REPORT TO THE COMMITTEE FOR THE ELIMINATION OF RACIAL DISCRIMINATION

Issues to be considered in the report submitted by **ARGENTINA** in compliance to art. 9 of the International Convention on the Elimination of All Forms of Racial Discrimination

This report is submitted by the **Centre for Legal and Social Studies (CELS)** and the **Ecumenical Service for Assistance and Orientation of Refugees and Migrants (CAREF)**, together with the **International Federation of Human Rights Leagues (IFHR)**

The Centre on Housing Rights and Evictiones (COHRE), the **Red por los Derechos de las Personas con Discapacidad (REDI),** the **Red de Asistencia Legal** and the **Asociación Argentina de Jóvenes Indígenas** have contributed to the writing and presentation of this report.

The following organizations adhere to this report:
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Comunidad Pueblo Kolla Tinkunaku
Equipo de Pueblos Indígenas (EPI)
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I. INTRODUCTION

This report is presented by non government organisations that have been working for more than 20 years in the defence of human rights in Argentina (the *Ecumenical Service for Assistance and Orientation of Refugees and Migrants –CAREF-* and the *Centre for Legal and Social Studies –CELS-*) together with the International Human Rights Federation, with the aim of promoting the accomplishment of human rights in the country, with no discrimination because of forbidden reasons.

Having this aim in mind, we will describe some of the main problems related to discrimination because of racial, ethnic, and physical characteristics and nationality that indigenous peoples, migrants, refugees, asylum seekers and disabled persons suffer at present as they constitute some of the social groups more affected by discrimination in Argentina.

Before we do this, we will describe the social and economic context and the structural adjustment that started in our country in the 90's, that has seriously affected the accomplishment of economic, social and cultural rights in all social sectors, but especially in those whose situation is more vulnerable. Social rights have become precarious and this process is characterized by the concentration of richness in a few hands, with the alarming growth of poverty and indigence, and consequently, with the consolidation of a sector of the population in a situation of unemployment and underemployment.

This crisis deepened during the late 90's and "exploited" in December 2001, when – as it is well known – Argentina went through a series of events that stroke grievously its institutional and political history. In only 15 days, the country had five presidents, consolidated its financial default, abandoned a strict exchange policy, created in 1991, and devaluated its currency (peso). All this happened in the midst of a social and economic crisis that is still to be taken care of. In May 2003, Dr. Néstor Kirchner became president.

Government administrations after the 2001 crisis have tried to reverse this situation, at least in some aspects, but the facts and testimonies that are expressed – not exhaustively – in this report, allow us to affirm that at present, **migrant population, indigenous peoples, refugees, asylum seekers and disabled persons, are seriously affected in the accomplishment of the human rights enumerated in the International Convention for the Elimination of all forms of Racial Discrimination.**

This report is a follow-up of the document that several non government organizations presented to this Committee in March 2001 (during its 1457th session), where the situation of migrants, indigenous peoples, refugees and African descendants in Argentina was analysed in detail, together with institutional policies, legislation and jurisprudence related to non discrimination. In this document, we will update this information, pointing advances and drawbacks in relation to the human rights situation of migrants, indigenous peoples, refugees and asylum seekers, during the period from 2001 to 2004. A brief report on the situation of disabled people will also be part of this submission.

II. SYNTHESIS

- **Migrants:** it is important to highlight that an important step forward took place when the Law on Migrations was revoked in December 2003. This law had been passed by the last military dictatorship. It was one of the main sources of migrants´ human rights violations. But, while we wait for the new law to be ruled, the positive changes that it introduces still haven't been transferred to an effective accomplishment of rights. At the same time, some serious problems still haven't been solved: the high costs and the numerous bureaucratic ties that poor migrants face to achieve a permanent permit to live in the country ; the need for reliable and deep investigation of xenophobic attacks and violence; and the derogation of regulations that discriminate irrationally because of nationality when it comes to access to rights.

- **Refugees and asylum seekers** are still affected by the lack of a law on this issue. The procedures to become a refugee are irregular, as its excessive and irrational duration (that can take 6 years) and the vulnerability of elemental guarantees in the process (the right to be listened to, the right to an interpreter, the right to obtain a founded resolution). At the same time, there are not efficient policies in border areas, so as to secure the principle of non discrimination. Moreover, the State does not promote measures to facilitate social inclusion of refugees.

- Between 2001 and 2004, the situation of **indigenous peoples** reveals a worrying drawback, stricken by the lack of development of policies and laws aimed to protect their rights effectively, along with the adoption of measures that have seriously violated their rights, in particular their rights to their land and territories, the right to be consulted, to participate and organize themselves, access to justice and the right to cultural identity and education. Violence, aggression and intimidation of members of indigenous communities are also of great concern, as the lack of preventive measures, investigation, punishment and reparation of these actions.

- **Disabled people:** the Argentinean State does not implement the measures needed to eliminate discrimination to the right to education and access to employment and the health system, among others. The obligation to eliminate physical, architectonic, and public transportation barriers is not respected – even in public buildings – and there have been several drawbacks in the integration of disabled children in schools. At the same time, the crisis in the health system has left hundreds of thousands of disabled people without proper medical care. Lastly, the State does not comply with its legal obligation of opening 4% of public employment to the disabled.

Before analysing in particular, the situation of each of the groups that are victims of discrimination, we will report briefly about the legislative measures on human rights and non discrimination issues that Argentina has already adopted and those that still have to be considered.

III: INTERNATIONAL LEGISLATION ON HUMAN RIGHTS AND NON DISCRIMINATION. CONTROL MECHANISMS

Since the 80's, Argentina has signed and ratified many international instruments on human rights issues, both at the universal level and the regional level. In 1994, the last reform of the National Constitution gave these instruments constitutional hierarchy (among them, the International Convention on the Elimination of all Forms of Racial Discrimination). In this way, the international treaties were given a higher hierarchy than national legislation. Nevertheless, it is important to inform this Committee about some essential steps that the State has not taken yet.

The Committee to Eliminate Racial Discrimination recommended Argentina to conclude in a short time the necessary administrative procedures to formulate a declaration foreseen in article 14 of the International Convention on the Elimination of all Forms of Racial Discrimination (cf. paragraph 20), **before July 2004. In spite that the government has agreed before the Committee to ratify the mechanism to denounce article 14 in the Convention, this step has not been taken yet.**

On the other hand, the Argentinean government still has not signed nor ratified the
International Convention for the Protectionof the Rights of all Migrant Workers and Members of their Families, and the ILO Convention 97 and 147 on migrant workers.

In the following sections we shall describe the main problems faced by migrants, refugee and asylum seekers, indigenous peoples and disabled persons in respect to the recognition and effective accomplishment of their human rights with no discrimination.

IV. MIGRANTS

IV.1 Brief story of immigration in Argentina. Migration today.

