



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2490th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 22 November 2016, at 3 p.m.

Chair: Ms. Crickley

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

Combined twenty-first to twenty-third periodic reports of Argentina (CERD/C/ARG/21-23; CERD/C/ARG/Q/21-23)

1. *At the invitation of the Chair, the delegation of Argentina took places at the Committee table.*
2. **Mr. Avruj** (Argentina), introducing his country's combined twenty-first to twenty-third periodic reports (CERD/C/ARG/21-23), said that his Government understood the need to implement policies and programmes for the protection and promotion of human rights, aimed especially at those whose rights had been neglected and who had been the victims of exclusion, racism and discrimination.
3. The Government of Argentina had made several changes to its institutional framework, including renaming the Secretariat for Human Rights of the Ministry of Justice and Human Rights, which was now known as the Secretariat for Human Rights and Cultural Pluralism. In 2016, three new national directorates had been created within that Secretariat in the respective areas of pluralism and multiculturalism, sexual diversity, and civic culture in human rights. In addition, the National Institute of Indigenous Affairs (INAI) had been transferred from the Ministry of Social Development to the Secretariat, on the understanding that indigenous matters should be addressed under a comprehensive approach that affirmed human rights and the status of indigenous communities as full subjects of law. Coordination between national and provincial authorities aimed to secure the rights of those communities and ensure that direct, specific actions were undertaken for their benefit. The State had recently committed itself to facilitating the participation of indigenous peoples through a decree establishing the Consultative and Participatory Council of the Indigenous Peoples of Argentina as a broad forum to inform policies on indigenous affairs. A policy agenda had been developed, focusing on intercultural health and education, community ownership of land, infrastructure, and visibility.
4. Between 2009 and 2015, a number of significant developments had occurred in the legislative sphere, including the adoption of a law on comprehensive protection as a means of preventing, punishing and eradicating violence against women, the passage of the Marriage Equality Act, and the adoption of legislation on the right to gender identity and on special regimes for agricultural and domestic workers. Further laws had been enacted establishing 8 November as the National Day of Afro-Argentine Peoples and Afro Culture and extending the emergency measures relating to the possession and ownership of land by indigenous communities. A new Civil and Commercial Code had entered into force in August 2015, introducing a series of amendments in the area of human rights protection and social inclusion, while a body of lawyers had been established to assist the victims of gender violence. Also in 2015, Congress had approved the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, which permitted access to the traditional knowledge of indigenous communities.
5. As a long-standing party to several human rights treaties, Argentina already had a legal framework on racial discrimination in place and was currently in the process of ratifying the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance and the Inter-American Convention against All Forms of Discrimination and Intolerance. It also participated in the Meeting of Authorities on the Rights of Afro-Descendants (RAFRO), established in the framework of the Southern Common Market (MERCOSUR).

6. In the area of public policy, the National Institute to Combat Discrimination, Xenophobia and Racism (INADI) of the Ministry of Justice and Human Rights was taking steps to formulate, promote and implement national policies for a more diverse and egalitarian society. The Institute's 2016 management plan set out a number of thematic activities, such as addressing complaints and providing advice and guidance to members of the public, as well as drawing on its long experience in the production of audiovisual and written materials for the purpose of education and awareness-raising in respect of public policies.

7. The Secretariat for Human Rights and Cultural Pluralism, working in conjunction with the Federal Human Rights Council, had embarked on the process of formulating a national human rights action plan, as recommended by the Human Rights Council following the first universal periodic review of Argentina in 2008. The plan would address inclusion; the fight against discrimination and equality; security, non-violence and access to justice; universal access to rights; memory, truth, justice and reparations; and social actors' commitment to human rights. The Federal Human Rights Council would oversee the design of the plan, focusing on dialogue with national and provincial government bodies, as well as with various domestic and international social actors. It would also coordinate the system for reporting progress and best practices in human rights by provincial authorities, which would be responsible for compiling information and monitoring indicators on the rights situation in each province, with a view to preparing assessments and joint proposals.

