

UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE

CONTRIBUTION TO THE REVIEW OF ARGENTINA

Right to land and food

I. Evictions

1. Over the last 30 years, Argentina has been undergoing a **process of expansion of areas allocated to monocultures** in zones traditionally relegated by the market. Land concentration, the expansion of agribusiness, and highly intensive modes of production threaten the livelihoods of peasant and indigenous communities. Moreover, they affect the environment, hinder the productive activity of family farming, and expel families from their territories forcing them to relocate to urban peripheries. The advance on peasant and indigenous territories deepens the conflict over land ownership and use, leading to violence against rural communities throughout the country.
2. One explanation for this conflict is **the precarious land ownership of thousands of peasant and indigenous communities throughout the country**. These peasant communities, many of which have possession of the land where they have lived and worked for decades, do not have any legal recognition that guarantees them the security of tenure. In some cases, they use lands that are registered in the name of individuals or legal entities that have never exercised possession. In other cases, the people who appear as formal owners of these lands have titles that present serious irregularities but are sufficient in that they are enough for the justice system to evict possessor families (who live and work the land but do not have a land title).
3. In any case, **there is no large-scale policy in Argentina to strengthen the land tenure of the communities that possess these lands**. In its latest evaluation of Argentina, in 2018, the Committee on Economic, Social and Culture Rights (CESCR) had already warned about this situation. In its concluding observations, it recommended "Strengthening the security of land ownership of peasant communities."¹ In that same report, it expressed concerns about the lack of implementation of the Family Farming Law² approved in December 2014. This law³ established the creation of a program to address the land tenure situation of peasant and indigenous family farming as well as the creation of a national commission for this purpose. Although this commission has been formally established in September 2020, eight years after the enactment of the law, the planned program has not yet been implemented, nor has any measure been adopted within the framework of the law to improve the land tenure security of peasant and indigenous communities. The lack of progress in this regard also contradicts the provisions of GC No. 4 of the CESCR,⁴ according to which states must guarantee the security of land ownership. The 2008 housing report also expressed concern regarding the problem of precarious land ownership.⁵

¹ See E/C.12/ARG/CO/4 (para. 46, inc. c)

² Ibid. (para. 45)

³ See full text at: <https://www.argentina.gob.ar/normativa/nacional/ley-27118-241352/texto>

⁴ See E/1992/23

⁵ See A/HRC/7/16, para. 70

4. The expulsion of rural communities from their territories occurs de facto, through wire fencing of the lands or violence, or via the courts, through eviction procedures and/or accusations of usurpation that criminalize the peasant families who work and live on the land. Frequently, evictions are spearheaded by companies or private actors seeking to take over peasant-owned land to expand their agricultural or livestock production area.
5. In 2016, in line with its general recommendation No. 34 (2015) on the rights of rural women, the Committee on the Elimination of Discrimination against Women (CEDAW) reviewed the seventh periodic report of Argentina and recommended that the State adopt policies to impede forced eviction in order to prevent violence, stigmatization, and attacks against rural women in the context of large economic development projects. Since then, however, no measures have been adopted to protect rural women.
6. The case of Ramona Orellano is illustrative of the situation of some peasant women who live and own land in areas where the agricultural frontier is expanding. Ramona Orellano, a 94-year-old peasant woman, suffered harassment and attempted dispossession of her land for more than 40 years. In February 2021, a civil judge allowed an eviction action initiated by agribusiness businesspeople against her, without any regard for Ramona's historical possession of the land in dispute. **The encroachment on her territory was framed in a context of agribusiness expansion that took advantage of the precarious land tenure titles of peasant families to take over their land.** The ruling did not include any mention of the possessory acts exercised by Ramona. The deed presented by the businesspeople was the only document taken into consideration. The judge did not analyze human rights standards on the right to the land of peasant communities and their specific link to the territory they inhabit. The judge also ignored the special protection against evictions that Ramona's case required as a peasant farmer, woman, and elderly person.
7. The judiciary does not acknowledge the peasant way of life. Judicial officers accept the possession of the houses and buildings where peasants live, but not the tenure of the common land they work on. Because they do not use the typical "markers" that indicate agribusiness ownership, such as wire fencing, possession becomes invisible. For example, judicial officers ignore transhumance as a way of raising cattle in large areas such as riverbanks, mountains, and salt flats. In practice, it means moving with the animals across large grazing areas of common use, through forests and watering places. Grazing adapts to the natural cycles and changes of the land. As a result of the lack of knowledge about these practices among those who must adjudicate cases involving peasant communities, the extension of the territory inhabited by them is constantly called into question.
8. The conflict that the farm "La Libertad" is going through highlights this lack of knowledge of those who must decide on the territorial rights of the peasant communities. "La Libertad" is a large 13,000 hectares of land located in a rural area in the north of the province of Córdoba, in the center of the country. Approximately 30 families live there. They produce foodstuffs such as honey, pork, and sheep meat. Their production has nothing to do with large-scale agricultural and livestock production. Despite the 20 families living and working there, a livestock company bought it. However, when that company went bankrupt, a group of creditors wanted to collect on the company's debts by selling the fields ancestrally inhabited by the community. As a result, in 2014, more than half of the land was auctioned off. Since then, the defense of the land has been ongoing in the judicial arena while the community has intensified its efforts to protect its way of life, production, and the natural environment. In May 2019, Córdoba Civil Court No.11 ordered the auction of 2,700 hectares but, thanks to peasant

