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Committee on Economic, Social and Cultural Rights

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Summary record of the 44th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 23 November 2011, at 10 a.m.

Chairperson: Mr. Pillay

Contents

Consideration of reports

- (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (*continued*)

Third periodic report of Argentina

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The meeting was called to order at 10.05 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Third periodic report of Argentina (E/C.12/ARG/3; E/C.12/ARG/Q/3 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Argentina took places at the Committee table.*
2. **Mr. Peláez** (Argentina) reaffirmed Argentina's commitment to the work of the Committee and to the promotion of human rights in general. The delegation was a very high-level one made up of experts in the areas dealt with in the Covenant. He noted that Argentina was a party to the various United Nations human rights instruments, cooperated fully with the relevant treaty bodies and special human rights procedures and also participated actively in the universal periodic review mechanism of the Human Rights Council. He was pleased to inform the Committee that on 24 October 2011 Argentina had deposited the instrument of ratification of the Optional Protocol to the Covenant, only the fifth country to do so.
3. **Ms. Perceval** (Argentina), introducing Argentina's third periodic report (E/C.12/ARG/3), said that her Government welcomed the opportunity to report to the Committee, as well as to other human rights bodies, on progress made in implementing human rights in Argentina, in particular since the serious economic, social and political crisis that had shaken the country in 2001. Her delegation looked forward to receiving the Committee's recommendations in the belief that promotion of human rights was an adaptive and constantly evolving process that required Governments to implement policies that improved the lives of their populations and contributed to the well-being of future generations.
4. Following the crisis of 2001–2002 and the presidential elections of 2003, and for the first time since the return to democracy in 1983 after a long period of State terrorism, new emphasis had been placed on making the promotion of human rights a practical reality and on promoting fairness and justice. To that end, those responsible for genocide and crimes against humanity had been brought to trial, not in a spirit of vengeance but to promote justice and due process and put an end to impunity.
5. A cultural change had occurred with the abandonment of the previous attitude of pessimism about the country's ability to address its problems, including exclusion and poverty and the minimum role that should be played by the State, leaving the markets to govern the economy. That attitude of indifference to creativity, innovation and boldness had been rejected. At the political level as well, there was a new awareness that a law-abiding State must itself comply with human rights obligations.
6. Despite the current uncertain international situation, and as a result of the abandonment of the fixed exchange-rate system in Argentina following the crisis, the economic system had been transformed, leading to a growth in State revenues. The Government had been able to increase investment and promote social rights. The federal tax office monitored the oil and mining sector to control shocks to the economy.
7. The human rights agenda informed economic policies and decisions as her Government pursued a comprehensive approach to human rights, rather than an approach focused on individual rights, in order to reduce inequality and promote social cohesion. The commitment to human rights was a permanent one shared by all political parties and not restricted to the policies of a particular Government.

8. Economic growth over the past eight years had averaged 8 per cent and was expected to reach 9 per cent in the current year, despite the international economic situation. The poverty rate had decreased from 48.5 per cent in 2003 to 7.3 per cent in 2011, while extreme poverty had declined during the same period from 21 per cent to 2.3 per cent. Thanks to economic growth and job creation, unemployment had dropped from 20.7 per cent to 7.3 per cent between 2003 and 2011. Socio-economic indicators had shown progress in income distribution; the Gini coefficient had gone from 0.475 in 2003 to 0.379 in 2011. The work participation rate had increased to 48.1 per cent. As further proof of progress in the promotion of economic, social and cultural rights, Argentina's human development index, despite the international economic crisis, was 0.797, forty-fifth in the world and second highest in Latin America, just behind Chile, and was expected to further improve to 0.775 in the next ranking.

9. In the area of education, a new National Education Act had been adopted in 2006. The Act required that 6 per cent of gross domestic product (GDP) should be allocated to education. As a result of economic growth, however, the equivalent of 6.7 per cent of GDP was currently allotted to education, as compared to only 1 per cent in 2003. Numerous progressive laws and policies had been adopted in such areas as welfare and social security, comprehensive protection of the rights of children and adolescents, elimination of violence against women, sexual and reproductive health and mental health. All ministries and departments cooperated to ensure the promotion of human rights.