8. In the area of justice, in December 2015 the Ministry of Justice and Human Rights had launched the "Justicia 2020" programme as a forum for institutional and civic dialogue aimed at improving the accessibility, transparency and independence of the justice system and facilitating the prompt resolution of conflicts. One of the programme's priorities was to improve access for vulnerable communities and in neglected areas, creating new centres for that purpose throughout the country. It also proposed a shift in emphasis with regard to indigenous peoples, by building an active policy that included them as subjects of law, taking into account their customs and the community ownership of land, in accordance with rights established under the Constitution and other national and international instruments.

9. To combat prejudice and racial stigmatization, the Secretariat for Human Rights and Cultural Pluralism promoted the rights of diverse groups and different identities throughout Argentina. For that purpose, it was carrying out a project to enhance the visibility and promote the rights of the Afro-descendent community, and had submitted a draft presidential decree to the Ministry of Foreign Affairs and Worship to ensure that the country participated in the International Decade for People of African Descent.

10. The Government had placed special emphasis on a federal, interdisciplinary approach to guarantee the protection of women's rights and gender equality, and was working to empower women facing situations of violence and those who suffered from intersectional discrimination. In 2016, the President had unveiled the National Plan of Action for the Provision of Assistance and the Prevention and Elimination of Violence Against Women 2017-2019, in which the State reaffirmed its commitment to the right of everyone to live a life free from violence. The Plan provided for measures at the federal level to prevent and eradicate violence against women and to guarantee equal access to good quality care for all Argentine women.

11. The State had also undertaken to provide basic services to indigenous communities and other minorities. In that regard, the Secretariat for Housing and Habitat had drawn up an urban development plan to provide rural settlements with fewer than 10,000 inhabitants — where most indigenous communities lived — with water, sanitation and energy infrastructure, along with housing, schools and health facilities. Other national initiatives of relevance to indigenous peoples included a programme to promote intercultural education

and improve school attendance rates, led by INAI, and a national health programme under the auspices of the Ministry of Health.

12. In September 2016, the Government had established a National Cabinet for its Syria Programme, developed in response to the armed conflict and humanitarian crisis in that country. The Secretariat for Human Rights and Cultural Pluralism was involved in the work of that cabinet, with the aim of ensuring that all participants in the programme were committed to guaranteeing full access to basic services and to facilitating the integration of Syrians arriving in the country.

13. The Government of Argentina recognized that it faced many arduous challenges, but was convinced that, with the help of the Committee's recommendations, it would be successful in overcoming them.

14. **Mr. Murillo Martínez** (Country Rapporteur), recalling that the demographic composition of Argentina included substantial numbers of indigenous peoples, persons of African descent and migrants from neighbouring countries, said that despite its great diversity, Argentina was not yet fully integrated into the age of multiculturalism. In that regard, he wished to learn whether the State party had any plans to follow the example of Costa Rica by amending its Constitution to recognize ethnic, linguistic and other forms of diversity. He would also be interested to know more about the public policies affecting the three aforementioned population groups, as well as the Jewish community, which seemed to have been the target of racial discrimination.

15. Although the State party had undertaken positive efforts in many areas, including the development of a significant institutional framework to tackle discrimination, racism and xenophobia, and was to be commended for its vibrant civil society and its openness to international scrutiny, enormous challenges remained. In his view, the history of Argentina did not differ greatly from that of other South American countries, in that a situation of structural and systemic racism had emerged that created barriers and imposed poverty and lower life expectancy on disadvantaged groups. It was evident that the region had not been able to meet all of the Millennium Development Goals, which in turn raised a question over its prospects of meeting the Sustainable Development Goals.

16. Given that ethnicity was an important factor in statistically significant discrepancies, for example in relation to poverty, he wished to know what statistics the State party could provide to illustrate its efforts towards achieving the Sustainable Development Goals among Afro-descendent and indigenous communities, and whether it had adopted differential mechanisms that would help counteract the historical inequalities that placed those communities at a disadvantage.

17. The delegation should also describe the measures taken to guarantee the right of indigenous peoples to access and own land and indicate how many hectares of land had been allocated to them to date. It would be useful to receive more information on the legal framework for the rights of indigenous peoples and on the relationship between the customary laws of those peoples, if recognized, and ordinary law in Argentina.

