



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination Sixty-fifth session

### Summary record of the 1656th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 10 August 2004, at 3 p.m.

*Chairperson:* Mr. Yutzis

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article 9 of the Convention (*continued*)

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*The meeting was called to order at 3 p.m.*

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

*Sixteenth to eighteenth periodic reports of Argentina (CERD/C/476/Add.2)*

1. *At the invitation of the Chairperson, the members of the delegation of Argentina took places at the Committee table.*
2. **Mr. Chiaradia** (Argentina) affirmed Argentina's desire to respect its international commitments in the field of human rights. Defending human rights and strengthening the international human rights protection system occupied centre stage in the Argentine Government's programme. A number of measures had recently been taken to ensure respect for human rights and follow-up to the Durban Declaration and Programme of Action, despite the serious economic and social crisis gripping the country since 2000. Argentina was convinced that dialogue and cooperation were essential to making progress in the combat against discrimination.
3. **Mr. Oteiza** (Argentina) said that important steps had been taken to implement the Convention, despite the profound economic and social crisis in which the country was mired. Since 1983, the year when democracy had been reinstated, Argentina had made significant progress in the area of respect for human rights, and several of the most important human rights treaties had been taken into consideration in the 1994 constitutional reform and had been given constitutional status.
4. The country was experiencing an unprecedented crisis, which had worsened significantly since the end of 2001. It had had a dramatic impact on large sectors of the population, in particular the most vulnerable groups. A worrying number of individuals had become marginalized and excluded, some even living in extreme poverty. That had given rise to new forms of massive discrimination which the authorities were endeavouring to combat.
5. The economic crisis had arisen from the overvaluation of the peso in relation to the United States dollar, which had caused exports to decline as businesses lost their market edge. The ensuing dramatic slowdown in production had made the debt burden impossible to meet. In 2003, 57 per cent of the Argentine urban population were living under the poverty line and 27.5 per cent in extreme poverty, compared to, respectively, 41 per cent and 11 per cent during the 1990s. In response to the worsening social crisis, the Government had launched in 2002 a wide-reaching emergency food programme to fund community and school canteens.
6. In the health field, the authorities had launched the "Remedy" programme (para. 321), under which basic medicine was distributed free of charge, representing the largest primary care programme of that kind in the world.
7. With regard to education, 350,000 subsidies had been granted to low-income families to help adolescents pursue their studies. The Government had made numerous efforts to supplement education programmes with programmes offering a combination of social aid and unemployment assistance. The current priority was job creation through the implementation of a vast housing construction project, which had three objectives: ensure a source of revenue for the unemployed; help to combat the housing crisis; and orient individuals who had been receiving state assistance towards actual employment.
8. In respect of legislation, in August 2003, Congress had adopted a law abrogating the laws relating to impunity for authors of crimes committed during the military dictatorship.

The current Government was firmly committed to putting an end to impunity for crimes against humanity.

9. A presidential decree promulgated in July 2003 prohibited the executive from appropriating powers that had been granted to the judiciary, a legislative advance that had had a positive impact on the combat against discrimination. The Migration Act, which dated from 1980 and violated various fundamental rights, had been revoked and replaced by a new law that protected the human rights of all foreign nationals and migrant workers, and guaranteed the same rights for all. The law had been inspired largely by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which the Argentine authorities planned to ratify. That law was undoubtedly the most advanced in Latin America and served as a frame of reference for the enlarged MERCOSUR, in which Argentina and Brazil were the two largest migrant-hosting countries. It guaranteed access to justice to all immigrants regardless of whether they had legal documentation, and to all foreigners.

10. In cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Development Programme (UNDP), the Argentine Government had prepared a workplan for the adoption of a national antidiscrimination plan, which would serve as a pilot project at the regional level.

11. With regard to native populations, the National Congress had approved in June 2002 a law launching a campaign to disseminate the rights of indigenous peoples. Acknowledging the country's significant historic debt to those peoples, the authorities had decided to collect all the information necessary to draw up effective policies to defend indigenous rights. Much remained to be done, but significant progress had already been made in compiling the relevant data.

