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THE INDIGENOUS PEOPLES OF JUJUY, ARGENTINA: LESSONS LEARNED AND CHALLENGES IN ACHIEVING THE IMPLEMENTATION OF THEIR RIGHT TO EDUCATION

The Expert Mechanism on the Rights of Indigenous Peoples (the *Expert Mechanism*), created pursuant to UN Human Rights Council Resolution 6/36 of December 14, 2007, has the mandate to “provide the Human Rights Council with thematic expertise on the rights of indigenous peoples [...]”.¹ In September 2008, the Expert Mechanism was given the more specific mandate of preparing a study on the lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education.² To that end, the Expert Mechanism was to request submissions from indigenous peoples’ organizations and civil society organizations (paragraph 6 of Human Rights Council Resolution 9/7). As part of this process, the *Consejo de Organizaciones Aborígenes de Jujuy* (COAJ—Council of Indigenous Organizations of Jujuy), the *Clinique internationale de défense des droits humains* of the Université du Québec à Montréal (CIDDHU—International Clinic for the Defence of Human Rights) and Rights & Democracy (R&D) respectfully make the present submission.

I. INTERNATIONAL LEGAL FRAMEWORK

1- Article 14 of the *United Nations Declaration on the Rights of Indigenous Peoples* (the *Declaration*) stipulates and confirms various aspects of the right of indigenous peoples to education:

“1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. 2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination. 3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.”

The Government of Argentina is already under the obligation to recognize and guarantee said right under the international treaties that it has signed reflecting those principles (the right to accessible education, the need for cultural adaptation of education, and the right of indigenous peoples to establish and control their educational systems).

2- **Access** – Argentina is under the obligation³ of guaranteeing the right to education (Art. 14 §2). This means that education must be accessible, both at the elementary level, and at the high school and university levels. Elementary education must be free and mandatory,⁴ while high school and university education must be accessible to all, particularly with regard to financial cost.⁵ The various types of discrimination are prohibited in education, particularly discrimination based on origin,⁶ “[t]he State must fulfill its obligation to guarantee access to free elementary education to all children, regardless of their ancestry or origin.”⁷

3- **Cultural Adaptation** – The right to education includes the right of indigenous peoples to receive an education that is adapted to their culture, and is appropriate to their methods of teaching and learning, within their communities, and outside of their communities as well, when possible (art. 14 §1 and §3). Argentina is under the obligation to adapt the content of educational programs and services for indigenous peoples, in order to meet their needs and include their history, knowledge, know-how, value systems, and social, economic and cultural aspirations.⁸ The Government must furthermore provide education that is adapted to the cultures and values of indigenous peoples, so that they may enjoy personal, social and cultural development.⁹ Indigenous peoples also have the right to receive education in their own languages in their communities and, when possible, outside of their communities as well (Art. 14 §1 and §3). This represents a particularly important international obligation on the part of the Government of Argentina,¹⁰ as learning in the mother tongue is fundamental to defining the human rights of indigenous peoples.¹¹ In order to fulfill these obligations, the Government must implement training plans aimed at the teachers and staff responsible for the education of indigenous children.¹²

4- **Control** – Indigenous peoples have the right to establish and control their own educational systems and institutions (Art. 14 §1). The Government of Argentina is under the obligation to guarantee this right,

particularly with regard to providing appropriate resources for its implementation.¹³ Therefore, education programs for indigenous peoples must be carried out with their cooperation.¹⁴ Cooperation must take place at all levels—planning, implementation, and evaluation—and must involve parents, teachers and representatives of indigenous peoples.¹⁵ In order for participation to be effective, Governments must make sure that members of indigenous peoples receive appropriate training.¹⁶

II – GOOD EXAMPLES AND LESSONS LEARNED IN THE IMPLEMENTATION OF THE RIGHT OF INDIGENOUS PEOPLES TO EDUCATION

5- Up until 1994, Argentina's National Constitution established the following function for Congress: to "[...] preserve peaceful dealings with the Indians and achieve their conversion to Catholicism."¹⁷ With regard to education, when primary education became mandatory in 1884, it created the obligation on the part of the Government to create schools for all children.¹⁸ In the last few decades, the legal framework in Argentina has both regressed and progressed. It has gone from establishing that government-implemented curricula must include content on indigenous culture, thus making it the schools' business to protect and assign value to elements of indigenous cultures,¹⁹ to providing constitutional recognition of the right to *Educación Intercultural Bilingüe* (EIB—Intercultural Bilingual Education), and further ensuring participation by indigenous peoples with regard to "interests that affect them."²⁰

6- In 2006, the *Ley Nacional de Educación* N° 26.206/06 (LEN—National Education Act) was passed. The Government made significant progress by ensuring the protection of language and cultural identity, and promoting inter-culturalism for all students belonging to indigenous communities (Art. 11 §n of the LEN). This initiative is a first positive step toward implementing, through legislation, Argentina's international obligations with regard to indigenous education.

