.

26. The Committee requests that the State party's fourth periodic report and these concluding observations be published and broadly disseminated among the general public; judicial, legislative and administrative bodies; and non-governmental organizations. Printed copies should also be distributed in universities, public libraries, the library of Parliament and other appropriate places.

27. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on developments in its situation and on its compliance with the recommendations made by the Committee in paragraphs 17, 18 and 25 of these concluding observations.

28. The Committee requests that, in its next periodic report, to be submitted prior to 30 March 2014, the State party provide information on the Committee's other recommendations and on the Covenant as a whole. It also requests that appropriate disaggregated statistics on major areas of concern be provided in that report.