12. **Mr. Thornberry** (Rapporteur for Argentina) welcomed the report but pointed out that it had not been drawn up in compliance with the general guidelines regarding the form and contents of reports to be submitted by State Parties (CERD/C/70/Rev.5). In the first part (page 8), which contained the provisional estimates based on the 2001 census and an update of the core document (HRI/CORE/1/Add.74), information on the ethnic composition of the population had not been provided. The delegation might therefore wish to provide the Committee with disaggregated data and to indicate the names of the various indigenous communities. According to some non-governmental organizations (NGOs), the indigenous population numbered 900,000, but according to others, it numbered 2 million. Could the delegation comment on those differences and provide as well recent data on the number of refugees and asylum seekers? In addition, as there had been no mention of Afro-Argentines in the report, it would be useful to know how many members of that minority group had been living in Argentina at the time of the census.

13. While welcoming the fact that international treaties had constitutional status (para. 34), he pointed out that such treaties did not have primacy over the articles of the Constitution in cases of incompatibility. In that regard, it would be helpful to know whether the constitutional provision encouraging immigration from Europe (para. 123) was still in force. Why had it not been abrogated under the 1994 reform? Could the delegation provide additional examples of Supreme Court decisions to complement those mentioned in paragraph 37 of the report? Since Argentina was a federal state, did that mean that human rights standards were applied uniformly throughout the country?

14. In respect of article 2 of the Convention, he welcomed with satisfaction the detailed information in paragraph 42 concerning the National Institute to Combat Discrimination, Xenophobia and Racism (INADI), in particular the fact that it had become autonomous (para. 89) and was cooperating actively with NGOs. It was nevertheless a matter of concern that significant cuts had been made to the INADI budget (para. 74): did those cuts threaten

the institute's ability to pursue its work? More information on the analysis of complaints submitted during the period 2000 to 2001 (para. 96) would be welcome. He would also appreciate knowing the amount of resources allocated to the National Plan against Discrimination (chap. XI) nationally and locally, and whether the plan was under way.

15. Article 3 of the Convention should not be understood as applying solely to apartheid. Indeed, in its general recommendation XXIX, the Committee had explained that a situation of partial segregation might arise not from government initiatives but as an unintended by-product of the actions of private persons, which could affect residential patterns (HRI/GEN/1/Rev.7).

16. In respect of article 4 of the Convention, he welcomed with satisfaction the additional information provided in paragraphs 127 and 128 on the act adopted in 1988 to punish illegal and criminal activities linked to discrimination. He pointed out that anti-Semitic attitudes and acts had been preponderant, and recalled that, during its examination of the previous report, the Committee had regretted in its final observations (CERD/C/304/Add.112) the slow pace of the proceedings initiated in the wake of anti-Semitic attacks in 1992 and 1994. Was it correct to assume, on the basis of the information provided in paragraphs 132 to 135 of the report, that those proceedings were still in progress? In that case, the Committee would have even more reason to criticise the slow pace of the justice system.

17. The information on women's rights contained in the section of the report relating to article 5 of the Convention was not relevant: the Committee was interested in the issue of women's rights only in so far as it related to double discrimination. Had affirmative action measures similar to those planned for women been taken to assist other underrepresented population groups?

18. With regard to the visit of the Special Rapporteur on freedom of religion or belief mandated by the Commission on Human Rights, he asked the Argentine delegation to provide more information on domestic law provisions criminalizing incitement to racial or religious hatred by the media, especially through the Internet.

19. In respect of economic, social and cultural rights, most of the information provided in the report did not specifically concern the Convention, aside from information relating to bilingual education. In that connection, he asked the Argentine delegation to explain the meaning of the term "intercultural education" (para. 376) and to indicate whether special schools with curriculum adapted to the needs of indigenous peoples existed and, if so, whether the beneficiaries had been consulted during the elaboration of the academic programme. Furthermore, it would be useful to know whether indigenous groups had been consulted during the "revision of the image of indigenous people as it has become fixed in the mind of society and in the education system", referred to in paragraph 383 of the report, and whether academic programmes included courses on indigenous peoples and on tolerance among different population groups. Additional information regarding participation in cultural activities (paras. 419 to 421) would also be welcome.