From mid 19th Century through the first half of the 20th Century, Argentina stood out by a remarkable European immigration Most of them arrived between 1870 and 1929 as consequence of a national population policy that had as its main objective the inclusion of Argentina in the modern world, taking the major powers of the time as development model. This building up of the Argentinean population spectrum began to change by mid XXth Century, when, on the one hand, European migration stops focused on the post-war economical reconstruction of Europe, and on the other hand, Argentina becomes one of the major industrial poles of South America. The latter had two strong influences upon population mobility. First, it determined a large internal migration from rural areas to big cities, mainly Buenos Aires. Second, it determined workers' immigration from neighbour countries, such as Chile, Bolivia, Uruguay, Paraguay and Peru.

Despite Argentina's economy permanent decay since the 70s, migration from neighbour countries continued, supplying basically the informal sector employment demand. The normalization of democratic institutions that took place in 1983 brought some improvement to the political situation of local and foreign people, and since 1990 there was a strong increase in migrant currents coming from Peru, Paraguay and Bolivia. Among today's migrations there is a remarkable affluence of Eastern European[1] persons, particularly since 1994, as well as migrants from South Korea, China, and several African countries. Another essential characteristic of these new migrations, matching an international pattern, is its female prevalence.

IV.2. Some of the problems faced by migrant persons.

IV.2.1. Xenophobia.

Among the most serious problems that contemporary migrations have faced in Argentina are **some racist and xenophobic campaigns that were made public in the late 90s**, whilst the economical crisis grew. Their mentors were a few media and political leaders that used migrants as scapegoats for unemployment and the increase of crime rates.

Some migrants **suffered physical violence**, as is the case of Bolivian "quinteros", horticultures in the Province of Buenos Aires, who were attacked and tortured at their own homes by hooded men. A particularly serious case was the murder of Marcelina Meneses and her baby that took place in 2001, when they were thrown away from a train in the Province of Buenos Aires after being insulted because of her condition of foreigner and Bolivian, according to eyewitnesses. Up to today, and despite the intervention of the National Institute against Discrimination, delays in the court procedures only show the **lack of a serious and deep investigation,** as should happen with a crime that could be indicative of xenophobic motivations.

Besides, in recent years a misleading vision of Peruvian immigrants has been construed. These immigrants have been accused for being the main cause in the crime rate increase, particularly in drug traffic related crimes and the use of weapons. Migrant and Human Rights Organizations have repeatedly denounced acts of **authority abuse by the police** (verified by official statistics that showed a high number of Peruvian citizens arrested by the Federal Police, as may be seen in the attached journalistic note from October 18, 2003, that can be read in **Annex 1**).

IV.2.2. **Migratory irregularity. Costs and obstacles in migratory procedures.**

A problem faced by thousands of migrants consists in difficulties to regularize their migration situation (according to different governmental analyses published in 2004, migrants in irregular situation could be between 700,000 and 1,000,000 people). In most cases, the situation is a consequence of **deficient public policies and bureaucratic institutions that seem to lay obstacles to regularization, as well as procedures high costs.**

[1] For these populations there was a special migratory agreement regulated by Presidential Decree 1023/94 (Modifying 1434/87).

Even when a new migration law has come to effect in January 2004 (as will be seen later), this fact hasn't reduced the **bureaucratic obstacles** that prevent migratory regularization. Migrants coming from Eastern European countries have verified these difficulties, among numerous other cases.

At the same time, **the high cost of the migratory procedure and paperwork** is still a major hindrance, which imposes discrimination on people in poverty situation, unable to afford the migratory rates and the necessary expenses to obtain the documentation required by the law. The lack of possibilities to afford these costs, and its consequent irregularity, gives place to a vulnerability of fundamental rights (health care, education, housing, due process). These violations are ongoing and will be until the new law is regulated and enforced, along with a plan to inform and train, and a media campaign.

Thus, the National State should implement of actions to reverse these situations by:

1. reduce significantly the economic costs of the aforementioned migratory procedures is of vital importance, so as to avoid discrimination by economical reasons.
2. modernize key institutions, such as the National Direction for Migration.

IV.2.3. Migrants traffic and trade

As a part of this situation, some of the signing NGOs have notice about migrant women traffic and trade, **especially what happened with Dominican women migrants**. Even when persons trade needs the participation of multiple individuals, which in turn may have different ends, the existence of **networks to enslave sexual workers** could be verified.

On this matter, and although the country has ratified the UN Convention against transnational organised crime and its additional protocols, it should be pointed out that **there is no information to verify that the Argentinean State is taking any measures or policies (apart from legislative measures) to prevent, investigate and punish these crimes, and to protect the victims.**

IV.3. Migrations law and its regulation. Diffusion, information and training.

Until the beginning of 2004, one of the main sources for violations of migrants Human Rights was the migratory law passed by the last military dictatorship (law 22.439). In January a new Law, 25.871, took effect. This law, presented as the end of 23 years of effectiveness of the previous one, seeks to regulate the access and permanence of migrants in Argentina.

Law 25.871, effective today, affirms among its principles "the fulfillment of the international commitments signed by the Republic of Argentina about migrants Human Rights, integration and mobility" (art. 3). By means of the law, the Argentinean State sanctions that it will "ensure equal access of migrants and their families in the same protection and rights as the local people, particularly in reference to social services, public welfare, health care, education, justice, work employment and social security" (art. 6). Articles 7 and 8 ensure the rights to health care and education regardless of the migratory situation of the person.

Although this new law brings a significant progress to the exercise of migrant rights, more than six months later it is still in its regulation process. This means that up to date, specifics that have to do with the institutional practices and procedures that will be part of the enforcement of the law are yet to be determined, all of which derives in the impossibility to effectively enjoy the rights there acknowledged.

As for the regulation process, in which non-governmental organizations will take part, it is of great importance the respect and observance of basic standards established by international law on the restriction of human rights. The International Convention on the Elimination of All Forms of Racial Discrimination (art. 2 C), as well as several international regulations on human rights, set a clear juridical limit to the regulation power of States, particularly when it comes to a restriction of guaranteed rights to all human beings (any restriction must be established by formal law, must be reasonable, non-discriminatory, addressing a legitimate end, and need to respect the pro homine principle).

It is particularly important to observe these limitations all through the regulation process of Law 25.871, in order to avoid any rights violations through illegitimate means and forms, as happened with the former Migration Rules (Decree # 1023/94) in relation with Law 22.439.[2]

On the other hand, as part of the effectiveness of Law 25.871, **it is essential to plan and implement government policies to foster and carry on institutional practices and procedures in accordance to the rights commonly acknowledged by migration norms**. In this sense, and in relation with experiences with the former law, it is indispensable for the Argentinean State to plan **public information policies** about the existence of the rights established through the regulation text. These policies must go together **with information and training programmes for staff members** from related areas (migrations, security forces, health and education, justice administration, among others) in order to put an end to institutional practices that may have discriminatory traits and thus attempt against the full exercise of the rights acknowledged in international treaties, the Argentinean Constitution and the migration law itself.

In summary, it is important that the Committee recommends the National State:

1. **immediate regulation of Law 25871**

2. **this law should contemplate among its objectives the eliminations of all existing obstacles and unfair practices to obtain residence in Argentina, as it is established by the migratory law[3],**
3. **this should be followed by a determined State policy in order to divulge and inform about the changes established by the law, as well as the training of all governmental authorities (at the national, provincial and local levels).**

IV.4. Discriminatory legislation because of nationality

Although the new migratory regulation reresents, in general terms, a progress regarding migrant rights in Argentina, there are still important pending issues for the Argentinean State in order to effectively guarantee – and without any discrimination– the rights of foreign citizens.