18. The Committee had received information pointing to the continued high prevalence of child malnutrition in provinces inhabited by indigenous peoples and confirming that several indigenous children had died of severe malnutrition in the recent past. Furthermore, it appeared that indigenous peoples living in certain provinces still lacked access to water. He asked what measures the State party had taken to address those issues, bearing in mind its commitment to end hunger and achieve food security and improved nutrition under Sustainable Development Goal 2.

19. Bearing in mind its commitments under Sustainable Development Goal 13 on combating climate change, he asked what steps the State party was taking to protect its tropical rainforests from the threat of deforestation.

20. Although he was pleased to learn that the persistent efforts of the Lhaka Honhat Association of Indigenous Communities over many years had resulted in the adoption of a decree transferring the ownership of 400,000 hectares of ancestral lands to the communities in question, it was his understanding that the process of demarcating and delimiting all the indigenous lands had still not been completed. He asked what stage had been reached in that process.

21. Noting that Argentina had ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), he said that he would like to hear more about the prior consultation procedures that it had introduced to ensure that the views of indigenous peoples were taken into account when legislative or administrative measures likely to affect them directly were being considered. He asked whether the State party had adopted legally binding legislation on holding prior consultations, how many such consultations had been held to date, what obstacles, if any, had been encountered and how it ensured that the indigenous institutions involved in that process were truly representative.

22. While he welcomed the adoption of the decree recognizing the International Decade for People of African Descent and the inclusion of questions intended to increase the visibility of persons of African descent in the national population census, it would be helpful to receive more general information on the evolution of that population group in the different regions of the country over the years, including the reasons for its lack of visibility. The delegation should outline the measures taken to tackle the racial discrimination and stigmatization to which persons of African descent were often subjected, which had only worsened as a result of the recent influx of migrants of African origin into Argentina. He asked how the situation of such persons was depicted in the national media. It would also be useful to receive statistical information on the number of such persons enrolled in higher education and on their participation in the labour market, particularly amid reports that a disproportionate number of persons of African descent held unskilled and low-paid jobs.

23. The Committee had learned of a number of cases in which Afro-descendent leaders had been attacked or killed for seeking to promote and defend the rights of their communities. It seemed that the Senegalese community in particular was subjected to systematic abuse and, on occasion, suffered reprisals. He asked how the State party guaranteed persons of African descent access to justice on an equal footing with the majority population.

24. The Committee was concerned by reports that the State party intended to adopt a decree which would effectively limit the application of Act No. 25871 (the Migration Act) and to establish a holding centre for migrants. Furthermore, the Committee had learned from alternative sources that there were serious irregularities in the application of the Migration Act, such as the use of discriminatory criteria for the regularization of immigration status and the adoption of a restrictive interpretation of the Act and of regulations denying migrants equal rights. He invited the delegation to comment on the veracity of those reports.

The meeting was suspended at 4.10 p.m. and resumed at 4.20 p.m.

25. **Mr. Calí Tzay** said that the Committee regretted the late submission of the State party's periodic report and trusted that it would endeavour to submit its future periodic reports on time. The Committee had received reports that, despite the adoption of Act No. 26160, which had served to halt the eviction of indigenous peoples, several indigenous communities, including the Quilmes people of Tucumán, had been violently evicted from

their ancestral lands in violation of the standards for the protection of the rights of indigenous peoples set out in ILO Convention No. 169. The delegation should comment on the veracity of those reports and outline the measures adopted to prevent such evictions from taking place in the future. He asked whether the State party planned to introduce a culturally sensitive special procedure for the land titling of indigenous territories and to arrange for the release of the imprisoned social leader Milagro Amalia Ángela Sala so that she could defend herself against the charges brought against her.

26. The Committee was also concerned by the negative impact of fracking on the water supply of indigenous peoples. In certain provinces of the country, the water table had become so polluted that the Government had to transport water to indigenous communities, which, more often than not, was insufficient for them to meet their basic needs. He asked how the State party intended to remedy that situation.