20. With regard to article 6 of the Convention, he wished to know whether judges received training in human rights standards and whether cases that were more precisely associated with the Convention than those mentioned in paragraph 429 of the report had been examined. More information would be welcome on the 48 complaints involving questions of race, nationality and religion (para. 103) that had been referred to INADI in 2002.

21. With reference to article 7 of the Convention, it would be useful to know the scope of the Professional Empowerment Project for Provincial Trainers (paras. 435 and 436), and implementation status of the 2002 law under which a campaign to publicize the rights of indigenous peoples was to be launched (para. 442).

22. Turning to the particular situation of indigenous peoples, he would like to know whether the 2001 census had included a question addressed to that population group and, if so, how it had been formulated and whether those concerned had been consulted in advance. In addition, information about laws relating to indigenous land rights would be welcome, in particular whether indigenous groups could demand the return of their ancestral lands, and whether they were consulted when exploitation of the natural resources on the lands where they lived had an impact on their living conditions, as in the case cited in paragraph 155.

23. With regard to International Labour Organization (ILO) Convention No. 169 on indigenous and tribal peoples in independent countries, he would like to know whether a law concerning application of that instrument had been or would be drawn up. In the area of economic, social and cultural rights, he noted that a draft law relating to the elaboration of a programme to set up basic infrastructures for indigenous communities had been submitted to the Senate. Had those communities been consulted in that regard? As to the concept of the word “indigenous”, in view of the fact that indigenous peoples could not, apparently, assert their rights in court without having the status of juridical person, it would be useful to know what the procedure was for obtaining that status.

24. In his report (E/CN.4/2002/73/Add.1, para.150), the Special Rapporteur on religious intolerance had declared that the process of returning land was a precondition for providing access to holy sites and burial grounds, and hence for indigenous peoples’ legitimate religious and spiritual activities, and had recommended that the draft bill on freedom of religion should take account of that concern. The Argentine delegation might wish to inform the Committee of the follow-up to that recommendation.

25. Even though Argentina was party to the Convention relating to the Status of Refugees, it had apparently not adopted a specific law on the matter. He would like, therefore, to know how refugee status was determined and whether the mechanisms described in paragraphs 191 to 195 of the report served as legislation in that field. If that were not the case, was a draft law in the process of being drawn up or examined?

26. Information transmitted by NGOs had made reference to xenophobic campaigns against migrants and the absence of refugee integration programmes. Furthermore, as highlighted by the Special Rapporteur on violence against women in her report (E/CN.4/2003/75/Add.1), migrant women without papers were often exploited by prostitution rings and their status prevented them from gaining access to the courts. Nevertheless, as he understood it, those issues were addressed in the new immigration law of 2000, in particular in the provisions criminalizing trafficking in persons.

27. **Mr. Lindgren Alves** noted with satisfaction that one of the Argentine delegation’s members was the president of INADI, and welcomed the quality of the report, despite its excessive length. Could the delegation expand orally on the explanation, contained in paragraph 123 of the report, of why it had not been possible to abrogate the 1853 constitutional provision encouraging European immigration?

28. **Mr. Valencia Rodríguez** said that, owing to the multi-ethnic nature of its population, Argentina must ensure respect for the identity of each person, and for the right of members of ethnic minorities to a bilingual and multicultural education. He noted in that regard that the Convention had constitutional status; it had primacy over national laws and could therefore be invoked directly before the court. Furthermore, despite the fact that racial discrimination was punishable under the Constitution and other legislative provisions, prejudices and condemnable practices continued to exist (paragraphs 125, 296 and 319 of the report).