In effect, in Annex II, we attach a list of ***valid laws and decrees in Argentina (at a national or provincial level), all of which regulate acess to rights (particularly the right to jobs, professions and diverse pensions), and establish the Argentinean nationality as anavoidable requirement to enjoy them.*** In this way, there is an evident vulneration of the equal rights principle for native people and foreigners as guaranteed by the Constitution of Argentina to all its inhabitants (arts. 14, 16 y 20), and the principle of non discrimination because of a person's national origin. This principle, it must be reminded, has been recognized as a jus cogens norm [4].

Because of all this, it is important that the Committee recommends the Argentinean State to:

1. revise and revoke all national and provincial legislation that establishes illegitimate discrimination because of nationality

V. REFUGEES AND ASYLUM SEEKERS

[2] This former law decree, but still effective, determined a considerable number of criteria and bans not mentioned in the law, all of which were discriminatory and opposed to Human Rights treaties.

[3] "The State will provide the means for the adption of measures intended to regularize the migratory situation of foreigners" Law 25.871, Art. 17.

[4] Inter-American Court on Human Rights, OC-18/03, *Legal status and rights of undocumented migrants,* San José, Costa Rica, September 17, 2003.

Because of their particular situation, refugees and refuge seekers are a special vulnerable group. The Argentina Republic is a signatory party State to the 1951 Refugee Convention and the 1967 Protocol, by which it is internationally committed to protect the rights of refugees.

V.1. There has not been an adoption of a national law on refugees nor of a procedure to allow eligibility of the refugee status.

Regarding the situation of refugees in Argentina, **our first concern is that the approval of a national law to regulate the status of refugees and procedures to seek asylum is still impending.** Even when the Argentinean Congress, by the end of 2003, passed a new migrations law,[5] the procedure to determine a refugee status is still regulated by a decree of the Executive Power dating from 1985, and by the practices of CEPARE (an administration agency under the National Direction of Migrations in charge of conceding or denying refugee status). In many occasions this entails bureaucratic obstacles, contradictions and even violations of due process.

V.2. The administrative requirements in asylum appliances do not meet international standards of due process

a) Unreasonable delays

In the first place, we must point out that even when CEPARE takes on all petitions presented, there are serious delays in the procedure and resolution of appliances. This delay in the determination of a refugee's status violates the seekers' right to be heard in a reasonable time frame to establish their rights.[6] In its report, the State says that because of the growing number of refugee appliances received in recent years, there has been an increase in the time it takes to determine a refugee's status. but the best is being done to decide upon appliances as fast as possible. However, these efforts are not successful, as the time estimated for an appliance to receive its first refugee status definition may span from 1 (one) to 4 (four) years. In cases of denial and therefore a need to appeal, procedures must be taken to the Domestic Affairs Ministry, with intervention of the Human Rights Sub-Secretary, all of which can take 1 (one) to 3 (three) more years. In this way, an asylum seeker might have to face **more than 6 (six) years** waiting for the administrative procedures to end.

During procedures to receive a refugee status, the seekers receive a *temporary residence* that must be renewed every 3 (three) months. This temporary residence, although legal, turns into a highly vulnerable condition, as the person finds difficulties to access a job, as well as a denial to some fundamental rights due to the lack of an Argentinean ID document (DNI)[7].

b) Lack of interpretation

Another aspect that seriously attempts against the basic guarantees that must be provided in every procedure to determine where the rights and obligations of the people[8], particularly in cases of asylum request, refers to the right to be "assisted freely by a translator or interpreter if the person does not understand or speak the language of the court"[9]. This right is not respected in CEPARE procedures, as CEPARE requests the asylum seeker to come over with a translator or interpreter if the person is unable to understand or speak Spanish. On the rare occasions when the seeker can get a translator, it's usually a refugee seeker that has been several years in

[5] Law # 25.871, approved on December 17, 2003, sanctioned on January 20, 2004.

[6] Articles 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the International Convention on Civil and Political Rights, article 8 American Convention on Human Rights.

[7] Even when formally several laws grant them the same rights as the local people, daily practices do not confirm it. The temporary residence allows them to work, but the indication that the person is seeking asylum brings about rejection from employers and discrimination by other members of society. This entails that jobs accessible for refugee seekers are only informal and precarious.

[8] Cfr. Arts. 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 8 American Convention on Human Rights; article 14 International Convention on Civil and Political Rights; Inter-American Court for Human Rigts, *Consitucional Court Casel*, Series C, Resolutions and Sentences, # 71, par. 124; Inter-American Court for Human Rights, *Ivchter Bronstein Case*, Series C, Resolutions and Sentences, # 74, par.103.

[9] Article 8.2.a ACHR.

Argentina and thus learnt the language, but the Argentinean State does not offer, in any moment, translation services, even when it is evident, by the Human Rights treaties of which it is a signatory part and the 1951 Convention on refugees that the State has the obligation. This omission has been the cause of several irregularities and violations of the rights to defense, to be heard and to due process (as has been verified by *Legal Clinic for the Rights of Immigrants and Refugees*[10]).

c) Violation of the guarantee for impartiality

One more reason of concern emerging from the procedure to determine the refugee status has to do with the administrative appeal when an appliance is denied. Here the principle of impartiality is affected. Before resorting to a higher level, the Human Rights Sub-Secretary has intervention as opinion organ. The Human Rights Sub-Secretary belongs to the Ministry of Justice, Security and Human Rights. Whenever there is an opinion conflict between this Sub-Secretary and the Ministry of Domestic Affairs, the case is sent again to CEPARE for a new resolution. This not only brings further delays, but resolution falls once more in the hands of the same agency that has given a denial in the first place, all of which violates the right to be judged by an impartial body and the guarantee to appeal the measures.

d) Lack of founded refusals

Finally, regarding process, the Argentinean State Report says that the Committee takes its decisions based on founded resolutions. However, the work of the *Legal Clinic for the Rights of Immigrants and Refugees* (where the asylum seekers that receive a denial generally go for assistance), has verified serious deficits in the reasons of the administrative act that rejects the asylum appliance. Among other things, CEPARE omits filing information on the objective situation in the seeker's country, at the same time it mentions the "objective situation" among the reasons for denial.

V.3. Absence of training for officers in border areas

Another issue is the deep concern brought by recent facts that would reveal a total lack of awareness among officials in border areas of the country about principles and norms regarding asylum seekers. Refusals that have taken place in border posts not only reveals this lack of awareness, but, much more seriously, a violation of the *Non Devolution Principle* as there is a denial of access to persons that could have their lives at risk if they are returned to their country.