movement resistance, the auction was eventually canceled. It is interesting to note that one of the arguments put forward by the judiciary to justify the auction of these 2,700 hectares was the questioning of the extension of the land claimed by the families.

II. Food

9. **The expansion of the agricultural frontier also has an impact on the right to food.** In the 1990s and 2000s, soybean production increased sharply in Argentina. As a result, **the country's territory is increasingly used to produce commodities for export, at the expense of the territory used for the production of food for local consumption.** In 2018, the Special Rapporteur on the right to food visited Argentina and expressed concerns about the situation of impoverishment in the country, notably about the risks it implied in terms of food. She highlighted a tendency to support an agro-industrial model while cutting back on policies to protect family farming.⁶ The report noted that most of the country's cultivated area is used for the production of soybeans.⁷ Within this context, she recommended protecting and promoting family farming.⁸
10. The COVID 19 pandemic exposed the limits of the Argentine agrifood system to guarantee equitable and universal access to quality food. At the same time, it gave unprecedented public visibility and social legitimacy to peasant and indigenous family farming. Prices for their products were sustained during the isolation months and demand grew exponentially. The products were sold all over the country in farmers' markets, street fairs, and via alternative consumer networks (which all offered successful responses). As a result, many people could access food at fair prices, avoiding the distortion normally caused by large intermediaries.
11. The peasant and indigenous family farming sector, however, faces great difficulties in providing quality and diverse food to a large part of the population.⁹ The fact is that most producers, who are at the bottom of the production chain, do not have the assurance of the ownership of the land they work and live on. This puts them under constant threat of eviction. A lot of the fresh produce consumed in the cities is produced by rural communities settled in the fruit and vegetable belts of the urban peripheries. Like in the deep countryside, these producers do not usually have the security of tenure over the land where they live and work. They are often tenants with very precarious rental contracts. In these areas, moreover, farmers are under pressure from the real estate sector seeking to develop large-scale projects, particularly gated communities, which occupy sizeable tracts of land.
12. When distributing and selling the products, the main difficulties are associated with the regulatory framework of this particular activity. **Peasant and indigenous family farmers must face tax and sanitary requirements defined based on the possibilities, conditions, and risks of large-scale production for export.** These obstacles make it impossible to give formal status to the activity, which in turn limits the possibility of expanding the scale of production. In her 2019 report, the Special Rapporteur on the right to food mentioned this problem and suggested to the Argentine State that tax regimes in the