29. Various bodies, described in chapter IV of the report under consideration, were responsible for ensuring application of the norms in effect and of international human rights

instruments, including the National Institute to Combat Discrimination, Xenophobia and Racism (INADI); the Human Rights Secretariat of the Ministry of Justice, Security and Human Rights; the Human Rights Office of the Ministry of Foreign Affairs, International Trade and Worship; the State Prosecutor; and parliamentary commissions. INADI activities, described in paragraphs 96 and following of the report, included antidiscrimination training for members of the armed forces, the police and other law enforcement agents. What had been the results of such training? INADI, which had no representatives of indigenous groups, received and centralized complaints about discriminatory behaviour, thereby playing a role of mediator and acquitting Argentina of its obligation under article 6 of the Convention, pending its forthcoming declaration under article 14 of the Convention, announced by the State party in paragraph 95 of the report.

30. The programme to combat discrimination against migrants, refugees and indigenous populations was an important activity, the execution of which should be based on the Convention's guidelines. Information about the results of the programme would be welcome. Furthermore, the activities of those different bodies and programmes should be suitably coordinated to avoid overlap and make appropriate use of the human and financial resources necessary to their operations.

31. In respect of article 5 of the Convention, it was evident that Argentina had always attracted immigrants from all backgrounds. It would, then, be appropriate to include in article 25 of the Constitution the interpretation given to it by the Supreme Court, in order to avoid any uncertainty about Argentina's position *vis-à-vis* immigration.

32. In connection with the information provided in paragraphs 147 and following, further efforts should be made by the State party to gather accurate census information on indigenous groups. The Committee should be provided with data, even preliminary, concerning development projects in indigenous communities. The ratification by the State party of ILO Convention No. 169 on indigenous and tribal peoples in independent countries was a welcome step.

33. It was essential to combat the exploitation of migrants by smugglers or "coyotes" and, in that regard, he welcomed the agreements concluded by Argentina with its neighbours with a view to regulating migratory flows between states, while respecting the fundamental rights of migrants, regardless of whether or not their papers were in order. To that end, measures should be taken to avoid any abuses in the application of the laws mentioned in paragraph 177 of the report.

34. The report did not provide any information about access of members of indigenous communities to public service (Congress, executive or judicial branches, armed forces, police) and information on that matter would be welcome.

35. **Mr. Kjaerum** welcomed the launching of the National Plan against Discrimination and asked what role local and regional authorities played in its implementation. He also welcomed the entry into force, in January 2004, of a new immigration law, drafted in accordance with international human rights standards, and wished to know whether the law had helped to speed up procedures in that field.

36. Noting with concern that the census data on the refugee population gathered by the regional office of the United Nations High Commissioner for Refugees contradicted the official figures and that, of the 360 refugees who had sought asylum in 2002, 77 had freely withdrawn their requests while 174 had ceased to request extensions of their temporary documents, he wondered whether the slow pace of the asylum-granting process — the average length of which was six years — might not discourage asylum seekers. Did Argentina plan to adopt in the near future legislation that would give effect to the Convention relating to the Status of Refugees?

37. With regard to a television series deemed to be discriminatory towards the Roma population, INADI, to which the Roma community had brought the case, had taken ten months to examine the complaint, which demonstrated the inadequacy of that mechanism's resources and authority. The Committee had already expressed concern about that matter when considering Argentina's previous report.

38. He welcomed the fact that an agreement had been concluded between the country's military authorities and the anti-defamation league with a view to including human rights training in the military school curriculum. What specific measures had the State party taken to combat anti-Semitic and racial prejudice within the army and the police force?

39. Regretting the dearth of information concerning ethnic minority women, he drew the delegation's attention to the Committee's general recommendation XXV (2000) on gender-related dimensions of racial discrimination, in which the Committee had stressed the fact that ethnic minority women, who were particularly vulnerable and frequently victims of commercial or sexual exploitation, were usually the object of several forms of discrimination.

40. **Mr. Pillai** paid tribute to the State party's judiciary for having taken the decisions set out in paragraphs 85 and 429 of the report in cases of discrimination, and in particular to the determination of the judges in the face of the threats reported by Amnesty International.