V.4. Absence of policies for the social inclusion of refugees

The Argentinean State does not promote any policies to facilitate the inclusion of refugees and refugee seekers in the Argentinean society. We must note the absence of official policies addressed to guarantee or facilitate integration. In the social inclusion programmes, as well as in the employment and housing programmes, there is a total lack of vision at a national scale and planning for the future. There are no assistance programmes, as all actions are carried on through the efforts of the UNHCR office in Buenos Aires. This situation is worsened by the absence of agreements of studies, titles and grade recognition with the countries from which, at present, the refugees come.

In consequence, it is essential that **the Committee recommends to the Argentinean anState to adopt fundamental measures such as:**

1. **Pass a law on refugees and asylum seekers**
2. **Restructure proceedings of eligibility in order to prevent due process violations**
3. **Initiate a policy to train competent officers to work in border areas**
4. **Develop actions to facilitate the social inclusion of people that are recognized as refugees by the State**

[10] The *Legal Clinic on the Rights of Migrants and Refugees* was created by an agreement between the Legal and Social Studies Centre (CELS), the Argentinean Committee for the Refugees (CAREF) and the School of Law of the University of Buenos Aires (UBA). It provides assessment and free legal advise to migrants, asylum seekers and refugees. It is formed by teachers and students of the School of Law of UBA.

VI. INDIGENOUS PEOPLES

In this section, we analyse the present situation of indigenous peoples in Argentina. In particular, we consider the fact that the laws needed to protect the rights and specific characteristics of indigenous peoples **have not been passed – nor existing legislation has been adapted –**and there are **great deficiencies in the implementation of concrete norms that have been passed already.**

Practically no advances have been made in this field, and in some cases **serious drawbacks have been detected,** in relation to structural problems linked to these peoples´ rights, like the **recognition of the communitarian property of the lands** where they live from ancestral times and land access, and the participation of communities in the matters that concern them. Equally, it is an inexcusable pending matter the fact that the State has not granted **legal status** to the communities.

In synthesis, the National State does not adopt the pertinent political and judicial measures in order to comply its obligations in respect to indigenous peoples' specific rights. Provincial states are obliged only in a concurrent manner (art 75 inc. 17 in the National Constitution, ILO Convention 169 on indigenous and tribal peoples, adopted in Argentina by the national law N 24.071 and ratified in 2001 and by numerous human rights treaties.

VI.1. Synthesis of the main problems that indigenous peoples face in Argentina

In relation to territorial rights, there are very few communities that have obtained the legal ownership of the land where they live from ancestral times. Ten years after the new National Constitution recognized the indigenous peoples' rights, a procedure to obtain legal ownership of the land has not been yet created, nor a method to establish and set territorial boundaries. Moreover, there are not efficient legal resources in the existing juridical order to protect the ancestral lands. In common practice, some members of the indigenous communities are intimidated, threatened and persecuted so that they resign to their land claims. In numerous occasions, they are judicially overthrown from their territories or there are lawsuits against them accusing them, paradoxically, of land usurpation. On the other hand, at present, there are taking place in several regions in the country, great infrastructure constructions and mining or forestal enterprises that put in danger territorial integrity, cultural identity and the life of some of the indigenous communities.

In spite of the legal obligation to consult and allow the participation of indigenous peoples in the debate of the public policies that concern them, only public servants and state agencies are the ones that, in practice, define these peoples' needs, interests and priorities. Infrastructure or development enterprises take place without consultation and without the communities' consent. Moreover, the indigenous peoples do not have any kind of representation before the State.

At the same time, the indigenous peoples receive little assistance for education and the National State has not been able to implement, till this moment, a public policy in education that takes into account, at a national level, indigenous peoples' cultural identity, specific educational, linguistic and cultural needs, nor has made the necessary and urgent reforms in present Education Plans to involve society as a whole.

There is also a serious lack of information from the State side. There is no information on a census on indigenous peoples and communities, nor detailed information about the representation of this population in public office at the federal and provincial levels.

The social and economic conditions in which these peoples live are highly deficient and, in spite of that, the State has not produce information on the situation of their economic, social and cultural rights nor has adopted, within the social security system, special measures to assist them in their specific needs. Another matter of great importance is that there is not a specific State policy for the indigenous people and the treatment they are given is predominantly aid driven. As we shall describe next, the results of the programmes related to land matters or health that have been created by the National Government and to be developed in some provinces, have produced insufficient and very poor results.

Finally, one of the main problems is the lack of adaptation of the normative to achieve Legal Status. The communities are recognized as "civil associations", fact that violates their rights as "peoples" and results totally contrary to their traditional forms of organization. This, added to the lack of articulation between policies and measures taken at the national and provincial levels and to the inexistence of effective mechanisms to guarantee access to the courts of Justice, results in the fact that most of the indigenous peoples see their access to their fundamental rights seriously limited and almost impossible to achieve.

In the following paragraphs we shall mention, when it is pertinent, the recommendations that CERD made to the Argentinean State on April 27, 2001.

Finally, as Annex III, we report some cases affecting indigenous communities that, till this moment, have not been able to achieve their claims as indigenous peoples and see their rights systematically violated.

IV.1. Main indigenous rights violations in Argentina

Since the last recommendations that CERD made to the Argentinean State in 2001, the situation of indigenous peoples in the country has not changed in practice and serious deficits and drawbacks have been spotted. This is a description of this situation:

IV.1.1. Absence of legislation adapted to the specific characteristics of the indigenous peoples. Lack of implementation of existing legislation. Lack of mechanism that guarantee access to the courts of Justice
Even when the State has recognised indigenous rights formally, the lack of rules and regulations of constitutional and legal norms and of articulation between the national and provincial levels[11] make their accomplishment or practice impossible, and constitute, because of that, a systematic violation of these rights.

In this sense, 10 years have passed since the indigenous peoples' rights were recognised constitutionally, but the National State has not yet adopted the legislation needed on land rights and access to territory, nor has established a procedure to obtain legal ownership of the land, nor a method to establish and set territorial boundaries.

The scarce "indigenous" laws that have been sanctioned, in general, are not fully applied and, in certain cases, not even partially, Unfortunately, Law 25.607 passed on June 12, 2002, that ruled "the realisation of a campaign in the media on indigenous people's rights as they are stated in art 75, inc 17 of the National Constitution never took place. In equal manner, there have been many situations in which a law or decree recognises territorial rights or other rights to a community that are never taken into account.[12] Moreover, though these laws seem to recognise cultural diversity, this discourse functions more as a stereotype or an obstacle than as a right to be enjoyed.

On the other hand, the juridical order has not foreseen the existence of legal resources to protect the property of ancestral lands, be they occupied by indigenous peoples or others, in order to avoid the exploitation of natural resources.[13] In this matter, indigenous peoples do not have established institutional spaces where to present their claims and see their possibilities of access to justice seriously limited, be it to demand for their rights or to defend themselves from the advances of others over their rights on matters that include economic and geographical

[11] Nine out of 23 provinces in Argentina have incorporated indigenous peoples' rights in their constitutions. With different emphasis, some seem to subscribe to the spirit of the National Constitution, while others keep an integrationist tendency.
[12] In the case of annex III, related to the Association of Indigenous Communities, Lhaka Honhat, it can be seen that the provincial decree 2609, in 1991, ruled to grant an amount of land without divisions and under only one title. Thirteen years have passed and this grant has not taken place. The case is under friendly resolution before the Interamerican Human Rights Court.
[13] As an example of this, recently the government in the Misiones Province, through its Ministry of Ecology, authorised the deforestation to the Mocona Forestal SA over the territory of the Tekoa Yma and the Tekoa Kapij Yvate communities. Read the case (11) in annex III.

problems. The lack of special procedures and mechanisms[14] and obstacles coming from the fact that they don't have a legal status became also a barrier.