7- These achievements were limited with regard to participation by indigenous peoples, being reduced to defining and implementing Intercultural Bilingual Education (EIB) strategies.

8- The federal regulatory framework is not reflected in the Constitution of the Province of Jujuy, which was reformed in 1986.²¹ It refers to indigenous people in Article 50 on an individual basis, without recognizing the social organization of indigenous peoples as such. The aforementioned article establishes that the Province must issue appropriate legislation to protect indigenous people, "leading to their integration, and economic and social progress."²²; Article 66 recognizes permanent, mandatory, free, gradual and pluralistic education. The term 'pluralistic' opens the door to introducing Intercultural Bilingual Education (EIB).

9- Provincial harmonization with the National Act 26206/06 is currently underway. At the invitation of the EIB Unit in Jujuy, members of the province's *Consejo de Participación Indígena* (CPI—Indigenous Participation Council) are taking part in the consultation process regarding the new *Ley de Educación provincial* (Provincial Education Act). This process is expected to lead to a CPI document with recommendations to improve the new legislation, to be included in the Act. The round of consultation will continue in some regions of the province throughout the month of March 2009.²³

10- It is deemed that the Government of Argentina must implement its aforementioned international obligations, and ensure the provinces' cooperation in this regard.²⁴

A- Access to Education without Discrimination

11- The LEN provides for 13 years of mandatory education and establishes the goal of devoting 6% of GDP to education in 2010. It defines the principle of quality education on equal terms, which guarantees assistance to poorer regions. It also identifies the recognition of the languages and cultures of indigenous peoples as a principle of education policies. This initiative is a noticeable effort to gradually achieve the objectives stipulated in Article 14 of the Declaration. However, significant obstacles remain.

12- Although we have seen an increase in indigenous elementary school graduates in the Province of Jujuy, the illiteracy rate among indigenous women is still two to three times higher than the national average and the Jujuy average for men.²⁵ Furthermore, there are still major problems with regard to high school education and beyond.

13- In fact, in 2001, 14.4% of the population over the age of 15 in the province of Jujuy had finished high school, whereas the national average was 16.6%. According to the ECPI (Supplementary Census of Indigenous Peoples),²⁶ among the Kolla people of the provinces of Jujuy and Salta, the high school completion rate is 9.9%, the percentage of Guaraní people in the provinces of Salta and Jujuy who completed high school is 7.1%. The data for other indigenous peoples in the region are similar. Approximately 47% of the national population between the ages of 20 and 29 had access to higher education; whereas the results for the indigenous groups covered by the ECPI are between 1 and 15%. For example, among the Ava Guaraní people aged 15 years and over in the Jujuy and Salta provinces, 1.2% attend university, whereas the percentage among the Kolla people of the Jujuy and Salta provinces is 5.8%.²⁷

14- This situation is starkly evident in the Puna region of Jujuy, where there is a significant concentration of indigenous communities. In 2005, indicators showed that 92% of school-aged children went to elementary school, 6% went to high school, and 2% went on to higher education.^{28§} The LEN's goal of 13 years of mandatory schooling is still a long way away for the indigenous peoples of Jujuy. If we compare this with results for Latin American and Caribbean countries overall, we see a profound difference: since the year 2000, the average high school attendance rate has been 70%, with the higher education rate at 25%.²⁹

15- With regard to the issue of distance, according to the COAJ, many children in Jujuy must walk 4 to 10 km over paths through mountains and high plateaux to attend elementary school. Furthermore, for most young people, the nearest high school is 100 to 200 km away.

16- In recent years, some boarding high schools have been created, to provide some kind of access to young indigenous people, but budget shortfalls have led to social risks in some cases (problems linked to nutrition, security, care, early pregnancies, etc.). Obtaining access to high school means emigrating to urban centres, with the social risks linked to emigration, such as being uprooted from one's family and culture, and the need to work to cover expenses.

