

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

Distr.: General

11 January 2017

English

Original: Spanish

Committee on the Elimination of Racial Discrimination**Concluding observations on the combined twenty-first to twenty-third
periodic reports of Argentina ***

1. The Committee considered the combined twenty-first to twenty-third periodic reports of Argentina, submitted in one document (CERD/C/ARG/21-23), at its 2490th and 2491st meetings (see CERD/C/SR.2490 and 2491), held on 22 and 23 November 2016. At its 2506th and 2507th meetings, held on 2 and 5 December 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined twenty-first to twenty-third periodic reports of Argentina in a single document. The Committee also welcomes the frank and constructive dialogue with the State party's high-level delegation and the additional information provided after the dialogue.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 24 October 2011, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 14 April 2015.

4. The Committee welcomes the legislative and institutional measures adopted by the State party during the period under review, in particular:

(a) The establishment of the Directorate for the Promotion and Development of Anti-Discrimination Practices, in 2011, by the National Institute to Combat Discrimination, Xenophobia and Racism (INADI);

(b) The establishment of the Office of the Ombudsman for Audiovisual Communication Services, in 2012, under Act No. 26522;

(c) The adoption of Presidential Decree No. 1584/2010, promulgated on 2 November 2010, pursuant to which the name of the 12 October holiday was changed from Día de la Raza (Race Day) to Día del Respeto a la Diversidad Cultural (Respect for Cultural Diversity Day);

(d) The designation of 8 November as the National Day of Afro-Argentine Peoples and Afro Culture, pursuant to Act No. 26852 of 20 May 2013.

5. The Committee notes with satisfaction that the State party has extended an open, standing invitation for special procedures mandate holders of the Human Rights Council to visit the country.

C. Concerns and recommendations**Structural discrimination**

6. The Committee remains concerned about the persistent structural discrimination against indigenous peoples and people of African descent and the invisibility of people of African descent in terms of their rights. Structural discrimination prevents indigenous peoples and people of African descent from enjoying the minimum international standards for development, including those set out in the Sustainable Development Goals. The Committee regrets the lack of access to basic services experienced by indigenous communities, people of African descent and migrants, in particular those in an irregular situation. The Committee is particularly concerned about cases of malnutrition in children from indigenous communities. The Committee also takes note with concern of the difficulties experienced by indigenous communities in gaining access to water, which are compounded by the lack of titling of their lands and the activities of companies that exploit natural resources (arts. 1, 2 and 5).

7. The Committee recommends that the State party:

(a) Adopt a comprehensive policy to combat racism and racial discrimination that promotes social inclusion and seeks to reduce the high levels of poverty prevalent among indigenous peoples, people of African descent and migrants, particularly those in an irregular situation. The Committee recommends that the State party strengthen its efforts to address the situation of child malnutrition that is especially prevalent among indigenous populations;

(b) Bearing in mind its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, take special measures or affirmative action to eliminate structural discrimination against indigenous peoples and people of African descent. The Committee urges the State party to develop and properly implement its programme entitled “Promoting and Raising Awareness of the Rights of the Afro-descendent Community” with a view to acknowledging the Afro-descendent population, giving it greater visibility, bearing in mind the Committee’s general recommendation No. 34 (2011) on racial discrimination against people of African descent, and recognizing its rights;

(c) Take the necessary steps to meet the Sustainable Development Goals.

Public policies

8. The Committee takes note of the recognition by the State party of the multi-ethnic and multicultural character of its population. However, the Committee notes with concern that, despite the existence of legal provisions relating to the protection of the rights of indigenous peoples, there is no comprehensive legislative framework or appropriate mechanisms for fully and effectively implementing those rights uniformly throughout the State party (arts. 2 and 5).

9. The Committee suggests that the State party reflect in its laws its vision of the country’s multi-ethnic and multicultural character. The Committee recommends that draft legislation on combating racial discrimination and promoting the rights of indigenous peoples and people of African descent be given priority in the legislative agenda, in consultation with those groups, so as to put in place a proper legal framework throughout the country.

Demographic composition of the population and statistical data

10. While the Committee takes note of the information provided by the State party regarding the 2010 national housing, household and population census, it regrets that the question on self-identification was not included in the general form, with the result that no full picture of the real situation of indigenous peoples and people of African descent could be obtained. The Committee regrets the lack of information on gypsies. The Committee also regrets the lack of reliable, disaggregated data to enable it to assess the levels of discrimination against minority groups and the absence of human rights and socioeconomic indicators to assess living conditions and the progress made towards full realization of the rights set forth in the Convention (art. 2, para. 11).