10. Argentina also worked at the international level to promote human rights and dignity. Given its past history it was keenly interested in the work of the Committee against Torture and the Committee on Enforced Disappearance. It worked in the G-20 and elsewhere to promote issues relating to economic, social and cultural rights, including strengthening the role of the International Labour Organization (ILO) and enhancing the importance of labour rights in ensuring all segments of society benefited from economic growth. Recently, at the initiative of Argentina, the Southern Common Market (MERCOSUR) had requested an advisory opinion from the Inter-American Court of Human Rights on child migrants. Argentina intended to work towards the adoption by the United Nations of an instrument on the rights of adults and would promote an agreement on human rights and bioethics at the forthcoming MERCOSUR meeting in December 2011. It played a leading role in efforts within MERCOSUR to combat human trafficking and was strengthening national mechanisms to punish perpetrators.

11. According to the World Bank, Argentina's GDP per capita had been the highest in the region in 2010, at \$15,901. Her Government was continuing its efforts to better distribute wealth and escape the trap of poverty and extreme poverty. It had been important to move away from being a commodities-based economy open to speculation and controlled by special interest groups. As a result of Government policies Argentina was no longer primarily an exporter of commodities. Currently 35 per cent of its production was accounted for by the agro-industrial sector, 31 per cent by industrial products, 22 per cent by commodities and the rest by the fuel and energy sector.

12. The education system had been severely affected by the crisis but her Government was strongly committed to funding education and promoting human rights through education. Great emphasis was put on increasing school completion rates. That required not only an education policy but also a broader social policy. To that end, school subsidies were provided for children whose parents were unemployed or in the informal economy and for pregnant women, beginning in the third month of pregnancy. Transfer of those resources to families in need had resulted in a 25 per cent increase in school completion rates. She added that as a result of increased attendance the number of children who received basic vaccinations had increased significantly; the diseases against which vaccinations were provided had increased from 6 to 26.

13. With a view to promoting education and a knowledge-based society, the State party had increased the Internet penetration rate from between 7 and 11 per cent in 2003 to 66 per cent currently, as compared to regional and world rates of 39.5 per cent and 28.7 per cent respectively. That was due in part to the creation of 5 million jobs and the growing prosperity of the middle class, a process aided by State policies aimed at reducing inequality. Her Government had decided to provide 3 million computers to students to ensure that all children, without discrimination, would have Internet access during the 13 years of compulsory education.

14. Indigenous communities in the north and the south had also acquired access to the Internet. The young people in those communities suffered from discrimination, poverty and prostitution but currently had new opportunities thanks to the availability of the Internet. Her Government had adopted a law on the audio-visual and communications media, which encouraged community radio, including in indigenous communities, increasing their access to information. The media policy also covered regular and digital television and radio. In the past only the educated middle class that understood English had had access to the Internet. Currently many more segments of society enjoyed such access, enabling them to consult multiple sources of information about their country and the world.

15. In the area of health, great progress had been made with regard to infant mortality. Faced with a situation where at the beginning of the twenty-first century 7 out of 10 children suffered from malnutrition in a country renowned for its grain and beef industries, a result of the policy choices made in the past, a decision had been taken to change policy and address that situation. As a result, infant mortality had been reduced from 16.3 per 1,000 live births in 2001 to 12.5 in 2008. Such successes were not isolated examples and were indicative of the great progress being made towards the promotion and protection of human rights for the population as a whole, including indigenous people.

16. **Mr. Kedzia** (Country Rapporteur), quoting the economist Amartya Sen, said that it was precisely in an economic downturn that the real effect of human rights policy was felt. It was therefore regrettable that both the report and the written replies to the list of issues (E/C.12/ARG/Q/3/Add.1) had been submitted so late. He asked whether the provisions of the Covenant could be invoked in Argentine courts and if there were any examples of decisions grounded in the Covenant. He requested further comment on the preliminary impact of recent landmark measures relating inter alia to mental health, same-sex marriage and self-identification of Argentines of African descent. He wished to know which measures to offset the adverse consequences of the economic crisis on the enjoyment of Covenant rights had been particularly effective and which had failed and why, and what follow-up there had been to the recommendation in the Committee's previous concluding observations concerning guarantees of an adequate minimum pension (E/C.12/1/Add.38, para. 33). He asked what role had been played by the Office of the Ombudsman (Defensoría del Pueblo de la Nación Argentina) during the crisis and subsequent recovery and its current impact on the promotion and protection of Covenant rights. Lastly, he requested information on the implementation of other aspects of the concluding observations, particularly on: deeds to communal land and exploitation of resources in traditional indigenous areas, with particular reference to the Mapuche people; unemployment and informal work and the slavery-like conditions prevailing in certain industries; the lack of social security for groups such as domestic workers, migrant workers, women, youths and persons with disabilities; de facto gender inequality in the labour market; the persistent housing shortage and forced evictions; and violence against women.