17- It should be mentioned that there has been some progress with regard to funding education. For example, the INAI (National Institute for Indigenous Affairs)³⁰ has implemented a program of scholarships for indigenous high school students. In 2008, 3000 new grant applications were sent out, of which 423 were for the Province of Jujuy. This initiative is complemented by intercultural tutoring and cultural strengthening workshops, as an attempt to reduce the dropout rate.³¹ However, neither the funding nor the scholarships are sizeable enough to guarantee access to education for indigenous children and youth.³²

18- Despite favourable national legislation and scholarship programs, access to high school and higher education for indigenous boys and girls remains very limited in the Province of Jujuy. Major initiatives are required if Argentina is to reach the objectives of Article 14(2) of the Declaration, and fulfill the international obligations set out above.³³

B- Cultural Adaptation and Bilingual Intercultural Education

19- Article 53, paragraph e) of the LEN provides for: "[...] encouraging the building of educational models and practices that belong to indigenous peoples, and that include their values, knowledge, language and other social and cultural characteristics."

20- However, according to the information gathered by COAJ at the community level, in Jujuy, education policies and teaching practices ignore the cultural reality of the indigenous population.

21- Community leaders have stated that public education is not adapted to language considerations. Indigenous students learn to read and write in standard Spanish, and the dialects spoken in the regions of Jujuy Province are not recognized at school.

22- According to those same leaders, instruction is carried out by teachers trained according to models that do not take into account, and are not familiar with, indigenous cultures. Educational projects are conceptually and methodologically undermined by the image that teachers have of indigenous children, with regard to their language and cognitive characteristics, and their future role in society. There is a disconnect between the children's world and what they learn at school, despite the fact that some courses have been adapted to a rural context. In boarding schools, the teachers take care of the students, and impose living and eating habits that are foreign to indigenous children's communities and cultures.

23- Teaching positions are assigned according to scores obtained during a training process that takes place in large urban centres.³⁴ The few indigenous teachers have limited or no access to the training that would give them high enough scores to get positions in their communities' schools.

24- According to the information gathered by COAJ, intercultural tutors (brought in to lower the dropout rate), work under irregular and economically precarious conditions, and do not receive sufficient training. Their functions are limited to tutoring high school students. This means that post-secondary students are exposed to a weakening of their cultural identity, which contributes to the dropout rate.

25- In response to the virtual absence of government participation in EIB in Jujuy, indigenous organizations have set up extra-curricular Guaraní language courses, provided by people from indigenous communities, in schools in Ledesma, Yuto and El Bananal. The EIB experience of the Guaraní people of Jujuy has gotten support from the Guaraní People of Bolivia, the APG (*Asamblea del Pueblo Guaraní*—Assembly of the Guaraní People). Bolivia has established support measures for young people in Jujuy and Salta, so that they may become community leaders, bilingual assistants or health agents, and have introduced educational resources developed in Bolivia. These are mainly textbooks in Guaraní, and informal teaching methods for the education of Guaraní children.

26- In order to implement the LEN in Jujuy, it is necessary to reform teacher training and amend the curriculum, taking into account the cultural parameters of indigenous peoples, including with regard to timelines. This can only be done in the context of Jujuy legislation that respects the standards of the LEN, and includes full participation by indigenous peoples. Those are the steps required to fulfill Article 14 §1 and §3 of the Declaration, and Argentina's corresponding international obligations.³⁵

C- Control and Participation

27- The LEN establishes the national government's responsibility for "creating permanent participation mechanisms for the representatives of indigenous peoples in the bodies responsible for defining and assessing Intercultural Bilingual Education strategies (EIB)."³⁶

28- Indigenous peoples' participation in drafting the LEN only took place in consultation mode. In 2006, on the initiative of the *Ministerio de Educación de la Nación* (National Ministry of Education), representatives of indigenous peoples were invited, through the *Consejo de Participación Indígena* (CPI—Indigenous Participation Council) to consider the basic draft of the new National Education Act (LEN). The representatives offered criticism and input, which were not recognized as part of parliamentary business, nor included in the new Act. Despite the fact that their input was not included, indigenous peoples created the *Consejo Educativo Autónomo de Pueblos Indígenas* (CEAPI—Independent Education Council of Indigenous Peoples),³⁷ as their own mechanism for participation, consultation and control. The Council also has the mandate of creating indigenous education councils in all constituent provinces.