11. In the light of its general recommendation No. 4 (1973) concerning reporting by States parties and its revised reporting guidelines (see CERD/C/2007/1, paras. 10 and 12), the Committee urges the State party to collect and provide to the Committee reliable, up-to-date and complete statistical data on the demographic composition of the population, in particular on indigenous peoples, people of African descent, gypsies and migrants, as well as civil, political, economic and social rights indicators that reflect the content of those rights appropriately. The Committee further requests information on the evaluation of the implementation of the present concluding observations, the National Human Rights Action Plan (2017-2020), which is currently under development, and existing programmes to combat racial discrimination, including the 2013 INADI National Discrimination Map.

Criminalization of racial discrimination

12. The Committee remains concerned that the State party has not yet defined racial discrimination as an offence in accordance with the Convention (art. 4).

13. In the light of its general recommendation No. 7 (1985) relating to the implementation of article 4 of the Convention, general recommendation No. 15 (1993) on article 4 of the Convention, and the Committee’s earlier recommendation (see CERD/C/ARG/CO/19-20, para. 15), the Committee urges the State party to establish as offences the conduct described in article 4 of the Convention, taking into account general recommendation No. 35 (2013) on combating racist hate speech.

Ombudsman and Office of the Ombudsman for Audiovisual Communication Services

14. The Committee regrets that no ombudsman has been appointed since 2009. It also regrets that the post of Ombudsman for Audiovisual Communication Services has recently become vacant (art. 2 (1)).

15. In the light of its previous recommendation (see CERD/C/ARG/CO/19-20, para. 16), the Committee urges the State party to step up its efforts to name an ombudsman through a selection and appointment process that is transparent and participatory and in which the guiding principles are merit, ability and integrity; it likewise calls on the State party to appoint an ombudsman for audiovisual communication services.

Institutional strengthening

16. The Committee regrets the failure to obtain the full and consistent participation of members of the indigenous community in organizations intended to represent them, such as the National Institute of Indigenous Affairs, the Council on Indigenous Participation and the Indigenous Peoples’ Advisory and Participatory Council. The Committee takes note of the increase in the budget allocated to the National Institute of Indigenous Affairs. However, it regrets: (a) that insufficient budget allocation to the Institute will not allow it to function effectively; (b) the Institute is not adequately represented at the provincial level; and (c) the Institute lacks staff from indigenous communities with relevant training. The Committee is also concerned about the administrative intervention measure taken in respect of the National Institute to Combat Discrimination, Xenophobia and Racism (INADI) since 2011, which might limit the Institute’s independence and capacity to act (art. 2).

17. The Committee urges the State party to:

- (a) Take all necessary steps to ensure the full and effective participation of indigenous peoples, people of African descent and migrants in the institutions that represent them or that work to combat racial discrimination;**
- (b) Continue to strengthen institutions working to combat racial discrimination and promote the rights of indigenous peoples by ensuring that they are fully autonomous and provided with the necessary funding and staff; and to consider establishing offices of those institutions in all of the country's provinces.**

Prior and informed consultation

18. The Committee remains concerned about the lack of regulations governing the consultation procedures established with a view to obtaining the free, prior and informed consent of indigenous peoples and the lack of effective mechanisms to carry out such consultations. The Committee regrets that only a small number of consultations have been undertaken in the State party and that, when such consultations take place, they are discretionary in nature and fail to observe international standards (arts. 2 and 5).

19. Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee calls upon the State party to:

- (a) Establish appropriate regulations and mechanisms throughout the country to ensure that prior consultations conducted with a view to securing free, prior and informed consent are carried out systematically and in good faith with the relevant representative authorities and through appropriate procedures, with adequate information being provided to the persons concerned;**
- (b) Ensure that legislative or administrative measures that could affect indigenous peoples and all infrastructure and natural resource exploitation projects are subjected to a process of prior consultation with a view to securing their free, prior and informed consent.**

Land rights and land restitution

20. The Committee notes with concern that, despite the legal framework recognizing the right of ownership of lands traditionally occupied by indigenous peoples, the State party still does not ensure the full enjoyment and effective exercise of this right. Act No. 26160 provides for the surveying and demarcation of the lands traditionally occupied by indigenous peoples with a view to their regularization. However, its implementation has been hindered by complications and delays, and surveying and demarcation operations have been completed in only six provinces; and even in those places where such operations have been completed, they have not necessarily led to community possession and ownership of those lands being recognized. The Committee remains concerned about the situation of the Lhaka Honhat Association of Indigenous Communities (art. 5).