VI. 2.2. Absence of a State policy

In spite of the rule of ILO Convention 169, there is not a State policy on behalf of the indigenous peoples.

In the first place, if we take that information is an fundamental tool to elaborate an efficient policy, it is necessary to highlight that till this day, and in spite this Committee recommended the Argentinean State three years ago to adopt "the needed measures to do a census in the shortest time possible" (Cfr. CERD/C/304/Add.112 – April 27, 2001, Final observations of the Committee to Eliminate Racial Discrimination paragraph 7), the State has not yet accomplished this request.[15]

The treatment that the State grants indigenous peoples today continues to be aid driven. Moreover, the national and provincial programmes tend to take care of the material needs of poor sectors, not recognising their particular characteristics nor their identity as indigenous peoples.

The Institute for Indigenous Affairs (INAI), en charge of State policies on this matter, suffers, from its very creation, diverse budget problems. On one side, it is true that by Decree 677, dictated on August 9, 2000, as a consequence of a judicial order (as manifested by the National State in Cfr. CERD/C/304/Add.112 – April 27, 2001, Final Observations to the Committee for the Elimination of Racial Discrimination, paragraph. 7), this Institute was decentralised and incorporated to the Ministry of Social Development. Three years have passed and the new administrative structure has not been approved, so it still has a State secretary rank. Nevertheless, in practice, it has the power to resolve any matter related to the indigenous communities even when (as the State recognises in the same document, paragraph 162), the indigenous peoples are still not part of it, as it is established by National Law 23.302, 1985.

The current situation indicates that there is not political will at this moment to put into practice the representation and participation of indigenous peoples. They don't have any kind of representation in the State structure nor mechanism to achieve it. Government officers and State agencies are the ones in charge of designing, without consultation, their needs and priorities. In the 2001 Recommendations,
CERD observed that there is "an absence of detailed information about the representation of indigenous peoples in public office at a federal and provincial level, in the police force, courts of justice and congress" (CERD/C/304/Add.112, April 27, 2001, final Observations of the Committee for the Elimination of Racial Discrimination, paragraph 8) and repeated its request that in 2004 the next State report produces information on this matter.

It must be pointed that there are no rules nor federal policies that allow communities access to their rights. At the same time, in these places of conflict, the National Government does not apply its duty to control nor intervenes so that decisions are adopted according to the legal obligations of the Argentinean State in protection of the indigenous peoples.

The results of the National Plan for the Regularisation of Indigenous Land in Jujuy, Chubut and Rio Negro that started in 1996 has been very deficient. The Programme for the Regularisation and Adjudication of Land in the Province of Jujuy, that consisted in granting titles for 1.293.000 hectares for 80.343 inhabitants of more than 150 kollas and guarani communities, was subscribed by the National State with the commitment of granting money to this project. But it was full of bureaucratic ties that resulted in the fact, eight years after, that only 3 of the 150 communities had been able to obtain their land titles. Moreover, the Institute for Colonisation and the Department

[14] Argentina does not have an Ombusman on Indigenous Matters, as other countries.

[15] The State has shown lack of interest towards the indigenous peoples. In its 1998 report, it mentions the existence of 17 indigenous peoples and in its last report, it manifests that there are "around 15 different ethnias" (Cfr. CERD/C/304/Add.112 – April 27, 2001, Final observations of the Committee to Eliminate Racial Discrimination, paragraph. 7). NGO reports point to the existence of between 18 to 24 indigenous peoples.

of Properties in Jujuy, contradicting the policy to make effective entitlement of community land, promoted and granted land under individual entitlement, a fact that resulted in legal actions. [16]

Lastly, in spite of the Committee's Recommendation (Cfr. CERD/C/304/Add.112 – April 27, 2001, Final Observations of the Committee to Eliminate Racial Discrimination, paragraph 12), the State has not adopted special measures within the social security system to respond to the specific needs of the indigenous peoples, and for this reason, has not reported on it. In some provinces, there are no indigenous health agents, and those who have them don't have the needed resources that would allow them to work. The ANAHI Programme originally planned to strengthen indigenous peoples´ health care has not met its objectives. The health centres were not properly equipped, there was no training of health agents, nor were they provided with the necessary medical stocks, nor authorities have taken into account cultural beliefs regarding these people's traditional medicine.

VI.2.3. Adverse social and economical conditions.

In its last recommendation, the Committee highlighted the lack of data in State reports regarding the accomplishment of economic, social and cultural rights for indigenous peoples and stressed its concern on the fact that the areas where indigenous communities live coincide with those with the highest numbers of unsatisfied needs and recommended the National State to adopt measures to palliate this situation and requested to be kept informed on this regard. (Cfr. Cfr. CERD/C/304/Add.112 - April 27, 2001, Final Observations of the Committee for the Elimination of Racial Discrimination, paragraphs 8 and 9). In its report, the State has not produced the requested data nor has reported on the measures that were taken.

Until today, the indigenous communities suffer the destruction of their natural resources by the devastation of forests and soil and water contamination because of the advance of agriculture and wood, mining, petrol and other enterprises. Neither have they seen their sanitary problems solved, because of the lack of water, medical care,[17] transport and communications. All these add to the absence of measures regarding environment contamination and control of plagues and human and animal parasites.

On the other hand, the communities have practically not received any assistance for education and there are high levels of school dropouts related specially to the discrimination children suffer on the side of teachers and schoolmates, and the lack of economic resources in the families. [18]

Finally, the lack of land regulations, stops the necessary protection of food resources that exist in the region, fact that has effects on the growth and development of the future generations.

VI.2.4. Lack of adapting legal status regulations to the traditional forms of organisation

The main problem associated to this issue is that the State sticks to the idea of "granting" legal status to the communities instead of the "recognition" that the National Constitution establishes.

The problem related to recognising legal status to indigenous peoples as peoples according to the non State public status has not been solved yet. In practice, the indigenous communities have not had but the option to obtain their legal status as private associations, figure that puts restraints to and denies their rights, because it results totally inadequate to their traditional forms of organisation. Moreover, as an Unified National Legal Status Register has not been created yet, there are problems and confrontations related to the existence of systems that

[16] During this year a representative group of indigenous communities in that province, formed by members of the Commission for Indigenous Participation and representatives of the Indigenous Peoples' Permanent Forum, presented a legal action requesting that the courts of Justice demand the Provincial State to abstain from continuing granting land to individuals (be they members of the indigenous communities or third parties) if these lands happened to be included in the Land Grants Programme. Because of the delay in this Programme, they also requested the Provincial State to take all the needed measures to accelerate procedures.