41. It was regrettable that the State party had failed to take steps to improve the situation of indigenous peoples — who were particularly affected by unemployment and poverty and whose fundamental needs were satisfied only minimally — as the Committee had invited it to do, in its conclusions following examination of the previous report. It was unfortunate, too, that the report under consideration had nothing to say on the matter.

42. The Human Rights Secretariat of the Ministry of Justice, Security and Human Rights and the National Institute to Combat Discrimination, Xenophobia and Racism (INADI) had the same mission, namely to receive and centralize complaints about discriminatory, xenophobic or racist behaviour or human rights violations. He requested the delegation to provide additional information on the manner in which the work of the two bodies was coordinated nationally, and on how INADI encouraged victims of discrimination to make complaints. He welcomed the fact that INADI had organized antidiscrimination and institutional reinforcement training for heads of NGOs, students and professionals and would like to know how the beneficiaries had reacted to the training courses.

43. With reference to paragraph 147 of the report, he would like to know what the "various factors" were that had prevented an accurate census of the indigenous population, and deplored the fact that ten years after the adoption of the new Constitution, which recognized the legal existence and rights of indigenous peoples, little had been done to delimit indigenous lands and to grant them land ownership rights. Even worse, it had been alleged that in the framework of important land development projects, indigenous peoples were, at times, still being expelled from their lands for so-called illegal appropriation. In that connection, he would like to know how the State party planned to follow up on the recommendations made by the Special Rapporteur of the Commission on Human Rights on religious intolerance concerning the return of land to indigenous populations to give them access to their sacred sites.

44. He would appreciate additional information from the Argentine delegation on the subject of police brutality, committed under various pretexts and linked to the race, colour or ethnic origin of the victim. The Committee had already deemed that a matter of concern on the occasion of its consideration of Argentina's previous report.

45. **Mr. Sicilianos** welcomed the adoption of measures to eradicate the Argentine dictatorship's legacy, and the State party's commitment to human rights, which manifested itself mainly through legislation under which racist or xenophobic intentions were considered an aggravating circumstance. Information on the major thrusts of the new immigration law that had entered into force in January 2004 would be appreciated, in particular with regard to the rights of undocumented immigrants. He suggested that the State party should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and made reference to the Committee's general recommendation XI on non-citizens (1993). The agreement on the free circulation of persons, concluded among the member states of MERCOSUR, should encourage immigration services to demonstrate more flexibility with regard to nationals of border countries, and was compatible with article 1, paragraph 2, of the Convention. He understood the factors hindering the adoption of a national policy to benefit indigenous peoples, described in paragraphs 150 to 157 of the report, but pointed out that Argentina was party to ILO Convention No. 169 relating to indigenous and tribal peoples in independent countries, and as such, was duty bound to carry out measures in their favour.

46. **Mr. Boyd** was concerned by the dearth of information on article 5(b) of the Convention relating to the right to security of person, and regretted that Argentina had failed to provide any information on allegations of police brutality committed on the grounds of race, colour or ethnic origin. He would appreciate information on the scope of the problem, the remedial measures taken, and the number of proceedings initiated. The report presented antidiscrimination legislation in detail but failed to consider cases of discrimination against indigenous peoples, Argentinians of African origin, and immigrants. He asked the State party to provide a better account of the somewhat ambiguous situation of those groups and to indicate the extent of the discrimination they suffered.

47. **Mr. Avtonomov** said that the political situation of women had improved significantly in Argentina owing to the adoption of the law on "quotas for women". According to paragraph 52 of the report, Argentina had created a post of Human Rights Procurator in Buenos Aires; had posts of that type been created in other cities? More information on paragraph 151 of the report would be welcome, since it appeared that the federal Government was having difficulty executing its policies and action plans locally. The absence of statistics on indigenous peoples was regrettable: since they represented only 1 per cent of the total population, it would not be difficult to obtain a breakdown of that figure. He would like to know the extent to which indigenous peoples benefited from the same political rights as the rest of the population, given that they lived in remote areas. He would also like to know how many indigenous children dropped out of school, and at what level, and welcomed the frankness with which Argentina had acknowledged the difficulties of literacy training for indigenous peoples. In that regard, he would appreciate information on implementation of the bilingual education policy in the schools.