21. The Committee urges the State party, in coordination with the federal, provincial and municipal authorities, to ensure and protect indigenous peoples' right to own, use, develop and exercise full control over their lands, territories and resources, including through:

- (a) Full implementation of Act No. 26160 and the early completion of operations to survey ancestral territories and lands;**
- (b) The establishment of the necessary legislative and administrative measures and appropriate and effective mechanisms to facilitate the ownership and titling of those lands and territories, to grant effective access to relevant judicial procedures and to guarantee due process.**

22. With regard to the Lhaka Honhat Association of Indigenous Communities, the Committee calls on the State party to complete the land demarcation process, to grant collective title to the communities and to provide Creole families with relocation assistance.

23. The Committee is especially concerned about the high number of evictions involving indigenous people which are carried out despite the entry into force of Act No. 26160 and, in particular, the very violent incidents targeting indigenous communities that occur during evictions and protests against such evictions. The Committee is particularly concerned about impunity for the killing of Javier Chocobar, which occurred seven years ago, and the violent incidents suffered by the Potae Napocna Navogoh (La Primavera) community, the Nam Qom community of the Qom people and the India Quilmes community, among many others. The Committee regrets that no investigations have been carried out or sanctions imposed in relation to the violent acts committed by the security forces and others against human rights defenders and members of indigenous peoples and that no measures have been taken to prevent such violent acts (art. 5).

24. The Committee urges the State party to:

- (a) Take all necessary steps to ensure that indigenous peoples are protected from forced evictions and ensure the full and effective implementation of Act No. 26160;**
- (b) Take steps to ensure the safety of indigenous peoples who are subjected to threats, harassment and other violent acts involving public officials and/or private individuals; and to take measures to prevent and investigate such acts and to punish the perpetrators.**

Situation of human rights defenders

25. The Committee is concerned about acts of retaliation, intimidation and threats against human rights defenders and members of indigenous peoples, people of African descent and migrants and the criminalization they endure because of their human rights activities. In this connection, the Committee is concerned about, among other things, the situation of Félix Díaz, the leader of the Potae Napocna Navogoh (La Primavera) community, and Milagro Sala, the leader of the Tupac Amaru neighbourhood association. The Committee is particularly concerned about the death of Massar Ba, the leader of the Senegalese community, in March 2016. The Committee regrets the lack of progress in the investigation of his killing and the failure to permit his association, the Senegalese Residents' Association, to become a party to the criminal proceedings (art. 5).

26. The Committee urges the State party to:

(a) Take all necessary steps to protect human rights defenders, including the leaders and members of indigenous communities, people of African descent and migrants against all acts of intimidation and violence and any arbitrary act by a public authority or private entity in response to a human rights defender's performance of his or her functions;

(b) Investigate all acts of intimidation and violence against human rights defenders and their communities and ensure that perpetrators are punished appropriately. In this connection, the Committee draws the State party's attention, in particular, to the death of Massar Ba;

(c) Ensure effective access to justice and respect for fundamental rights and due process guarantees in proceedings against human rights defenders, members of indigenous communities, people of African descent and migrants, including the proceedings concerning Milagro Sala and Félix Díaz. In the case of Milagro Sala, the Committee invites the State party to implement the measures requested by the Working Group on Arbitrary Detention (A/HRC/WGAD/2016/31, para. 117).

Access to education

27. The Committee regrets the lack of disaggregated statistical data on the level of literacy and access to primary, secondary and university education of members of indigenous peoples. The Committee takes note of the efforts made to implement the right to intercultural bilingual education but regrets the lack of progress resulting from, among other causes, the low number of teachers from indigenous communities and the difficulties they face in gaining access to training courses (art. 5).

28. The Committee recommends that the State party step up its efforts to ensure the availability, accessibility and quality of education at all levels for indigenous children, including in their mother tongue. It further recommends that the State party continue its efforts to increase the number of teachers from indigenous communities, including by facilitating their access to training courses.

Access to justice

29. The Committee regrets the lack of disaggregated statistical data on complaints of racial discrimination and the action taken as a result of such complaints. While the Committee takes note of the State party's efforts to ensure access to justice for indigenous peoples, it regrets the difficulties that they face in enjoying this right because of, among other reasons, (a) insufficient awareness on the part of judicial authorities, public defenders and lawyers of indigenous customary law; (b) the lack of interpreters and translators of indigenous languages; and (c) the lack of legal assistance and justice centres in the most remote and vulnerable parts of the country. The Committee is also concerned about the lack of equal access to justice for people of African descent (art. 6).