[17] In relation to the indigenous peoples, the State does not comply with the fundamental elements of the right to health care (access, availability, quality and acceptability) according to the norms established by the Committee for Economic, Social and Cultural Rights in its General Observation, number 14

[18] See case (41) in Annex III

differ among them On the other hand, there are many the communities that haven't obtained their legal status till today.[19]

VI. 2.5. The right to cultural identity and to bilingual and intercultural education. Training.

The indigenous peoples' rights to exist as such is linked to the effective exercise of special rights, and in particular, of the right to communitarian ownership of their land, as this is a fundamental element that is part of their identity as a people. If this right is not effectively assured, the consequences work in detriment of the right to cultural identity.

On the other hand, in 2004 the National State launched a National Programme on Intercultural and Bilingual Education, though it has not been able to develop an education policy that, at a federal scale, might take into account indigenous peoples´ cultural identity and their specific educational, linguistic and cultural needs. In practice, there is little training of indigenous teachers, few jurisdictions develop programmes to preserve indigenous languages (some of them due only to individual efforts) and there are no measures to include contents aimed to eliminate from the schools´ curricula existing prejudices in society towards indigenous peoples. The existing curricula have not been revised and the State should do so in order to eliminate offensive contents against indigenous peoples and include their history and culture.[20]

Finally, real and effective mechanisms have not been implemented to allow society in general and indigenous communities as well, to learn about their constitutional rights and other regulations.[21]

At the same time, it should be highlighted that the State considers that "the work that has to be done will demand a big effort and long years before society gets enough information about this issue. It will also demand a special task involving training and education of agents in the administration, members of security forces, officers and judges" (cfr. Paragraph 150). It doesn't report on any measure that has been planned or taken place in order to achieve this training and education.

VI. 2. 6. The right to participate and be consulted

Problems related to the lack of participation of indigenous peoples in the design, planning, execution and control of the policies that concern them still exist. This also happens in relation to the absence of their consent to the design and execution of infrastructure or development enterprises that affect their natural resources. On this matter, there is a lack of the needed mechanisms to make participation effective and informed consent on the side of the communities. Studies to measure impact on the environment have not taken place and there usually are great obstacles to access information related to these projects.[22]. Associated to this second matter is the fact that mechanisms to allow participation and the expression of informed consent on the side of the communities are

[19] The case (19) figures in Annex III of this report and shows the terrible consequences of the lack of legal status the community of Liviara has not been able to defend its territory from gold mining because a company took advantage of their lack of legal status to sue them.

[20] In this matter, the only measure that some provinces have adopted is the incorporation of a bilingual assistant (whose category is inferior to that of a teacher) but the communities do not take part in their designation nor in the definition of their functions. As a consequence, many of these assistants are discriminated and even given task that have to do with cleaning. Their qualifications are not valuable for the Qualifications Committee.

[21] We have already mentioned the National Law 25.607 that includes this issue, but has never been put into practice.

[22] The Mapuche communities in the Province of Neuquen, for example, have to suffer, on one side, constant problems with mining companies that explore and exploit the land without proper control. On one side, privatised companies such as Gas de Sur, Transportadora Camuzzi, Transener, Hidronor or former State companies have planned to occupy indigenous territories without the due consultation and requests. As an example of the lack of institutionalised mechanisms for indigenous participation in the issues that affect them, the provincial congress in the Province of Chubut appointed a committee to regulate State lands and forest without taking into account the participation of the communities. At the end of 2002, workshops took place to put two projects related to the Legal Regime for Forests into consideration of the population. As a result, a Project on Land Legislation was discussed, that would substitute the present regulations. Curiously enough, this project made no mention to indigenous lands and territories nor other aspects of the existing provincial law 3765. This new project would diminish and even end legal protection for indigenous people.

not used. Studies on impact on the environment do not take place and there are usually great obstacles to access to information related to these projects.[23]

VI. 2.7. Territorial rights

There are scarce experiences in which indigenous communities have achieved the right to the communitarian property of the land that they have occupied from ancestral times. In the majority of these situations, they have not yet obtained a definite title [24] and in certain cases in which the communitarian land titles have been recognised, either not all the land claimed was included or the State did not take a resolution on the situation of non indigenous inhabitants that live in those lands.

Added to all this is the fact that land ownership as foreseen in the law does not comply the special ways in which the communities relate to their territories, not taking into account their criteria and world view.

At the same time, there are intimidations, pressure and unfortunately, persecutions against some community members to force them to resign to their land claims. During these last years, there have been cases of communities or individuals that have been evicted with and without a legal order, or judicial procedures are initiated against them because they are accused, paradoxically, of usurpation of the lands they have occupied from ancestral times.

At present, the development of several infrastructure or development enterprises in different parts of the country threaten indigenous communities' territorial integrity and even their life. To this we should add the process of "soy invasion"[25] that started in our country some years ago and that decrease the possibilities that indigenous communities have to obtain their land because governments would rather sell the land to private owners. [26]

VI. 2.8 The right to physical integrity and personal freedom

A serious problem that we cannot avoid in this report is the terrible persecution and represion that the State led against the Toba Nam Qom community in the Province of Formosa.

By mid- 2002, around 100 policemen entered into this community's territory, without a judicial order, looking for a group of indigenous men that were accused of having killed a policeman. According to the denounces that were presented, the policemen battered and bad treated children, men and women in the community, several of whon suffered serious threats, humiliations and even torture. Finally, 8 people were detained and were left incommunicated in a police station and under torture they were obliged to declare against themselves. Three of these men, in spite of the evident irregular procedures and the serious violations of their human rights, are still in jail (July, 2004), [27]

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[23] In the Province of Jujuy, apart from the negative results of the Provincial Programme we have already mentioned, another situation of concern is that some indigenous communities have to bear the fact that they live in their own land as "tenants". This is the case in, for example, Tafna, Ojo de Agua, Casillas, Abuas Calientes, Doncellas, Vicuñayoc and Poma, where they live in lands that belong at present to the Aguilar Mining Company. On the other hand, the majority of the Mapuche communities that live in the Province of Neuquen face obstacles in relation to the legal registration of their territories because of conflicts with private owners. In spite that many of the territories in this Province are considered as permanent reservations by the Provincial State, it does not intervene in their defence when third parties overtake them.

[24] See case (1) in Annex III

[25] This "soy invasión" refers to the explosive growth of soy cultivation that started in our country in the 90's. En truth, this process is linked to the advance of agriculture because of climate changes, but above all, due to the use of new technologies that allow cultivation in areas that were considered economically sterile some years ago and that have become now apt for specific crops. The great economic groups are the ones that have access to these new technologies and they want to produce their crops at a large scale. Because of this they pay good money to buy or rent the land and want high returns for their investments. This situation affects inevitably the life of the communities that see their ancestral lands subject to deforestation.

[26] Recently, the government of the Province of Salta sold a natural reservation inhabited by the Wichi ethnia for deforestation and soy cultivation. The legal actions that several organisations put forward were not enough to stop the sale, which took place on June 24, 2004. See case (18) in Annex III.

[27] This case is described in Annex III (case 42).

Nor the National State nor the Provincial State have taken any measures considering these events. This is a flagrant deliction of their duties to investigate and sanction those responsible of human rights violations.