Articles 1 to 5

17. **Mr. Ribeiro Leão** asked to what extent consultations with indigenous communities satisfied the provisions of the Covenant and if there were any recent cases where consultations had not taken place.

18. **Mr. Schrijver** requested the State party's assessment of the impact of the entry into force of the Covenant on the country, its legal system and citizens. He asked whether individuals were likely to directly invoke the Optional Protocol and to what extent it would complement prior obligations under the American Convention on Human Rights and other human rights instruments. He would also appreciate a fuller response on efforts to uphold indigenous rights given apparent ongoing violations, in particular relating to land seizures.

19. **Ms. Shin** urged the State party to display greater care and thoroughness in preparing future reports. She asked if there was a mechanism, other than the courts, allowing individuals to lodge complaints of human rights violations, if the population was aware of the existence of the Office of the Ombudsman and how active that body was. In that regard, she requested data on the number of complaints processed, disaggregated by group.

20. **Mr. Texier**, referring to the specific case of the indigenous population in Salinas Grandes who were battling a lithium production project on their land, asked if consultations had been carried out with the community and whether the State party had plans to grant title to communal lands traditionally occupied by the community and to take measures to safeguard its water resources.

21. **Mr. Tirado Mejía** said he regretted the delay in submitting the periodic report and the written replies to the list of issues. He enquired about the status of the Covenant in the domestic legal system, in particular given that Argentina was a federal State, and asked if new legislation superseded prior laws. Was there a time lag between the implementation of federal and provincial laws and, if so, what measures was the State party taking to remedy it? He also wished to know if education was dispensed in indigenous languages; if the State party was prepared to consider temporary positive discrimination in favour of minorities in order to further equality and ensure greater representation; and if it was taking measures to monitor sales of land to international corporations.

22. **Ms. Barahona Riera** asked whether the State party applied the Fundamental Principles of Official Statistics, as established by the United Nations Statistics Division, in its new statistical system and, if not, whether it would consider doing so. It would be useful to hear the delegation's response to the criticisms that had been directed at the State party's official statistics.

23. While the rulings of the State party's Supreme Court involving the Covenant had provided valuable case law for the entire continent, they had been based on interpretations of the provisions of the Covenant, expanding on the content of constitutional norms. She wished to know whether the provisions of the Covenant could be directly invoked by all courts in the State party and, if so, whether the delegation could give details of cases in which that had happened. It would be interesting to know whether any measures were being taken to encourage the direct invocation of the Covenant in court.

24. She would welcome information on how the State party managed to balance the need for economic development against the right to self-determination enshrined in article 1 of the Covenant. In particular, it would be useful to know how the Government gave effect to the requirement under the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169) for consultations to be held with indigenous communities before undertaking any projects that could affect them, their lands or their natural and ancestral resources.

25. She asked whether there was any specific legislation in the State party concerning gender equality and whether there was a law prohibiting discrimination on all the grounds listed in the Covenant.

26. **Mr. Sadi** asked whether there had been a lack of economic and social justice during the period of grave human rights violations in the State party in the 1970s and early 1980s. It would be interesting to know whether the provisions of the Covenant had been relevant to the process of coming to terms with the events of that era.

27. Given that the significance of the Optional Protocol was that it rendered the provisions of the Covenant justiciable, it would be useful to know what steps were being taken to encourage the judiciary to invoke the Covenant directly in the State party's courts.

28. He requested further information on human rights education in the State party, especially whether it was sufficiently extensive and if there was enough funding to make human rights education generally available.

29. He understood that indigenous rights had not been at the forefront of politics in the past and that it had not been until 2007 that the first national meeting of indigenous communities had been held, calling for an end to oppression and discrimination.

30. **Mr. Riedel** emphasized the need for the State party to provide the Committee with data on the results of its projects and programmes designed to implement the rights enshrined in the Covenant, on an annual basis. Without those data, the Committee was unable to ascertain the progress the State party had made towards the realization of economic, social and cultural rights and make suggestions as to how it could improve.

The meeting was suspended at 11.45 a.m. and resumed at 11.55 a.m.

31. **Mr. Labarta Liprandi** (Argentina) said that the National Institute of Statistics and Censuses (INDEC) applied the Fundamental Principles of Official Statistics established by the United Nations Statistics Division. Experts had praised the 2010 census, assessing it as the best the country had ever held. It had taken five years to publish all the data from the 2001 census, while statistics from the 2010 census had become available in 2011. The 2010 census had also cost significantly less per capita than the previous two censuses. In 2012, INDEC would use the 2010 census to conduct several additional surveys including one into indigenous people's access to health, education and other services and another into the situation of people of African descent. INDEC worked together with the provincial statistics offices, that of the Autonomous City of Buenos Aires and several ministries.