⁶ See A/HRC/40/56/Add.3, January 16, 2019

⁷ "Although Argentina has enough cultivated land to feed its population of 42 million inhabitants, approximately 60% of the cultivated land (19 million hectares) is dedicated to soybean production, a large part of which is destined for export" (See A/HRC/40/56/Add.3, para. 23)

⁸ See A/HRC/40/56/Add.3, para. 109 c)

⁹ More information available at:

https://www.cels.org.ar/web/wp-content/uploads/2022/06/CELS_Alimentos_Web.pdf

agricultural sector should protect small producers and the right to sufficient food, and not only favor the industrial export sector.¹⁰

13. This, in turn, acts as an entry barrier to the commercial-scale circuits in large urban centers. Their smaller scale prevents them from assuming the risk of producing and not selling or cushioning payment delays. For peasant and indigenous family farmers, the organization of demand is critical, i.e., having guaranteed sales of what they produce. In this regard, purchases by the State—which are systematic and predictable—could play a central role in boosting the sector. The family farming law establishes that this sector has "absolute priority" in the purchase of foodstuffs by the national government.¹¹ However, no steps have yet been taken to move in this direction.
14. The increase in food prices has been higher than general inflation in recent months. Official statistics show that between May 2021 and May 2022 the general basket of goods rose by 54.7%,¹² while the Basic Food Basket¹³ went up by 62.3%.¹⁴ Although this difference can be explained in part by the Ukraine-Russia war, it is also worth noting that Argentina is particularly exposed to these types of events because it is an agro-exporting country. However, access to food cannot be subject to the dynamics of international market prices. It is necessary to move forward with fundamental measures to protect and strengthen the capacity of those who produce quality food and build a national system that guarantees the right to quality food for the entire population. This is in line with what was stated by the rapporteur on food when she warned that, in Argentina, the industrial agriculture model has been detrimental to the food security of the population.¹⁵
15. Seeds are the source of the food production chain. The way seeds are dealt with determines what is produced, what is marketed, traded, and shared. In her visit to Argentina in 2019, the then Special Rapporteur on the right to food recommended that the state protect the producers' rights to ownership and suggested the creation of seed

¹⁰ See A/HRC/40/56/Add.3, para. 30 "Many small producers were unable to take advantage of Argentina's expanding agricultural economy because of socioeconomic constraints. Lack of access to credit and high interest rates do not allow most small producers to invest in the agricultural sector. Due to the accreditation processes required by the National Agri-Food Health and Quality Service (SENASA), there is limited availability of biopesticides. Fiscal regimes in the agricultural sector should protect small producers, give them the right to healthy food, and not only favor the industrial export sector."

¹¹ This includes hospitals, schools, community canteens, institutions dependent on the National Penitentiary System, the armed forces and other public institutions relying on the state. See <https://www.argentina.gob.ar/normativa/nacional/ley-27118-241352/texto> (art.22 inc. 3)

¹² The Total Basic Basket (TBB) broadens the Basic Food Basket (BFB) by including non-food goods and services such as clothing, transportation, education, health, housing, etc. The TBB is obtained from the value of the BFB, multiplied by a coefficient that shows the relationship between total expenses and the food expenses observed in the reference population.

¹³ The Basic Food Basket (BFB) is the set of food and beverages that are nutritious and meet the minimum amount of kilocalories and protein requirements, and whose composition reflects the consumption habits of a reference population, that is, a group of households whose consumption covers such food needs. The value of the BFB is used in Argentina for statistical purposes as a reference to establish the indigence line (IL), commonly known as extreme poverty. The concept of the indigence line seeks to establish whether households have sufficient income to cover a basic food basket capable of satisfying a minimum threshold of energy and protein needs.

¹⁴ For more details, see:

https://www.indec.gob.ar/uploads/informesdeprensa/canasta_06_226144AF5583.pdf

¹⁵ See A/HRC/40/56/Add.3 para. 103 "While there should be no problem in ensuring food availability for the population, the current model of industrial agriculture, which promotes soybeans and other cash crops for export over a diversified agricultural sector, has undermined the food security of the population".

banks.¹⁶ She also cautioned about the danger of the concentration of the management/ownership of seeds in the hands of a few companies for the availability of food.¹⁷ The United Nations Declaration on the Rights of Peasants recognizes the right to seeds of peasants and establishes the obligations of states to protect and implement this right.