27. The complex and contradictory nature of the domestic legal system often had a detrimental effect on indigenous peoples insofar as the laws and policies adopted for their benefit at the federal level were not consistently applied at the provincial and local levels. He asked whether the State party had given any thought to how that contradiction could be resolved. He also wished to know whether any progress had been made in bringing the perpetrators of the murder of the indigenous leader Javier Chocobar to justice. It was his impression that, while justice was meted out immediately to indigenous persons accused of having committed a crime, the opposite was true in the case of indigenous persons seeking to vindicate their rights.

28. **Mr. Yeung Sik Yuen**, noting that, according to paragraph 70 of the State party's report, the provision of assistance for racist activities, including the funding of such activities, had not been criminalized under Act No. 23592, asked whether any of the bills put forward to make the necessary amendments to that Act had been passed by Congress in the time that had elapsed since the submission of the report.

29. The delegation should provide examples of the situations in which the National Institute to Combat Discrimination, Xenophobia and Racism had actually provided free legal services and/or initiated judicial or administrative proceedings on behalf of a complainant, given that it did not do so as a matter of policy. It would also be helpful to hear more about the strategically selected cases of discrimination in which the National Institute to Combat Discrimination, Xenophobia and Racism and the Chief Public Defender would provide assistance to victims through the pilot litigation project mentioned in paragraph 100 of the periodic report. He asked whether the State party had made efforts to raise public awareness of that project. The delegation should also clarify whether indigenous persons themselves could lodge complaints of discrimination by post or whether the National Institute to Combat Discrimination, Xenophobia and Racism was required to do so on their behalf, and to whom those complaints were to be addressed.

30. Noting that, to date, no penalties had been imposed on owners, organizers or persons responsible for public premises who failed to comply with the obligation to post, at the entrance of the premises, the text of the constitutional rule establishing the principle of equality, he asked whether the non-imposition of penalties was attributable to unsuccessful attempts to prosecute and punish that offence or to the total absence of investigation, prosecution and conviction of the perpetrators.

31. **Mr. Avtonomov** said that he wished to know whether mechanisms for cooperation between provincial and federal authorities existed with regard to land management; it was possible that a lack of cooperation was hindering the granting of land to indigenous communities. He asked whether there were plans to return territory to indigenous communities that had moved away from their ancestral lands, how teachers in indigenous

schools were trained in providing bilingual education and whether the State party would participate in the International Decade for People of African Descent.

32. **Mr. Lindgren Alves** said that the positive steps taken by the State party to eradicate racial discrimination included the introduction of the International Day of Afro-Latin American, Afro-Caribbean and Diaspora Women and the implementation of a plan of action relating to the Durban Conference. Also commendable was the increased visibility of persons of African descent in public life; the mixing of cultures was the best route to eradicating racial segregation. While he supported Mr. Murillo Martínez's question regarding possible amendments to the State party's Constitution, he pointed out that it was not for the Committee to make recommendations in that regard.

33. **The Chair** said that the Committee would be interested in the results achieved by the mechanisms implemented under the Durban Declaration and Programme of Action.

34. **Mr. Kut**, noting that the State party had failed to submit a follow-up report on the implementation of the recommendations made in the Committee's concluding observations in 2010 (CERD/C/ARG/CO/19-20), said that he would welcome an explanation of that shortcoming, as well as information on the three recommendations selected for follow-up in 2010.

35. **Mr. Kemal** said that much work remained to be done to correct the historical injustices suffered by ethnic minorities in Argentina. He would welcome clarification of whether international instruments became part of the Constitution upon ratification and asked why the budgets of the National Institute to Combat Discrimination, Xenophobia and Racism and the National Institute of Indigenous Affairs were insufficient. How did the State party intend to rectify that situation? Public education programmes were required to improve the implementation of existing legislation, and the State party should address all of the concluding observations that had been adopted by the Committee in 2010, as well as the matters raised during the current session.

36. **Ms. Hohoueto** asked what follow-up had been given to the recommendation made at the meeting of High-Level Human Rights Authorities of MERCOSUR that policies to tackle racism, racial discrimination, xenophobia and related intolerance should be implemented; whether perpetrators of discrimination against persons of African descent had been prosecuted and whether victims had received compensation. She wished to know how the complaints listed in the table in paragraph 142 of the periodic report had been dealt with, how the local justice component of the "Justicia 2020" programme would be implemented given the shortcomings in legal aid at that level, and why indigenous peoples and communities of persons of African descent lived mainly in the provinces, rather than the major cities.