48. **Mr. Cali Tzay** welcomed that fact that Argentina had ratified ILO Convention No. 169 relating to indigenous and tribal peoples, but would appreciate more information from the State party on those groups. According to certain NGOs, bilingual assistant teachers of indigenous origin were victims of discrimination and assigned to cleaning tasks in the schools rather than to teaching duties. He asked the delegation to confirm that information and provide more details on the violent acts of which indigenous peoples were victims?

49. **Mr. Amir** expressed his surprise that only 13.7 per cent of pupils went on to study at university and 6.3 per cent completed their higher education (paragraph 9 of the report), in view of the fact that the State party claimed to provide students with all the material resources they needed to pursue their education. He noted with great interest the existence of institutions such as the Penitentiary Procurator and the Ombudsman, and welcomed the



frankness with which Argentina had acknowledged in its report that history had been particularly cruel to indigenous peoples.

50. **Mr. Tang** welcomed the richness of the report under consideration but regretted the absence of statistics on the composition of the ethnic population. He noted with satisfaction that the 1994 Constitution expressly recognized indigenous communities as legal entities and the common possession and ownership of the lands they traditionally occupied (paragraph 80 of the report), but requested more details on the application in fact of those constitutional provisions. He noted in paragraph 152 that the Government appeared to be having difficulties in implementing its policies locally and asked the delegation to express its views on the problems that might rise between federal and local authorities.

51. **Mr. de Gouttes** welcomed the frank manner in which Argentina had recognized that the socioeconomic crisis had severely affected the most vulnerable population groups, in particular indigenous peoples. The explanations provided by the Director of INADI had also been of great interest. With regard to article 4 of the Convention, the examples of complaints and legal doctrine provided in the report did not concern racial discrimination directly. He was surprised that INADI had not received more complaints, and requested more detailed information on acts of racial discrimination. In reference to the issue of the attacks against the Israeli embassy and the Jewish Community Centre AMIA in 1999, he asked why the investigation had been entrusted to the country's Supreme Court. In respect of article 5 of the Convention, he pointed out that loss of land could impede indigenous peoples' exercise of their freedom of religion if it denied them access to their sacred sites and burial grounds. It would be useful to know what measures had been taken to combat the diffusion by the media or the Internet of material inciting to racial hatred. Additional information on the sensitization of police officers to ethnic group issues and on implementation of the campaign to disseminate the rights of indigenous populations (paragraph 442 of the report) would also be welcome. He urged Argentina to make the declaration under article 14 of the Convention and to accept the revision of article 8 of the Convention as decided by the States parties.

52. **Ms. Dah** invited Argentina to update the core document that it had submitted to the Committee by incorporating the results of the 2001 census as well as changes in the country's socioeconomic situation. She noted with satisfaction the rising school enrolment rate for girls in urban areas, but was surprised that women had represented only 27 per cent of the employed population in 2001, and would like to know why that was the case. She would also like to know the size of the land area traditionally occupied by indigenous peoples, in comparison with that of the entire country, and whether indigenous peoples lived in well defined areas. Paragraph 163 of the report referred to implementation of a development project for indigenous communities; what share of the national budget was represented by the amount mentioned in the report and who, specifically, were the beneficiaries of the project? She would like to know whether the cooperation agreements with Peru and Bolivia were still in effect, since the expulsion of citizens from those countries, in 1999.

53. **Ms. January-Bardill** said that Argentina's legislative framework and institutional mechanisms demonstrated its genuine political determination to combat racial discrimination. She nevertheless regretted the inadequacy of the information provided on the most vulnerable groups, including indigenous peoples, who had been particularly affected by the socioeconomic crisis, and urged Argentina to furnish that information. She noted with satisfaction the training initiatives and development activities carried out by INADI. Had the State party made an assessment of the training programmes for local officials and, if so, what were the results? It would be particularly helpful to have the officials' views on the usefulness of the activities.

*The meeting rose at 6.05 p.m.*