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INDIGENOUS ISSUES

**Written statement* submitted by the Permanent Assembly for Human Rights (ADPH),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

INDIGENOUS ISSUES

The Argentine government reproduces and reaffirms the subordination of the indigenous people that have existed in our country ever since the creation of the Argentinean nation, as it does not apply nor guarantees their the territorial, political and cultural rights recognized by the constitutional reform of 1994 (art. 75 Inc.. 17) and by the ratification of the Convention (No. 169) concerning Indigenous and Tribal Peoples

in Independent Countries Adopted on 27 June 1989 by the General Conference of the International Labour.

This policy firstly reflects in the deficient adaptation to these norms by national and provincial legislation, substantive as much as procedural. There is no regulation or project which, elaborated with the participation of the indigenous people, would generate conditions of stability for the communities and for the rural and urban settlers, and would allow them to exert control of their natural and cultural resources.

The government and its different institutions, arbitrarily define categories to establish the exercise of their rights, such as the notion of traditional occupation, which are restrictive, inapplicable and/or unconstitutional. At the national stage law 23,302 on Indigenous Policy and Support to Aboriginal Communities, promulgated in 1985, are slanted by paternalists, authoritarian and disrespectful criteria concerning the values, practices and institutions of the indigenous people. It fails to recognize the diversity of communities that inhabit the Argentinean territory, as well as the diversity of situations which they face and are a consequence of their particular social histories. At a provincial stage, the administrative practices and resolutions openly deny their rights. Among other examples, the government of Río Negro possesses 5.000.000 hectares, most of which had been traditionally occupied by mapuche communities and settlers. Without consultations, and through the promulgation of decree 967 (12 July, 2004), they ordered the fiscal valuation of land and put it up for sale without recognizing the rights of possession and property of the original occupants; thus creating and consolidating illegitimate appropriations. Seemingly, the government of Jujuy granted concessions to operate gold within the territory of the Community of Liviara without their consent, causing serious human and environmental damages. The wastes from gold washing are spilled in the Orosmayo River, which constitutes a source for water and food supply for the settlers. The Province refused to stop this practice due to economic development needs.

Secondly, the subordination materializes on the lack of participation and consultation with the communities and original settlers when deciding on issues that affect their interests. The National Institute of Indigenous Affairs (INAI), an institution that was established without proper consultations and must implement the national law already mentioned, does not comply with the legislation. Indigenous communities aren't properly represented on this institution, and several international organizations, such as the Commission of Experts of the ILO (CEACR 2002/73°) and the Committee for the Elimination of Racial Discrimination (CERD/C/65/CO/1), expressed their concern on this issue. Denunciations had also been made pointing out practices, policies and resolutions against the interests and needs of the indigenous people, such as strategies to favour interethnic conflicts and confrontation with other sectors of society, false promises, corrupt practices and representation of illegitimate interests.

The Provincial Institute of Indigenous People of Salta (IPPIS) established a commission to represent the indigenous guaraní community “El Tabacal” and negotiate agreements with the board of the Ingenio San Martín of “El Tabacal” and provincial authorities that were harmful for the natives and violated the legislation in force. The Ingenio San Martín of “El Tabacal” is responsible for the violent evacuation of the community from its ancestral land and for the continuous threats and persecutions to its inhabitants. Although the manoeuvre was denounced by the victims in several opportunities before the INAI, the national government used the misbehaviour of the commission as a justification for the government’s lack of response to the request for the restitution of 5000 hectares to the community.

As a consequence of the government’s attitude, massive arbitrary evictions and displacements (administrative, judicial and private) of communities and settlers had taken place, in an open violation of human rights: discrimination, arbitrary detentions and unlawful entry. One of the worst examples took place on 16 August 2003 in the toba community of Formosa, Nam Qom, which was attacked by 100 policemen. Without any judicial order, the policemen entered the community searching for natives accused of assassinating a policemen. They beat, mistreated and humiliated children, women and men. Some members of the community were held in incommunicado detention and suffered torture and serious injuries.

The lack of access to an effective and impartial judicial system worsens the situation of these communities. The lack or delay of judicial response, the arbitrary decisions and the construction and consolidation of structures to neutralize aboriginal leaders are practices aimed to the remove indigenous people from their land or to allow landowners and transnational companies (Benetton, Seabord Corporation, Moconá Forestal S.A., Repsol YPF, etc) to do so in order to explode and acquire their water reservations (High River Chubut, Ñorquinco, Negro River), forests and mounts (Communities Jeju, Yamandú and Tamanduá, Missions), minerals (Communities mapuche Kaxipayiñ and Paynemil, Neuquén) and biodiversity (Communities Tekoa Yma and Tekoa Kapii Yvate); or to expand the agro-industrial border -mainly for the production of transgenic soybean- (Communities Tufa Colony Sun of May, Chaco and Wichí Eben Ezer, Jump); tourism (Yriapú Community, Missions) or real estate speculation (Community Cardinal red Mapuche Motoco, Puelo Lake, Chubut).