16. Today, through litigation and corporate lobbying, **attempts are being made to modify the legislation on seeds, moving toward their privatization.** It is necessary to strengthen the policies of indigenous peasant agriculture to protect seeds as the heritage of the people and in their role as a primary input for food production.
17. In Argentina, Law 20.247 on Seeds and Phytogenetic Creations was enacted in 1973. It initiated the regulation of intellectual property but also protected the rights of farmers over seeds for private use, allowing them to continue with basic and ancestral practices such as saving seeds after harvesting.¹⁸
18. To obtain a stronger private property system, with no exceptions for farmers, Monsanto sued the Argentine state so that its soybean seed would be registered under the patent law regime and not under the seed law. In 2019, without resolving the substantive issue of Monsanto's claim, the Supreme Court of Justice of the Nation declared the patenting request to be futile because the maximum term foreseen by the regulations for patents—20 years—¹⁹ had expired. Monsanto re-filed the claim to obtain the patent for its soybean seed. This new case, with favorable rulings in the lower courts, is currently before the Supreme Court of Justice of the Nation.²⁰ If this ruling is confirmed in favor of Bayer-Monsanto, it would be the beginning of the privatization of seeds to the detriment of the legislation that recognizes the rights of farmers.

Recommendations to the state:

1. Generate land-use regulation tools to protect territories destined for food production by peasant and indigenous family farmers. More specifically, protect the fruit and vegetable belts of large cities and rural territories that are on the edge of the expanding agricultural frontier.
2. Pass a national law to adopt the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.

¹⁶ See A/HRC/40/56/Add.3 para. 80 "to protect the producers' rights to ownership of traditional seeds so they can freely commercialize them. Furthermore, in order to maintain the genetic diversity of seeds and ensure access to equitable sharing of the benefits arising from the utilization of such genetic resources, the state should establish seed banks."

¹⁷ See A/HRC/46/33 para. 80 "Any increase in seed prices will increase the cost of agriculture, making it more difficult for farmers to make a profit. A potentially higher input costs for farmers may also increase consumer prices, which in turn can threaten both the livelihoods of food producers and the access of the population to food."

¹⁸ The law preserves the right of farmers to save seed without having to pay royalties; the right to use a protected seed variety to develop new varieties of vegetables without the consent of the person who is registered as the owner of a seed variety; and, finally, the power of the National Executive Power to authorize planting when it is necessary to supply the population with the product obtained from that seed.

¹⁹ CCF 8044/2007/1/RH1 Monsanto Technology LLC v/ National Institute of Industrial Property s/ patent refusal

²⁰ CAUSE No. 7385/17 MONSANTO TECHNOLOGY LLC C/ NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY S/ PATENT REFUSAL

3. Generate a regulatory framework with sanitary and tax regulations that take into account the particularities of the peasant and indigenous family farming sector in terms of its scale of production.
4. Make progress on the general implementation of the National Family Farming Law (No. 27.118).
5. In line with the provisions of the Family Farming Law regarding the creation of a land ownership regularization program (art. 18), generate a national survey to create a national registry of land owners with basic information on the condition of possession. Based on this registry, move forward with a land regularization policy that contemplates the collective uses of the communities' territory when appropriate. This registry could also serve as a consultation tool for judiciary officers in the framework of legalized land conflicts.
6. In line with the Family Farming Law (article 22, paragraph 3), create a "government purchasing " program that prioritizes peasant and indigenous family farming products in the food purchases made by the national government.
7. Generate mechanisms and tools such as training workshops and visits to the territory to ensure that judicial officers are familiar with the way of life and production of peasant and indigenous communities in their territories so they can take them into account when making legal decisions.
8. Establish a regulatory framework that guarantees access to seeds for indigenous family farmers and avoids the implementation of the patent regime on this resource.