30. The Committee, in the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, urges the State party to:

(a) Step up its efforts to acknowledge and respect the traditional justice systems of indigenous peoples in keeping with international human rights standards;

(b) Take the necessary action to ensure access to justice for indigenous peoples, ensuring that their fundamental rights and due process guarantees are respected, including by increasing the number of interpreters and specialists in the traditional systems of justice of indigenous peoples; to continue to increase the provision of legal assistance and the number of justice centres in the most remote and vulnerable parts of the country and to increase the availability of free legal assistance;

(c) Promote training programmes for police officers, public defenders, lawyers, judges and professionals in the judicial system on indigenous customary law and the rights of people of African descent and migrants, and the fight against racial discrimination.

Labour rights

31. The Committee notes with concern the difficulties faced by members of indigenous peoples, people of African descent and migrants in gaining access to the formal sector of the labour market and their concentration in work that does not allow them to gain access to fundamental labour rights (art. 5).

32. The Committee recommends that the State party continue to do everything possible to increase access to the formal sector of the economy and ensure fair, satisfactory working conditions consistent with international human and labour rights standards; and to investigate the exploitation and discrimination that occur and provide the Committee with statistical information in that connection in the next periodic report.

Migrants

33. The Committee takes note of the State party's advanced legislation in the field of migration and welcomes the regularization programmes that have been carried out. However, the Committee is concerned about: (a) discrimination against migrants, in particular migrants from the Senegalese and Dominican communities, especially women and persons in an irregular situation; (b) the increase in the number of expulsion orders; (c) the reduction in regularization policies and the introduction of additional requirements for the regularization of irregular migrants from countries outside MERCOSUR; and (d) the existence of provisions that establish differentiated access to basic rights. The Committee is also concerned about plans to set up a detention centre for migrants awaiting deportation because it could lead to detention not being used as a last resort. Lastly, the Committee regrets the lack of statistical data on the detention of foreigners and the absence of an open and regular dialogue with migrants' associations (arts. 1, 2 and 5).

34. Taking into account its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take the necessary action to ensure the protection of migrants, including by:

(a) Implementing measures that promote the full participation and integration of migrants into the State party and respect for their rights; and ensuring that no practices or provisions are introduced that represent a backward step compared with the regulatory framework in force;

(b) Considering the use of alternatives to the deprivation of liberty for migrants in an irregular situation and ensuring that detention is used only as a last resort and that it is reasonable, necessary and proportionate and is kept as short as possible.

Multiple forms of discrimination

35. The Committee is concerned that indigenous, Afro-descendent and migrant women, including women from the Dominican Republic, lesbian, gay, bisexual, transgender and intersex persons and women belonging to other minorities still face multiple forms of discrimination in all aspects of social, political, economic and cultural life (art. 2 (2)).

36. The Committee recommends that the State party take into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and that it mainstream a gender perspective in all its policies and strategies for combating racial discrimination in order to address the multiple forms of discrimination faced by, in particular, indigenous, Afro-descendent and migrant women, including lesbian, gay, bisexual, transgender and intersex persons and women belonging to other minorities. It also recommends that the State party compile disaggregated statistics on this subject.

D. Other recommendations

Ratification of other treaties

37. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance of 2013 and the Inter-American Convention against All Forms of Discrimination and Intolerance of 2013.

Amendment to article 8 of the Convention

38. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Durban Declaration and Programme of Action

39. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its domestic legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in April 2009. The Committee requests the State party to include, in its next periodic report, detailed information on the action plans and other measures taken to implement the Durban Declaration and Programme of Action in the country.

International Decade for People of African Descent

40. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed the International Decade for People of African Descent (2015-2024), and resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. In addition, the Committee requests the State party to include, in its next periodic report, precise information on specific measures taken to that end, bearing in mind its general recommendation No. 34.

Dissemination of reports and concluding observations

41. The Committee recommends that the State party make its reports available to the public as from the time of their submission and that it disseminate the present concluding observations, including in the languages of the indigenous

communities.

Consultations with civil society organizations

42. The Committee recommends that the State party engage in consultations and expand its dialogue with civil society organizations active in the sphere of protection of human rights, in particular with regard to combating racial discrimination, when preparing its next periodic report and in its follow-up to the present concluding observations.

Follow-up to concluding observations

43. In accordance with article 9 (1) of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information, within one year following the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 15, 24 and 26 (b) and (c) above.

Paragraphs of particular importance

44. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 19, 21, 30 and 34 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Preparation of the next report

45. The Committee recommends that the State party submit its combined twenty-fourth to twenty-sixth periodic reports in a single document by 4 January 2020, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. In accordance with General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.