32. There was no new system at INDEC. Of the 100 statistical programmes implemented by the Institute, it had received severe criticism about only one – the consumer price index. There had been no methodological changes to that index; rather, as of 2007, the Institute had begun to apply the relevant methodology, which staff had sadly been failing to do up to that point. The list of products representing the typical basket of goods and services purchased by Argentine households had been updated and brought into line with international practice. The statistics provided by INDEC were reliable and readily available on the Institute's website.

33. **Ms. Carbone** (Argentina) said that, since the 1990s, there had been an increasing tendency to refer to international human rights instruments in provincial and federal courts, including the Supreme Court. The Covenant had been invoked to uphold rights in several areas, particularly health, housing, social security and employment. As domestic legislation had been progressively brought into line with the international human rights instruments ratified by her country, there had been less need to invoke international instruments directly.

34. **Mr. Dell'elce** (Argentina) said that it had taken several decades to attain recognition of indigenous people's rights in his country, but the Government now attached great importance to the multi-ethnic and intercultural nature of Argentine society. After giving a brief historical overview of the situation of the indigenous communities since the Spanish conquest, he noted that the Government had ratified ILO Convention No. 169 in 2000 and indigenous rights had been introduced into the Constitution. In 2005, the Council on Indigenous Participation had been set up to provide a mechanism for indigenous participation in public policymaking. It was financed by the State and included representatives from all the country's indigenous communities and from every province. The Council's principal demand had been for territorial demarcation, resulting in the Indigenous Property Act No. 26160. The Act provided for the declaration of a state of emergency in order to regularize the communal property of indigenous communities. It also prevented the eviction of indigenous communities from their ancestral lands and established a special assistance fund for the demarcation of the lands of those communities. While the implementation of the Act had been challenging, that was in part owing to the fact that the Act itself had raised indigenous communities' awareness of their rights. Some 1,287 communities were currently demanding demarcation of their land and regularization of titles. To date, about 40 per cent of indigenous communities' lands had been demarcated and some 5 million hectares were now held collectively. In the province of Jujuy alone, 35 per cent of the land was held collectively and, as such, could not be transferred and was inalienable, imprescriptible and not subject to seizure. Through a process of intercultural dialogue, indigenous rights had been introduced into several pieces of federal legislation, including those concerning education and audio-visual services. In 2010, the President had set up a commission composed of some 400 indigenous representatives to prepare legislation on the property of indigenous communities. The Government was determined to give effect to indigenous communities' right to prior consultation. If that right was not respected at the provincial level, the federal Government provided a comprehensive legal service to ensure prior consultations were conducted.

35. **Mr. Roma** (Argentina) said that the main tasks of the National Institute against Discrimination, Xenophobia and Racism (INADI) were to disseminate as widely as possible the principles and provisions of legislation on eradicating discriminatory, xenophobic and racist practices, and the results and recommendations of studies carried out in the area; encourage and help deliver educational and awareness-raising campaigns; continue efforts to combat discriminatory, xenophobic and racist acts; compile, update and disseminate information on international anti-discrimination law; receive complaints and keep a register on discriminatory, xenophobic and racist acts; and provide a free comprehensive advice and guidance service to individuals or groups who had been victims of such acts.

36. **Ms. Perceval** (Argentina) said that INADI provided a valuable service and made a real difference in efforts to prevent all forms of discrimination, xenophobia and racism. Its establishment was certainly more than just a token measure.

37. **Mr. Roma** (Argentina) said that INADI had established links with relevant Government bodies, with which it worked closely to help formulate public policies and to give advice and support in judicial actions and the processing of complaints. It had a 24-hour dedicated hotline to receive complaints and offer guidance and support. Most complaints concerned gender violence and discrimination, and discrimination against migrants, persons with disabilities and young people.

38. **Ms. Perceval** (Argentina) said that there were no discrepancies in the application of the Covenant at the national, regional and local levels in Argentina because the entire legal framework had to abide by the provisions of the national Constitution. Some countries had a longer tradition of human rights culture than Argentina, with more jurisprudence, but it

was committed to moving forward on the issue. Due to its long history of injustice, repression and federalism, Argentina had inherited a legacy of fear, terror and shame, which all of its people had been forced to endure, but it was well on the way to recovering a democratic system.