29- So far, the CEAPI has not received official recognition from the National Government, nor from the Provinces, despite a number of requests to that effect.³⁸

30- In Jujuy, COAJ has pushed hard to create community education councils, with the firm belief that "participation is key to adapting the teaching system to indigenous requirements."³⁹

31- The LEN does not provide for real indigenous educational institutions, as outlined in Article 14 of the Declaration, and in the Government of Argentina's other obligations.⁴⁰ However, indigenous initiatives like the CEAPI have opened up a participation process. It is therefore a matter of priority for the National Government to recognize the CEAPI, and for the Government of Jujuy to recognize the indigenous education councils. They will operate according to the customs of indigenous peoples, and will see to the implementation and accessibility of EIB.

III - RECOMMENDATIONS

- Recognizing the progress represented by *Ley 26.206/06* (Act 26.206/06), passed by the Government of Argentina in 2006, it is recommended that the Expert Mechanism on the Rights of Indigenous Peoples request the Government of Argentina to "ensure, in cooperation with indigenous peoples, effective mechanisms for the implementation of its *ley de Educación Nacional* (LEN—National Education Act), particularly with regard to its provisions on *Educación Intercultural Bilingüe* (EIB—Intercultural Bilingual Education) (Articles 52-53-54), while giving priority to provinces with a higher indigenous population."

- Considering that the legislative progress in implementing Article 14 of the Declaration does not guarantee the effective exercise of recognized rights, it is recommended that the Expert Mechanism examine ways of establishing follow-up of these legislative measures, through the relevant international organizations (including the Committee on Economic, Social and Cultural Rights, UNESCO, and the ILO).

¹ Human Rights Council Resolution 6/36, § 6.

² Human Rights Council Resolution 9/7.

³ Protocol of San Salvador (PSS) (art. 13), International Covenant on Economic, Social and Cultural Rights (ICESCR) (PIDESC) (Art. 13), ILO Convention No. 169 OIT (C169) (Art. 26) and the Convention on the Rights of the Child (CRC) (Art. 28).

⁴ CRC (Art. 28 § 1. a)), PSS (Art. 13 § 3 a) and Art. 16) of the Convention against Discrimination in Education (CDE) (Art. 4 § a)). See also Inter-American Court of Human Rights (IACHR), *Caso de las Niñas Yean y Bosico c. República Dominicana* (Case of the Yean and Bosico Girls v. the Dominican Republic), September 8, 2005, Series C., No. 130, (“*Yean y Bosico*” Case), par. § 185.

⁵ CRC (Art. 28 § 1. b) c)), PSS (Art. 13 § 3 b) c)) and CDE (Art. 4 a)).

⁶ International Covenant on Civil and Political Rights (ICCPR) (Art. 26), ICESCR (Art. 2), CDE (art. 3), C169 (Art. 2 par. 2 a) y Art. 26), CRC (Art. 2), International Convention on the Elimination of all Forms of Racial Discrimination (ICEFRD) (Art. 1, 2, 5, 7), American Convention on Human Rights (ACHR) (Art. 1, 24) and PSS (Art. 3).

⁷ “*Yean y Bosico*” Case, “Considerations of the Court” section, par. d) on education, § 244.

⁸ C169, Art. 27 § 1.

⁹ Report of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, 2005, E/CN.2005/88, § 88.

¹⁰ C169 Art. 28, § 1.

¹¹ Report of the of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, 2002, E/CN.4/2002/97, § 64.

¹² UN Committee on the Rights of the Child, General Observation No. 1 on the implementation of Article 29 of the Convention on the Rights of the Child, CRC/GC/2001/1, § 18. See, for example, ILO, CEACR: Individual direct request concerning Convention No. 169, Honduras 2004, ILOLEX Doc. 092004HND169, § 26.

¹³ C169, Art. 27 § 3.

¹⁴ C169, Art. 27 § 1 y CDE, Art. 5 § 1). See also the 2005 Report of the UN Special Rapporteur on the Right to Education, Section E. See, for example, the concurrent interpretation by the ILO CEACR in its observations regarding C169 in Colombia 1994 (ILOLEX doc. 091994COL169 § 27), Mexico 1999 (ILOLEX doc. 091999MEX169, § 5), Bolivia 1995 (ILOLEX doc. 091995BOL169, § 25) and Honduras 2000 (ILOLEX doc. 092000HND169, § 22).