37. **Mr. Marugán** asked whether the complaints of discrimination made to the police and summarized in an annex to the periodic report fell within the scope of the Convention, what type of complaints were involved and how they had been dealt with. He wished to know whether any perpetrators of racial discrimination had been sentenced since 2013 and whether the low number of prosecutions suggested that racial discrimination was underreported in the State party. He asked what action had been taken to facilitate the reporting of racial discrimination by non-governmental organizations (NGOs) and victims outside the province of Buenos Aires who allegedly encountered difficulties in that regard, for example by means of a telephone helpline similar to the one set up for victims of violence against women. He would welcome information on whether there were police officers, prosecutors and judges who specialized in cases of racial discrimination and whether it was planned to introduce legislation providing for compensation for victims.

38. He asked what follow-up had been given to the recommendations of the Office of the Ombudsman that dealt with audiovisual communication. He wished to know how the

progress made in terms of access to education, health and housing for ethnic minorities had been evaluated and what conclusions had been drawn. Lastly, he would welcome data on the financial and human resources allocated for the implementation of policies to combat racial discrimination.

39. **The Chair** said that she would welcome information on the targets and timelines of the programmes intended to prevent racial discrimination and on the specific assistance provided for women vulnerable to racial discrimination by the helpline for victims of violence against women.

40. **Ms. McDougall** said that the numerous items of legislation and policies described in the delegation's opening statement had sounded very progressive but were essentially measures on paper. The Committee wished to hear what measures were actually touching the lives of the people it was interested in.

41. She would appreciate some information on progress in providing legal protection to the migrant population. It would seem that those arriving in Argentina from outside MERCOSUR were people of colour from Africa and the Caribbean. They were encountering great difficulty in regularizing their status, finding decent work and extricating themselves from the unregulated, unsupervised informal economy. She noted that no judicial action had been taken on cases of murder of such migrants. She would also like to know if it was true that migrants were excluded from non-contributory social benefits and social services and that marriages between Argentine nationals and migrants from outside the region were not recognized on the grounds that they were "fraudulent", an attitude that amounted to denial of the non-Argentine partner's rights and status under the law.

42. She asked what percentage of the prison population was made up of migrants from outside the region and what percentage comprised members of indigenous groups and persons of African descent.

43. **Mr. Khalaf**, referring to paragraph 81 of the State party's core document (HRI/CORE/ARG/2014), said that, in light of article 31 of the Constitution, whereby the provincial authorities were bound by international treaties entered into by the State party "notwithstanding any provision to the contrary which the provincial laws or constitutions may contain", he wondered what the legal status of the Convention would be if a province deemed it not applicable in its territory. Referring to paragraphs 84 and 85 of the core document, he noted that the Secretariat for Human Rights was required to assist in bringing domestic law into line with international human rights law; he would like to know whether, in so doing, it had identified any discrepancies in the two levels of legislation, particularly in respect of the Convention, and whether it had produced any reports on that process. Referring to paragraph 83, he noted that the Supreme Court was the court of appeal for provincial court judgments, and he wondered whether there were any data on cases considered or judgments handed down by the Supreme Court in which the Convention had been invoked.

44. He welcomed the proposals for the protection of indigenous peoples contained in the National Plan to Combat Discrimination. There did not appear to have been any evaluation of the implementation of those proposals, however, and he wondered whether there were any figures showing progress made and the impact of those provisions on indigenous peoples.

45. **Ms. Shepherd**, noting that the State party's report said that NGOs were regularly consulted by the Government, asked whether they had been involved in preparing the report currently under consideration.

46. Despite the action taken to improve the visibility and conditions of persons of African descent and indigenous peoples, as described in the report and the delegation's opening statement, discussions with NGOs had revealed that those strategies had fallen short of their goals. Those groups considered that they had benefited very little from socioeconomic progress, that they had not moved out of the areas of the economy they had occupied since colonial times, and that racism and lack of access to quality education had become institutionalized. What was the State party doing to ensure that policies resulted in true progress? Where should the Committee look to find statistical data on improvements for people of African descent in such areas as literacy rates, access to secondary and tertiary education, and participation in non-traditional occupations and political life?