39. **Mr. Ciaravino** (Argentina), referring to the impact of the economic crisis on the most vulnerable groups, said that measures had been adopted to protect them. No cuts had been made in benefits, and wage levels had been increased to strengthen demand and boost the internal market as a means to sustain production and prevent the economic crisis from deepening further. The Ministry of Labour, Employment and Social Security had initiated special programmes to help indigenous communities, including skills training and educational schemes. Between 2003 and 2011, the number of people benefiting from those programmes had risen from 1,500 to 3,500. The Ministry had also signed agreements with individual communities to provide specific vocational training and help them to develop and improve the ancestral skills they already possessed, for example in boat building. With regard to domestic workers, most were women and not officially registered as workers. The Ministry had tried to tackle the problem by introducing a special system of social benefits for domestic workers and adjusting tax rates favourably to encourage registration. Legislation had also been adopted to require employers to register domestic workers and grant them the minimum benefits enjoyed by registered workers in relation to working hours, holidays, sick leave, sickness benefit and maternity leave. The Ministry was trying to put pressure on employers to ensure that they met those obligations. Currently 40 to 45 per cent of domestic workers were registered, i.e. approximately 1 million workers.

40. Concerning gender discrimination in employment, he said that the general growth in employment in Argentina and specific policies targeted at women had resulted in an increase in the number of women in the labour market and the number of quality jobs open to women. In the 1990s, the female unemployment rate had increased to 70 per cent, but it had since fallen to 21 per cent. Gender was treated as a cross-cutting issue by all ministries and departments and at all government levels and areas. His Ministry was a role model because over 60 per cent of staff were women and over 70 per cent of senior posts were held by women. The pay gap had been brought down from 18 per cent to 10 per cent over the past six years thanks to the efforts of the labour inspectorate.

41. **Ms. Shin** requested more information on the role and modus operandi of the Office of the Ombudsman and asked whether it dealt with complaints. If so, how many complaints had been received from men, women, migrant workers or indigenous people?

42. **Ms. Barahona Riera** asked what steps were being taken to ensure that indigenous peoples enjoyed their right to prior consultation. Was such consultation obligatory before work began on development projects? She expressed concern about the quality and transparency of official statistics prepared by INDEC, and the extent to which international standards were applied, even though the State party claimed that the Fundamental Principles laid down by the United Nations in that respect were observed.

43. **Mr. Tirado Mejía** said he was dissatisfied with the response to his question concerning compliance with the provisions of the Covenant in the State party. It was not a problem of politics or the legal framework as such, but more an issue of practicality. In some regions of Argentina there appeared to be legislation or practices which were in contradiction with national policy and hence made it difficult for the country to implement the provisions of the Covenant, particularly with respect to land ownership and land rights for indigenous peoples. He asked what steps the State party intended to take to ensure that the provisions of the Covenant were complied with in all regions.

44. **Mr. Ribeiro Leão** requested clarification on reports that in certain land disputes which legal and political authorities had been unable to settle the armed police had clashed

with indigenous people protesting against infringements of their land rights. If those reports were accurate, what steps was the State party taking to remedy the situation?

45. **Mr. Kedzia** asked whether the results of the 2010 census would be used in formulating State policy. He wished to know what role the Covenant played in the judicial system. Was his understanding correct that the State party considered that, as national legislation covered all the areas related to economic, social and cultural rights, there was no need for the courts to invoke the Covenant? If that was the case, what was meant in practical legal terms by the statement in the Constitution that the Covenant prevailed over national legislation?

Articles 6 to 9

46. **Mr. Texier** requested clarification on the current figures for overall unemployment and female unemployment, which he understood to be 10 per cent and 21 per cent respectively. He asked whether the informal sector was continuing to contract and whether there was a systematic policy to reduce the amount of employment in that sector, to the benefit of the formal sector. Did the calculation for the unemployment rate take into account all workers, including those in the informal sector? He wished to know whether the current minimum wage was sufficient to assure workers and their families of a decent standard of living and whether domestic workers earned less than the minimum wage. He wondered whether Argentina intended to ratify the ILO Convention concerning decent work for domestic workers, 2011 (No. 189). Lastly, he noted that there had been some infringements of trade union rights regarding the freedom of association and the right to strike, and decisions handed down by the Supreme Court had called for those rights to be extended to all workers. What had been the Government's reaction to those decisions? Would the State party consider amending legislation and practices on trade union rights so that they would apply to all workers, rather than be restricted to particular cases?

The meeting rose at 1 p.m.