¹⁵ Report of the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, 2005, E/CN.2005/88, § 68.

¹⁶ C169, Art. 27 § 2.

¹⁷ National Constitution of 1853, Art. 67 § 15.

¹⁸ Ley de Educación Común N° 1420 (Common Education Act No. 1420).

¹⁹ Act 23.302/85.

²⁰ National Constitution of 1994, Art. 75 § 17.

²¹ Jujuy is the province with Argentina’s highest percentage of households in which a member identifies him or herself as an indigenous person or the descendent of an indigenous person. See Encuesta Complementaria de Pueblos Indígenas (ECPI—Supplementary Survey of Indigenous Peoples), 2004–2005. Instituto Nacional de Estadística y Censo (INDEC—National Statistics and Census Institute).

²² Constitution of the Province of Jujuy, Art. 50.

²³ Informe sobre el proceso de consulta de la nueva Ley de Educación Provincial (Report on the Consultation Process for the New Provincial Education Act), carried out by COAJ, for the CPI. February 2008.

²⁴ ICESCR, Art. 28, Committee on Economic, Social and Cultural Rights, see, for example, U.N. Doc. E/C.12/1993/9 (1993), § 13; Human Rights Committee: U.N. Doc. CCPR/CO/80/DEU (2004), § 12; CCPR/CO/73/CH (2001), § 6.

²⁵ Source: developed using the database of the Dirección Provincial de Planeamiento, Estadísticas y Censos (DIPPEC—Provincial Planning, Statistics and Census Branch) (Censo Nacional de Población, Hogares y Vivienda—National Population, Household and Housing Census).

²⁶ Encuesta Complementaria de Pueblos Indígenas (Supplementary Survey on Indigenous Peoples). 2004–2005. INDEC.

²⁷ *Ibid.*

²⁸ Enlace Continental de Mujeres Indígenas (Continental Network of Indigenous Women of America; Université du Québec International Workshop for the Protection of Human Rights (2006) Report: “MUJERES INDÍGENAS DE LAS AMÉRICAS: UNA DOBLE DISCRIMINACIÓN” (Indigenous Women of the Americas: Double Discrimination), <<http://www.cidh.uqam.ca/documents/Versionimprim%C3%A9-OEA%5B2%5D.pdf>>.

²⁹ Gentili, P. 2007: *Desencanto y Utopía. La educación en el laberinto de los nuevos tiempos* (Disenchantment and Utopia. Education in the Modern-Day Labyrinth). Homo Sapiens ediciones, Argentina.

³⁰ Instituto Nacional de Asuntos Indígenas (National Institute of Indigenous Affairs).

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- ³¹ According to 2001 Census data, Jujuy is the province with the highest rate of grade repetition at the polymodal level in the country, at 12.8%. Jujuy is first place among the provinces of the NOA region with regard to the in-year dropout rate, 18.7%. (Datos del CIPPEC, Proyecto “Las Provincias Educativas”).
- ³² Only 2 to 5% of Indigenous children and youth in the Province of Jujuy receive scholarships. ECPI. INDEC.
- ³³ See endnotes 6-10.
- ³⁴ Provincial Act 2316/08, amending Article 19 of the Teacher’s Statute. December 2008.
- ³⁵ See endnotes 8-12.
- ³⁶ Ley Nacional de Educación N° 26.206/06 (Nacional Education Act No. 26.206/06), Art. 53 (a)
- ³⁷ Created September 28, 2007, pursuant to the Workshop Seminar “Los recursos humanos para la EIB en el marco de la Ley de Educación Nacional” (Human Resources for EIB within the Framework of the Nacional Education Act).
- ³⁸ Notas y actas dirigidas al Ministerio de Educación de la Nación y Modalidad EIB (Notes and reports to the Ministry of National Education and the EIB Unit) (28/09/07, 07/12/07, 10/10/08, 7/12/08, 11/08/09).
- ³⁹ Salgado, Juan Manuel, *Convenio 169 de la OIT sobre Pueblos Indígenas* (Comentado y anotado) (ILO Convention No. 169 concerning Indigenous and Tribal Peoples—Commented and Annotated), 2006, PUBLIFADECS.
- ⁴⁰ See endnotes 13-16.