VI. 2.8 The right to a name and identity

Members of indigenous communities see that their right to a name and identity is also vulnerated by the State because in spite that there are a large number of indigenous people who have no identification cards, the State has not created any efficient polity to provide them this document. This causes that many indigenous people cannot access the majority of social programmes because they don't have their ID.

VI.3. Conclusion

Due to these facts, it is fundamental that the Committee recommends the Argentina State to adopt essential and urgent measures such as:

1. **develop and apply a Federal State policy that is specific for indigenous people;**
2. **regulate the rights recognised in the National Constitution and in the ILO Convention 169;**
3. **implement existing normative effectively and create control mechanism to guarantee that Provincial Governments comply the local laws that have to do with indigenous communities;**
4. **create representation for these peoples in public bodies and open their participation in public polices that concern them;**
5. **produce a census with information on indigenous peoples and on the situation of their economic, social and cultural rights;**
6. **adopt, within the social security system, special measures to assist the indigenous peoples' specific needs;**
7. **recognise effectively , by a national policy, the legal status of peoples and communities in their traditional way of organisation;**
8. **implement a policy on education that – at a federal range – takes into account indigenous peoples' cultural identity and promotes the needed reforms in education plans in order to eliminate discriminatory contents against indigenous peoples and to include their history and culture;**
9. **create the needed mechanisms for effective participation and expression of consent in all the issues that affect indigenous communities;**
10. **adopt urgently effective legal procedures to recognise land titles and establish territorial landmarks and special legal resources to protect the property of ancestral lands, stop exfoliation of natural resources and guarantee access to justice.**
11. **promote and develop policies so that indigenous people can obtain their identification cards;**
12. **investigate and punish all persecution, intimidation and/or aggression against indigenous people;**
13. **develop and launch a media campaign to inform society about indigenous peoples' rights, and implement training and education for agents in the State administration.**

VI.4. Case studies of indigenous peoples' rights violations

In the following paragraphs, it is shown the amount of situations in which communities see their rights violated nowadays.

The full development of each of these cases can be read in **Annex III** in this report. The information that is reproduced here is taken from data given by members of the communities themselves, from their legal representatives of from press articles published in main newspapers in the country.[28]

[28] The stories related to these case studies are taken from the Alternative Report on the compliance of the Argentine State to the duties assumed by the ratification of ILO Convention 169 related to Indigenous and Tribal Peoples in independent countries, that was written by Equipo Nacional de Pastoral Aborigen (ENDEPA) and the Ecumenical Movement for Human Rights (MEDH) in July 2003. This content was updated with the help of members who played a key role in the conflict.

On this respect, we should clarify that all the cases presented here are not the totality of communities that, to this day, have not been able to obtain access to their rights.

VI.4.1 Violation of territorial rights

Cases: (1) Asociación Meguexosochi, (2) Asociación de Comunidades Aborígenes Lhaka Honhat, (3) Comunidad QOM de Miraflores, (4) Comunidad Mapuche Marifil, (5) Comunidad Yrapú Mbya Guaraní, (6) Comunidad Kaa Kupe, (7) Comunidad Virgen María, (8) Comunidades Kaaguy Poty, Ivy Pyta, Kapi´i Poty, (9) Comunidad Pindo Poty, (10) Comunidad Jejy, (11) Comunidades de Tekoa Yma y Tekoa Kapiì Yvate, (12) Comunidades YY Ovy, Yamandú, Tamanduá, (13) Comunidades Kolla Tinkunaku de San Andrés, Rio Blanquito, Los Naranjos and Angosto del Paraní, Comunidad (14) Wichí Hoktek T'oi, (15) Comunidad de Cazadores Alazampa, (16) Comunidades Huarpe Milcayac (17) Comunidades Mapuche Felipin, (18) Comunidad Wichi Eben Ezer.

VI.4.2 Violation of the right to be consulted, to participate and to give informed consent

Cases: (19) Comunidades Kolla Rachaite, Pucara y Tumbaya, (20) Comunidad Liviara, (21) Comunidad del Paso de Jama, (22) Comunidades Painemil y Kaxipayiñ, (23) Comunidad Gelay Ko, (24) Comunidades Tekoa Ima and Kapii Ivate, (25) Comunidades Huarpe de Huanacache, (26) Comunidades Mapuche Huisca-Antieco, (27) Comunidades Reserva Mariano Epulef, Nahuelpan, Prane, Vuelta del Río, Ranquil Huau, Füta Huao, Reserva Cushamen and Comunidades Tehuelche from the Meseta region**,** (28) Indigenous communities in the Quebrada de Humahuaca, (29) Comunidad Tinkunaku, Finca Santiago, Iruya y Cáspala, (30) Comunidades Pilagás "El Descanso" and "Campo del Cielo, (31) Comunidad Mapuche Lago Rosario de Chubut.

IV.4.3 Dislodging, persecutions and discriminatory actions

Cases: (32) Comunidades Mapuche Tehueche Vuelta del Río and Ranquil Huao, (33) Comunidades Painemil and Kaxipayiñ del Pueblo Mapuche, (34) Comunidad Trypan Anty in the Province de Rio Negro, (35) Comunidad Mapuche-Tehuelche Prane, (36) Comunidad Ava Guaraní El Tabacal, (37) Lof Casiano from the Provincia de Río Negro, (38) Mapuche couple formed by Rosa Rúa Nahuelquir and Atilio Curiñanco, (39) Comunidad Sepúlveda Paraje Buenos Aires Chico, (40) Familia Mapuche Choyqueta – Cayulef, (41) Comunidades Toba San Carlos from Provincia de Formosa, (42) Comunidad Toba Nam Qom- Provincia de Formosa, (43) Comunidad Toba Cementerio Aborigen Colonia del Sol.

VII. DISABLED PERSONS

The following chapter presents a brief description of the problems and rights vulnerations suffered by disabled persons in Argentina,and constitute a summary of longer document elaborated by several NGOs in 2003[29]

The information gathered in this report draws us to the conclusion that the Argentinean State has not taken all possible and feasible measures to meet its obligation to eliminate discrimination of the disabled. In this respect, the Committee on Economical, Social, and Cultural Rights has stated that "discrimination, *de iure* or *de facto*., against disabled persons exists since long ago and in many ways, which span from direct discrimination, as the refusal to concede educational opportunities, to more subtle forms of discrimination, as the segregation and isolation produced by the imposition of physical and social hindrances"[30].

[29] The following chapter is a summary of the document "The Situation of Disabled Persons in Argentina"[29], that was presented to the Argentinean government by the National Assessment Committe on the Integration of Disabled Persons – from here on CONADIS– in August 2003, attached to this counter report as Annex IV. The full document was produced by REDI – Network for the Rights of Disabled Persons – CELS and Network for Legal Assistance and was conceived to be presented to the Special Rapporteur for the Commission on Social Development on the Supervision of the Application of Uniform Norms on Equal Opportunities for Disabled Persons in the United Nations.

[30] Committee on Economical, Social and Cultural Rights (DESC), General Observation # 5/94. Pt. 15.

