

Buenos Aires, September 18th, 2007

Findings and Orders, considering:

1º) That on page 8/41 the Ombudsman promotes a lawsuit against the Federal Government and the Province of Chaco, so that they are ordered to take the necessary measures to change the current living conditions of the inhabitants of the southeast region of the General Güemes Department and northwest of the Libertador General San Martín Department of that province, mostly belonging to the Toba ethnicity, who he claims are in a situation of extreme emergency, with most of their basic and essential needs unmet, as a result of the Federal and provincial government's inaction and non-compliance, on the part of both, of the obligations under the existing laws, the National Constitution, the international treaties and the Constitution of the Province of Chaco.

Likewise, he requests that they are ordered to ensure a real and effective quality of decent life to these communities, that would enable them to exercise their rights to life, health, medical and social assistance, food, potable water, education, housing, general welfare, employment, social inclusion, among others, and that these rights are continuously and permanently satisfied, with the mutual intervention of the Federal Government and the Province of Chaco.

The Ombudsman also notes that, according to the survey conducted in August this year by the Ombudsman's office, as well as reports prepared by the Chaco's Institute for Indigenous People, the Human Rights Secretariat of the Nation and the media that he quotes and offers as evidence, the natives who inhabit that portion of the provincial territory are affected by a severe socio-economic situation as a result of which most of the population suffers from endemic diseases that are the result of extreme poverty (malnutrition, Chagas, tuberculosis, donovaniosis, bronchopaties, parasitosis, scabies, etc.), lack of food, access to clean water, housing, necessary medical care, and that the defendants have failed to carry out the necessary actions aimed at reversing this serious situation. He stresses that, because of the health and food crisis, there have been 11 deaths in the region in the last month, a fact that, as noted, would also have been corroborated by the Chaco's Institute for Indigenous People and the Human Rights Secretariat of the Nation.

Furthermore, he indicates that the signature and ratification of international human rights treaties, the explicit and implicit mandates of the National and Provincial Constitutions, and the numerous federal and provincial existing laws relating to fundamental rights of individuals, clearly considers both states (federal and provincial) as passive subjects of the action.

In that sense, he affirms that the Federal Government is obliged to ensure the basic rights of the citizens and, hence, to meet, concurrently with the provincial and municipal

states, the basic needs of the population, such as life and health; and in particular that the provisions of the Law 23,302 and its regulatory decree 155/1989 places the Federal Government as the main party responsible for the effective exercise of indigenous peoples' rights by establishing concrete actions whose execution entrusts to the Nation through the National Institute for Indigenous Affairs, currently dependent of the Ministry of Social Development of the Nation.

He argues that, undoubtedly, the Federal Government has not fully complied with the legal mandate, because otherwise the extreme degree of abandonment and misery suffered by the inhabitants of the said areas would not take place.

In turn, he states that the Province of Chaco has breached the rules of its own Constitution, which impose a duty to ensure the human rights of its inhabitants.

In addition, he also request that, as a precautionary measure, it is ordered that the province of Chaco and the Federal Government perform actions in order to meet the basic needs of these peoples, which requires suitable and sufficient personnel to be sent for medical care, medicines, food, and drinking water in necessary quantities, equipment for spraying pests, clothing, blankets, mattresses, etc. in sufficient quantities, and that in a periodic and documented way the defendants prove that the actions actually materialize.

2º) That on page 49 the Attorney General of the Province of Chaco requested permission to take immediate action on the record on behalf of the State, under the express instruction received by the Governor through Decree 1688/2007.

3º) That the severity and urgency of the facts denounced require this Court to exercise the control entrusted to justice on the activities of the other branches of government and, in this context, the adoption of the necessary measures that, without undermining the powers of the latter tend to support the observance of the Constitution, beyond the decision that can be placed on the time to rule on its jurisdiction to hear the case via the instance provided for in Article 117 of the Constitution (cf. case L. 733.XLII "Lavado, Diego Jorge y otros c/ Mendoza, Provincia de y otro s/ acción declarative de certeza", judgment of February 13th, 2007).

