

ARGENTINA

Follow-up - State Reporting (i) Action by State Party

CESCR E/1991/23

Annex VI

Letter dated 4 May 1990 from the charge d'affaires of the permanent mission of Argentina to the United Nations Office at Geneva addressed to the chairman of the Committee on Economic, Social and Cultural Rights

TO: Chairman, Committee on Economic, Social and Cultural Rights

I have the honour to address you on behalf of the Government of the Argentina Republic with reference to the concluding observations of the Committee on Economic, Social and Cultural Rights concerning the initial report of Argentina concerning the rights covered by articles 13 to 15 (E/1988/5/Add.4) submitted under articles 16 and 17 of the Covenant.

My Government wishes to inform you that it has taken note with surprise of the Committee's conclusions (document E/1990/23, para. 254). It is stated therein that the Committee "regretted that the answers provided by the representative of the State party to the questions concerning the position of the indigenous minorities had not entirely dispelled the concern which the members might have in that regard. Likewise, the information given in reply to the questions concerning the distribution of national income, the situation of the 12 million Argentinians living below the poverty level and the employment opportunities for university graduates were not felt to have been entirely adequate".

The authorities of Argentina do not question the right of the Committee to reach conclusions regarding any aspect of their report and fully recognize its independence and its powers as a body entrusted with monitoring compliance by States with the International Covenant on Economic, Social and Cultural Rights.

It is, however, surprising - and indeed contrary to the practice of all the committees set up under human rights treaties - that none of the experts expressed any dissatisfaction when the Argentine delegation concluded its replies to the questions put to it.

The dissatisfaction of the experts appears all the more odd in that the summary record of the meeting (see E/C.12/1990/SR.19, para. 38) shows that none of them asked the Chairman for the floor to express his concerns and thus give the Argentine representatives an opportunity to make the relevant clarifications.

It was only at the 20th meeting of 29 January 1990 - and in the absence of the Argentine delegation - that the experts expressed their criticisms, a situation which the Chairman of the meeting himself considered inappropriate since he "drew attention to the fact that the debate had been declared closed at the previous meeting, held on Friday, 26 January, as members of the Committee had had

no further questions or comments on the Argentine report, and that the statements which were now being made were reopening the discussion, whereas they should have taken place when the Argentine delegation had been present to respond. He considered that to be a departure from the Committee's normal procedure . . ."; and in a later statement he added "that the current situation was unprecedented. It had never happened that a delegation had been denied the opportunity to reply to comments made by members of the Committee" (see E/C.12/1990/SR.20, paras. 21 and 23).

The procedure thus adopted ignored the principle of equality of opportunity which must necessarily be observed by all the supervisory bodies bearing in mind the eminently legal character of their tasks, with the aggravating circumstance in the present case that it meant ignoring the rights of a State party to the Covenant.

We also consider it unacceptable that the inclusion in the Committee's report of the critical paragraphs in question is largely due to a presentation by a non-governmental organization made subsequently to our statement. This appears clearly from the summary records, and in particular from the statement by Mr. Texier, who declared that "when the Argentine delegation had finished replying to the questions put to it, none of the experts had indicated a wish to speak, and the Chairman had therefore declared the meeting closed. It was only then that the representative of a non-governmental organization defending the rights of indigenous persons had asserted to some of the experts that the replies given by Argentina were unsatisfactory on certain points such as the census figures for indigenous persons, ... the way they were treated, etc. If the experts had been aware of those comments before the end of the meeting, they would have been able to ask additional questions" (see E/C.12/1990/SR.20, para. 42).

The Argentine Republic has a deep respect for the non-governmental organizations and more particularly for those working in the area of human rights. It would never venture to challenge their right to participate in the life of international organizations and to make any criticisms they consider appropriate regarding the action of States. Indeed, we encourage that activity, convinced as we are that it is absolutely necessary and desirable to ensure that all views are heard.

For that reason, we consider it inadmissible that a statement by a representative of a non-governmental organization should have sufficed to make the majority of the experts change their views regarding the Argentine report and - what is even more serious - without allowing our delegation its legitimate right of reply.