47. Despite the efforts reported by the State party to promote diversity and interculturalism, and despite the Committee's own recommendation in its previous concluding observations (CERD/C/ARG/CO/19-20, para. 19), NGOs considered that Argentina still fell short of being a multicultural State. For the first time, the 2010 census had invited self-identification by members of ethnic groups and had yielded data on the ethnic composition of Argentine society. However, if the prevailing environment did not encourage people to take pride in their origin, then the census might not reflect those groups' true share of the population: why, for example, should the indigenous population account for a mere 2.4 per cent of the total population? Accordingly, she wondered whether the education system encouraged an awareness of marginalized groups' contribution to the country's development and of the links between their current situation and past oppression by the State. While she welcomed the change of name of the 12 October national holiday to "Respect for Cultural Diversity Day", she wondered whether the new name properly encompassed indigenous peoples' experience of conquest, colonization and indeed genocide.

48. **Mr. Murillo Martínez** said that he would have welcomed input to the discussion from the national human rights institution, namely the Office of the Ombudsman, and he wondered why it was not represented. Noting that the delegation included no representatives of indigenous peoples, he asked how ethnic groups in general were represented in State decision-making bodies. He asked whether the State party had considered ratifying the relevant inter-American instruments on racism and xenophobia.

49. The reports from NGOs had raised many questions, which he would like the delegation to reflect on. What policies were in place, for example, to effectively guarantee the regularization of migrants' status, or to ensure that they could receive specialist legal advice and linguistic support in proceedings? Why were those classed as self-employed not eligible for regularization? That was an important question as migrants accounted for a large number of such workers and were highly vulnerable to discrimination. What steps was the State party taking to amend or repeal legal provisions that violated human rights, such as the provision permitting anyone deemed to be a "fake tourist" to be denied entry at the border?

50. **Mr. Calí Tzay** said that he would like to know what budget the State party had allocated to the implementation of its programmes and policies on persons of African descent and indigenous peoples. He asked the delegation for information on the status of Gypsies in Argentina and whether Gypsies faced situations of discrimination of any kind. Noting the establishment of the Audiovisual Media Ombudsman, a body to regulate media conduct and the freedom of speech, he asked what policies the Ombudsman was implementing to help eliminate racial discrimination in Argentina. Lastly, according to information received, indigenous peoples had not been consulted on the establishment of the Indigenous Peoples' Advisory Committee, which seemed paradoxical. He would welcome the delegation's comments.

51. **Mr. Avtonomov** asked whether there were any legal mechanisms for consultation with indigenous communities at the various administrative levels of the State. If not, were there any plans to introduce legislation in that regard? He welcomed the fact that the census had yielded information on persons of African descent for the first time. It would be helpful to identify all the different communities that had arrived at various points in the country's history and that now had a variety of needs; such information was important if their problems were to be solved.

52. **Mr. Marugán** asked what residence conditions — for example, number of years spent in the country — migrants needed to fulfil in order to be able to access social benefits.

53. **The Chair** said that the question of differing levels of legislative authority was an important one: had a province or other division ever been known to refuse to introduce legislation on racial discrimination? It was important to be quite clear about the term that Gypsies or Roma in Argentina themselves used in self-identification: she would appreciate input from the delegation. How did the State party intend to ensure that the public at large was aware of the current proceedings before the Committee, and of the Government's consultations with civil society? The census had marked a positive step forward, but there were issues surrounding self-identification, including the nature of the question asked and the extent to which people felt able to identify themselves as members of a particular group: she would appreciate knowing how that question had been prepared and how enumerators were selected and trained. Lastly, she would like the delegation to comment on how the State party addressed intersectional discrimination, particularly the discrimination experienced by migrant, indigenous and Afro-descendent women, and the intersection of racial discrimination and discrimination on the basis of gender or sexual identity.

The meeting rose at 5.55 p.m.