This is so because it is up to the national Judiciary search for ways to ensure the effectiveness of rights and prevent them from being undermined as a fundamental and guiding objective when administering justice and decision making processes that are submitted to it, especially when it concerns the right to life and physical integrity of persons. It should not be seen as an undue interference by the judiciary when all it does is aim to protect rights or supplement omissions to the extent that such rights may be injured (cf. case cited above; Decision: 328:1146).

Consequently, the Court as custodian of constitutional guarantees shall require the defendant's explanations that it considers necessary for the purpose of litigation and order the appearance of the parties at a hearing. Furthermore, since in this case there is sufficient likelihood in the law, and in particular there is a possibility of imminent or irreparable injury, in accordance with the provisions of Article 232 of the Code of Civil and Commercial Procedure, it corresponds to grant the requested injunction, with the scope to be disposed below (arg. case. D. 251. XLIII. "Defensor del Pueblo de la Nación c/ Buenos Aires, Provincia de y otro (Estado Nacional) s/ amparo", judgment of April 24th, 2007, among others).

Therefore, and heard the Attorney General in this instance, without prejudice as to what will ultimately be decided, it is resolved to:

I. Order the Federal Government and the Province of Chaco to inform the Court, within thirty days, regarding the measures to protect the indigenous people who live in the southeast of the General Güemes Department and northwest of the Libertador General San Martín Department of that province: 1) Communities that inhabit these territories and number of people within them. 2) Budget for the care of indigenous affairs and allocation of resources set out in the relevant laws. 3) Execution of health programs, food, and health care. 4) Implementation of programs of water supply, fumigation and disinfection. 5) Implementation of education plans. 6) Implementation of housing programs.

II. Convene a hearing to be held at the seat of this Court on November 6th, 2007 at 11:00 am, in which the content of the report shall be expressed on oral and public hearing by the parties before the Court. For communication to the federal government, issue an official communication to the Ministry of Social Development (Art. 91, Law 25,344) and with regard to the Governor of the Province of Chaco, issue an official communication to the federal judge on duty in the city of Resistencia. Let it be notified.

III. Grant the injunction requested and, consequently, order the Federal Government and the Province of Chaco to provide drinking water and food to indigenous communities living in the southeastern region of the General Güemes Department and the northwest of the Libertador General San Martín Department of that province, as well as adequate means of transport and communication to each of the health posts. Let it be notified to enable non-working days and hours.

RICARDO LUIS LORENZETTI - ELENA I. HIGHTON DE NOLASCO (dissenting)-
CARLOS S. FAYT – ENRIQUESANTIAGO PETRACCHI - JUAN CARLOS
MAQUEDA - E. RAUL ZAFFARONI -CARMEN M. ARGIBAY (dissenting).

DISSENTING OPINION OF THE VICEPRESIDENT JUDGE ELENA I. HIGHTON DE NOLASCO AND JUDGE CARMEN M. ARGIBAY:

Considering:

1º) That the aforementioned share the arguments and the conclusion reached in the opinion of Attorney General above, to which they refer in order to avoid unnecessary repetition.

2º) That without prejudice to the foregoing, since in this case there is sufficient likelihood in the law and in particular there is a possibility of imminent or irreparable injury, in accordance with the provisions of Article 232 of the Code of Civil and Commercial Procedure it corresponds to grant the requested injunction, with the scope to be disposed below (arg. case. D. 251. XLIII. “Defensor del Pueblo de la Nación c/ Buenos Aires, Provincia de y otro (Estado Nacional) s/ amparo”, judgment of April 24th, 2007, among others), and which must be fulfilled in accordance with the provisions of Article 196 of that Code.

Therefore, it is resolved to:

I. Grant the injunction requested and consequently, order the Federal Government and the Province of Chaco to provide drinking water and food to indigenous communities living in the southeastern region of the General Güemes Department and the northwest of the Libertador General San Martín Department of that province, as well as adequate means of transport and communication to each of the health posts. Let it be notified to enable non-working days and hours.

II. Declare the incompetence of this Court to hear these proceedings. Let it be notified.

ELENA I. HIGHTON de NOLASCO – CARMENM. ARGIBAY.