In this connection, my country cannot accept the argument put forward by Mr. Alston (see E/C.12/1990/SR.20, para. 33) to the effect that "States parties had the right to be present during the submission of the concluding observations on reports, and that they were even invited to do so", giving in that regard the example of Cyprus. The fact is that 29 January, when the concluding observations were discussed, was the date on which the forty-sixth session of the Commission on Human Rights began, which obviously made it difficult for the Argentine delegation to attend the meeting of the Committee. In any case, there was nothing to prevent the Committee, had it so wished, from requesting the attendance of the Argentine delegation for the purposes of the required clarifications - a request with which we would have immediately complied, since both the Committee and the secretariat of the Centre for Human Rights were aware that the head of the Argentine delegation, and the officials of the Permanent Mission at Geneva who accompanied her,

were available if their attendance at the Committee was requested.

My Government therefore deplores the fact that the Committee should have failed to contact our Mission for that purpose, or at any time to invite the Argentine delegation to participate in the meeting at which the concluding observations were presented.

Before concluding, I wish to inform you that in due course my Government will transmit to the Committee its response to all the concerns expressed by the experts, in compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights and with a view to continuing a fluid dialogue with the body under your chairmanship.

At the same time, the authorities of my country cannot but draw attention to what they consider to be a serious breach of procedure by a body entrusted with monitoring the observance of a human rights treaty, inasmuch as that breach deprived a State party of its equality of opportunity to defend its position. This resulted in critical observations on the part of the Committee which we believe could have been avoided in large measure if we had been given an opportunity of furnishing the necessary explanations at the appropriate time and in the appropriate form.

In future, the Argentine delegation will make strenuous efforts both in the Commission on Human Rights and in the Economic and Social Council and the General Assembly of the United Nations, to ensure that all United Nations bodies concerned with the protection of human rights, observe as standard practice the principle of equality of opportunity to respond to allegations made against States, this being the only means of preventing situations in which they go undefended, as happened to Argentina in the present case.

Accept, Sir, the assurances of my highest consideration.

(Signed) Gregorio DUPONT
Minister Plenipotentiary
Chargé d' affaires a.i.

(ii) Action by Treaty Bodies, Including Reports on Missions

CESCR E/1991/23

Annex VII

Letter dated 11 December 1990 from the Chairman of the Committee on Economic, Social and Cultural Rights addressed to the Permanent Representative of Argentina to the United Nations Office at Geneva

I wish to refer on behalf of the Committee on Economic, Social and Cultural Rights to the letter addressed by you to its Chairman on 4 May 1990 relating to the concluding observations of the Committee at its fourth session concerning the initial report of Argentina on articles 13-15 of the Covenant. After discussion with the Committee on three separate occasions during its fifth session I have been requested by my colleagues to respond in the terms set out herein.

One of the issues arising from the letter concerns the methods of work of the Committee and, in particular, its practice of reflecting in its report any concluding observations that its members consider to be warranted at the conclusion of the examination of each State party's report. This procedure has been clearly laid down in the Committee's reports, and is reflected in the rules of procedure which were adopted by the Committee at its third session. As the Government will certainly appreciate, the Committee is obliged to retain its autonomy in such matters in order to ensure its effective functioning.

Another issue arising from the letter concerns the issue of indigenous minorities and the use by some members of the Committee of information provided to them by non-governmental organizations. The Committee notes that its rules of procedure for the use of all relevant sources of information to facilitate its work. The Committee attaches great importance to the need to ensure the proper application of its procedures and its members have always endeavoured to respect this principle. It is with considerable regret therefore that the Committee notes the view of the Government that, in this instance, its members failed to follow the correct procedures. In order to ensure that the Committee does indeed take fully into account all information available from the Government, the Committee warmly welcomes the information that the Government will, in due course, transmit to the Committee in response to all the concerns expressed by the experts. The Committee looks forward to receiving that information which will contribute further towards the constructive dialogue that characterizes its work.

(Signed) Valeri I. Kouznetsov
Chairman
Committee on Economic, Social and Cultural Rights