VII.1. Access and friendly environment for the disabled

Regarding the Argentinean government report – paragraph 112, inc. b and 422-423– in reference to accessibility to transport and buildings, we must note that: "Education, work, social life and personal development find serious limitations because of physical, architectural, transportation, and communication barriers that exist all over the country's territory." (Annex IV: 5.1)

Violations of the rights of disabled persons by the Argentinean state become apparent in public transportation. Enough is to say that "Deadlines established by National Law to incorporate **accessible transportation units** and **adapt public facilities** (such as train and bus stations) have expired without modification of the real inaccessibility conditions for persons with mobility and communications disabilities" (Annex IV: 5.3.1)

As for buildings accessibility, the Argentinean government mentions the Working Place Adaptation Programme[31]. However, we must note that the Government report only talks about jobs assigned by that Programme, **without any mention of the lack of accessibility in public buildings"** ...because most governmental buildings do not meet accessibility norms. In the few cases where accessibility is sought, it is only partial and without the observation of technical specifics" (Annex IV: 5.3.3). The situation is even worst in the sphere of provincial governments, as in many of them there isn't even a legal framework to promote accessibility.

Thus, regarding the role of CONADIS in promoting accessibility in the national territory, it must be noted that: "Because of the federal structure of the country's organisaton, provinces and communities decide if they adopt the law. In this sense, 21 years after the approval of Law # 22.431[32], only two out of twenty four Argentinean provinces adopted it. This circumstance shows national authorities' the **lack of strategies to foster local regulations in order to guarantee the right to accessibility in all the country**" (Annex IV: 5.4).

VII.2. The right to work of disabled persons

Regarding the Argentinean State report[33], as for the Integration and Follow-Up Programme that mentions a job quota for disabled persons, the report ommits that: "The monitoring process that took place in Public Administration dependencies shows that this quota barely reaches one per cent (1%) of the staff, which **falls short from meeting the requirements of the law and thus constitutes a violation of the human rights of disabled persons** [which require 4%]"[34].

Regarding the Argentinean State report, paragraphs 274, 277-280, in reference to the Protected Production Workshops (TPP), we must note that the report omits any reference to National Law 24.147, which **hasn't been regulated yet** –with the consequent uncertainty about the reach and content of the law– and "while art. 1 of the aforementioned law designates a social role to TPP, art. 3 requires from the entities a corporate and professional structure sustainable even when meeting the social role factor". In this way, it is clear that while the State requires contribution, at the same time it does not contemplate the budget prevision established by art. 6 of the law 24.147, thus non-profit entities authorized to run and manage TPP are left unprotected" (Annex IV: 7.3)

VII.3. The right to health of disabled persons

Regarding health, the Argentinean State report[35] only mentions Social Security, that is, persons with regular employment whose health care is guaranteed by the law. However, there is no mention that: "According to recent surveys, 50 % of the population has no medical care and depends exclusively on public hospitals, taking into account extreme poverty, more than 10 %, which means that about **1,800,000 people, are disabled persons**

[31] Paragraph 284.
[32] Estimated time when the document was composed.
[33] Paragraph 285.
[34] We must note that: "National Law # 22.431, approved in 1981, is still effective. Art. 8 of this law estableshes that: "The National State, all of it's dependencies, non-State public entities, State corporations and the Government of the City of Buenos Aires must employ disabled persons fit for the job in proportion not lower than four per cent (4 %) of their total staff'. See point 7.2.1 of "The Situation…" report.
[35] Paragraph 322

who lack any possibility of receiving the necessary medical treatment because of the present state of the public health system" (Annex IV: 4.1).

On the other hand, the State report does not mention that: "The National Institute of Social Services for the Retired and Pensions (INSSJP) is in charge of the Integral Care for Disabled Persons Programme (PROIDIS). This programme provides social services to the majority of disabled persons all over the country. PAMI, the health care service run by the Institute, along with PROFE, the programme with the largest number of disabled persons, have been largely and frequently denounced. In this sense, PAMI's services cut off is notoriously higher than any other health care service; 50% of the **denounces for medication shortage** refer to PAMI" (Annex IV: 4.1.1 and 4.1.3)

The Argentinean State omits mentioning that through a Resolution by the Public Health Ministry[36] health care for disabled persons has been significantly reduced, all of which gives place to **a regressive situation that attempts against the rights of the disabled persons**[37].

VII.4. The right to education of disabled persons

Regarding what the Argentinean State points out about education[38], enough is to say that the report shows only concepts, without statistical data or results in support of the efficiency of implemented policies: "At best, in public education facilities there is a lack of criteria to facilitate "case by case integration". Thus, inclusion of a disabled person depends on the willingness of the directive staff or the teachers of the institution, most of which are not trained to develop integrating activities, nor do they have didactic elements or pedagogy methodologies to carry on with it". Moreover, **physical inaccessibility of the educational facilities and scarce technology to implement along the educational process of persons with sensory or multiple disabilities have a negative incidence.**

On the other hand, the State report does not mention the education of disabled adults. Adult disabled persons **suffer many educational and training discriminations and denials by institutions dependent on the Ministry of Education, with the argument that those institutions are not professionally or structurally fit to meet these demands**. For example, the National Institute of Technological Education, that offers free advanced technology training courses lacks the necessary resources to adapt that technology to disabled persons. The official educational programmes do not consider disability from an interdisciplinary view: university careers don't approach disabled persons as an issue or studies subject (Annex IV: 6.2)

Because of all that is stated here, it is imperative that the Committee recommends to the Argentinean State the adoption of measures to comply the regulations on the suppression of architectonic barriers and barries in public transport; see that 4% of public employment be granted to disabled persons in compliance of existing legislation; and that pertinent policies be adopted to guarantee disabled persons´ access to health and education rights in an effective and full manner.

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[36] Under decree # 486/02 (*national health emergency*) on April 2nd, 2002, the Ministry Resolution # 201 was sanctioned. This resolution approves an Obligatory Medical Programme for Emergency (PMOE). The effect of this Decree was extended by Decrees # 2724/02 and 1210/03.

[37] In this sense, we must point out that: "All health services providers are obliged by the Obligatory Medical Programme (PMO) to provide a minimum of medical assistance to their affiliates. This minimum system lists the obligatory health care that must be met by all health security agencies. PMO establishes which are the basic services that must be provided to disabled persons according to law 24.901. There is, however, a regulation deficit, reflected in recent regulations passed by de Public Health Ministry. In the first place, there is a reduction of integral services provided to mother and child, from prevention since conception, to an aggravation in case of risk factors, intended to an early detection of any deficiency or circumstance along pregnancy and beyond. At present, PMOE does not consider this situation and only covers from diagnosis through the first month after birth, without consideration of risk factors. As for early detection of congenital diseases, preemptive tests are limited to only three, leaving many possibilities unattended and imposing on the parents the administrative verification of the medicine that the new born child might need. This task not only takes a long time, but once the medication is authorized, it will be supplied only for a year. PMOE does not mention prolonged rehabilitation treatments that may guarantee the full development of the child abilities, as did the former PMO". See point 4.2. of "The Situation…" report. .

[38] Paragraphs 360-375